

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

Supplements at 11 November 2009

This document contains the supplements published on the Blue Book Extra website (<http://www.ramblers.co.uk/rightsofwaybook/bbe>) at 11 November 2009. 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 13 May 2009

Location	Details
Various	Revisions to Planning Inspectorate Advice Notes 1,2,3,5,7,9,10,15, 16 and 20
2 Further Reading page 38	Department for Transport information about electrically-assisted pedal cycles.
3.4.7 page 65	Case of Campbell v Banks – allegation of public right of way heard by the courts.
5.3.4 page 109	Maroudas case on validity of applications for modification orders
5.7.8 page 123	Revised version of Defra circular 1/09
5.7.11 page 124	Case of Jones v Welsh Assembly Government on the effect of a decision of the court to quash an Inspector's decision to confirm a modification order.
7.7.1 page 217	Case of Wilson and Motoring Organisations' Land Access and Recreation Association v Yorkshire Dales National Park Authority on grounds and procedure for traffic regulation orders.
8.1 page 226	Further note on Powell v Secretary of State for Environment, Food and Rural Affairs re adjournment of inquiry
8.2.11 page 231	Revised version of Defra circular 1/09
8 Further Reading	New Planning Inspectorate Advice Note 21 on procedural irregularities in orders
10.4.3 page 281	Revised text on obligation to provide a surface on former RUPPs
12.6.6 page 324	Publication by Local Government Ombudsman of summaries of rights of way cases

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

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30	Commissioner of the Police for the Metropolis v Kay [2007] EWCA Civ 477
328	Horvath (Agriculture) [2009] EUECJ C-428/07_O
56	Housden v Conservators of Wimbledon and Putney Commons [2008] EWCA Civ 200, [2008] 1 WLR 1172, [2008] 3 All ER 1038
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332	R (Chaston) v Devon CC [2007] EWHC 1209 (Admin)
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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 (1/09): Guidance for Local Authorities (Defra, revised October 2009) – references on pages 77, 87, 98, 104, 113, 118, 122, 127, 131, 158, 168, 169, 171, 173, 175, 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)
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Chapter 1

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- 3 1.1 Natural England has published *England Leisure Visits – report of the 2005 survey*. 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.
- 8 1.2.1 By ‘road’ in the phrase ‘any other road’, is meant that which has the characteristics of what is in common parlance termed a road, namely, a route with a tarmacadamed surface and defined lateral boundaries. For example, in *Barrett v Director of Public Prosecutions* (2009) a way through a private caravan site to give access to the public to a beach on the far side of the site was held to be a ‘road’ within the phrase ‘any other road to which the public has access’ in the definition of ‘road’ in RTA 1988 s 192.
- 9 Further Reading A new edition of *Out in the Country* was published in 2007 by Natural England.
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- 11 2.2 In *R (Smith) v Land Registry (Peterborough Office)* (2009), the owner of a caravan claimed possession of land on which the caravan had stood for more than 12 years. The Registry rejected the application on the ground that the land on which the caravan stood was public highway, and public highway could not (*Harvey v Truro District Council* (1903)) be extinguished by adverse possession. The court upheld the Registry’s decision.
- 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). The case concerned a recurrent event (named Critical Mass) in which pedal cyclists met at the same place in London at 6pm on the last Friday of each month and, having no fixed, settled or predetermined route, end time or destination, followed the route taken by whichever cyclist happened from time to time to be in the lead. The police notified participants that the event was illegal in that no notification had been given as required by section 11(1). A participant sought a declaration that the rides were not public processions of which notice was required to be given to the police. In *Kay v Commissioner of Police of the Metropolis* (2008) the House of Lords held (per Lord Phillips) that the event was a 'procession' within the meaning of section 11 but that, being one 'commonly or customarily held', by virtue of section 11(2) the requirement to give notice did not apply; (per Lord Brown) there being no organizers, the requirement to give notice did not apply. Consequently, the exception under section 11 (2) did not arise. The event was therefore not illegal.
- 38 Further Reading The Department for Transport has published new and revised guidance on self-balancing scooters, motorised scooters and miniature motorcycles
- 38 Further Reading The Department for Transport published in July 2009 details of the regulations applying to electrically-assisted pedal cycles.
- 38 The Planning Inspectorate published a new version of Advice Note 16 in September 2009.
- 38 Further Reading A new edition of *Out in the Country* was published in 2007 by Natural England.

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- 44 In *Smith v Muller* (2008), landowner A made a claim, based on long usage, to an easement (a private right of way) over B's land to a road on the far side. An enclosure award of 1798 required the boundary between A's and B's land to be fenced. B argued that the construction of an access through the fence would constitute an unlawful breach of the fencing requirement in the award, with the result that no presumption of dedication either under statute or at common law could have arisen. The court rejected the argument. The purpose of the requirement was to mark the ownership boundary and to retain cattle, purposes that would not be impeded by the existence of a gate in the fence. The enclosure award requirement of fencing was therefore no bar to the presumption of the dedication of the easement. A's claim succeeded.
- 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 An Inspector has held that section 56 of the Pastoral Measure 1985, under which no church or consecrated land can be sold, leased or otherwise disposed of otherwise than under powers conferred by the Measure did not preclude the presumption of the dedication of a right of way under HA 1980 s 31 over consecrated land. The reason was that presumed dedication under the section did not constitute the sale, lease or other disposition of the land. Since twenty years’ use of the way as of right over the consecrated land concerned had been shown, the order modifying the definitive map to add a footpath was confirmed. (A Pastoral Measure is a Measure of the General Synod of the Church of England confirmed by both Houses of Parliament...) Worcestershire County Council Order (Footpath 709, Alfrick) Definitive Map Modification Order 2006. PINS ref:FPS/E1855/715, order decision issued 14.12.2007.
- 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.

- 65 3.4.7 In *Campbell v Banks* (2009) it was held that while the Wildlife and Countryside Act 1981 provides a statutory procedure by which the existence or non-existence of a public right of way may be established, the fact that this statutory procedure exists does not oust the inherent jurisdiction of the court to make a declaration as to whether a way is or is not public. For the court to exercise this jurisdiction, however, it is necessary for all parties affected (including, in particular, the owners of land crossed by the way) to be joined as parties to the action, so the parties may be before the court.

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- 77 4.2.5 Circular 2/1993 has been replaced, for authorities in England, by Defra circular 1/09, paragraph 6.17 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 1/09.

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- 98 5.1.3 footnote 4 The guidance previously in circular 2/1993 is now, for authorities in England, in Defra circular 1/09, paragraph 4.09.
- 99 5.2.1 The level of accuracy of the map and statement should be of the highest level in practice attainable. The level of the degree of accuracy attainable will depend on the circumstances, in particular the nature of the evidence as to the line and other particulars of the route. In *Perkins v Secretary of State for the Environment, Food and Rural Affairs* (2009), Sir George Newman said, '...if it is possible, it will generally be desirable to show an order route to a high level of precision, but that will be the position if there is evidence to support such precise delineation actually relating to the right of way in question. Where, as is often the case, the existence of the right of way is shown by historical maps of varying quality, vintage and produced for varying purposes, in my judgment, there is certainly no requirement in law to show the route with a greater degree of particularity than can be justified on the basis of the available evidence.'
- 104 5.2.6 DOE Circular 18/1990 has been replaced, for authorities in England, by Defra Circular 1/09, see paragraph 4.30 onwards. Paragraph 4.35 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. . In circular 1/09 the view is expressed that this applies from the date of first recording on the definitive map, this term being defined as 'either the date of the

original publication of the first definitive map, the date of publication of a review, or the relevant date of an order adding the path to the definitive map, whichever was appropriate’.

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..” Note that this advice was superseded by the *Winchester College* case below, and see Defra circular 1/09, paragraph 4.7.

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 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.

- 109 5.3.4 In *Maroudas v Secretary of State for Environment, Food and Rural Affairs and Oxfordshire CC* [2009] the High Court (Mackie J) considered whether an application had been validly made by compliance with WCA 81 Sch 14 and regulation 8 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993. The Court concluded that it was necessary for the application and the circumstances attending its submission to be looked at as a whole. Notwithstanding defects in the application, including a failure to sign and date the form in the relevant boxes, the circumstances, taken as a whole and including subsequent correspondence between the applicant and the authority that established the essentials of the application, warranted an inspector in finding that the application had been validly made. The consequence was that the exception to NERCA 2006 s 67 did not operate to extinguish vehicular rights over the way in respect of which the application had been lodged, as the exception in sub-section 67(3)(a) had been engaged.
- 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 1/09, paragraph 4.41.
- 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.” Note that this advice was superseded by the *Winchester College* case above, and see Defra circular 1/09, paragraph 4.7.
- 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 4.20 of Defra circular 1/09 to authorities to consider wider publicity for orders through ‘local organisations which are recognised as being representative of user interests’.
- 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 1/09 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 and for Wales available on its website.

123 5.7.8 In a revised version of circular 1/09 in October 2009 Defra revised paragraph 4.27 to make it clear that if orders are severed, each part must be separately capable of confirmation.

124 5.7.11 An appeal under Schedule 15 is in the nature of a statutory judicial review and is limited to ordinary public law grounds: *Powell v Secretary of State for Environment, Food and Rural Affairs and Doncaster MDC* (2009), para 9; *Norman and Anr v Secretary of State for Environment, Food & Rural Affairs* (2007), para 3. For the grounds, see 13.1.3, p 332.

124 5.7.11 The effect of an order of the court under WCA 1981 Sch 15 para 12 (2) quashing an inspector's decision to confirm an order is to quash not merely the decision of the inspector, but the order itself (thus requiring the order, if the authority so decides, to be re-made): *Jones v Welsh Assembly Government*

- (2008).
- 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 1/09, 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 1/09, paragraph 6.17 of which restates the advice about obstructions apparently recorded in the definitive statement. Paragraph 4.16 of circular 1/09 advises surveying authorities on the inclusion of limitations in modification orders.
- 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.
- 134 Further Reading Natural England published a new edition of *A guide to definitive maps and changes to rights of way* (NE 112) in 2008
- 135 Further Reading Defra issued version 5 of its guidance to the NERC Act in May 2008.
- 135 Further Reading The Planning Inspectorate issued revised versions of Advice Notes 5, 7, 9, 10, 15, 16 and 20 between June and October 2009.
- 135 Further Reading The Planning Inspectorate's Definitive Map Orders guide has been revised. It has been superseded for English orders submitted to the Inspectorate from 1 October 2007 by new guidance (itself revised in November 2008).
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Chapter 6

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- 141 6.1 Totality of evidence. In *R (Ridley) v Secretary of State for Environment, Food and Rural Affairs* (2009) Walker J said 'As a matter of logic and common sense, it is perfectly plausible that an accumulation of material pieces of evidence may lead to a conclusion that while none of them, of itself, actually points to a particular result, taken as whole they do.'
- 141 6.1 Circumstances may arise in which an inspector or the court has to determine which of two conflicting, or apparently conflicting, items of evidence should prevail. For example, in *Parker v Nottinghamshire CC and Department for Environment, Food and Rural Affairs* (2009) an order was made adding a restricted byway to the definitive map on the ground of the depiction of the way in an enclosure award [see 6.3.2] made under the Inclosure Act 1771. In 1783 the Trent Navigation Act [see 6.3.3] conferred powers on a navigation [i.e., canal] company to 'set out ...use...and maintain Paths and Ways for haling, towing by men or horses any Boats, Barges or Vessels using the said Navigation'. The Act provided that owners though whose land the path was to pass should have a right to use the path as a 'footpath, bridleway or driftway for their cattle and that no other person may use the same.' Adjacent landowners objected to the modification order on the ground that this provision, and in particular the words 'and no other', restricting those entitled to use the way precluded the existence of public rights over the route. The court held that the Act created private rights of

	way over the path (for the benefit of canal users and adjoining landowners.) The existence of private rights did not preclude the existence of public rights (in the instant case, rights of a different nature) over the same route. The order was therefore confirmed. [Semble, if the public rights were extinguished, the private rights created by the Act would not be affected.]
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. Section 11 has been extended to cover also Farm Survey records and records of wartime closures.
158	6.3.12 footnote 15 The advice to authorities is now, for authorities in England, in Defra circular 1/09, paragraph 4.42.
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

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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 1/09.
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 1/09.
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. The Advice Note was further revised in September 2009.
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 5.29 of Defra circular 1/09.
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 1/09, paragraph 5.59.
173	7.2.5 The Planning Inspectorate is now making decisions on public path orders in England and Wales 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 1/09.
175	7.2.7 Guidance on the use of the certification procedure for s 119 orders is contained, for authorities in England, in Defra circular 1/09, paragraph 5.28
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.

- In December 2008 Defra wrote to surveying authorities about proposed changes to the regulations.
- 177 7.2.12 Advice on charging applicants is now, for authorities in England, in Defra circular 1/09, paragraphs 5.34 to 5.41.
- 178 7.3.1 The advice previously in circular 2/1993 is now, for authorities in England, in Defra Circular 1/09, chapter 5.
- 181 7.3.2 The advice previously in circular 2/1993 is now, for authorities in England, in Defra Circular 1/09, chapter 5. Paragraph 5.32 expresses the view that the Inspector's role is not 'confined to auditing the reasons for which the order making authority made the order. The Inspector is entitled to his or her own view, on the basis of the evidence submitted by interested parties, and may confirm an order, even where the reasons, under section 119(1), for doing so may not align with those of the order-making authority, provided that the Inspector is satisfied that in the interests of the owner, lessee or occupier or the public, it is expedient to divert the way'.
- 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." See also Defra circular 1/09, paragraph 5.25.
- 185 7.3.3 The advice previously in circular 2/1993 is now, for authorities in England, in Defra Circular 1/09, chapter 5.
- 185 7.3.3 Where, to exercise the power conferred by HA 80, section 26 to make an order that creates a public footpath, the authority is required to show that there is a need for the path, and that it is expedient that the order should be made, the need that must be shown relates to both the need for the path to exist [i.e. on the route proposed], and the need for the created path to be of the dimensions proposed [e.g. with regard to its width]. *R (MJI Farming Limited) v Secretary of State for Environment, Food and Rural Affairs* (2009): order creating a public footpath quashed since no need had been shown for the order path to be of the width proposed (4 metres), the width being that needed to accommodate a bridleway should one later be created.
- 186 7.3.4 The advice previously in circular 2/1993 is now, for authorities in England, in Defra Circular 1/09, paragraph 5.54.
- 189 7.3.6 The advice previously in circular 2/1993 is now, for authorities in England, in Defra Circular 1/09, paragraphs 5.48 to 5.50.
- 191 7.3.7 The advice previously in circular 2/1993 is now, for authorities in England, in Defra Circular 1/09, paragraphs 5.51 to 5.53.
- 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

192 7.3.8 School security. *R (Hockerill College) v Hertfordshire CC* (2008) concerned a public footpath that crossed the grounds of a school. The school applied to the CC for a special extinguishment order under HA 1980 s118B(1)(b) order'. The council declined to make the order. The school applied to the court, in proceedings for judicial review, for an order quashing the decision. In granting the order, the court held that the council had erred. When considering (at the first stage) whether it was expedient, for the purposes specified (protecting pupils or staff), that the order should be made, it had taken into account matters (set out in s118B(8)(a)-(d)) required to be considered when deciding (at the second stage of the process) whether to confirm the order,

When considering, at the first stage, whether it was expedient that the order should be made, the council was entitled to bear in mind the requirements of sub-section (8) to the extent that it would not be reasonable to make the order if there was no chance of the sub-section (8) requirements being met. Nevertheless, the two stages of the process were distinct. The council, in giving reasons for finding it inexpedient to make the order, had cited matters that fell within subsection (8) (the fact that the path was well used; the need for improved security, and the absence of a reasonably convenient alternative route). The order was accordingly quashed (and the matter directed to be remitted to the council for reconsideration).

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

193 7.3.9 In August 2008 Defra announced, following a consultation exercise, that it had concluded that the right to apply provisions should not be implemented as they stood, and that further primary legislation was needed to secure an effective framework for applications.

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 1/09, 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.
- See also Defra circular 1/09, paragraph 7.4.
- 212 7.5.1 footnote 131 The advice previously in circular 2/1993 is now, for authorities in England, in Defra Circular 1/09, paragraph 5.56. Paragraph 9.9 of the circular advises on costs arising from s 116 applications.
- 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.
- 217 7.7.1 In *Wilson and Motoring Organisations' Land Access and Recreation Association v Yorkshire Dales National Park Authority* (2009), the failure of the authority to give proper consideration to the duty imposed by section 122 was a ground on which the court quashed orders that restricted the use of certain ways to non-motorised vehicles (the other ground being that the reasoning of the authority in reaching decisions to make orders had not been rational).
- 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 Natural England published a new edition of *A guide to definitive maps and changes to rights of way* (NE 112) in 2008.
- 224 Further Reading The Planning Inspectorate issued revised versions of Advice Notes 9 and 16 in September and October 2009.
- 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 English orders submitted to the Inspectorate from 1 October 2007 by new guidance (itself revised in November 2008).

Chapter 8

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- 226 8.1 The Planning Inspectorate is now making decisions on definitive map modification and public path orders for England and Wales 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 paragraphs 4.26 and 5.30 of Defra circular 1/09 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 (revised in November 2008) 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)]

In *Powell v Secretary of State for Environment, Food and Rural Affairs and Doncaster MDC* (2009) the claimant had purchased a house through the curtilage of which ran a way the subject of a modification order to add it to the definitive map. He had been assured by the vendor that the vendor's solicitors would maintain an objection they had lodged to the order, but subsequently discovered that they had failed to submit documents to the Inspectorate in accordance with the inquiry rules. A request by the claimant's representative for an adjournment to allow time for proper preparation had been refused both by the Inspectorate in advance of the public inquiry arranged to hear objections and by the Inspector at the inquiry. The High Court (Michael Supperstone QC, sitting as a deputy judge) held that whilst the impact of the order on the claimants might not be relevant to the substantive issue before the Inspector, it had been relevant to matters of procedural fairness arising during the proceedings, and in particular to the determination of the application for an adjournment. In his view, the refusal of the application for an adjournment amounted to a breach of the rules of natural justice and the Inspector's decision to confirm the order was quashed.

227 8.2.1 The Planning Inspectorate issued a revised version of Advice Note 1 in September 2009.

231, 232 8.2.11 footnotes 14 and 15 Advice formerly in circular 2/1993 is now, for authorities in England, in Defra circular 1/09, chapter 9. The chapter was amended in a revised version of the circular issued in October 2009.

235 Further Reading The Planning Inspectorate issued revised versions of Advice Notes 1,2,3 and 10 in September 2009. The Inspectorate issued a new Advice Note 21 in June 2009 advising Inspectors how to deal with cases where it is alleged that there were procedural irregularities in respect of public path or definitive map orders.

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 English orders submitted to the Inspectorate from 1 October 2007 by new guidance (itself revised in November 2008).

Chapter 9

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244 9.3 Advice formerly in circular 2/1993 is now, for authorities in England, in Defra circular 1/09, chapter 6.

258 9.7.2 Guidance for enforcers in England on dangerous dogs law has been published by Defra.

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.

261 9.8.2 Extended advice to authorities in England on stiles and gates is included in Defra circular 1/09, paragraphs 6.7 to 6.11

Chapter 10

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281 10.4.3 Replace existing text with:
“10.4.3 What kind of surface? The effect of section 49(4) of the Countryside and Rights of Way Act 2000

Provisions, subsequently repealed, in WCA 1981 s 54(7) and CA 1968 Sch 3 state that nothing in those sections, or in WCA 1981 s 53, obliged a highway authority to provide, on a way shown on a definitive map as a byway, a metalled carriageway or a carriageway which was by any other means provided with a surface suitable for the passage of vehicles. This provision was reportedly taken by some authorities to mean that depiction of a way as a byway in some way reduced their liability to maintain it. It is submitted that this was an incorrect reading of the provisions, and that their correct interpretation was that the effect of an order under WCA 1981 s 53 or s 54, or the reclassification of a RUPP as a byway under CA 1968, was to leave unchanged the extent of maintenance liability on a particular way.

CRWA 2000 s 49(4) re-states and extends the provision in relation to the reclassification by that Act of RUPPs as restricted byways, and the requirement that any way so reclassified will be maintainable at public expense. It states that nothing in ss 48 or 49 obliges a highway authority to provide on any way a metalled carriageway or a carriageway which is by any other means provided with a surface suitable for cycles or other vehicles. “

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 1/09, paragraph 6.5.

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

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292 11.2.3 Defra circular 1/09 refers, at paragraph 2.9 to the regulations and Natural England's advice on waymarking of restricted byways

Chapter 12

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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 1/09, paragraph 3.2

314 12.5.2 The Equality and Human Rights Commission has replaced the Disability Rights Commission.

315 12.5.4 Advice on the application of the Disability Discrimination Act to rights of way is, for authorities in England, contained in Defra circular 1/09 at paragraphs 1.3, 5.4 and 6.8

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.
- 324 12.6.6 The Local Government Ombudsman has published a list of decisions on rights of way cases between 1993 and 2007.
- 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.
- In *Horvath (Agriculture)* (2009) The European Court of Justice held : (i) that the UK government had been entitled to introduce cross-compliance measures relating to public rights of way; and (ii) that the respective administrations in England and Wales had been entitled to introduce different cross-compliance measures (the provisions about rights of way not applying in Wales).
- 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

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- 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

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- 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 A Marine and Coastal Access Bill which includes proposals for increased coastal access in England was introduced in Parliament in December 2008. At the same time Natural England published a draft scheme for implementation of the new coastal access provisions.

Chapter 15

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- 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.

- 395 15.4.1 On 1 April 2009 the following changes were made to local government in England. In Cornwall, Durham, Northumberland, Shropshire and Wiltshire the county council has become a unitary authority. In both Bedfordshire and Cheshire two unitary authorities have been created: Bedford Borough and Central Bedfordshire and Cheshire West and Chester and Cheshire East respectively.
- 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 1/09, paragraphs 4.29 and 5.59.
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Part II : text of selected statutes

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- 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'.
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