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To all local authorities

4th December 2008

Dear colleague

**This letter concerns surveying authorities, who have the power to make combined orders under the Public Rights of Way (combined orders) (England) regulations 2008: SI 2008/442**

**The current Regulations**

Many of you will be aware by now, that there has been some controversy over the prescribed form of combined orders, as set out in the current combined order regulations, SI 2008/442. The concern is that the form of order provided for in these regulations, does not enable the way in which the definitive map and statement are to be modified to be set out in the combined order, as it would be in a definitive map modification order or legal event modification order under SI 1993/12. Moreover, contrary to the advice that we mistakenly issued in July this year, the regulations do not enable surveying authorities to modify the form of any combined order they make so as to include this.

Nevertheless, any combined order made under SI 2008/442 will still enable a surveying authority to modify the map and statement, at the time of consolidation of the definitive map and statement, in line with the changes effected by the combined order. Moreover, from a legal standpoint, the current regulations fulfil their function adequately (in terms of permitting combined orders to be made) and Defra is firmly of the view that orders made on this basis are perfectly sound as long as the form of order is adhered to, either strictly or “substantially to the like effect”, in other words, they have not been modified to set out the way in which the definitive map and statement are to be modified.

**Amending regulations**

We have been consulting practitioners in surveying authorities about whether there is a need to amend SI 2008/442. They tell us that the regulations would be greatly improved by the addition of provision, in the form of order, for setting out the way in which the definitive map and statement is to be modified

and so we have decided that we will amend the regulations accordingly. However, such regulations will not come into effect before the next common commencement date, which will be the beginning of April 2009.

### **In the interim**

Until the new regulations come into effect, there are two options open to surveying authorities. They can make combined orders under SI 2008/442, which will be legally sound, provided they have not been modified to set out the way in which the definitive map and statement are to be modified. Alternatively, they can continue to make separate orders, as they did before the combined orders regulations came into effect.

### **Objections to combined orders already made**

We are aware that a number of combined orders have been the subject of objections from the Byways and Bridleways Trust. We understand that some of these are objections to the form of the legal event modification order element of the order. Although the legislation governing definitive map modification orders and public path orders (and analogous orders) provides for these orders to be objected to and, if opposed, submitted to the Secretary of State, the legislation does not provide for orders made under s.52 in consequence of events in s.53(3)(a) of the Wildlife and Countryside Act 1981 (commonly referred to as legal event modification orders) to be objected to in this way.

There is therefore no legal basis for an objection to the legal event modification order element of a combined order. The legislation provides only (in s.53A(7)) that the order may be challenged in the usual way, though the Courts, on the grounds that it is not within the powers of this Part of the Act (Part III of the Wildlife and Countryside Act 1981), or that the requirements of this Part of the Act or of the regulations had not been complied with. Any objection to the legal event modification order element of a combined order has no basis in law and the Secretary of State has no jurisdiction in relation to orders objected to in this way.

Consequently, we will be returning any combined orders to surveying authorities, where the sole ground of objection is to the legal event modification element of the order. Where such a combined order conforms to the form of order set out in SI 2008/442, surveying authorities may simply confirm the order as unopposed. Where such a combined order has been modified to set out the way in which the definitive map and statement are to be modified, as indicated in the advice that we mistakenly issued in July, then surveying authorities have two options. One is to remake the order from scratch, adhering to the form of order prescribed in SI 2008/442. The other is to detach the legal event modification element of the order, leaving only the public path (or analogous) order element of the combined order, which may then be confirmed, enabling a separate legal event modification order to be made, as was the practice before the introduction of combined orders;

sections 53A, subsections (3) and (4), enable a surveying authority to do this without having to repeat any of the statutory procedures already undertaken.

### **Guidance**

We will be revising the combined orders guidance and publishing this revised version once the amending regulations are made. In the meantime if you require clarification of anything in this letter, or require further guidance on combined orders for any reason please email the following address: [recreation.access@defra.gsi.gov.uk](mailto:recreation.access@defra.gsi.gov.uk)

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Waterman', with a stylized flourish at the end.

DAVE WATERMAN  
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