

Improvements to the policy and legal framework for public rights of way – a public consultation



Response proforma

Please use this proforma to answer the questions in the above document. The closing date for submission of responses is **Monday 6 August 2012**. Please send your response by:

- email to: RightsofwayReforms@defra.gsi.gov.uk
- or post to: Andrew Crawford, Reform Projects Team, Zone 1/09, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6EB

The above email address may also be used for general queries relating to this consultation.

In line with Defra's policy of openness, at the end of the consultation period copies of the responses we receive will be made publicly available through the Defra Information Resource Centre, Lower Ground Floor, Ergon House, 17 Smith Square, London SW1P 3JR. The information they contain may also be published in a summary of responses. If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request.

You should also be aware that there may be circumstances in which Defra will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

To help us analyse responses, please provide details of yourself or your organisation (* if appropriate) below.

Name	Jane Ing
Organisation / Company*	Shropshire Local Access Forum
Job Title*	Chair
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Date of response	25 June 2012

NB: on the form below, please leave the response box blank for any questions that you do not wish to answer.

Please do not feel that you have to answer all questions. Responses, including any general comments you might wish to make, are welcome on any number of the questions – we do value your comments.

For each question it would be helpful if you could please indicate whether you agree, disagree or are uncertain by marking the appropriate box.

Parts 1 to 4 – General consultation questions		
1. Do you agree that there should be a brief, post cut-off period during which applications that pass the basic evidential test can be registered?		
Yes	<input checked="" type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	
Comment:		
Shropshire LAF suggests a 3 month period.		
2. Do you agree that during this period, local authorities should be able to register rights of way by self application, including any self applications made in the past, subject to the same tests and transparency as for any other applications?		
Yes	<input checked="" type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	
Comment:		
Yes but that they should be prioritised.		

3. Are there any other categories of rights of way that need to be protected by exceptions set out in regulations?

Yes	<input type="checkbox"/>	
No	<input checked="" type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

4. Do you agree that the [Stakeholder Working Group's] proposals [in paragraphs 5.1-5.12] would be effective in improving the process of recording rights of way?

Yes	<input checked="" type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

Yes but would add the following previsos:-
 Para 5.2 - Documents that are being relyed upon should be properly referenced and catalogued for the investigating authority.
 Para 5.6 Agree that cases should be split but there should be some safeguarding so anomalies are not created
 Para 5.11 Any proposals to gate Restricted Byways and/or Byways Open to all Traffic should be thoroughly jusstified and should also have more strenuous guidelines that those lower rights.

5. Do you think that more use could be made of electronic communications, for example, to make definitive map modification order applications online and to serve notice of rights of way orders?

Yes	<input checked="" type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

Yes there should be a standard process available to do this.

6. Are there any particular issues associated with these proposals which have not been captured and which we should consider?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>
Not sure	<input type="checkbox"/>

Comment:

7. Do you think that the mechanism [proposed in paragraph 7.2 and annex B], would work effectively?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>
Not sure	<input type="checkbox"/>

Comment:

8. Do you think that there would be a residual risk that it would be in a local authority's interests to decline to make an order in the first place?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>
Not sure	<input type="checkbox"/>

Comment:
Not in Shropshire's case.

9. Do you think that the alternative mechanism set out [in paragraph 7.3] would work effectively?

Yes	<input checked="" type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

10. Do you have any other suggestions for ensuring that cases go to the Secretary of State only once?

Yes	<input type="checkbox"/>	
No	<input checked="" type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

11. Do you agree that applicants and affected owners should be able to seek a court order requiring the authority to determine an outstanding definitive map modification order application?

Yes	<input checked="" type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:
Subject to no fee being payed.

12. Do you think this is an appropriate way to resolve undetermined definitive map modification order applications?

Yes	<input checked="" type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

This should be as a last resort.

13. Do you have any suggestions for alternative mechanisms to resolve undetermined definitive map modification order applications?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>
Not sure	<input type="checkbox"/>

Comment:

14. Do you have any suggestions on how a process might work, which would enable an appropriate diversion to be agreed and put into effect before the way is recorded and brought into use?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>
Not sure	<input checked="" type="checkbox"/>

Comment:

In principle Shropshire LAF agrees with the proposal but would add that any proposals to divert these routes should be fully justified and would require appropriate guidance and details to be followed.

15. What aspects of data management systems for recording public rights of way need to be tackled?

Comment:

The Shropshire LAF would comment that access to the Definitive record should be available in several formats to ensure as wide an access and availability to that data source as possible. Those people who do not have access to electronic media should not be prejudiced.

16. What are the key outcomes that need to be achieved in terms of data management systems?

Comment:

Accessibility to the information in an appropriate media.

17. Do you agree that the proposals identified in [Part 2] should be applied to the policy and legislation governing public path orders?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>
Not sure	<input type="checkbox"/>

Comment:

18. Do you think that more use could be made of electronic communications for public path orders, in similar ways to those suggested for definitive map modification orders in Question 5?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>
Not sure	<input type="checkbox"/>

Comment:

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19. Do you agree that enabling local authorities to recover their costs in full would incentivise them to pursue public path orders requested by landowners or managers?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>
Not sure	<input type="checkbox"/>

Comment:

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20. Would local authorities be incentivised sufficiently to enable retention of a right of appeal to the Secretary of State without the risk of local authorities shifting the burden and cost of order-making onto the Secretary of State?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>
Not sure	<input checked="" type="checkbox"/>

Comment:

This would depend on the individual authorities.		
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21. Should the proposed arrangements apply to all public path orders and not just to land used for agriculture, forestry, or the keeping of horses?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>
Not sure	<input type="checkbox"/>

Comment:

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22. How could it be made clear what charges are levied for each stage of the public path order-making process and that the charges reflect the costs actually incurred?

Comment:

Shropshire already provides detailed cost schedules together with guidance and the relevant application forms. Examples of these are attached.

23. Do you think that landowners should have the option of outsourcing some of the work once a public path order is made in order to have more control over the costs?

Yes	<input type="checkbox"/>	
No	<input checked="" type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

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24. Might this [full cost recovery for public path orders] have an impact on other aspects of rights of way work?

Yes	<input checked="" type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

Potential prioritisation of fee paying work.

25. Are there any alternative mechanisms [to full cost recovery for public path orders] that should be considered?

Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input checked="" type="checkbox"/>	

Comment:

26. Under Option A [in Part 4], how do you think wider adherence to existing guidance might be achieved?

Comment:

Make it a condition of the planning approval.

27. What do you think would be the best option to minimise the cost and delay to developers while safeguarding the public interest on public rights of way?

Comment:

The LAF considers that a mixture of option B & C would be the best way forward. This would provide safeguarding for access generally and the development thereof.

28. Are there other options that should be considered [to minimise the cost and delay to developers while safeguarding the public interest on public rights of way]?

Yes	<input type="checkbox"/>	
No	<input checked="" type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

29. Do you think that enabling a single application form to be submitted through the Planning Portal would improve the process?	
Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>
Not sure	<input type="checkbox"/>
Comment:	

Part 5 – Impact Assessments (and related) questions	
(i) Is the estimate for the number of unrecorded rights of way a fair estimate (20,000) and is the rate at which local authorities record them (1,200 per year) a fair reflection of what is anticipated to take place over the next 10 years?	
Yes	<input type="checkbox"/>
No	<input type="checkbox"/>
Not sure	<input type="checkbox"/>
Comment:	
(ii) Are the 'typical costs' used in the impact assessment a fair assessment of the costs? (as shown in table 1 of the impact assessment)	
Yes	<input type="checkbox"/>
No	<input type="checkbox"/>
Not sure	<input type="checkbox"/>

Comment:

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(iii) Are the assumptions used to calculate the impacts (as found in the final column in the tables in annex 4 of the impact assessment) a fair assessment of the likely impacts of the proposals?

Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

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(iv) Is it a fair assumption that the familiarisation cost is negligible to both local authorities and landowners – if not how long do you think familiarisation would take?

Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

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(v) Are there any other impacts that have not been quantified (or identified) which you think could be quantified (or identified)? Please provide evidence

Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

(vi) Is the assumption that the cost of putting the new guidance into operation will be negligible a fair assumption?		
Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	
Comment:		
(vii) Are there any impacts on business/landowners that have been overlooked?		
Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	
Comment:		
(viii) For Proposal 28 (“ <i>Consideration should be given to the data management systems needed to support administration of the definitive map and statement</i> ”) the consultation asks what aspects of data management systems for recording public rights of way need to be tackled and what are the key outcomes that need to be achieved? Information received as a result of this question will be used in the final impact assessment.		
Comment:		

(ix) When and how should these reforms be reviewed ¹ ?		
Comment:		
(x) Are the assumptions and data used for the assessment of impacts on definitive map modification orders also applicable to public path orders? If not, what evidence do you have on the cost of the process?		
Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	
Comment:		
(xi) Are there any impacts that have been overlooked?		
Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	
Comment:		

¹ The Stakeholder Working Group's proposal 21 says: "A stakeholder review panel should be constituted after implementation of the Group's proposals to review progress with recording or protecting useful or potentially useful pre-1949 rights of way before the cut-off. The panel should make an initial report in 2015".

(xii) The impact assessment assumes that the number of applications per year would be 2,630 – is this a reasonable assumption?		
Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	
Comment:		
(xiii) Will local authorities, as a result of being able to recover their costs, provide a service to landowners for extinguishing or diverting rights of way on their land?		
Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	
Comment:		
(xiv) How much would applicants be willing to pay to have their application considered?		
Not sure	<input type="checkbox"/>	
Comment:		

(xv) How would the number of applications vary with the cost of the application? How would the number of applications change in moving from option 1 to option 2?		
Not sure	<input type="checkbox"/>	
Comment:		
(xvi) What evidence is there on the value of the benefits to landowners of having their application considered and accepted?		
Not sure	<input type="checkbox"/>	
Comment:		
(xvii) The impact assessment assumes that that, because of the public interest tests in the current order making process, public goods would not be affected by the policy – is this a fair assumption?		
Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	
Comment:		

(xviii) Are the assumptions that the impact assessment calculations have been based on reasonable?

Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

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(xix) Are the costs and benefits identified a reasonable estimation?

Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

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(xx) Have any costs or benefits been overlooked – for example, any impacts on businesses?

Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

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(xxi) When and how should this policy be reviewed?

Not sure	<input type="checkbox"/>	
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Comment:

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(xxii) Do the proposals strike a fair balance between public and private costs and benefits? If not, how could a better balance be obtained?

Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

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(xxiii) Are the figures derived from the Ramblers data on the number of rights of way orders that are required as a result of planning permission a fair assumption to use (between 413 and 489 a year)?

Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

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(xxiv) Is an assumption that 10% of the applications will be referred to the Secretary of State because they are subject to objections a fair assumption to use? If not, what proportion of applications for rights of way orders are objected to and what proportion of these result in an inquiry?

Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

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(xxv) What evidence is there on how many planning applications have an impact on rights of way but are refused?		
Not sure	<input type="checkbox"/>	
Comment:		
(xxvi) What is the current cost to local authorities of dealing with objections?		
Not sure	<input type="checkbox"/>	
Comment:		
(xxvii) What is the current charge for applying for a rights of way change following planning permission being granted?		
Not sure	<input type="checkbox"/>	
Comment:		
(xxviii) What are the costs to other stakeholders of having to respond to consultations on rights of way?		
Not sure	<input type="checkbox"/>	

Comment:		
(xxix) How much time does the additional rights of way process add to development processes? Both in actual time and time planned into the project? Is there any evidence on the cost of these delays?		
Not sure	<input type="checkbox"/>	
Comment:		
(xxx) For each option how long would it take developers, local authorities and other stakeholders to familiarise themselves with the guidance? What level of staff would be responsible for this?		
Not sure	<input type="checkbox"/>	
Comment:		
(xxxi) All the options should lead to consideration of rights of way earlier in the process as well as earlier engagement with other stakeholders. It is assumed that this will lead to a reduction in the number of objections. Under business as usual it is assumed that 10% of cases go to the Secretary of State because of objections. By considering rights of way early on in the process do you think the percentage will change? If so to what? (for each option).		
Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	
Comment:		

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(xxxii) To what extent would the consideration of applications concurrently lead to a streamlining of the process?

Not sure	<input type="checkbox"/>	
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Comment:

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(xxxiii) Would an integrated system increase or reduce costs (to local authorities, developers and other stakeholders)? If so why, and by how much?

Yes	<input type="checkbox"/>	
No	<input type="checkbox"/>	
Not sure	<input type="checkbox"/>	

Comment:

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Thank you for your response