

RIGHTS OF WAY REVIEW COMMITTEE PRACTICE GUIDANCE NOTES

PRACTICE GUIDANCE NOTE 1 CONSULTATION ON CHANGES TO PUBLIC RIGHTS OF WAY AND DEFINITIVE MAPS

Fifth edition, November 2008

FOREWORD

The Rights of Way Review Committee is a non-statutory committee which reviews matters relating to public rights of way in England and Wales with the aim of agreeing, by consensus, proposals for action. It brings together a wide range of organisations. The Chairman is John Grogan MP. The Countryside Council for Wales and Natural England provide Vice-Chairmen.

The following bodies are represented on the Rights of Way Review Committee : Association of National Park Authorities, British Driving Society, British Horse Society, Byways and Bridleways Trust, Central Council of Physical Recreation, County Surveyors' Society, Country Land and Business Association, Countryside Council for Wales, Cyclists Touring Club, Disabled Ramblers, Institute of Public Rights of Way Management, Land Access and Recreation Association, Local Government Association, National Association of Local Councils, National Farmers Union, National Federation of Bridleway Associations, Natural England, Open Spaces Society, Ramblers' Association, Riding for the Disabled Association, Welsh Local Government Association. Observer status : Department for Culture, Media and Sport, Department for Environment, Food and Rural Affairs, National Assembly for Wales, Department for Transport.

The purpose of these Practice Guidance Notes is to offer practical advice on aspects of rights of way legislation and to recommend working practices that will enhance the overall protection and good management of the rights of way network. They are advisory, derived from extensive discussions between the principal interest groups, and represent a consensus that has been endorsed by the Rights of Way Review Committee. We hope that they will be welcomed by everyone concerned with the practical management of rights of way and be a valuable aid in that important work.

Notes in the series are :

- PGN1 : Consultation on changes to public rights of way and definitive maps*
- PGN2 : Deemed dedication of public rights of way : section 31(6) of the Highways Act 1980*
- PGN3 : Minimising representations and objections to definitive map modification orders*
- PGN4 : Securing agreement to public path orders*
- PGN5 : Investigating the existence and status of public rights of way*
- PGN6 : Planning and public rights of way*

If you have any comments about these notes please write to the Secretary, Rights of Way Review Committee, 15 Lansdown Park, Bath BA1 5TG; or suetoland@hotmail.com.

CONSULTATION ON CHANGES TO PUBLIC RIGHTS OF WAY AND DEFINITIVE MAPS

I. Introduction

1. Most authorities with powers to make orders affecting public rights of way agree that the time, cost and possible conflict involved in processing such orders can be reduced if informal consultation is carried out with interested parties prior to the orders being made. The Rights of Way Review Committee has therefore prepared the following code of practice. The code is advisory. Failure to comply with it will not invalidate any subsequent order, nor does compliance with the code discharge order-making authorities from fulfilling the statutory order-making requirements.

II. Application of the code

2. The code applies to proposals affecting public rights of way made by local authorities (county and district councils, unitary authorities, London borough councils, and National Park authorities) for :

- a. side roads orders made under section 14 or 18 of the Highways Act 1980.
- b. creation, diversion or extinguishments orders made under sections 26, 118, 118A, 118B, 119, 119A, 119B and 119D of the Highways Act 1980.
- c. definitive map modification orders made following an event under section 53(3)(b) or (c) of the Wildlife and Countryside Act 1981.
- d. extinguishment orders made under section 32 of the Acquisition of Land Act 1981, section 294 of the Housing Act 1985 or section 258 of the Town and Country Planning Act 1990.
- e. orders made under section 257 of the Town and Country Planning Act 1990.
- f. traffic regulation orders made under section 1 of the Road Traffic Regulation Act 1984 to restrict or regulate use of footpaths, bridleways or unsurfaced carriageways.
- g. Gating orders made under sections 129A-G of the Highways Act 1980.

The code also applies to :

- h. creation agreements made under section 25 of the Highways Act 1980, especially where these are part of a package involving diversion or extinguishment orders.
- i. applications by local authorities to magistrates' courts under section 116 of the Highways Act 1980 for the diversion or stopping up of a public right of way.

III. Rights of way affected by planning permission for development

3. Under section 257 of the Town and Country Planning Act 1990, an order can be made to divert or extinguish a public footpath, bridleway or restricted byway to enable development to be carried out in accordance with planning permission. In view of the need to process planning applications quickly and within strictly defined time limits, local authorities should follow the advice in PGN6 when there is not enough time to apply this code.

IV. Consultees

4. The organisations to be consulted will vary, both between and within authorities. Authorities should compile a list of consultees for each local authority district and keep this list up to date by checking it annually - by sending it to the organisations listed on it. Organisations to be included on this list include :

- a. Local access forums.
- b. Other local authorities, including parish or community councils, chairmen of parish meetings and National Park authorities.
- c. Prescribed organisations (see Annex).
- d. Local organisations. Those local bodies which appear to the authority to have an interest in public rights of way in the district concerned.
- e. The Countryside Council for Wales and Natural England. These bodies must be consulted before an order is made under sections 118, 118A, 118B, 119, 119A, 119B and 119D of Highways Act 1980 with respect to any part of a footpath, bridleway or restricted byway in a National Park.

Authorities should also keep a list of statutory undertakers, to whom notice of the making of orders must be sent.

5. The owner and occupier of any land affected by a proposal should be consulted unless the proposal has originated from him or he is otherwise given notice of the proposal. Authorities should bear in mind that a proposal may have a wider effect on owners and occupiers than those whose land is directly affected and so they should consult accordingly.

6. As authorities may not be aware of all the organisations in their area with an interest in rights of way, they should advertise in local newspapers or their own newsletters at intervals of, say, four years, to explain that a list of consultees exists and to invite applications for inclusion on the list from organisations with an interest. This should not preclude local authorities from adding organisations to the list at any time but it would give authorities the protection of having invited and responded to requests so made. Advice should also be sought from local access forums.

7. The regional office of the Countryside Council for Wales or Natural England must be notified of proposals affecting a national trail, so that they can consider whether an order is needed to vary formally the line of the approved route. Organisations representing users of the route such as Offa's Dyke Association or the South West Way Association should also be consulted.

V. Procedure

8. The request to consultees on a proposed order or agreement should include :

- a. A plan or map, to a scale of not less than 1:10,000 in rural areas or 1:2,500 in built-up areas with Ordnance Survey grid references and sheet number of the relevant OS Landranger or Explorer series map. It would also be helpful to show any definitive map ROW reference number.

- b. A statement of the powers that are being used.
- c. A statement of reasons for the change.
- d. Where appropriate, details of any limitations or conditions to which any proposed new route would be subject, or of any works which would be carried out on such a route.
- e. The date by which comments should be received by the authority. The Government *Compact with Volunteers*, with which local authorities have undertaken to comply, sets three months as a reasonable time in which volunteers can be expected to respond fully. Where 3 months is not feasible, officers should consider changing their practices, involving consultees at an earlier stage or, at the least, reminding consultees that they can usually be given extra time if they ask for it.
- f. An indication of whether consultees can inspect the line of any proposed new route or the name, address and telephone number of the person or organisation from whom such permission should be sought.
- g. A request that the consultee acknowledges receipt of the consultation.

VI Further considerations

9. Do not assume that consultees are well-informed about the local network and proposals for change. Officers should stand back from the process, identify what consultees need to know in order to respond effectively and make sure that the consultation exercise covers all that is identified. Effective consultation exercise should :
- a. Clearly identify the route both in the text and the map so that people who are not familiar with the area can identify it. Are the places referred to in the text shown on the map? The consultee may need to work out which person or organisation might have the best local knowledge.
 - b. Describe the *real-world* – as well as the legal or mapping – effects of the change. Some changes alter things on the ground, others recognise the status quo.
 - c. Ensure that the map supplied shows other public rights of way in the vicinity of the proposed change.
 - d. State whether the map shows the legal status of all other routes or just connecting, definitive routes. Unless all the highways are identified, including 'ordinary' roads, many changes may not make sense on the ground or in law. Explaining the status of linking non-definitive highways allows consultees to be sure of the effects of the proposals.
 - e. Explain what sort of response is needed. Responses appropriate to a planning change, depending on opinion and amenity, need to be quite different from a definitive map modification order which depends on evidence of status.
 - f. State clearly whether this consultation is seeking opinions about a possible future change, as distinct from a decision already made and awaiting confirmation.

g. Where the responsible officer is absent from the office for significant periods of time during the consultation period, brief another officer(s) to deal with calls about the proposals.

10. Follow the Information and Development Agency guidance on distributing Ordnance Survey maps. Be aware that distributing consultation material by e-mail can impose unintended constraints on consultee organisations' ability to respond. E-mail messages are routinely described as *for the named individual recipient only; must not be copied further*. Often, consultations are not addressed to a named individual but to an organisation, and are often not sent to the organisation's most appropriate respondent.

11. For regulations (for example the application of a traffic regulation order) describe what options or relevant factors are appropriate to this case rather than listing the options as set out in the Act. Consultees need to know what it is about the particular case which makes the use of the regulations appropriate. Without this information consultees are unable to check that a restriction, for example, is proportional and reasonable; with it, they are able to assist with compliance.

See also : www.defra.gov.uk – access/rights of way pages

Information and Development Agency Access to Public Rights of Way Information in England and Wales Guidance Document

Cancellation

The fourth edition of this PGN is cancelled.

ANNEX - PRESCRIBED ORGANISATIONS

Notices about Highways Act 1980, Wildlife and Countryside Act 1981 and Town and Country Planning Act 1990 orders	
<i>All notices</i>	
Auto Cycle Union	Wood Street Rugby CV21 2XY
British Horse Society	Stoneleigh Deer Park Stareton Lane Kenilworth CV8 2XZ
Byways and Bridleways Trust	PO Box 117 Newcastle upon Tyne NE3 5YT
Cyclists' Touring Club	Parklands, Railton Road, Guildford, Surrey GU2 9JX
Open Spaces Society	25A Bell Street Henley on Thames RG9 2BA
Ramblers' Association	2nd Floor Camelford House 87-90 Albert Embankment London SE1 7TW
<i>Notices about orders affecting land in: Bedfordshire (Mid Bedfordshire & South Bedfordshire districts); Buckinghamshire (Aylesbury Vale, Chiltern, South Buckinghamshire & Wycombe districts); Hertfordshire (Dacorum Borough, North Hertfordshire & Three Rivers districts); Luton Borough; Oxfordshire (South Oxfordshire district)</i>	
Chiltern Society	White Hill Centre White Hill Chesham HP5 1AG
<i>Notices about orders affecting land in Cheshire, Derbyshire, Greater Manchester, Lancashire, Merseyside, South Yorkshire, Staffordshire and West Yorkshire</i>	
Peak and Northern Footpaths Society	Taylor House 23 Turncroft Lane Offerton Stockport SK1 4AB
<i>Notices about orders affecting land in Wales</i>	
Welsh Trail Riders Association	21 Tewdrig Close, Llantwit Major CF61 1SZ
Notices about Wildlife and Countryside Act 1981 orders	
British Driving Society	83 New Road Helmingham IP14 6EA
Notices about orders creating footpaths, bridleways or restricted byways on land adjacent to operational railway lines	
Network Rail	40 Melton Street London NW1 2EE

Unless authorities have been notified otherwise by the head office of the prescribed organisation, they should send copies of notices to the addresses in the table above (the head offices).