

Public consultation on the Right to Apply

Briefing note for local access forums

1. This note is intended to assist secretaries and members in developing their response to Defra's public consultation on the Right to Apply.
2. Defra is keen to receive views from all interested individuals and organisations, but local access forums will be particularly well placed to offer impartial, balanced and locally-informed views. The consultation paper is relatively long and covers a range of issues, some of which are fairly technical and detailed (which may be of more interest to local authority officers who have to administer the application process). It is appreciated that not every forum member will necessarily have the time to read through the entire consultation paper. This note therefore highlights areas which might be of most interest to forums, although **forums (or individuals forum members) remain free to comment on any aspect of the consultation.**
3. The proposals are summarised in the Executive Summary, reproduced below:

Executive Summary

4. The consultation paper seeks views on a proposed approach to commencing new statutory rights of application and appeal in connection with making changes to the public rights of way network. The new rights were introduced by the Countryside and Rights of Way Act 2000 (which inserted new provisions into the Highways Act 1980), and were in recognition of the difficulties that land managers can encounter in persuading authorities to use their discretionary order-making powers.
5. The right to apply would enable owners, lessees and occupiers of land used for agriculture, forestry or for the breeding or keeping of horses, and school proprietors, to **apply** to a local authority (or National Park authority) for a public path or special order to permanently extinguish or divert a public right of way.
6. The rights to appeal would enable applicants to **appeal** to the Secretary of State at two stages in the decision-making process: firstly, if a local authority refuses to make the order applied for, and secondly where (after having made an order) the authority refuses to confirm it or to submit it to the Secretary of State. Making an appeal will ensure that the applicant's reasons, and any objections, are considered at a public inquiry, hearing or through an exchange of written representations.
7. The new provisions contain two other significant features - the level of charges would be prescribed by the Secretary of State in the regulations, and if authorities are slow to deal with an application or an order, the Secretary of State could be asked to direct the authority to deal with it within a specified time.

8. The new rights provide **no guarantee** that applicants would be able to obtain an order. However, an order should usually be forthcoming provided all the relevant statutory criteria and requirements are met (including those relating, as appropriate, to the convenience and enjoyment of the public, payment of charges and agreement to defray or contribute towards certain costs and expenses).

9. The consultation paper seeks views on the proposed approach to implementing the new rights through the making of regulations, including the level of prescribed charges to be paid by applicants.

10. An assessment of the likely impacts, costs, risks and benefits has been carried out. The results are set out in the partial Regulatory Impact Assessment (partial RIA) which accompanies the consultation paper (Annex F). Views are sought on whether the partial RIA is a realistic assessment upon which decisions can be taken. Since it shows that there might be only **marginal net benefits** for applicants and, at the national level, a significant dis-benefit, the consultation also seeks views on whether the legislation relating to the new rights should be **commenced in present form, repealed or amended**.

Key issues

11. The new rights will probably result in **higher costs for all stakeholder groups**. These are assessed in the partial RIA (Annex F of the consultation document). All things being equal, the procedures involved in considering a single application and making an order should not be significantly different or more costly to the existing procedures. However, the overall cost of administering the new statutory procedures would be higher.

12. The charges to be paid by applicants - and the circumstances in which refunds should be made - will be prescribed in regulations, and the exact cost to applicants will depend on the circumstances. The consultation paper proposes an **application charge of £1000**, plus **further charges** payable if the application leads to the making of an order (or to an appeal). It is estimated that the charges for a typical unopposed application/order could be up to 30-40% higher than what land managers currently pay (on average) - perhaps £2,500 including newspaper notice costs. Views are sought on the proposed charges and proposed refunds - Section 6 of the consultation document provides more detail.

13. An assessment of the likely impacts, costs, risks and benefits has been carried out. The results are set out in the partial RIA which forms Annex F of the consultation document. Views are sought on whether the partial RIA is a realistic assessment upon which decisions can be taken ?

14. The partial RIA assumes the following volumes of casework per annum:

Applications for public path orders special orders	2,630
Applications for special orders for schools	50
Public path orders made by authorities on application	900

Refusal notices	1,680
Appeals to the Secretary of State (= 25% of refusals)	432
Orders confirmed by authorities	770
Orders made/confirmed by Secretary of State	302

15. The partial RIA also looks at the costs and benefits for different groups. For applicants it is estimated that the financial benefits (in terms of convenience, improved security and increased land) will marginally outweigh the costs. It is assumed that an individual applicant will - on average - gain financial benefits, spread over ten years, in the order of £6,000. No financial benefits are identified for other stakeholder groups, although they may incur additional costs (e.g. in objecting to applications and orders).

16. The partial RIA estimates that the costs and the benefits for the different stakeholder groups, over a 10 year period, would be:

Stakeholder Group	Benefits (£m)	Costs (£m)
Applicants	39.3	37.6
Authorities	0.2	16.2
Statutory Undertakers / Highway Authorities	0.0	0.6
Other Stakeholder Groups	0.0	1.2
Central Government	0.0	14.7
Total	39.5	70.4

Issues for forums to bear in mind

17. Forums should in bear in mind the following points:

- (a) whether the proposals are likely to be workable and efficient within the context of their own local area;
- (b) the extent to which the proposals would benefit land mangers in their own local area;
- (c) the impact on other local stakeholders (e.g. ramblers groups, parish councils, local residents, local authorities etc) in their own area; and
- (d) whether the partial RIA is accurate and comprehensive.

18. Forum secretaries may like to request information form their local authorities about the current approach, policies and charges which apply to the making of extinguish and diversion orders in the locality. This might assist help forums to formulating their views.

19. Defra has written to all local authorities to invite their views, in contrast to individual land mangers, few of whom can be expected to have the time to comment. Therefore, whilst forums can comment on the impact which the proposals will have on local government (and service levels), it would be especially useful if forums could

consider the proposals from the view point of **land managers** and **other local interests** which they represent.

Further information

20. Further information on the public consultation is available on the Defra website at <http://www.defra.gov.uk/corporate/consult/row-rights/index.htm>, including:

- the full consultation paper and partial RIA;
- the consultation letter;
- a list of organisations consulted;
- answers to some Frequently Asked Questions; and
- a link to further background material.

Defra participation in local access forum meetings

21. With over 80 forums in England, Defra cannot offer to attend all forum meeting at which these issues are discussed. However, officials would welcome the opportunity to attend a small number of forums meetings, should any forums wish to extend an invitation.

22. If you have any questions, would like further information or would like to invite a Defra representative to a forum meeting, please contact Geoff Audcent on 0117 372 8339 (E-mail: geoff.audcent@defra.gis.gov.uk).

Department for Environment, food and Rural Affairs
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