

**EXPLANATORY MEMORANDUM TO**  
**THE RIGHTS OF WAY (HEARINGS AND INQUIRIES PROCEDURE) (ENGLAND)**  
**RULES 2007**

**2007 No. 2008**

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by the Command of Her Majesty.

**2. Description**

2.1 These Rules provide for the procedure to be used in relation to hearings and inquiries which are required in respect of opposed orders for the creation, modification, diversion or extinguishment of certain public rights of way under the provisions of the Highways Act 1980, the Wildlife and Countryside Act 1981 and the Town and Country Planning Act 1990.

**3. Matters of special interest to the Select Committee on Statutory Instruments**

3.1 None

**4. Legislative Background**

4.1 Up to the present time the procedures which have informally been adopted for hearings and inquiries, which are required in respect of opposed orders under the Highways Act 1980, the Wildlife and Countryside Act 1981 and the Town and Country Planning Act 1990, have been based on rules which apply to hearings and inquiries under the Town and Country Planning legislation.

4.2 In 2001 the House of Commons Select Committee on Environment, Transport and Regional Affairs recommended that, to improve the consistency of Planning Inspectorate procedures, rules should be introduced for rights of way public inquiries. Following this recommendation, it is considered necessary that there should now be specific rules for the procedure for hearings and inquiries which are required in respect of opposed rights of way orders.

**5. Territorial Extent and Application**

5.1 This instrument applies in relation to England only.

**6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *Policy*

7.1 The Tribunals and Inquiries Act 1992 enables rules to be made regulating to procedure to be followed in connection with statutory inquiries held by or on behalf of Ministers. These Rules prescribe the procedures that are to apply in respect of statutory inquiries and hearings held in relation to certain disputed rights of way orders. These Rules aim to provide a fair process for all participants at rights of way hearings and inquiries by enabling evidence to be dealt with in an open manner, and therefore also helping the inquiry or hearing to run more smoothly.

Without rules for rights of way hearings and inquiries there is no requirement for the advance circulation of information relevant to the case, which delays the decision making process, and gives participants no security in knowing in advance the procedures to be followed.

### *Consultation*

7.2 There was a significant interest in the public consultation from both the public and user groups. Two thirds of those who responded to the consultation agreed that procedure rules would benefit all parties. There were many, very detailed comments on the proposals for the way in which the rules would operate. Wherever possible, the Rules have been modified in the light of these comments. A brief analysis of the consultation is made in the Regulatory Impact Assessment.

Consultation has been carried out with the Department for Constitutional Affairs, the Department responsible for the parent legislation, and the Council on Tribunals, which must be consulted under the terms of section 9 of the Tribunals and Inquiries Act 1992.

Most recently, the draft Rules have been sent for comment to the Rights of Way Review Committee, the Local Government Association and the Institute of Public Rights of Way Officers, together with the Regulatory Impact Assessment, analysis of responses to the consultation, and a note of the changes made in the light of comments received.

### *Guidance*

7.3 The Department will be publishing a Circular and the Planning Inspectorate will be issuing a guidance note in relation to the new Rules.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum at Annex A. The costs to businesses, charities, user groups, landowners and individuals are negligible.

8.2 The impact on the public sector is negligible.

## **9. Contact**

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## **Annex A**

### **REGULATORY IMPACT ASSESSMENT ON PROCEDURE RULES FOR HEARINGS AND INQUIRIES ON RIGHTS OF WAY ORDERS COMING TO THE SECRETARY OF STATE FOR DECISION**

#### **Purpose and intended effect**

##### **Objective**

The policy objectives of these Rules are to give all those involved in a hearing or inquiry into a rights of way order sent to the Secretary of State for decision the security of knowing the procedure with which they and other parties must comply. The Rules enable all parties to scrutinise and assess the evidence in advance of the hearing or inquiry, enable parties to concentrate on evidence that is in dispute, and to facilitate the decision-making process.

##### **Background**

About 330 rights of way orders made under Schedule 6 to the Highways Act 1980, Schedule 15 to the Wildlife and Countryside Act 1981 and Schedule 14 to the Town and Country Planning Act 1990 are sent to the Secretary of State for decision each year. About half of these are orders which modify the definitive map or statement of public rights of way. Local authorities are under a duty to keep their definitive maps and statements under constant review. Orders are made when people apply to local authorities for definitive map modification orders having discovered evidence which suggests that the map or statement is wrong or because authorities discover evidence themselves. The remainder are orders, made by local authorities, which have the effect of creating, diverting or extinguishing public rights of way. The number of orders coming to the Secretary of State is likely to increase in coming years as local authorities work to bring their definitive maps of rights of way up to date as the deadline, imposed in the Countryside and Rights of Way Act 2000, approaches. Work is underway to carry out the research needed to identify historic ways.

Authorities cannot decide orders to which there are representations or objections. The relevant Acts require that they are decided by the Secretary of State. Decisions on these orders are almost always transferred to the Planning Inspectorate who decides them on behalf of the Secretary of State. Even when the Secretary of State does decide on an order, the Planning Inspectorate arranges for an inspector to hear the evidence and make a report which is passed to the relevant Government Office for a decision. The Rules cover both transferred decisions and decisions by the Secretary of State.

The Rules set out the procedure before, during and after hearings and inquiries held into those rights of way orders submitted to the Secretary of State for decision. The Rules apply to orders submitted to the Secretary of State from the commencement date. The Rules only apply to England. The National Assembly for Wales is responsible for procedures for hearings and inquiries into orders made by Welsh local authorities.

While there is provision in the Rules for the running of hearings and inquiries, inspectors continue to have discretion to run the hearing and inquiry according to local circumstances.

The parties agree with about 90 orders each year to being decided by exchanges of written representations. These orders do not come within the scope of the statutory provision which provides for Rules for orders dealt with by hearings and inquiries. For these orders, Defra proposes to ask the parties to adopt a voluntary procedure for dealing with exchanges of material. This is based on the principles which have been used to draw up the hearing and inquiry Rules and is similar to the informal procedures already operated by the Planning Inspectorate.

#### Rationale for government intervention

There are no rules governing the procedures to be followed by persons appearing at rights of way hearings or inquiries. Experience with planning appeals and other casework which comes to the Secretary of State for decision is that codifying the steps to be taken by all parties leading up to and after a hearing or inquiry benefits them all and speeds the decision-making process.

The Rights of Way (Hearings and Inquiries Procedure) (England) Rules 2007 set out the requirements for publicising the hearing or inquiry, the process of exchanging and scrutinising information in advance of the hearing or inquiry, and the post hearing or inquiry events leading to the issue of the decision. They ensure that the process is open to all parties (and the public) and fair to all participants.

### **Consultation**

#### Within government

Consultation with Department for Education and Employment, the Department for Constitutional Affairs and the Council on Tribunals has been carried out.

#### Public consultation

The Rules have been written in the light of responses from landowner and user groups, local authorities and their representative organisations, and individuals who responded to a public consultation exercise in March 2002 on the proposed Rules. The Department made considerable amendments to its proposals in the light of responses. Responders were concerned that sufficient time should be allowed for each stage leading up to and after hearings and inquiries; that the time allowed should be transparent; that the burden of copying of statements of case and of documents which had already been supplied by the local authority should be minimised; and that there should be no requirement on parties to prepare a statement of the matters that they, having scrutinised the other parties' evidence, regarded as being in dispute.

A separate analysis of responses is being made publicly available.

### **Options**

The options are to introduce Rules, and to do nothing.

#### *Do nothing*

The current system works well for those familiar with rights of way hearings and inquiries. However, it leaves those unfamiliar with the process uncertain about who does what and when they might do it by. There is no requirement to provide evidence in

advance of the hearing or inquiry (although local authorities often do provide a statement of their case for making an order in advance). Hence parties may submit evidence at any time before or at the hearing or inquiry. Parties and the inspector often have little or no opportunity to examine the material in advance of the hearing or inquiry. (In some cases, the proceedings have to be adjourned while parties examine the material.) Hearing or inquiry time can be spent assimilating evidence which is not in dispute.

#### *Introduce Rules*

By setting out a timetable and the steps leading up to and after the event the Rules introduce certainty. Evidence is available for everyone, including the inspector conducting the hearing or inquiry, to scrutinise well before the event. People who have little experience of submitting evidence or appearing at a hearing or inquiry have a clear framework within which to prepare their case and assess the cases of other parties. Those more experienced in hearing and inquiries are required to open their evidence to public scrutiny in a more formalised way than now. (The Rules do not prevent the disclosure of evidence later than provided for currently, but those doing so should have good reason why they have so acted). This results in a fairer process for all parties. Some hearings and inquiries are completed more quickly than they would otherwise have done, resulting in modest savings.

There are no risks associated with the options.

### **Costs and benefits**

#### **Sectors and groups affected**

The parties to rights of way hearings and inquiries are local authorities, land and property owners, rights of way users (sometimes individuals, sometimes acting as members of rights of way user organisations) and other members of the public with an interest. The Rules will not have a disproportionate impact on any business sector or social group. Small businesses are not affected. There are no identified social or environmental impacts.

#### **Benefits**

##### *Do nothing*

There are no benefits in doing nothing.

##### *Introduce Rules*

The Rules promote better awareness and certainty in the procedures to be followed by parties to hearings and inquiries into rights of way orders. By setting out a timetable and the steps leading up to and after the event the Rules introduce certainty. Evidence will be available for scrutiny well before the event. People have a clear framework within which to prepare their case and assess the cases of other parties. Because all parties to a hearing or inquiry have had the opportunity to examine the evidence in advance, the Rules will promote the efficient and effective use of hearing or inquiry time, and better and more timely decisions.

#### **Costs**

##### *Do nothing*

Unnecessary costs continue to be incurred because parties are not required to prepare evidence in advance of the hearing or inquiry.

### *Introduce Rules*

There are minimal costs associated with Rules, to the extent that parties who would not otherwise do so prepare and supply one copy of their evidence and, where they propose to give evidence at an inquiry by reading a proof of evidence, a copy of their proof, to the Planning Inspectorate. Where they rely on a document which is already included in the local authority's statement of case for the order, the parties refer to that document rather than providing another copy of it.

The Planning Inspectorate copies and distributes statements of case and proofs of evidence. Local authorities are responsible for making copies available for inspection by the public.

### *Businesses, charities and voluntary organisations*

Land owners and managers, property owners and voluntary organisations (usually user groups with an interest in public rights of way; these may also be charities) who are involved in rights of way orders sent to the Planning Inspectorate for decision benefit from the Rules because they have greater certainty about the timetable and procedure to be followed.

There are no costs for these sectors. There is no impact on prices, outputs, levels of employment or competitiveness.

### *Consumers/individuals*

Consumers and individuals are not affected by the Rules except where they are parties to a hearing or inquiry. The costs to parties are minimal.

### **Small Firms Impact Test**

Small firms are not affected by the Rules except where they are parties to a hearing or inquiry. The costs to parties are minimal.

### **Competition assessment**

The Rules have no impact.

### **Enforcement, sanctions and monitoring**

The Planning Inspectorate has no sanctions against those who do not adhere to the Rules for no good reason. However, parties who incur unnecessary costs because another party (or parties) has delayed or otherwise hindered proceedings can apply to the Secretary of State for an award of the additional costs incurred. These applications are handled by the Planning Inspectorate. Applications for costs are rare in rights of way cases but are open to anyone affected by another party's behaviour.

The Rules will be monitored through the Inspectorate's complaint procedure, feedback from inspectors, and through consultation with the Rights of Way Review Committee, local authorities and their associations and landowning and user organisations.

### **Implementation and delivery plan**

The Planning Inspectorate has produced a guide to handling public rights of way orders. This will be distributed to all parties to hearings or inquiries and anyone else who asks for a copy, and placed on the Inspectorate's website. The Inspectorate is holding a

seminar for local authorities, user groups, users and anyone else who is interested to hear an explanation of the Rules.

The Rights of Way (Hearings and Inquiries Procedure) (England) Rules 2007 will apply to orders received by the Planning Inspectorate from commencement, which will be 3 months after the Rules are laid. The Inspectorate has prepared the relevant letters, notices and in-house procedures to achieve this. It will run two systems in parallel until orders received before commencement have been decided. The Inspectorate and its associated Defra policy division will continue to monitor and review the Rules as they become bedded in, and thereafter.

### **Post-implementation review**

The Rules will be reviewed after five years.

### **Summary and recommendation**

The preferred option is to introduce the Rights of Way (Hearings and Inquiries Procedure) (England) Rules 2007. The Rules promote better awareness and certainty in the procedures to be followed by parties to hearings and inquiries into rights of way orders. By setting out a timetable and the steps leading up to and after the event the Rules introduce certainty. Evidence will be available for scrutiny well before the event. People have a clear framework within which to prepare their case and assess the cases of other parties. Because all parties to a hearing or inquiry have had the opportunity to examine the evidence in advance, the Rules will promote the efficient and effective use of hearing or inquiry time, and better and more timely decisions. The costs are minimal, and are outweighed by the benefits identified in this Regulatory Impact Assessment.

### **Summary costs and benefits table**

There are only minimal costs associated with the Rules, as they only defines procedures for inquiries and hearings and have no further economic, social or environmental impact.

### **Declaration and publication**

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs*

**Signed ...Bridget Prentice**

**Date 6th July 2007**

**Bridget Prentice Parliamentary Under-Secretary of State Ministry of Justice**

**Contact point for enquiries and comments: name, address, telephone number and email address.**

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