

Rights of way : a guide to law and practice - fourth edition

Supplements at 25 July 2008

This document contains the supplements published on the Blue Book Extra website (<http://www.ramblers.co.uk/rightsofwaybook/bbe>) at 25 July 2008. It will be republished when sufficient further changes have been made to the site.

A list of corrections, previously included with this collection of supplements, is now available from the website as a separate file.

Changes made since the previous collection of supplements at 20 April 2008

Location	Details
3.3.10 page 56	Amended commentary on the case of Housden v Wimbledon Conservators
5.3.1 page 107	Winchester College case in the Court of Appeal.
5.3.2 page 108	
5 Further Reading	Defra has issued revised guidance on the NERC Act
6.3.6 page 150	The Planning Inspectorate has revised the section of the Consistency Guidelines dealing with the Finance Act 1910.
7.7.2 page 221	Court case on gating orders.
12.6.5 page 324	Decisions of the Information Commissioner and Tribunal summarised.

Cases in the fourth edition – more recent reports

Berry v Secretary of State for Environment, Food and Rural Affairs (QBD) (2007) 24 FW 3,5

R (Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs (HL) – see 3.3.9 page 53 [2007] UKHL 28, [2008] 1 AC 221, [2007] 4 All ER 273

Supplementary table of cases

Page	Chapter and case
30	Commissioner of the Police for the Metropolis v Kay [2007] EWCA Civ 477
56	Housden v Conservators of Wimbledon and Putney Commons [2008] EWCA Civ 200
53	Norman and Bird v Secretary of State for Environment, Food and Rural

	Affairs [2007] EWCA Civ 334
332	R (Chaston) v Devon CC [2007] EWHC 1209 (Admin)
51, 53	R (Godmanchester Town Council) v Secretary of State for Environment, Food and Rural Affairs; R (Drain) v Secretary of State for Environment, Food and Rural Affairs [2007] UKHL 28, [2008] 1 AC 221, [2007] 4 All ER 273
328	R (Horvath) v Secretary of State for Environment Food and Rural Affairs [2007] EWCA Civ 620
192	R (Manchester City Council) v Secretary of State for Environment, Food and Rural Affairs (2007)
214	R (Ramblers' Association) v Secretary of State for Defence [2007] EWHC 1398 (Admin)
107, 108	R (Warden and Fellows of Winchester College) v Hampshire CC ([2007] EWHC 2786 (Admin))
107, 108	R (Warden and Fellows of Winchester College) v Hampshire CC [2008] EWCA 431
221	Ramblers' Association v Coventry City Council (2008 EWHC 796 Admin)

Supplementary table of statutes and conventions

Page

	Tribunals, Courts and Enforcement Act 2007 c15
331	s 141

Supplementary table of orders and regulations

Page

684	Controls on Dogs (Non-application to Designated Land) (Wales) Order 2007 SI 2007 No 701
261, 282	Countryside and Rights of Way Act 2000 (Commencement No.9 and Saving) (Wales) Order 2006 SI 2006 No 3257
194	Countryside and Rights of Way Act 2000 (Commencement No. 12) Order 2007 SI 2007 No 1493
56	Countryside and Rights of Way Act 2000 (Commencement No. 13) Order 2007 SI 2007 No 2335
261, 282	Countryside and Rights of Way Act 2000 (Commencement No. 14) Order 2007 SI 2007 No 2595
193	Crime Prevention (Designated Areas) Order 2007 No 1829
56	Dedicated Highways (Registers under Section 31A of the Highways Act 1980) (England) Regulations 2007 SI 2007 No 2334
324	Environmental Information Regulations 2004 SI 2004 No 3391
621, 676, 684	Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007 SI 2007 No 175
621,	Environmental Offences (Fixed Penalties) (Miscellaneous Provisions)

676, 684	(Wales) Regulations 2007 SI 2007 No 739
194	Highways (SSSI Diversion Orders) (England) Regulations 2007 SI 2007 No 1494
25	Home Information Pack Regulations 2007 SI 2007 No 992
25	Home Information Pack (Amendment) Regulations 2007 SI 2007 No 3301
25	Home Information Pack (No. 2) Regulations 2007 SI 2007 No 1667
25	Home Information Pack (Revocation) Regulations 2007 SI 2007 No 1525
25	Housing Act 2004 (Commencement No. 8) (England and Wales) Order 2007 SI 2007 No 1668
25	Housing Act 2004 (Commencement No. 9) (England and Wales) Order 2007 SI 2007 No 2471
25	Housing Act 2004 (Commencement No. 10) (England and Wales) Order 2007 SI 2007 No 3308
311	Local Access Forums (England) Regulations 2007 SI 2007 No 268
303	National Park Authorities (England) Order 2006 SI 2006 No 3155
221	National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007 SI 2007 No 2542
221	Natural Environment and Rural Communities Act 2006 (Commencement No. 1) (England) Order 2007 SI 2007 No 2540
26	Police Reform Act 2002 (Standard Powers and Duties of Community Support Officers) Order 2007 SI 2007 No 3202
176	Public Rights of Way (Combined Orders) (England) Regulations 2008 SI 2008 No 442
122, 226	Rights of Way (Hearing and Inquiry Procedure) (England) Rules 2007 SI 2007 No 2008
20	Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) Order 2007 SI 2007 No 930
20	Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2007 SI 2007 No 1387
158, 302	Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 SI 2007 No 1951
158, 302	Street Works (Registers, Notices, Directions and Designations) (Wales) Regulations 2008 SI 2008 No 101
391	Town and Country Planning (Control of Advertisements) (England) Regulations 2007 SI 2007 No 783
196	Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2008 SI 2008 No 550
331	Tribunals, Courts and Enforcement Act 2007 (Commencement No. 3) Order 2008 SI 2008 No 749

Supplementary table of circulars and guidance

Page

176	Combined Orders and the power to include modifications in other orders (Defra, 2008)
-----	--

391	Department for Communities and Local Government Circular 03/2007 : Town and Country Planning (Control of Advertisements) (England) Regulations 2007
297	Guidance for Local Authorities on Implementing the Biodiversity Duty (Defra, 2007)
221	Guidance for National Park Authorities making Traffic Regulation Orders under section 22BB Road Traffic Regulation Act 1984 (Defra, 2007)
304	Guidance for Public Authorities on Implementing the Biodiversity Duty (Defra, 2007)
122, 226	Guidance on procedures for considering objections to Definitive Map and Public Path Orders in England (Planning Inspectorate, 2007, revised December 2007)
261, 282	Making stiles and gates easier for those with mobility problems (Defra, 2007)
121	Non Statutory Guidance on the recording of widths on public path, rail crossing and definitive map modification orders (Defra, 2007)
194	Non-statutory advice on new provisions relating to diversions of rights of way for the protection of sites of special scientific interest (SSSIs) (Defra, 2007)
56	Register of Highway Act Declarations, Statements and Maps Guidance for English Local Authorities to accompany Statutory Instrument No 2334 (Defra, 2007).
see text	Rights of Way Circular (1/08): Guidance for Local Authorities (Defra, 2008) – references on pages 77, 87, 98, 104, 113, 122, 127, 131, 158, 168, 169, 171, 173, 177, 178, 181, 185, 186, 189, 191, 196, 212, 226, 231, 244, 286, 311, 396
261, 282	Statutory guidance under sections 147 and 147ZA of the Highways Act 1980 relating to the requirement for local authorities to have regard to the needs of people with mobility problems when authorising stiles and gates (Welsh Assembly Government, 2007)
196	The Validation of Planning Applications : guidance for local planning authorities (Department for Communities and Local Government, 2007)

Chapter 1

Page

3	1.1 Natural England has published <i>England Leisure Visits – report of the 2005 survey</i> . This found that walking had been the main reason for 18% of trips, and that 21.2 million visits to land to which access had been granted under the 2000 Act had been undertaken by people living in England over a 12-month survey period.
4	Performance indicators for the 2006-07 financial year have been included in a revised set of tables for both England and Wales available for downloading from the website.

Chapter 2

Page

- 20 2.4.3, footnote 38, additional sites have been designated by the Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) Order 2007, as amended by the Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2007.
- 25 2.5.3, final paragraph. From 14 December 2007 the requirement to produce a Home Information Pack applies to all types of properties by virtue of the Housing Act 2004 (Commencement No. 8) (England and Wales) Order 2007, the Housing Act 2004 (Commencement No. 9) (England and Wales) Order 2007 and the Housing Act 2004 (Commencement No. 10) (England and Wales) Order 2007. The regulations prescribing the contents of packs are now the Home Information Pack (No. 2) Regulations 2007 as amended by the Home Information Pack (Amendment) Regulations 2007.
- 26 2.6.2, third paragraph. Police community support officers now have powers to issue fixed penalty notices to people cycling on footways: the Police Reform Act 2002 (Standard Powers and Duties of Community Support Officers) Order 2007.
- 30 2.6.6, footnote 87, the decision of the High Court in *Kay* has been overturned by the Court of Appeal in *Commissioner of the Police for the Metropolis v Kay* (2007).
-

Chapter 3**Page**

- 51 3.3.8 ‘..brought into question.’ How? In *R (Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs* (2007) Lord Scott said, ‘ ... the bringing into question could, in my opinion, be done not only by the landowner but also by a member of the public or by the local authority. A member of the public might apply to the court for relief of some sort that would bring the right into question, or a prosecution brought by a local authority against a landowner e.g., allowing a stile to fall into disrepair, might, if the landowner disputed that there was any right of way, be similarly regarded’.
- 53 3.3.9 The House of Lords, in *R (Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs* (2007) reversed the decision of the Court of Appeal, thus overturning the decision of Dyson J in *R v Secretary of State for the Environment, Transport and the Regions ex parte Dorset CC* (1999) and rendering unsound the decision of Collins J in *Norman and Bird v Secretary of State for Environment, Food and Rural Affairs* (2006) and of the Court of Appeal (2007) in upholding Collins J’s decision: dictum of Lord Justice Denning in *Fairey v Southampton CC* (1956), (‘In my opinion a landowner cannot escape the effect of 20 years’ prescription by saying that, locked in his own mind, he had no intention to dedicate. ... In order for there to be “sufficient evidence that there was no intention” to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – in this case the villagers – that he had no

intention to dedicate'), approved.

In R (Drain)) v Secretary of State for the Environment, Food and Rural Affairs (heard and reported with *Godmanchester* above), the House of Lords rejected the contention of the appellant that the contrary intention under section 31 must, to rebut the presumption of dedication, be shown to have existed throughout the twenty year period of use.

56 3.3.9 and footnote 67. HA 1980 s 31A(1), which requires highway authorities to keep a register containing information relating to maps and statements deposited and declarations lodged with the authority under section 31(6), was brought into operation in England from 1 October 2007 : Countryside and Rights of Way Act 2000 (Commencement No. 13) Order 2007.

The Dedicated Highways (Registers under Section 31A of the Highways Act 1980) (England) Regulations 2007, make provision for the information that is to be included in a register (regulation 3), the manner in which the register is to be kept (regulation 4), and the circumstances in which an entry may be removed (regulation 5).

Defra has issued guidance to authorities in England on the regulations.

56 3.3.10 In *Housden v Conservators of Wimbledon and Putney Commons* (2008), the Court of Appeal held that that section 35 of the Wimbledon and Putney Commons Act 1871, which prevented the Conservators from selling, leasing or in any manner disposing of any part of the common, did not prevent them lawfully granting an easement over the land [in exercise of the power conferred by section 8 to 'hold and to dispose of (by grant, demise or otherwise) land']. The Court (Mummery LJ) indicated, obiter, that if it had – if the Conservators had had no power to grant an easement - this lack of capacity would prevent the acquisition, from long usage, of an easement under section 2 of the Prescription act 1832, notwithstanding that, under the section, where 40 years use had been shown, the claim was to be 'deemed absolute and indefeasible' unless the use had been by consent in writing.

Chapter 4

Page

77 4.2.5 Circular 2/1993 has been replaced, for authorities in England, by Defra circular 1/08, paragraph 6.10 of which restates the advice about obstructions apparently recorded in the definitive statement.

87 4.6.1 Annex B to circular 2/1993 has been replaced, for authorities in England, by chapter 4 of Defra circular 1/08.

Chapter 5

Page

98 5.1.3 footnote 4 The guidance previously in circular 2/1993 is now, for authorities in England, in Defra circular 1/08, paragraph 4.18.

104 5.2.6 DOE Circular 18/1990 has been replaced, for authorities in England,

by Defra Circular 1/08, see paragraph 4.4. Paragraph 4.13 of the new circular expresses an amended view that, in the context of deletions from the definitive map, it is not possible for a right of way to be dedicated when use is by virtue of its already being shown on a definitive map. Defra's view is now that use of the way in such circumstances can no longer be seen to be as of right.

106 5.3 The Rights of Way (Hearing and Inquiry Procedure) (England) Rules 2007 gives rights to applicants for modification orders which are opposed. See 5.7.8 below.

107 5.3.1 Defra wrote to surveying authorities in England in April 2007 to express the view that "where an application under section 53(5) of the Wildlife & Countryside Act 1981 is accompanied by a list or summary analysis of documentary evidence sufficient to make a credible case for an Order under section 53(2) of the '81 Act, then this constitutes an application that is compliant with schedule 14, paragraph 1.."

R (Warden and Fellows of Winchester College) v Hampshire CC (2008) concerned an application to re-classify as a byway open to all traffic a route shown on the definitive map in a part as bridleway and the remainder as a restricted byway.

Paragraph 1(b) of WCA 1981 Sch 14 requires that an application for a definitive map modification order should be accompanied by 'copies of any documentary evidence ... which the applicant wishes to adduce in support of the application'. The landowner contended that the requirement had not been complied with in that the application had been accompanied, not by copies of the evidence, but by a list of the documents. Therefore, the landowner contended, the exception to NERCA 2006 s 67 where, before 20 January 2005, an application under section 53(5) of the Wildlife and Countryside Act 1981 had been made for the reclassification of a right of way as a byway open to all traffic did not apply, with the result that section 67 had operated to extinguish vehicular rights. Thus the decision by the authority to make an order modifying the definitive map as a byway open to all traffic had been unlawful.

The Court of Appeal, reversing the decision of the High Court (*R (Warden and Fellows of Winchester College) v Hampshire CC* (2007)), held that the words of WCA 1981 Sch 14 para 1(b) were to be given their clear and ordinary meaning. The requirements of the paragraph were therefore to be adhered to strictly. Thus the application for the way to be shown as a BOAT had not been validly made. The consequence was that the exception in section 67(3)(a) did not apply, so that, since an application to have the way shown as a BOAT had not been made by 20 January 2005, vehicular rights over the way had been extinguished by section 67(1). The appeal by the landowner against the refusal by the High Court to allow its claim for judicial review of the decision of the authority not to reconsider its decision to make the order was accordingly allowed.

108 5.3.2 In *R (Warden and Fellows of Winchester College) v Hampshire CC* (2008), the Court of Appeal held (upholding the decision of the High Court in

R (Warden and Fellows of Winchester College) v Hampshire CC (2007)) that where a landowner had received notification from the authority that an application for a modification order had been made, this was sufficient for the authority validly to determine the application and make the order, notwithstanding that the notification to the landowner had been by the authority and not, as required by Sch 14 para 2(1), by the applicant.

- 113 5.5.1 Advice to surveying authorities in England on the action to be taken where, with respect to former RUPPs, there is any ambiguity between the definitive map and statement is contained in Defra circular 1/08, paragraph 4.7.
- 118 5.6.4 Defra wrote to surveying authorities in England in April 2007 to express the view that “where an application under section 53(5) of the Wildlife & Countryside Act 1981 is accompanied by a list or summary analysis of documentary evidence sufficient to make a credible case for an Order under section 53(2) of the '81 Act, then this constitutes an application that is compliant with schedule 14, paragraph 1, and hence with sections 67(3)(a) and (6) of the NERC Act.”
- 118 5.6.4 In October 2007 Defra wrote to the Planning Inspectorate to express a view on whether the exemption in section 67(3)(a) applied where an application had been made, but also determined, before the 20th January 2005 date. Defra’s view is that the exemption does not apply in such a case: for an application to qualify it must not have been determined at the date specified in the Act.
- 121 5.7.4 Non Statutory Guidance on the recording of widths on public path, rail crossing and definitive map modification orders was issued by Defra in February 2007 alongside a revision of the Planning Inspectorate’s Advice Note 16.
- 122 5.7.5 footnote 54 The previous advice in Circular 2/1993 about ‘appropriate bodies’ for the receipt of orders has been replaced, for authorities in England, by advice in paragraph 3.5 of Defra circular 1/08 to authorities to consider wider publicity for orders through user groups, local access forums and liaison groups.
- 122 5.7.8 footnote 60 The previous advice in Circular 2/1993 about what to send with orders has been replaced, for authorities in England, by advice in paragraph 4.26 of Defra circular 1/08 to authorities to use the Inspectorate’s checklist.
- 122 5.7.8 The Rights of Way (Hearing and Inquiry Procedure) (England) Rules 2007 apply to modification orders in England submitted to the Secretary of State on or after 1st October 2007. For general details of the rules see the supplement to chapter 8. Under the Rules the applicant for an order [defined in rule 4(4)(b)] has the following rights:
- (a) to receive preliminary notice indicating whether an inquiry or hearing will be held and its date, time and place [Rule 4(4)(b)]
 - (b) to receive from the Secretary of State a copy of the order-making authority’s statement of case or proof of evidence [Rules 6(2), 17(2) and 20(3)(a)]
 - (c) to receive from the Secretary of State a copy of any other statement of case [Rules 6(6)(b) and 17(6)(b)]
 - (d) if the applicant has submitted a statement of case or notice of

reliance on the order-making authority's case, to receive from the Secretary of State a copy of any further information he required any person to supply [Rules 7(3) and 18(3)]

(e) to appear at a hearing and give oral evidence or call someone else to do so [Rules 8(1)(b) and 9(6)(b)]

(f) to receive notice of any pre-inquiry meeting [Rule 15(2)]

(g) to appear at an inquiry [Rule 19(1)(b)]

(h) if appearing at an inquiry, to give or call another person to give, oral evidence and to present, or call another person to present, any matter; and to cross-examine any person giving evidence or presenting any matter to the inquiry [Rules 21(5) and 21(6)]

(i) to receive notice of the intention of the Secretary of State to disagree with the inspector and to be given an opportunity to make representations; and to receive notice of any re-opened hearing or inquiry [Rules 11(6), 11(9), 23(6) and 23(9)]

(j) to receive notice of a decision by an Inspector to take into account any subsequent material and to be given an opportunity to make representations, and to receive notice of any re-opened hearing or inquiry [Rules 12(3), 12(6)(a), 24(3) and 24(6)(a)]

(k) to receive notice of the decision [Rules 13(2), 14(2), 25(2) and 26(2)]

An applicant is given similar rights by the procedure for written representations adopted by the Planning Inspectorate for opposed orders determined by that method – see new publication for details.

The applicant also has the following duties:

(a) to ensure that, within 14 weeks of the start date, the Secretary of State has received either their statement of case or notification that they intend to rely on the order-making authority's statement of case [Rules 6(3) and 17(3)]

(b) to ensure that the Secretary of State receives any proofs of evidence (and summary if necessary) not less than four weeks before the start of the inquiry [Rule 20]

- 122 The Planning Inspectorate's checklist for order-making authorities was revised in March 2007 and again in October 2007.
- 123 5.7.8 The Planning Inspectorate is now making decisions on definitive map modification orders for England available on its website.
- 127 5.8.3 The OS and IDEA have published guidance to local authorities on making OS-based definitive map information available to the public
- 127 5.8.3 The advice previously in circular 2/1993 has been replaced, for authorities in England, by paragraph 2.3 of Defra circular 1/08, which no longer recommends that maps be sold to the public.
- 131 5.9.4 footnote 87 Circular 2/1993 has been replaced, for authorities in England, by Defra circular 1/08, paragraph 6.10 of which restates the advice about obstructions apparently recorded in the definitive statement.
- 132 5.11.1 Natural England has withdrawn from further archive research in the Discovering Lost Ways project, and is seeking a review of legislation. Defra has announced that the implementation of sections 53 to 56 of the 2000 Act will be deferred at least until that review has reported.
- 135 Further reading Defra issued version 4 of its guidance to the NERC Act in

- June 2008.
- 135 Further Reading The Planning Inspectorate issued a revised version of Advice Note 9 in February 2008.
- 135 Further Reading The Planning Inspectorate's Definitive Map Orders guide has been revised. It has been superseded for orders submitted to the Inspectorate from 1 October 2007 by new guidance (itself revised in December 2007).
-

Chapter 6

Page

- 145 and 160 6.3.1 Sections 4 and 5 of the Consistency Guidelines have been revised by the Planning Inspectorate.
- 150 and 160 6.3.6 The sections of the Consistency Guidelines dealing with the Finance Act have been revised by the Planning Inspectorate.
- 158 6.3.12 footnote 15 The advice to authorities is now, for authorities in England, in Defra circular 1/08, paragraph 4.8.
- 158 6.3.12 footnote 16, the 1992 regulations have been replaced by the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 and the Street Works (Registers, Notices, Directions and Designations) (Wales) Regulations 2008. These require registers to be indexed, to comply with BS 766 Part 1 and, by no later than 1st April 2009, to be based on a geographical information system. The Department for Transport has published new and revised guidance on street works, which includes guidance on the registers.
-

Chapter 7

Page

- 168 7.2.1 Annex C of Circular 2/1993 has been replaced, for authorities in England, by Chapters 3 and 5 of Defra circular 1/08
- 169 7.2.2 The Secretary of State's advice that he will exercise his powers to make orders under the Highways Act only exceptionally is now, for authorities in England, in paragraph 10.2 of Defra circular 1/08.
- 169 7.2.3 Non Statutory Guidance on the recording of widths on public path, rail crossing and definitive map modification orders was issued by Defra in February 2007 alongside a revision of the Planning Inspectorate's Advice Note 16.
- 171 7.2.4 footnote 27 The view that an authority may decide not to proceed with an order under the Highways Act is now, for authorities in England, in paragraph 5.10 of Defra circular 1/08.
- 173 7.2.5 A table listing when order-making authorities should send copies of orders to the Ordnance Survey is, for authorities in England, in Defra circular 1/08, paragraph 3.6.

- 173 7.2.5 The Planning Inspectorate is now making decisions on public path orders in England available on its website.
- 173 7.2.6 The Secretary of State's advice on his powers to modify orders is now, for authorities in England, contained in chapter 10 of Defra circular 1/08.
- 176 7.2.8 The provision for combined orders, whereby certain public path orders made by surveying authorities may include modification of the definitive map, was brought into force in England from 6th April 2008: Public Rights of Way (Combined Orders) (England) Regulations 2008. Defra has published guidance.
- 177 7.2.12 Advice on charging applicants is now, for authorities in England, in Defra circular 1/08, paragraphs 5.12 to 5.15
- 178 7.3.1 The advice previously in circular 2/1993 is now, for authorities in England, in Defra Circular 1/08, chapter 5.
- 181 7.3.2 The advice previously in circular 2/1993 is now, for authorities in England, in Defra Circular 1/08, chapter 5.
- 184 7.3.2 What if the existing path is obstructed?, third paragraph. In a revised Advice Note 9 the Planning Inspectorate has given the following guidance: "Whereas section 118(6) provides that, for the purposes of deciding whether a right of way should be stopped up, any temporary circumstances preventing or diminishing its use by the public shall be disregarded, section 119 contains no equivalent provision. However, [it is the Inspectorate's view that, when considering orders made under section 119(6), whether the right of way will be/ will not be substantially less convenient to the public in consequence of the diversion, an equitable comparison between the existing and proposed routes can only be made by similarly disregarding any temporary circumstances preventing or diminishing the use of the existing route by the public. Therefore, in all cases where this test is to be applied, the convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it."
- 185 7.3.3 The advice previously in circular 2/1993 is now, for authorities in England, in Defra Circular 1/08, chapter 5.
- 186 7.3.4 The advice previously in circular 2/1993 is now, for authorities in England, in Defra Circular 1/08, paragraph 5.33.
- 189 7.3.6 The advice previously in circular 2/1993 is now, for authorities in England, in Defra Circular 1/08, paragraphs 5.28 to 5.32.
- 191 7.3.7 The advice previously in circular 2/1993 is now, for authorities in England, in Defra Circular 1/08, paragraphs 5.28 to 5.32.
- 192 7.3.8 In *R (Manchester City Council) v Secretary of State for Environment, Food and Rural Affairs* (2007), the City Council sought, through judicial review, an order quashing the decision of an inspector not to confirm an order made by the council under HA 1980 s 118B to close a footpath for the purpose of crime prevention. The inspector found that there would be sufficient benefits in preventing and reducing crime that disrupted the life of the community, to make it expedient, under section 118B(a), that the path should be stopped up for the purposes of preventing crime.
- However, in considering whether, under section 118B(7), it was expedient, having regard to all the circumstances, to confirm the order, he concluded it would not be expedient for the path to be closed. The reasons

were that the footpath provided a utility and recreational function; that the proposed alternative route was twice the distance and alongside roads, (one part carrying heavy traffic), and was less attractive to users of existing footpaths; that the order path had a real purpose for a significant number of local people and that its closure would be detrimental to the amenity of some local residents.

In the High Court, Sullivan J found that there was evidence on which the inspector was entitled to reach the conclusion he did. The issue before the inspector had been one of balance. It was possible that another inspector might well have reached a different conclusion. But that was not to say that the inspector's conclusion was unreasonable. His reasoning was entirely intelligible and the application was therefore dismissed

193 7.3.8, footnote 72, an area in Darlington has been designated by the Crime Prevention (Designated Areas) Order 2007

194 7.3.10 The power to divert ways in SSSIs was brought into effect in England on 21 May 2007 by the Countryside and Rights of Way Act 2000 (Commencement No. 12) Order 2007. The Highways (SSSI Diversion Orders) (England) Regulations 2007 have been made to prescribe the form of applications and orders. Defra has issued guidance on the use of the power (Non-statutory advice on new provisions relating to diversions of rights of way for the protection of sites of special scientific interest (SSSIs)).

196 7.4 The advice previously in circular 2/1993 is now, for authorities in England, in Defra Circular 1/08, in particular chapter 7.

196 7.4.1 The Department for Communities and Local Government has issued guidance to local planning authorities on the validation of planning applications. The guidance states (page 23) that applications for full planning permission should be accompanied by a site plan on a scale of 1:200 or 1:500 showing accurately all public rights of way crossing or adjoining the site.

The Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2008 requires all planning applications in England after 6 April 2008 to be made on a standard form published by the Secretary of State.

212 7.5.1 footnote 131 The advice previously in circular 2/1993 is now, for authorities in England, in Defra Circular 1/08, paragraph 5.35.

214 7.5.3 In *R (Ramblers' Association) v Secretary of State for Defence* (2007), it was held that

(a) the power in section 16 of the 1842 Act to stop up or divert footpaths or bridleways is not confined to land that is in the process of being acquired;

(b) the requirement of section 17 that where, in exercise of the power conferred by section 16, a way is stopped up, 'another path or road shall be provided', is not satisfied by the existence of an alternative route on existing public rights of way: while some of the alternative route could be on existing rights of way, some part of the route had to be new, how much being 'a question of fact and degree';

(c) there is no requirement that the other 'path or road' should be of the same legal nature as that stopped or diverted, provided the use permitted is of no lesser nature than that on the path diverted or stopped up. Thus a footpath can be replaced by a bridleway, but not a bridleway by a footpath.

- 220 7.7.1 The Department for Transport has made the guidance on special events orders available on its website.
- 221 7.7.1 The power for a national park authority in England to make traffic regulation orders was brought into operation on 1 October 2007: Natural Environment and Rural Communities Act 2006 (Commencement No. 1) (England) Order 2007. Regulations, the National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007, require the RA and OSS, among others to be consulted on proposed orders. Defra has issued guidance to national park authorities on their new order-making powers.
- 221 7.7.2 In *Ramblers' Association v Coventry City Council* (2008) Mr Michael Supperstone QC, sitting as a deputy High Court judge, considered a challenge by the RA to the making of a gating order by the Council. In rejecting the challenge, he made the following points. First, when considering whether "the existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour" (section 129A(3)(b)), a council should consider the position as at the date of the making of the order. Second, the word "persistent" in section 129A(3)(b) is an ordinary English word, commonly understood to mean "continuing or recurring; prolonged", that does not require further definition. Third, what was "expedient" would depend, as the section stated, on "all the circumstances". He accepted that utility, cost and practicality of a lesser restriction were all factors that could be taken into account when considering whether or not to impose a blanket restriction.
- 224 Further Reading The Planning Inspectorate's Advice Note 9 was revised in February 2008.
- 225 The Planning Inspectorate's checklist for order-making authorities was revised in March 2007 and again in October 2007.
- 225 Further Reading The Planning Inspectorate's Public Path Orders guide was revised in 2007. It has been superseded for orders submitted to the Inspectorate from 1 October 2007 by new guidance (itself revised in December 2007).

Chapter 8

Page

- 226 8.1 The Planning Inspectorate is now making decisions on definitive map modification and public path orders for England available on its website.
- 226 8.1 footnote 1. The previous advice in Circular 2/1993 about what to send with orders has been replaced, for authorities in England, by advice in paragraph 4.26 of Defra circular 1/08 to authorities to use the Inspectorate's checklist..
- 226-232 8.1, 8.2, 8.3 The Rights of Way (Hearing and Inquiry Procedure) (England) Rules 2007 apply to modification and public path orders in England submitted to the Secretary of State on or after 1st October 2007. The Planning Inspectorate (PINS) has issued a publication which explains the rules, includes copies of the rules and a Defra circular, and also sets out a procedure, similar to the rules, for orders determined by the written representations procedure.

The Rules require notice to be given of the following matters:

Notice to be given by the Secretary of State (or PINS on his behalf):

- (a) Preliminary notice indicating whether an inquiry or hearing will be held and its date, time and place [Rule 4]
- (b) Any pre-inquiry meeting [Rule 15]
- (c) Intention to disagree with the inspector [Rules 11 and 23]
- (d) Proposed modifications [Rule 27]
- (e) Decision [Rules 13, 14, 25 and 26]

Notice to be given by the Inspector:

Decision to take into account any subsequent material [Rules 12 and 24]

Notice to be given by the order-making authority:

Notice of hearing or inquiry on site and in a local newspaper [Rules 5(3) and 16(3)]

The order-making authority has the following duties:

- (a) to ensure that, within eight weeks of the start date, the Secretary of State has received its statement of case [Rules 6(2) and 17(1)]
- (b) to ensure that the Secretary of State receives any proofs of evidence (and summary if necessary) not less than four weeks before the start of the inquiry [Rule 20]
- (c) to ensure that notice of the date, time and place of a hearing or inquiry is placed on site and in a local newspaper not less than four weeks before it starts [Rules 5(3) and 16(3)]

The order-making authority has the following rights:

- (a) to receive preliminary notice indicating whether an inquiry or hearing will be held and its date, time and place [Rule 4(4)(b)]
- (b) to receive from the Secretary of State a copy of any other statement of case [Rules 6(6)(b) and 17(6)(b)]
- (c) to receive from the Secretary of State a copy of any further information he required any person to supply [Rules 7(3) and 18(3)]
- (d) to appear at a hearing and give oral evidence or call someone else to do so [Rules 8(1)(a) and 9(6)(a)]
- (e) to receive notice of any pre-inquiry meeting [Rule 15(2)]
- (f) to appear at an inquiry, and unless determined otherwise by the inspector, to begin proceedings [Rules 19(1)(a) and 21(4)]
- (g) if appearing at an inquiry, to give or call another person to give, oral evidence and to present, or call another person to present, any matter; and to cross-examine any person giving evidence or presenting any matter to the inquiry [Rules 21(5) and 21(6)]
- (h) to receive notice of the intention of the Secretary of State to disagree with the inspector and to be given an opportunity to make representations; and to receive notice of any re-opened hearing or inquiry [Rules 11(6), 11(9), 23(6) and 23(9)]
- (i) to receive notice of a decision by an Inspector to take into account

any subsequent material and to be given an opportunity to make representations, and to receive notice of any re-opened hearing or inquiry [Rules 12(3), 12(6)(a), 24(3) and 24(6)(a)]

(j) to receive notice of the decision [Rules 13(2), 14(2), 25(2) and 26(2)]

The dates for hearings and inquiries have to be:

(a) for a hearing, within 20 weeks of the 'start date' (the date of the preliminary notice, or, where that is not practicable, the earliest possible date [Rule 5(1)])

(b) for an inquiry, within 26 weeks of the 'start date' (the date of the preliminary notice, or, where that is not practicable, the earliest possible date [Rule 16(1)])

The date, time or place of an inquiry or hearing may be changed, subject to notice being given [Rules 5(2) and 16(2)]

Where a proof of evidence is more than 1,500 words long, it has to be accompanied by a summary [Rule 20(4)]

231, 8.2.11 footnotes 14 and 15 Advice formerly in circular 2/1993 is now, for
232 authorities in England, in Defra circular 1/08, chapter 9.

235 Further Reading Planning Inspectorate Advice Note 3 was revised in June 2007.

236 Further Reading The Planning Inspectorate's checklist for order-making authorities was revised in March 2007 and again in October 2007.

236 Further Reading The Planning Inspectorate's Definitive Map Orders and Public Path Orders guides have been revised. They have been superseded for orders submitted to the Inspectorate from 1 October 2007 by new guidance (itself revised in December 2007).

Chapter 9

Page

244 9.3 Advice formerly in circular 2/1993 is now, for authorities in England, in Defra circular 1/08, chapter 6.

261 9.8.2 HA 1980 s 147, subsections (2A) and (2B), added by CRWA 2000 s 69, provide that in exercising the power under section 147 to authorise a gate or a stile, an authority must have regard to the needs of persons with mobility problems and empowers the Secretary of State to issue guidance on this.

The provision was brought into force in Wales on 1 April 2007: Countryside and Rights of Way Act 2000 (Commencement No.9 and Saving) (Wales) Order 2006. The Welsh Assembly Government has issued statutory guidance to local authorities in Wales.

The provision was brought into force in England from 1 October 2007 by the Countryside and Rights of Way Act 2000 (Commencement No. 14) Order 2006. Defra has issued non-statutory guidance to local authorities in England.

Chapter 10

Page

- 282 10.6.1 The new HA 1980 s 147ZA provision was brought into force in Wales from 1 April 2007 by the Countryside and Rights of Way Act 2000 (Commencement No.9 and Saving) (Wales) Order 2006. The Welsh Assembly Government has issued guidance on the provisions.
- 282 10.6.1 The new HA 1980 s 147ZA provision was brought into force in England from 1 October 2007 by the Countryside and Rights of Way Act 2000 (Commencement No. 14) Order 2006. Defra has issued non-statutory guidance to local authorities in England on the provisions.
- 286 10.7.1, footnote 44 Advice formerly in circular 2/1993 is now, for authorities in England, in Defra circular 1/08, paragraph 6.4.
- 290 Further Reading Guidance “Understanding the British Standard for Gaps Gates and Stiles: BS5709:2006 explained” has been published by the Pittecroft Trust.
-

Chapter 11

Page

no supplementary text to date

Chapter 12

Page

- 297 12.1.2 Section 40 of the Natural Environment and Rural Communities Act 2006 requires every local authority to have regard, so far as is consistent with the proper exercise of its functions, to the purpose of conserving biodiversity when undertaking those functions. Defra has issued guidance to local authorities on this duty.
- 302 12.1.5, footnote 9, the 1992 regulations have been replaced by the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 and the Street Works (Registers, Notices, Directions and Designations) (Wales) Regulations 2008. These require registers to be indexed, to comply with BS 766 Part 1 and, by no later than 1st April 2009, to be based on a geographical information system. The Department for Transport has published new and revised guidance on street works, which includes guidance on the registers.
- 303 12.1.8 The membership of national park authorities in England has been revised from 8th May 2007 by the National Park Authorities (England) Order 2006.
- 304 12.2.1 Section 40 of the Natural Environment and Rural Communities Act 2006 requires every government department and agency, to have regard, so far as is consistent with the proper exercise of its functions, to the purpose of conserving biodiversity when undertaking those functions. Defra has issued guidance to public authorities on this duty.

- 309 12.4.3 Defra published in March 2007 a report by Cranfield University *The social and economic benefits of Public Rights of Way - quantifying value for money* and associated PROWTool for highway authorities to use in their improvement plan work.
- 311 12.4.4 The regulations governing membership of Local Access Forums in England have been revised (Local Access Forums (England) Regulations 2007), and revised guidance has been issued.
- 311 12.4.4 Advice on the role of Local Access Forums in relation to rights of way is contained, for authorities in England, in Defra circular 1/08, paragraph 3.2
- 314 12.5.2 The Equality and Human Rights Commission has replaced the Disability Rights Commission.
- 324 12.6.5 The duty of public authorities to provide 'environmental information' is imposed, not by the Freedom of information Act 2000, but by paragraph 5 of the Environmental Information Regulations 2004, (implementing European Council Directive 2003/4/EC). The terms 'public authorities', 'environmental information' are defined in the regulations (para 2), the latter term including planning applications and planning permissions. In *Markinson v Information Commissioner* (Information Tribunal Appeal Number:EA/2005/0014 FER 0061168), X complained to the Information Commissioner (established by the Freedom of Information Act 2000 and charged by regulation 18 of the Environmental Information Regulations with hearing complaints under those Regulations) that the charge of £6 made by the Kings Lynn and West Norfolk Borough Council for a copy of a planning application was excessive. Under regulation 8, an authority may not charge for the inspection of information. It may charge for copies of information supplied, provided that the charge does 'not exceed an amount which the public authority is satisfied is a reasonable amount'. The Information Commissioner, being satisfied that the authority had satisfied itself that the amount charged was (taking into account the (sic) 'legal significance' of the document) reasonable, rejected the complaint. X appealed (under section 58 of the Freedom of information Act 2000) to the Information Tribunal. The Tribunal found that the Council and the Commissioner had failed to take into account guidance on making a charge for the provision of information, and that 'the Commissioner was wrong to conclude that the Council's decision was one that a reasonable authority, which had properly instructed itself as to the applicable law and relevant facts, could have reached'. The Tribunal ruled that the Council should re-assess the charges it makes for providing copies of 'environmental information' and that in making the re-assessment it should adopt as a guide price the sum of 10p per A4 sheet, as identified in the good practice guidance on access to and charging for planning information published by the office of the Deputy Prime Minister and as recommended by the Department for Constitutional Affairs, being free to exceed that price only if it could demonstrate that there was a good reason for doing so, taking into account guidance by Defra to the effect that any charge should be at a level that does not exceed the cost of producing the copies.
- 324 12.6.5 A number of decisions of the Information Commissioner and Information Tribunal have been summarised and are available as a download from the BBE website.
- 328 12.7.1 In *R (Horvath) v Secretary of State for Environment Food and Rural*

- Affairs (2007) the Court of Appeal dismissed the appeal and varied the direction.
- 328 Further Reading A Welsh version of “By All Reasonable Means” has been published.
- 328 Further Reading Guidance “Understanding the British Standard for Gaps Gates and Stiles: BS5709:2006 explained” has been published by the Pittecroft Trust.
-

Chapter 13

Page

- 331 13.1.3 Section 141 of the Tribunals, Courts and Enforcement Act 2007, brought into force on 1 April 2008, gives the court the power to substitute its own decision in certain cases of judicial review where the decision maker is a court or tribunal, the decision is quashed on the ground that there has been an error of law and if the High Court is satisfied that it is the only decision the court or tribunal could have reached. Tribunals, Courts and Enforcement Act 2007 (Commencement No. 3) Order 2008.
- 332 13.1.3 The circumstances in which the court may overturn the decision of an administrative body include instances in which a procedure has been followed that is unfair to one of the parties. In *R (Chaston) v Devon CC* (2007) owing to uncertainty as to the correct route of a path, the surveying authority appointed an inspector to hold a non-statutory inquiry to hear the evidence and make a recommendation as to the correct route. The inspector found that of three possible routes, the correct one was down steps constructed by nearby landowners on a line that took the path away from the front of their properties. The other two routes were down a lane that ran in front of the properties. The inspector found that the correct route was, as contended by the landowners, down the steps. The authority subsequently received further representations from members of the public that supported a line that passed down the lane. The authority notified the landowners but did not refer the matter back to the inspector. The authority resolved to reject the inspector’s conclusion and determined that the correct line passed down the lane. In an application for judicial review of the authority’s decision the landowners sought an order that the decision should be quashed. The High Court held that, to have acted in a procedurally fair manner, the authority should have either informed the landowners of the further representations and invited them to comment, or referred the matter back to the inspector. Its failure to follow either course meant that the manner in which the decision had been reached was contrary to the rules of natural justice. The decision was therefore quashed and the matter referred back to the inspector for reconsideration in the light of the fresh evidence supplied.
-

Chapter 14

Page

- 368 14.2.1 Natural England has published *England Leisure Visits – report of the 2005 survey*. This found that 21.2 million visits to land to which access had been granted under the 2000 Act had been undertaken by people living in England over a 12-month survey period.
- 370 14.2.3 The Government published in April 2008 a draft Marine Bill which includes proposals for increased coastal access in England.
-

Chapter 15

Page

- 391 15.1.3 The 1992 regulations have been replaced by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, with guidance in Department for Communities and Local Government Circular 03/2007. The effect on advertisements visible from rights of way has not been changed.
- 395 15.3 The Cotswold Way was officially opened on 24 May 2007.
- 396 15.5 A table listing when order-making authorities should send copies of orders to the Ordnance Survey is, for authorities in England, in Defra circular 1/08, paragraph 3.6.
-

Part II : text of selected statutes

Page

- 621 Environmental Protection Act 1990 s 88 – the amount that may be charged as a fixed penalty for leaving litter has been increased :
- in England to not less than £50 and not more than £80 by the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007;
 - in Wales to not less than £75 and not more than £150 by the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2007.
- 676 Anti-Social Behaviour Act 2003 s 44 – the amount that may be charged as a fixed penalty for graffiti, including defacing of signposts, has been increased :
- in England to not less than £50 and not more than £80 by the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007;
 - in Wales to not less than £75 and not more than £150 by the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2007.
- 684 Clean Neighbourhoods and Environment Act 2005 s 56 – the amount that may be charged as a fixed penalty under a dog control order has been increased :
- in England to not less than £50 and not more than £80 by the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007;
 - in Wales to not less than £75 and not more than £150 by the

Environmental Offences (Fixed Penalties) (Miscellaneous Provisions)
(Wales) Regulations 2007.

- 684 Note to Clean Neighbourhoods and Environment Act 2005 s 57 - The
Controls on Dogs (Non-application to Designated Land) (Wales) Order 2007
make the same provision for Wales as applies in England, namely that dog
control orders cannot be made in respect of a 'road'.
-