

## **REGULATORY APPRAISAL**

### **COUNTRYSIDE, WALES**

### **RIGHTS OF WAY, WALES**

#### **THE COUNTRYSIDE AND RIGHTS OF WAY ACT 2000 (COMMENCEMENT NO.9 AND SAVING) (WALES) ORDER 2006**

##### **Purpose and intended effect of the measure**

1. This Order brings into force certain provisions of Part II of the Countryside and Rights of Way Act 2000 (“the CROW Act”) in relation to Wales and clarifies the effect of the previous commencement of two other provisions.
2. The Order will:
  - commence section 69 of the CROW Act, which amends section 147 of the Highways Act 1980 and requires competent authorities (local highway authorities) to have regard to the needs of persons with mobility problems when authorising the erection of stiles and gates across footpaths and bridleways. It also empowers the Assembly Government to issue guidance to authorities on the matters they should take into account in exercising their powers, and requires authorities to have regard to any such guidance. Consultation on the draft guidance will be issued this autumn, with a view to issuing the guidance in April 2007. Subsection (3) of section 69 allows authorities to enter into agreements with landowners, lessees or occupiers of land for the replacement of lawful structures across footpaths and bridleways with other structures that will be safer or more convenient for persons with mobility problems;
  - correct a minor drafting error in the Countryside and Rights of Way Act 2000 (Commencement No. 4) (Wales) Order 2004, which came into force on 1 April 2006. This will clarify the provisions contained in that Order, which sought to commence section 57 in so far as it gives effect to paragraphs 1, 6, and 9(5) of Schedule 6 to the Act (which relate to the use of rights of way improvement plans during the legal process of creating, stopping up or diverting public rights of way);
  - correct a drafting error in the Countryside and Rights of Way Act 2000 (Commencement No. 5) (Wales) Order 2004. The effect of this change will be to clarify provisions relating to section 102 of the Act in relation to the technical repeal of section 193(2) of the Law of Property Act 1925, which were commenced on 21 June 2004. Furthermore, the clarification will repeat the saving provisions, which provide that any deed executed under section 193(2) of the Law of Property Act 1925 prior to the Commencement of the No.5 Order would remain in force after the section is repealed; and

- commence Part II of Schedule 16 to the Act to the extent that it repeals paragraph 9 of Schedule 15 to the Wildlife and Countryside Act 1981. This Commencement removes from the statute book an already redundant provision.

### **Risk Assessment**

3. If this legislation was not made local authorities would not be required to have regard to the needs of persons with mobility problems when erecting stiles and gates across footpaths and bridleways. Therefore, the inconsistency of approach, which already exists across Wales would continue.

### **Options**

#### Option 1: Do Nothing

4. This option would leave unchanged the inconsistent approach local authorities take when erecting stiles and gates and when assessing the appropriateness of the chosen structures to the needs of those with mobility problems.

#### Option 2: Issue guidance only

5. If guidance was issued, without commencing these provisions, there would be no requirement on the local authorities to have regard to the guidance. This could lead to inconsistency across Wales.

#### Option 3: Make the Legislation

6. Introducing this legislation will require local authorities to have regard to the needs of persons with mobility problems when erecting stiles/gates.

### **Benefits**

7. The main benefits of making the Order are that it should :
  - ensure the needs of those with mobility problems are taken into consideration when local authorities authorise the erection of stiles and gates;
  - allow local authorities to enter into agreements with landowners, lessees or occupiers of land for the replacement of stiles / gates with other structures that will be safer or more convenient for people with mobility problems; and
  - clarify Commencement Orders No.4 and No.5 with regard to the need to take account of the local prioritisation identified within the Rights of Way Improvement Plans when considering the creation, stopping up or diverting of public rights of way; and in relation to the repeal of section 193 of the Law of Property Act.

### **Costs**

8. There are no financial implications for the Assembly as a result of implementing this Order. The statutory guidance issued under section 69

of the Act will require the local highway authority to have regard to the needs of people with mobility problems when authorizing the erection of stiles and gates across footpaths and bridleways Local authorities have received additional resources (£2.4 million being paid annually as part of the revenue settlement grant) to cover additional costs arising from the implementation of the Act. It's already the landowners' and/or occupiers' duty to maintain gates and stiles in a safe condition. They can recover at least 25% of the reasonable cost from the highway authority. In practice many local authorities now provide free materials in the form of a gate kit, which the farmer can install. This Commencement Order will not change this situation.

### **Competition Assessment**

9. The Commencement Order does not affect business, charities and/or the voluntary sector. The competition filter was applied to the Commencement Order and there would be no detrimental effect for competition.

### **Consultation**

#### With Stakeholders

10. No separate consultation has been undertaken on the provisions commenced by this Order. However, consultation was undertaken on the Countryside and Rights of Way Act 2000, by the Department for Environment, Planning and Countryside, prior to it being given Royal Assent. In addition, a consultation on the content of the accompanying Statutory Guidance to local highway authorities will be issued shortly.

#### With Subject Committee

11. The Instrument was notified to the Environment, Planning and Countryside Committee, via the list of forthcoming legislation, on the 24 May 2006 (EPC(2)-08-06 (p. 3), Annex 1, item no.2 and has remained on the list ever since. However, the title of the legislation at that time was Countryside and Rights of Way Act 2000 (Commencement No.9) (Wales) Order 2006. The Order was not identified for detailed scrutiny. The Committee has indicated that it wishes to scrutinise the accompanying Statutory Guidance.

### **Review**

12. No formal arrangements are planned for reviewing these measures.

### **Summary**

13. The Order brings into force certain provisions of the Countryside and Rights Of Way Act 2000, which requires local highway authorities to have regard to the needs of persons with mobility problems when erecting stiles and gates across footpaths and bridleways. The Order also clarifies two technical drafting issues in relation to previous Commencement Orders.