

## **REGULATORY APPRAISAL**

### **RIGHTS OF WAY, WALES**

#### **THE COUNTRYSIDE AND RIGHTS OF WAY ACT 2000 (COMMENCEMENT NO. 8 AND TRANSITIONAL PROVISIONS) (WALES) ORDER 2006**

##### **Purpose and intended effect of the measure**

1. This Order brings into force certain provisions of Part II of the Countryside and Rights of Way Act 2000 on 3 May 2006 in relation to Wales. It also gives effect to transitional arrangements in respect of the procedures to be adopted in the processing of relevant orders (defined in the 2000 Act) made or applied for before the commencement of section 47 of the 2000 Act. The Order also effects certain consequential and related amendments to the Wildlife and Countryside Act 1981, the Highways Act 1980, and other primary legislation.
2. The main provisions to be commenced by the Order are:
  - section 47 of the Countryside and Rights of Way Act 2000, which repeals section 54 of the Wildlife and Countryside Act 1981, thereby relieving surveying authorities of the duty under that section to reclassify “roads used as public paths”. The commencement of section 47 effectively renders redundant the term “road used as a public path” (RUPP), by stipulating that that term is no longer to be used in definitive maps and statements to describe any way, and is instead to be replaced by the term “restricted byway” (i.e. a highway over which there will be a public right of way on foot, on horseback or leading a horse, and for non-mechanically propelled vehicles (including certain electrically assisted pedal cycles and powered wheelchairs and scooters)); and
  - sections 48 to 50 of the 2000 Act, which define the terms “restricted byway” and “restricted byway rights” and which, subject to certain limitations, confer upon the public restricted byway rights over ways previously known as road used as a public path (RUPPs) (now to be known as restricted byways). The existence of restricted byway rights is without prejudice to the existence of other rights, including public rights of way for mechanically propelled vehicles. The further provisions effected by the commencement of these sections concern, amongst other matters, private rights over restricted byways, maintenance of restricted byways at the public expense, continuity in effect of pre-existing conditions or limitations applicable to RUPPs over which restricted byway rights are created by the commencement of section 48(1) of the 2000 Act, and other supplementary, consequential and related provisions.
3. This Order also introduces a transitional provision to secure that where a relevant order was made or applied for before the commencement of section 47 of the 2000 Act, that order or application is to be processed to a

final determination in accordance with the relevant procedural requirements of section 53 or 54 of, and Schedule 14 or 15 to, the 1981 Act, unaffected by anything in section 47 or 48 of the 2000 Act.

4. In addition, the Order contains consequential and related amendments to primary legislation in connection with definitive maps and statements and restricted byways.
5. This Order also make amendments to Parts I and II of Schedule 5 to the Wildlife and Countryside Act 1981, these include:
  - evidence of full vehicular rights over a way shown as a restricted byway, which has already been considered by a surveying authority to constitute the basis of an application to have such a way shown as a byway open to all traffic; and
  - certain RUPPs that were reclassified under the provisions of the National Parks and Access to the Countryside Act 1949 become maintainable at the public expense.
6. The amendments to be effected by the commencement of these provisions provide, in the main, for certain legislation, which currently applies to RUPPs to apply instead to restricted byways.
7. Section 57 introduces Schedule 6, which contains amendments related to the creation, stopping up and diversion of highways. The Order commences one provision in Schedule 6, to the Countryside and Rights of Way Act 2000 the effect of which is:
  - to apply subsections (2) to (5) of the Local Government Act 1972 to hearings (as opposed to inquiries (to which those sections already apply by virtue of s 302(1) of the 1980 Act)) held under paragraph 2 of Schedule 6 to the Highways Act 1980; and
  - to apply section 322A of the Town and Country Planning Act 1990 (award of costs of inquiry or hearing where an inquiry or hearing does not take place) to hearings and inquiries held under paragraph 2 of Schedule 6 to the 1980 Act.
8. This provision, insofar as it relates to hearings or inquiries held under paragraph 2 of Schedule 6 to the 1980 Act in relation to stopping up or diversion orders made in respect of certain highways, which cross land occupied for the purposes of a school, was brought into force by article 3 of the Countryside and Rights of Way Act 2000 (Commencement No. 7) (Wales) (Order) 2005 (S.I. 2005/1314 (W. 96) (C. 58)).

### **Risk Assessment**

9. If this Order is not made the following relevant circumstances will subsist:

- the confusion in relation to the rights of way to which RUPPs are subject, particularly in relation to whether vehicular rights of way exist over these highways, will continue;
- the increased certainty intended for walkers, horse riders, cyclists and horse drawn and other non-mechanically propelled vehicle drivers by the conferral on each of express statutory rights to use restricted byways will not happen;
- the ability of authorities to concentrate on other important rights of way functions by relieving them of the duty to review the status of each RUPP individually will not materialise;
- there will be inconsistent arrangements in place with respect to the powers available to inspectors to make awards of costs in connections with hearings and/or inquiries held under paragraph 2 to Schedule 6 to the 1980 Act;
- legislation, which currently applies to RUPPs and which will, on the coming into force of Regulations to be made by the Department for the Environment, Food and Rural Affairs (Defra) under section 52 of the 2000 Act, apply instead to restricted byways will arguably be incapable of application in Wales at all, because no restricted byways will exist in Wales; and
- certain provisions of Part 6 of the Natural Environment and Rural Communities Bill, which is due to be given Royal Assent in April 2006, refer to the term 'Restricted Byways'. If these provisions have not been commenced in Wales then the provisions within the Natural Environment and Communities Bill will be incapable of application in Wales.

## **Options**

### Option 1: Do Nothing

10. If this Order is not made the current lack of clarity as to the rights of way subsisting over roads used as public paths will continue in Wales. This will be compounded by the fact that existing unrecorded public rights of way for mechanically propelled vehicles over such ways will not, as is intended to be effected by Part 6 of the Natural Environment and Rural Communities Bill, be extinguished over such ways. Much of the statutory protection currently afforded to RUPPs will cease to apply to those ways, and additional statutory protection intended to such ways (once re-designated as restricted byways) will be incapable of application in Wales.
11. There will be inconsistent arrangements in place with respect to the powers available to inspectors to make awards of costs in connection with hearings and/or inquiries held under paragraph 2 to Schedule 6 to the Highways Act 1980.

### Option 2: Make the Legislation

12. Implementing this Order will bring into force certain provisions of Part II of the Countryside and Rights of Way Act 2000. It will also give effect to transitional arrangements in respect of the procedures to be adopted in the processing of relevant Orders made or applied for before the commencement of section 47 of the 2000 Act.

### **Benefits**

13. The main benefits of making the Order are to:

- clarify the rights of way subsisting over restricted byways;
- afford consistent statutory protection (e.g. maintenance) to such ways as is afforded to other public paths;
- relieve surveying authorities of the burden imposed by the duty to reclassify every road used as a public path (RUPP) in its area; and
- enable inspectors to deal consistently and fairly with the issue of costs in respect of hearings and/or inquiries held under paragraph 2 of Schedule 6 to the 1980 Act.

### **Costs**

14. Work associated with the preparation of the Commencement Order is being accommodated within existing administrative costs budgets of the Environment, Planning and Countryside Department and the Directorate of Legal Services. The Assembly has made £2.4 million per year available to local authorities to take account of their responsibilities under the 2000 Act. These resources were permanently built into the local government revenue settlement from 2001/2002. However, the implementation of the Act is being phased in over a longer period, approximately 5 years (2001/2002 to 2006/2007).

15. With regard to the cost of hearings and inquiries the provision merely allows the Planning Inspectorate to award costs and therefore does not place a financial burden on any organisation or individual.

16. Under the present system, section 54 of the Wildlife and Countryside Act 1981 requires local authorities to create individual orders to reclassify each RUPP within its boundaries. As a result of implementing this Order there will be no requirement for this. Therefore, there will be no financial burden on the authorities.

### **Competition Assessment**

17. The Commencement Order does not affect business, charities and/or the voluntary sector. The competition filter was applied to the Commencement Order and there would be no detrimental effect for competition.

## **Consultation**

### With Stakeholders

18. No separate consultation has been undertaken on the provisions, which are being commenced by this Order. However, consultation was undertaken on the 2000 Act by the Department for Transport and Rural Affairs, prior to it being given Royal Assent. Additionally, a consultation on the Restricted Byways Regulations (which are being made by Defra for England and Wales, as the Regulations in the main amend primary legislation) was undertaken by Defra in September 2003. A list of consultees is attached at Annex A. A copy of the consultation documents can be found at the below website:

<http://www.defra.gov.uk/corporate/consult/byways/index.htm>

### With Subject Committee

19. This Order was notified to the Environment, Planning and Countryside Committee, via the list of forthcoming legislation on 5 October 2005 (EPC(2)-11-05(p.7) Annex 2, item no. 79 (77PE)) and has remained on the list ever since. However, the title of the legislation was originally stated as The Countryside and Rights of Way Act 2000 (Commencement No.8) (Wales) Order 2006. The Order was not identified for detailed scrutiny.

## **Review**

20. No formal arrangements are planned for reviewing these measures.

## **Summary**

21. The Commencement Order will bring into force certain provisions of the Countryside and Rights of Way Act 2000 including those which will reclassify “roads used as public paths” (RUPPs) as restricted byways. This will provide clarity to the public and to local authorities as to which rights of way subsist over such ways. The Order also brings into force for remaining purposes, the power for inspectors to make consistent awards with respect to costs in connection with hearings and/or inquiries held under paragraph 2 of Schedule 6 to the Highways Act 1980.

## **Annex A - List of Consultees**

Access Association Wales  
Access Committee for England  
ACES Counties Branch  
Action for Blind People  
Action with Communities in Rural England  
ADAS  
All Wales Ethnic Minority Association  
All Wheel Drive Club  
Amateur Motor Cycle Association  
Ancient Monuments Society  
Architects & Surveyors Institute  
ARROW  
Assn of Council Secretaries  
Assn of County Planning Officers  
Assn of Professional Foresters  
Assoc of Community Councils in Rural England  
Association  
Association of Areas of Outstanding Natural Beauty  
Association of British Riding Schools  
Association of Chief Police Officers  
Association of Classic Trials Clubs  
Association of Conservation Officers  
Association of Drainage Authorities  
Association of Heads of Outdoor Education Centres  
Association of Inland Navigation Authorities  
Association of Larger Local Councils  
Association of London Borough Planning Officers  
Association of London Government  
Association of Magisterial Officers  
Association of Municipal Engineers  
Association of National Park Authorities  
Association of Professional Foresters  
Association of Provincial Stipendiary Magistrates  
Association of Rover Clubs  
Auto Cycle Union  
Automobile Association

BAA PLC  
Bampton Society  
Black Voluntary Sector Network In Wales  
Bridleways & Riders Action Group  
British Assoc for Shooting & Conservation  
British Assoc of Leisure Parks  
British Association of Nature Conservationists  
British Canoe Union  
British Coal Corporation  
British Council of Organisations of Disabled People

British Deer Society  
British Driving Society  
British Ecological Society  
British Equestrian Federation  
British Gas Plc  
British Holiday & Home Parks Association  
British Horse Society  
British Horseracing Board  
British Motorcyclists Federation  
British Mountaineering Council  
British Nuclear Fuels PLC  
British Off Road Driving Association  
British Orienteering Federation  
British Ornithologists' Union  
British Ports Association  
British Property Federation  
British Schoolboy Motorcycle Association  
British Shooting Sports Council  
British Telecom Group Property  
British Trust for Conservation Volunteers  
British Trust for Ornithology  
British Upland Footpath Trust  
British Water  
British Waterways  
British Wildlife Management  
BT PLC  
Business in Sports and Leisure  
Byways & Bridleways Trust

Canoe-Camping Club  
Caravan Club  
Care for the Wild  
Catholic Education Service  
CCRU  
Central Association Of Agricultural Valuers  
Central Council of Physical Recreation  
Central Science Laboratory  
Centre for Accessible Environments  
CHAR  
Chartered Institute of Building  
Chartered Institute of Environmental Health  
Chemical Industries Assoc Ltd  
Church of England Board of Education  
Church of England, Archbishops' Council  
Churches Conservation Trust  
City of London Conservation Area  
City of London Law Society  
Civic Trust  
Civil Aviation Authority  
Civil Service Motoring Association

Coastal Heritage Network  
Commission for Architecture and the Built Environment  
Commission for New Towns  
Commission for Racial Equality Wales Office  
Confederation of British Industry  
Construction Industry Council  
Consumers' Association  
Corporation of London  
Council for British Archaeology  
Council for National Parks  
Council for the Protection of Rural England  
Council on Tribunals  
Country Land and Business Association  
Countryside Agency  
Countryside Alliance  
Countryside Alliance Wales  
Countryside Business Group  
Countryside Foundation for Education  
Countryside Planning & Management  
Countryside Recreation Network  
Countryside Restoration Trust  
Countryside Rights Association  
Countrywide Holidays Association  
County Mobility  
County Planning Officers' Society  
Crown Estate Commissioners  
CRS  
CSS  
Cyclists' Touring Club  
Cyngor Gwynedd  
Cyngor Sir Ynys Mon

Disability Rights Commission  
Disability Wales  
Disabled Drivers Association  
Disabled Off-Road Access  
Disabled Persons Transport Advisory Committee  
District Planning Officers' Society,  
Duchy of Cornwall  
Duke of Edinburgh's Award  
Dwr Cymru

Earthkind  
Education National Interest Group  
English Golf Union  
English Heritage  
English Historic Towns Forum  
English Nature  
English Partnerships  
English Sports Council



English Tourist Board  
Environment Agency  
Environment Council  
Environment Trust  
Environmental Investigation Agency  
Environmental Services Association  
Exmoor Society

Face – UK  
Farmers' Union of Wales  
Farming and Rural Conservation Agency  
Farming and Wildlife Advisory Group  
FAVASA  
Federation of Rural Community Councils  
Federation of Small Businesses  
Fieldfare Trust  
Forest Authority  
Forest Enterprise  
Forestry Commission  
Forestry Contracting Association Ltd  
Forestry Industry Committee of Great Britain  
Formby Society  
Forum of People with Disabilities  
Forum of Private Business  
FPD Savills  
Friends of the Earth  
Friends of the Lake District  
Friends of the Ridgeway  
Friends, Families and Travellers

Gala Research  
Game Conservancy Trust  
Garden History Society  
Geological Society  
Geologists Association  
Greater London Action on Disability (GLAD)  
Green Base Exchange  
Green Lane Association  
Green Lanes Bridleways Group  
Green Lanes Environmental Action Movement  
Greenpeace  
Guide Association

Health and Safety Executive  
Highways Agency  
Historic Buildings and Monuments Commission for England  
Historic Houses Association  
Horticultural Trades Association  
House Builders Federation

IFA Association  
Improvement and Development Agency  
Incorporated Society of Valuers & Auctioneers  
Industrial Water Society  
Inland Waterways Association  
Inner London Magistrates' Court Service  
Inst. Of Environmental Management and Assessment  
Institute of Chartered Foresters  
Institute of Directors  
Institute of Economic Affairs  
Institute of Highways and Transportation  
Institute of Leisure and Amenity Management  
Institute of Public Rights of Way Officers  
Institution of Civil Engineers  
Institution of Environmental Sciences  
Institution of Water and Environmental Management  
International Wildlife Coalition  
ISFTPOWP

Joint Airports Committee of Local Authorities  
Joint Committee of National Amenity Societies  
Joint Committee on Mobility for Disabled People  
Joint Committee on Mobility of Blind and Partially Sighted People  
Joint Nature Conservation Committee  
Joseph Nickerson Heather Foundation  
Justices' Clerks Society

Land Access and Recreation Association  
Land is Ours  
Land Owners Group  
Landscape Institute  
Law Commission  
Law Society  
League of Venturers  
Living Streets  
Local authorities in England and Wales  
Local Authority Valuers Assoc.  
Local Government Association  
Local Government Management Board  
London Ecology Unit  
London First  
London Green Belt Council  
London Regional Planning  
London Transport Planning  
London Transport Today  
London Walking Forum  
Long Distance Walkers' Association  
LPGA

Magistrates' Association  
Marine Conservation Society  
Marine Ecology and Sailing  
Mencap  
Met. Planning Officers' Society  
MFU/LARA  
Mining Association of the UK  
Moorland Association  
Moorland Gamekeepers' Association  
Motor Cycle Industry Association Ltd  
Motorsport Facilities Unit  
Mountain Leader Training Board

National Access Forum for Wales  
National Assoc of Local Councils  
National Association of Principal Agricultural  
National Association of Waste Disposal Contractors  
National Autograss Sport Association Ltd  
National Caravan Council Ltd  
National Caving Association  
National Council for Metal Detecting  
National Council for Voluntary Organisations  
National Disability Council  
National Farmers' Union  
National Farmers' Union Wales  
National Federation of Bridleway Associations  
National Federation of Clay Industries  
National Federation of Housing Associations  
National Forest  
National Gamekeepers' Organisation  
National Governors' Council  
National Grid Company  
National Heritage Memorial Fund  
National House Building Council  
National Housebuilders Federation  
National Housing and Town Planning  
National Joint Utilities Group  
National Park Authorities in England and Wales  
National Playing Fields Assn  
National Power Plc  
National Sheep Association  
National Small Woods Association  
National Society of Allotment and Leisure Gardeners Ltd  
National Trust  
National Union of Residents' Assns  
National Urban Forestry Unit

Open Spaces Society  
Ordnance Survey

Pathways Trust  
People's Trust for Endangered Species  
Planning Aid for London  
Planning and Environment Bar Association  
Planning Inspectorate  
Planning Officers Society  
Police Federation of England and Wales  
Princes Trust  
PSI

Quarry Products Association

RAC Motor Sports Association Ltd  
Radar  
Railtrack  
Ramblers' Association  
Ramblers' Association Wales  
Range Rover Register  
Regional Sports Fora  
Rights of Way Law Review  
Rights of Way Officer Trail Riders Fellowship  
Rights of Way Review Committee  
Rough-Stuff Fellowship  
Royal Agricultural College  
Royal Agricultural Society of England  
Royal Commission on Environmental Pollution  
Royal Commission on Historic Monuments of England  
Royal Inst. of British Architects  
Royal Inst. of Chartered Surveyors  
Royal Mail Property Holdings  
Royal National Institute for the Blind  
Royal National Institute for the Blind Cymru  
Royal Society for the Prevention of Accidents  
Royal Society for the Protection of Birds  
Royal Town Planning Institute  
Royal Veterinary College  
RSNC Wildlife Trusts Partnership  
RSPCA

School of Earth Sciences  
Scout Association  
Seatech Marine  
Secondary Heads Association  
Shooting Sports Trust  
Society of County Secretaries  
Society of County Treasurers  
Society of Local Council Clerks  
Society of Trusts and Estates Practitioners  
SPAB  
Sportsmans' Association

Standing Conference on Countryside Sports  
Stone Walling Association of GB  
Strategic Rail Authority  
Surlingham Society  
Sustrans  
Sustrans Cymru

Tenant Farmers' Association  
Thames Planning & Amenities Forum  
Town and County Planning Assoc  
Towpath Action Group  
Trades Union Congress  
Trail Riders Fellowship  
Transport 2000  
Transport and General Workers Union  
Tree Council  
TUA (BBT)  
Twentieth Century Society

UK 200 Group  
UK Environmental Law Association  
UK Major Posts  
UK Petroleum Industry Association  
UKAEA  
Unison  
United Kingdom Sports Council

Vauxhall Off-Road Club  
Victorian Society  
Wales Association of Community and Town Councils  
Wales Council for the Blind  
Wales Council for the Deaf  
Wales Council for Voluntary Action  
Wales Social Partners Unit  
Wales Tourist Board  
Wales Wildlife and Countryside Link  
Wales Women's National Coalition  
Walking and Cycling for Health  
Water Companies Association  
Wildfowl & Wetlands Trust  
Wildlife and Countryside Link  
Wildlife Trusts  
Wildlife Trusts Wales  
Woodland Trust/Coed Cadw  
World Wide Fund for Nature

Young People's Trust for the Environment & Nature Conservation  
Youth Hostels Association (England and Wales)