

REGULATORY APPRAISAL

HIGHWAYS, WALES

THE PUBLIC RIGHTS OF WAY (REGISTERS) (WALES) REGULATIONS 2006

Background

1. Part II of the Countryside and Rights of Way Act 2000 contains provisions to improve and strengthen the management of the rights of way network.

Purpose and intended effect of the measure

2. Schedules 5 (paragraph 2) and 6 (paragraphs 4 and 15) of the Countryside Rights of Way Act 2000 insert new provisions into the Wildlife and Countryside Act 1981 and the Highways act 1980 respectively, which require Local Highway Authorities (LHAs) to establish and maintain three registers.
3. The three registers will contain information relating to applications and dedications involving footpaths, bridleways, restricted byways and byways open to all traffic. The registers will provide one central point where information on changes to rights of way can be found. The registers will hold information on:
 - applications requesting changes to a definitive map or statement (Schedule 5, paragraph 2 of the Countryside Rights of Way Act 2000);
 - declarations lodged, and maps and statements deposited, by landowners in relation to rights of way on their land. Such declarations and deposits enable landowners formally to acknowledge the rights of way across their land, and in doing so, create a presumption that they do not intend to dedicate further routes across their land (Schedule 6, paragraph 4 of the Countryside Rights of Way Act 2000); and
 - applications by owners, leasees or occupiers of any land used for agriculture, forestry, or the breeding or keeping of horses for public path extinguishment and diversion orders; or by proprietors of schools for special extinguishment or diversion orders (Schedule 6, paragraph 15).

Risk Assessment

4. Many LHAs already keep informal registers of applications and declarations in their Authority. These can be integrated into the “statutory” registers. The Assembly Government will be establishing a working group to design an electronic version of the registers, which can be disseminated to each local authority reducing the amount of work, which each individual LHA will have to undertake. After the creation of the Registers members of the public will no longer need to contact officials directly for information on their application, or applications relating to them. Information on such applications will be available over the internet, or from computer terminals within the LHA offices. If the Regulations are not made the amount of information available on rights of way

applications, and the accessibility for this information will vary considerably across Wales.

Options

Option 1: Do Nothing

5. If a statutory register was not introduced the amount and ease of accessing information for the public would differ considerably across Wales. In addition, the provisions relating to the section 53B applications came into force in England at the end of September 2005 and the Department for Environment, Food and Rural Affairs (Defra) are now working on the provisions relating to the other two registers.

Option 2: Make the Legislation

6. The new register's provisions will provide LHAs with an important resource to formally track their case work and keep the public informed of potential changes to the rights of way network in their locality. We have kept the content of the Registers as straightforward as possible, but at the same time ensure that that they contain useful and appropriate information.

Benefits

7. The main benefit is that LHAs will be able to further improve communication links with the public through providing information on applications and declarations over the internet and at authority offices. The new Regulations will also provide the LHAs with standardised registers through which they can keep track of rights of way cases within their boundaries.

Costs

8. The Assembly will be establishing a working group, which will develop a template for the electronic register, which will enable LHAs to use or modify, thereby reducing the cost and time involved by each authority in developing such a Register. The establishment of a working group will be accommodated within existing Environment – Conservation and Management administration costs budgets. Maintaining the registers should not be a burden on staff time nor have any financial implications for the authorities.
9. The LHAs in Wales are already receiving additional funding of £2.4 million per annum (as part of their Revenue Settlement Grant) to help cover their additional responsibilities under the Countryside Rights of Way 2000 Act, including the responsibilities related to these Regulations.
10. There are no additional financial implications for the Assembly arising from these Regulations.

Consultation

With Stakeholders

11. A consultation paper was issued for a period of 10 weeks from 22 October 2004 to 6 January 2005. The paper contained proposals for the implementation of section 53B of the Wildlife and Countryside Act 1981, and

sections 31A and 121B of the Highways Act 1980 via the introduction of these new Regulations. Twenty-two responses were received from a range of interested parties, including local highway authorities, National Park Authorities and Planning Inspectorate. A summary of responses is available at Annex 2 of the Regulatory Appraisal.

12. Overall, the scope and content of the draft Regulations were endorsed as sensible and proportionate. However, we have made one technical change to the proposed Regulations in light of the consultation. We have extended the time for which the LHAs must keep successful applications under section 53B of the 1981 Act on the register. The initial consultation proposed 14 days from when a modification order was made by the LHAs, this has changed to 5 days after the definitive map/statement has been updated, which is typically some time after the order is made. It was felt that this change needed to be made as the definitive map/statement may not be updated on a regular basis. A full list of consultees is available at Annex 1.

With Subject Committee

13. These Regulations were notified to the Environment, Planning and Countryside Committee via the list of forthcoming legislation on 6 October 2004 (EPC (2)-09-04, P.4, Annex 1, Item No.100) and have remained on the list ever since. The Committee did not identify these Regulations for detailed scrutiny.

Review

14. The Welsh Assembly Government will be establishing a working group with the Countryside Council for Wales to develop a model register, which the LHAs can use, and thereafter will occasionally monitor the effectiveness of the Regulations.

Summary

15. The financial cost to local highway authorities of enacting these Regulations will be minimal as most are already keeping informal registers. However, the Regulations could prove significant in cutting down the time spent by authorities on dealing with public enquiries relating to applications. Members of the public will have easy access to information held on the Registers – either over the internet or from computer terminals in the LHAs offices. This will provide a much more effective and efficient way for the public to monitor progress on work undertaken by the LHA on right of way applications.

ANNEX 1

List of consultees

Andrew Kelly
Access Association Wales
All Wheel Drive Club
Arfon & Dwyfor Local Access Forum
Association of Heads of Outdoor Education Centres
Association of National Park Authorities
Auto Cycle Union Limited
Black Environment Network
Black Voluntary Network in Wales
Blaenau Gwent County Borough Council
Blaenau Gwent Local Access Forum
Brecknockshire Local Access Forum
Brecon Beacons Local Access Forums
Brecon Beacons National Park Authority
Bridgend County Borough Council
Bridgend Local Access Forum
British Driving Society
British Horse Society
Byways & Bridleways Trust
Caerphilly County Borough Council
Caerphilly Local Access Forum
Cardiff County Council
Cardiff Local Access Forum
Cardiff Ramblers
Carmarthenshire County Council
Carmarthenshire Local Access Forum
Ceredigion County Council
Ceredigion Local Access Forum
City & County of Swansea
Conwy County Borough Council
Conwy Local Access Forum
Council for National Parks
Country Land and Business Association
Countryside Alliance (Wales)
Countryside Council for Wales
County Surveyors Society Wales
Cyclists' Touring Club
Cyngor Gwynedd
Cyngor Sir Ynys Môn
Denbighshire County Council
Denbighshire Local Access Forum
Department for the Environment, Food and Rural Affairs
Disability Rights Commission
Disability Wales
Disabled Persons Transport Advisory Committee
Dominic Miles
Environment Agency Wales
Flintshire County Council
Flintshire Local Access Forum
Forestry Commission
Gower Commoners Association
Institute of Public Rights of Way Officers
Isle of Anglesey Local Access Forum
JCMBPS
JMU Access Partnership

Land Access & Recreation Association
Law Society
MENCAP Cymru
Merthyr Tydfil County Borough Council
Merthyr Tydfil Local Access Forum
Monmouthshire County Council
Monmouthshire Local Access Forum
Montgomeryshire Local Access Forum
Motorcycle Action Group
National Access Forum for Wales
National Association of Local Councils
National Trust
Neath Port Talbot County Borough Council
Neath Port Talbot Local Access Forum
Newport City Council
Newport Local Access Forum
North Wales Association of Town Councils
One Voice Wales
Open Spaces Society
Pembrokeshire Coast National Park Authority
Pembrokeshire County Council
Pembrokeshire Local Access Forum
Planning Inspectorate
Powys County Council
Radnorshire Local Access Forum
Rhondda Cynon Taff County Borough Council
Rhondda Cynon Taff Local Access Forum
Rights of Way Review Committee
Royal Institution of Chartered Surveyors
Snowdonia Local Access Forums
Snowdonia National Park Authority
Swansea Local Access Forum
The Countryside Agency
The Ramblers' Association Wales
The Ramblers' Association
Torfaen County Borough Council
Torfaen Local Access Forum
Transport 2000
Vale of Glamorgan Council
Vale of Glamorgan Local Access Forum
Valeways
Wales Council for the Blind
Wales Council for the Deaf
Wales Council for Voluntary Action
Wales Tourist Board
Wales Environment Link
Welsh Local Government Association
Welsh Cycling Union
Welsh Trail Riders Association
Wildlife Trusts Wales
Woodland Trust / Coed Cadw
Wrexham County Borough Council
Wrexham Local Access Forum
Youth Hostels Association (England & Wales)

ANNEX 2

SYNOPSIS OF CONSULTATION PAPER

COUNTRYSIDE & RIGHTS OF WAY ACT 2000

Registers of definitive map modifications; and Highways Act applications and declarations.

Response to public consultation exercise

1. In December 2004 the Welsh Assembly Government published a consultation paper setting out our proposals for the contents of three registers that local authorities will be required to establish under various provisions inserted into the Highways Act 1980 ("the 1980 Act") and the Wildlife & Countryside Act 1981 ("the 1981 Act") by schedules 5 and 6 of the Countryside & Rights of Way Act 2000 ("the CROW Act"). Defra consulted on similar proposals for England in October 2004.

2. The consultation paper described the proposed content of three registers, covering information relating to applications and dedications involving footpaths, bridleways, restricted byways, and byways open to all traffic (BOATS).

3. The consultation paper was distributed in Wales to all Unitary Authorities, Local Access Forums and organisations with a specific land interest. 22 responses were received. A list of the organisations which responded is at annex 1.

4. The key issues for consultation and a summary of the main points made in response are as follows:

Question 1. Do you agree with the general principles set out in paragraph 1.8?

The general principles of the proposed regulations on registers outlined in the consultation paper aimed to impose a minimum burden on authorities, be in line with the Assembly Government's e-government and Welsh language policies and be flexible to enable incorporation of further information.

5. The majority of respondents agreed with the Assembly's principles on the registers and were pleased to see that the registers would be accessible to the public via the web. The Countryside Council for Wales in particular were keen to stress that all registers should be deposited on the web, and not just "where feasible" as the paper suggested. It was also suggested that applicant names and addresses should be removed from any web based register, so as to protect privacy rights and any potential intimidation. However, under the current system, applicant names and addresses are

made available to those wanting to see applications to modify maps and statements.

6. The cost factor of having part or all of the registers available in Welsh was raised as a concern by Monmouthshire County council and the Planning Inspectorate. While the process of translating the Registers to Welsh will acquire additional costs, the National Assembly for Wales is highly committed to providing bilingual services in line with its Language Policy.

7. Several bodies, Bridgend County Council, RICS, Arfon & Dwyfor Local Access Forum, suggested that both the public and the local authorities would benefit from a standardised format of register, to generate clarity and coherence. Officials will give the format of registers further consideration and we are in the process of establishing a working group consisting of local authority rights of way officers to discuss the practicalities of the registers, including format. The regulations will not prescribe the format of the registers, only the contents.

Question 2. As indicated in paragraph 1.7 of the paper, local authorities may choose to add information on other public rights of way related applications to the statutory registers. However, do you agree with the proposed content of the statutory registers under:

- a) **Section 53B** - Register of applications to make changes to the definitive map and/or statement
- b) **Section 31A** - A register of maps, statements and declarations made by landowners under s.31(6) in relation to rights of way on their land; **and**
- c) **Section 121B?** - Register of applications by owners, lessees or occupiers of any land used for agriculture, forestry, or the breeding or keeping of horses for the extinguishment and diversion orders; and by proprietors of schools for extinguishment or diversion orders.

If not, how would you like to see the content changed and for what reason(s)?

- a) Section 53B

The paper proposed that successful Modification Order applications would not be retained on the registers for longer than 14 days from the date the order was made. Arfon and Dwyfor Local Access Forum and the CCW felt that this information should be kept on the register for a longer period of time, so to allow the public to track changes without the need for further inquiries to be made. In line with the responses received, Officials have decided that successful applications should be kept on the registers for a minimum of 5 working days after the definitive map and statement have been updated, which is typically some time after the date the order was made. However, authorities will be able to retain these applications as long as they wish after that time, even indefinitely.

Under “*Geographical location*” the CCW felt that a category of “Community Name” should be added as most definitive rights of ways are named by the communities that use them. Officials do not believe this is necessary as the path may cross community boundaries and there will be an address included under “location”.

Under “*Request for Direction from the National Assembly*”, the CCW and the Rights of Way Review Committee have suggested that dates for hearings/inquiries should be added to enable the public to be notified. Officials agree that, where authorities are able to do so, this would give the public a more complete picture of the application’s status.

b) Section 31A.

Under 3.6, “*A description of the general effect*”, Carmarthenshire County Council suggested that it would be more appropriate to state “declaration will ‘admit’ to highways and rights of way that have been dedicated, and ‘declare’ that no additional ways have been dedicated”. This statement was supported by Newport Local Access Forum, BBNPA and CCW, all of which reasoned that many declarations would be protecting against new rights of way. To clarify this, officials have decided to add "declaring no additional ways have been added" to this paragraph.

Under “*declaration when date ceases to be valid*” the CCW considered that it would be beneficial to retain register entries for lapsed declarations so to allow the public easy access to information that may prove relevant to a Definitive Map Modification Order application. Local authorities will have the option to retain lapsed declarations but officials do not believe it is necessary to prescribe this in the regulations.

On all registers

Several respondents suggested that the local authorities should be encouraged to record as much information as possible. The NFU requested that non statutory ways or tracks be recorded and Blaenau Gwent requested the length of the route affected be documented. In addition, Bridgend County Council requested the additional use of land parcel numbers and GPS locations. Officials have concluded that the use of ordinance survey 6-figure grid referencing will be sufficient for determining geographical location. However, authorities will be entitled to add data fields to the registers to fit their own requirements.

The CCW requested that for all registers a date of when the register was last updated should be recorded, to enable the public to track changes. Though officials would recommend that the Authorities include some reference to when the registers are updated, they do not believe that the regulations should prescribe this.

Monmouthshire County Council also proposed a register of applications to close or divert footpaths and bridleways for the purpose of aiding development made under section 257 of the Town & Country Planning Act 1990 be added to the statutory list. Officials appreciate the Authority’s reasoning on this point, however, adding this to the statutory list would require primary legislation as they are not covered by the CROW Act. Monmouthshire may create its own "informal" register of section 257 applications.

Question 3. Do you consider 12 months from the time of coming into force of the new regulations enough time to compile the:

- a) Section 53B register; and**
- b) Section 31A register?**

8. Generally it was agreed that 12 months would be more than sufficient, since as Brecon Beacons National Park Authority highlighted, applications relating to both proposed registers are few in number and informal registers already exists. However there was concern from Monmouthshire County Council that 12 months was not sufficient time to put the registers on the web. Officials intend to use the working group (referred to under question 1) to compile a basic structure for electronic versions of the registers which will then be circulated on disc to each authority.

Countryside Access and Sponsorship Branch
October

2005

Annex A

List of respondees:

- Arfon & Dwyfor Local access Forum
- British Association for Shooting and Conservation
- Blaenau Gwent County Borough Council
- Brecon Beacons National Park Authority
- Bridgend County Council
- Bridgend Local Access Forum
- British Waterways
- Carmarthenshire County Council
- Countryside Council for Wales
- Forestry Commission
- Gwynedd Archaeological Trust
- Gwynedd County Council
- Local Access Forums within Powys, Brecknockshire, Montgomeryshire and Radnorshire
- Ministry of Defence
- Monmouthshire County Council
- National Farmers Union
- Newport County Council for Newport Local Access Forum (informal)
- PINS
- RICS Wales
- Right Of Way Review Committee
- Snowdonia National Park Authority
- The Law Society (Planning & Environmental Law Committee)