

**EXPLANATORY MEMORANDUM TO**  
**THE RESTRICTED BYWAYS (APPLICATION AND CONSEQUENTIAL**  
**AMENDMENT OF PROVISIONS) REGULATIONS 2006**

**2006 No.**

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
2. **Description**
  - 2.1 These Regulations provide for certain provisions of existing primary and secondary legislation to apply, or to be excluded from applying, to a new category of highway, the “restricted byway”, which is established by sections 47 to 50 of the Countryside and Rights of Way Act 2000 (“the 2000 Act”). They also make amendments to primary and secondary legislation which are necessary either as a consequence of that legislation being applied to restricted byways, or of the coming into force of those sections of the 2000 Act.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
4. **Legislative Background**
  - 4.1 Sections 47-50 of the 2000 Act introduce a new category of highway called the “restricted byway”. A restricted byway is defined as a highway over which the public have restricted byway rights, with or without the right to drive animals of any description. “Restricted byway rights” include a right of way on foot, on horseback or leading a horse and a right of way for vehicles other than mechanically propelled vehicles (this includes a right of way for pedal cycles and horse drawn vehicles).
  - 4.2 Restricted byways are intended to replace an existing category of highway called a “road used as a public path” (“RUPP”) which was introduced by the National Parks and Access to the Countryside Act 1949. Section 47 of the 2000 Act provides that all RUPPs shown on local authorities’ definitive maps at commencement will afterwards be treated as being shown as restricted byways.
  - 4.3 These Regulations are made under powers in section 52 of the 2000 Act. This section provides for regulations to be made applying relevant provisions in legislation relating to highways or highways of a particular description to restricted byways. The regulations may also provide that certain relevant provisions do not apply to restricted byways. Section 52 also contains the power to make consequential amendments to legislation which are necessary

as a result of applying (or not applying) that legislation to restricted byways, or as directly as a consequence of sections 47-50 of the 2000 Act coming into force.

- 4.4 Most of the provisions of these Regulations are to come into force in England at the same time as sections 47 to 50 of the 2000 Act are commenced in England, and in Wales at the same time as those sections are commenced in Wales. By way of exception, the application of section 59 of the Wildlife and Countryside Act 1981 and the section 33 of the Road Traffic Act 1988 in relation to restricted byways, and amendments to those sections, are to come into force two months after the commencement of sections 47 to 50 of the 2000 Act. Both those sections contain criminal offences, the scope of which will be extended by applying them in relation to restricted byways.

## **5. Extent**

- 5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

- 6.1 Jim Knight MP has made the following statement regarding Human Rights:

In my view the provisions of the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 are compatible with the Convention rights.

## **7. Policy background**

- 7.1 There are at present four classes of highway – footpaths, bridleways, roads used as public paths (RUPPs) and byways open to all traffic (BOATs). It is clearly established that footpaths carry rights of way for pedestrians only, bridleways have rights for pedestrians and horse-riders (and since the Countryside Act 1968 rights for cyclists), and BOATs have rights for pedestrians, horse-riders and all vehicles. However, there has been legal uncertainty, ever since RUPPs were first established by the National Parks and Access to the Countryside Act 1949, as to the extent and nature of rights over them, and in particular as to whether vehicular rights exist over them.
- 7.2 It has been long-standing Government policy to phase out RUPPs, and both the Countryside Act 1968 and, subsequently, section 54 of the Wildlife and Countryside Act 1981 contained a requirement for highway authorities to review and reclassify each of the RUPPs within their area as either a BOAT, a bridleway or a footpath, according to the rights which could be proved to exist over them. Many former RUPPs have been reclassified in accordance with those provisions. However, the process of reclassifying RUPPs has proved time consuming and burdensome for highway authorities, and many authorities have still not completed the process of reclassifying all the RUPPs in their area.

- 7.3 The 2000 Act therefore seeks to put an end to this uncertainty by reclassifying all remaining RUPPs as restricted byways, and specifying the rights which are to exist over them. Where a former RUPP has already been reclassified as a BOAT, bridleway or footpath, that reclassification is not affected and the way will not become a restricted byway.
- 7.4 These Regulations make amendments to other legislation (both primary and secondary) which is necessary as a result of this reclassification. In most cases the Regulations apply the legislation to restricted byways and make amendments to that legislation as a consequence of this application. In certain cases, the amendments are required as a direct consequence of the coming into force of sections 47-50 of the 2000 Act.
- 7.5 In September 2003, the Department for Environment, Food and Rural Affairs consulted on its proposals for implementing sections 47 to 51 of the 2000 Act. The consultation period closed in December 2003. The consultation paper can be found at: <http://www.defra.gov.uk/corporate/consult/byways/index.htm>
- 7.6 A total of 156 consultees responded to the consultation paper. The largest number of respondents came from user groups (26.9%), followed by local authorities (17.9%) and individuals (10.2%). Other respondents included professional bodies and trade associations (8.3%), environmental, heritage and civic organisations, local access forums (6.4%), town and parish councils (5.8%), other (5.8%), Government agencies, offices and departments (4.5%), mobility/disabled Groups (4.5%) and National Park authorities (2.6%). Defra studied all responses carefully and took account of all relevant suggestions and ideas in drafting the Regulations. Copies of the analysis of responses have been deposited in the House Library.
- 7.7 Most respondents chose to respond to the consultation paper by stating whether or not they supported/agreed with a proposal, and then commenting on any proposals they agreed or disagreed with, stating their advantages and disadvantages. From the analysis it should be noted that most respondents supported the proposals put forward in the consultation paper.
- 7.8 Thirty respondents commented on the overview - Part 1 of the consultation paper – a number of issues were raised on what would happen to users of RUPPS for the purpose of off-road leisure pursuits. Although this is not reflected in the regulations, Defra has been working with other Government departments to increase the awareness of the use of alternative sites for these particular motor vehicle activities.
- 7.9 In Part 1 it was identified that there was a need for clarification on the transitional arrangements from a RUPP to a Restricted Byway. These arrangements will be included in the guidance which will sent out to all Local Authorities when the Restricted Byways regulations come into force.
- 7.10 Section 2 of the consultation paper received the highest number of responses. Over 125 respondents out of the 156 total respondents commented on this

section – most of the comments related to the proposals, intentions and invitations of views outlined in this chapter.

- 7.11 One of the main proposals was to give the power to Local Authorities to be able to stop up or divert restricted byways as well as footpaths and bridleways. 96 respondents commented on this with 76 agreeing. This has now been included in the Schedule Part 1.
- 7.12 Section 2 also covered the issue of the colour of way marked signs on how to distinguish a restricted byway as a right of way. 103 respondents commented and 23 preferred figure 3 – the colour purple – we are now taking forward this most popular colour. This will also be included in the guidance that is sent out.
- 7.13 Under the proposals in section 2 – Planning, Harbour and Ports, Water, and Defence, a large proportion of the responses agreed with amendments to the related provisions. These proposals were then taken forward in the Schedule Part 1 of the regulations.
- 7.14 Throughout the analysis it is clear that Defra would need to produce guidance to Local Authorities, landowners and user groups on the change from RUPPs to Restricted Byways and how it will affect them individually. Copies of this guidance will be placed in the House Library.
- 7.15 The Secretary of State has consulted the National Assembly for Wales in accordance with section 52(3) (a) of the 2000 Act, and has not received any representations from the Assembly.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is that it will enable Local Authorities to concentrate on other important functions by relieving them of the duty to review the status of each RUPP individually.

## **9. Contact**

- 9.1 Paula Reading at the Department for Environment, Food and Rural Affairs (Tel: 0117 3728585 or e-mail: Paula.Reading@defra.gsi.gov.uk) can answer any queries regarding the instrument.