

**EXPLANATORY MEMORANDUM TO
THE PUBLIC RIGHTS OF WAY (COMBINED ORDERS) (ENGLAND)
REGULATIONS 2008.**

2008 No. 442

- 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 Section 53A(2) of the Wildlife and Countryside Act 1981 removes the requirement for local authorities to make a separate order modifying the definitive map to take account of changes made to the rights of way network by particular orders. It permits them instead to include such a modification provision within the same Order that effects the change to the right of way. Section 53A applies to Orders of a type that are prescribed for the purpose in Regulations: that is the reason why these present Regulations are being made.

- 3. Matters of special interest to the Joint Committee on Statutory Instruments on Statutory Instruments**
 - 3.1 None

- 4. Legislative Background**
 - 4.1 Section 53A of Wildlife and Countryside Act 1981 was inserted by an amendment made by section 57 of, and paragraph 2 of Schedule 5 to, the Countryside and Rights of Way Act 2000.

- 5. Extent**
 - 5.1 This instrument applies to England.

- 6. European Convention on Human Rights**
 - 6.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

- 7. Policy background**
 - 7.1 The Regulations afford local authorities the facility (contained in section 53A(2) of the 1981 Act) of achieving in one order the two steps ((i) effecting a change to a right of way; (ii) making a consequential change to the definitive map and statement) that were formerly achievable only by making two separate orders.

7.2. Section 53A will apply only to the types of order (described in regulation 3 of these Regulations):

- which are made by a local authority, which is also the surveying authority for the land affected by the order;
- whose coming into operation would constitute an event under section 53(3)(a) of the Wildlife and Countryside Act 1981;
- which do not affect land outside the authority's area.

7.3 The events under section 53(3)(a) referred to in the second bullet above are those where:

- A highway shown or required to be shown in the map and statement has been authorised to be stopped up, diverted, widened or extended;
- A highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description; or
- A new right of way has been created over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path or restricted byway.

7.4 In November 2004 the Department for Environment, Food and Rural Affairs consulted on the contents of the joint orders and the power to include modification in their orders. The consultation period closed in January 2005.

7.5 A total of 109 consultees responded to the consultation paper. The largest number of respondents came from County Councils (21.1%), Countryside User Groups (20.2%), followed by and District, Borough and Local Councils (15.6%). Other respondents included Local access Forums 11.0%, Parish Councils 4.6%, Government Departments/Agencies/Utilities 4.6% and National Park Authorities 2.8%.

7.6 81.2% of respondents agreed with the proposed list of orders. Of the remaining 18.8%, 11.9% disagreed with the contents of the list, 4% expressed no preference, and 3% were unsure as to their response. 86.6% respondents agreed that the proposed scale of section 53A maps should be line with current regulations. Of the remaining 13.4%, 3.1% disagreed with the current regulations, 2.1% expressed no preference and 8.2% were uncertain of their response. 82.8% respondents agreed that we should adapt current prescribed form of modification order as a schedule to the section 53A orders. Of the remaining 17.2%, 4% respondents did not agree, 7.1% expressed no view at all and 6.1% were undecided as to their response.

7.7 Defra studied all responses carefully and took account of all relevant suggestions and ideas in drafting the Regulations. For example, a number of issues were raised from the consultation paper, so in order for these to be discussed in detail, a 'working group' (which involved 'rights of way experts') was formed. Copies of the analysis of responses that was prepared for Defra have been deposited in the House library.

7.8 The Government plan to issue guidance to all Local Authorities to help set up the new process.

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 will be to establish and maintain the forms

9. Contact

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.