

REGULATORY APPRAISAL

HIGHWAYS, WALES

THE HIGHWAYS (SCHOOLS) (SPECIAL EXTINGUISHMENT AND SPECIAL DIVERSION ORDERS) (WALES) REGULATIONS 2005

Background

1. Part II of the Countryside and Rights of Way Act 2000 (CROW Act) contains provisions to improve and strengthen the management of the rights of way network.
2. Section 57 of, and Schedule 6 to, the CROW Act inserts a number of new provisions into the Highways Act 1980 relating to the creation, stopping-up and diversion of public paths.

Purpose and intended effect of the measure

3. At present, the provisions of section 118 of the 1980 Act only permit local highway authorities (LHAs) to close paths where it can be proven they are no longer needed for public use. Section 119 of the 1980 Act only permits the diversion of paths where the new route would not be substantially less convenient to the public than the original route and where the end points of the way are the same on both the original and alternative routes. The schools provisions in Schedule 6 to the CROW Act would allow LHAs to stop-up (section 118B of the 1980 Act) or divert (section 119B of the 1980 Act) rights of way that cross school premises for the purpose of protecting pupils and staff from:
 - violence or the threat of violence;
 - harassment;
 - alarm or distress arising from unlawful activity; or
 - any other risk to their health and safety arising from such activity.

Risk Assessment

4. These Regulations are merely adding to the list of criteria under which LHAs can stop-up or divert rights of way. As it is up to the discretion of LHAs to what degree they use these new powers, there is little risk that they will significantly increase the burden on resources placed on LHAs. In fact, to date, only a very small number of authorities have expressed an intention to use these new Regulations on their implementation in Wales.

Options

Option 1: Do Nothing

5. This would deny LHAs in Wales access to a provision which the Department for Environment, Food and Rural Affairs (Defra) introduced in England in June 2003 – and would mean that an important provision of the CROW Act is not available in Wales.

Option 2: Make the Legislation

6. This will provide LHAs with an important capability to protect the health and safety of both pupils and staff.

Benefits

7. The main benefits are that LHAs will be able to further improve health and safety provisions for school pupils and staff in Wales without adversely affecting the rights of way network.

Costs

8. Work associated with the preparation these Regulations will be accommodated within the existing administration costs budgets of the Environment, Planning and Countryside Department and the Directorate of Legal Services. The cost of stopping-up or diverting ways under the similar provisions of sections 118, 118A, 119 and 119A of the 1980 Act vary with each LHA. The average costs are between £800 - £1,200 per case. These amounts include administrative, legal and publicity costs.
9. It is estimated that within each local highway authority area there are only one or two public rights of way that could possibly be affected by these Regulations. The LHAs in Wales are already receiving additional funding of £2.4 million per annum to help cover their additional responsibilities under the CROW Act, including the responsibilities related to these Regulations. These provisions do not in themselves impose any new or additional costs on schools since it is intended that the costs should be borne by the LHAs.
10. There are no additional financial implications for the Assembly arising from these Regulations.

Consultation

With Stakeholders

11. A consultation paper was issued for a period of 10 weeks from 25 August 2004 to 3 November 2004. The paper contained proposals for the implementation of parts of sections 118B and 119B of the Highways Act 1980 via the introduction of new Regulations. A full list of consultees is available at Annex 1. Forty-one responses were received from a wide range of interested parties, including organisations such as local highway authorities, North Wales Police Authority and the National Union of Teachers. A summary of responses is available at Annex 2. Overall, the scope and content of the draft Regulations were endorsed as sensible and proportionate.

With Subject Committee

12. These Regulations were notified to the Environment, Planning and Countryside Committee via the list of forthcoming legislation on 6 October 2004, and ever since (EPC(2)-09-04, P.4, Annex 1, Item No. 99). The Committee did not identify these Regulations for detailed scrutiny.

Review

13. The Welsh Assembly Government will be monitoring the operation of these Regulations in conjunction with its partners, the Countryside Council for Wales and the LHAs.

Summary

14. The financial cost to local highway authorities of enacting these Regulations will be minimal as it is estimated that there are only a limited number of paths that cross school land. However, the Regulations could prove significant in assisting in crime prevention in schools.

ANNEX 1

List of consultees

Andrew Kelly
Access Association Wales
All Wheel Drive Club
Arfon & Dwyfor Local Access Forum
Association of Heads of Outdoor Education Centres
Association of National Park Authorities
Auto Cycle Union Limited
Black Environment Network
Black Voluntary Network in Wales
Blaenau Gwent County Borough Council
Blaenau Gwent Local Access Forum
Brecknockshire Local Access Forum
Brecon Beacons Local Access Forums
Brecon Beacons National Park Authority
Bridgend County Borough Council
Bridgend Local Access Forum
British Driving Society
British Horse Society
Byways & Bridleways Trust
Caerphilly County Borough Council
Caerphilly Local Access Forum
Cardiff County Council
Cardiff Local Access Forum
Cardiff Ramblers
Carmarthenshire County Council
Carmarthenshire Local Access Forum
Ceredigion County Council
Ceredigion Local Access Forum
City & County of Swansea
Conwy County Borough Council
Conwy Local Access Forum
Council for National Parks
Country Land and Business Association
Countryside Alliance (Wales)
Countryside Council for Wales
County Surveyors Society Wales
Cyclists' Touring Club
Cyngor Gwynedd
Cyngor Sir Ynys Môn
Denbighshire County Council
Denbighshire Local Access Forum
Department for the Environment, Food and Rural Affairs
Disability Rights Commission
Disability Wales
Disabled Persons Transport Advisory Committee
Dominic Miles
Dyfed Powys Police Authority
Environment Agency Wales
Flintshire County Council
Flintshire Local Access Forum
Forestry Commission
Gower Commoners Association
Gwent Police Authority
Institute of Public Rights of Way Officers

Isle of Anglesey Local Access Forum
Joint Committee on Mobility of Blind and Partially Sighted People (JCMBPS)
JMU Access Partnership
Land Access & Recreation Association
Law Society
MENCAP Cymru
Merthyr Tydfil County Borough Council
Merthyr Tydfil Local Access Forum
Mid and West Wales Fire Authority
Monmouthshire County Council
Monmouthshire Local Access Forum
Montgomeryshire Local Access Forum
Motorcycle Action Group
National Access Forum for Wales
National Association of Local Councils
National Trust
Neath Port Talbot County Borough Council
Neath Port Talbot Local Access Forum
Newport City Council
Newport Local Access Forum
North Wales Association of Town Councils
North Wales Fire Authority
North Wales Police Authority
One Voice Wales
Open Spaces Society
Pembrokeshire Coast National Park Authority
Pembrokeshire County Council
Pembrokeshire Local Access Forum
Planning Inspectorate
Powys County Council
Radnorshire Local Access Forum
Rhondda Cynon Taff County Borough Council
Rhondda Cynon Taff Local Access Forum
Rights of Way Review Committee
Royal Institution of Chartered Surveyors
Snowdonia Local Access Forums
Snowdonia National Park Authority
South Wales Fire Authority
South Wales Police Authority
Swansea Local Access Forum
The Countryside Agency
The Ramblers' Association Wales
The Ramblers' Association
Torfaen County Borough Council
Torfaen Local Access Forum
Transport 2000
Vale of Glamorgan Council
Vale of Glamorgan Local Access Forum
Valeways
Wales Council for the Blind
Wales Council for the Deaf
Wales Council for Voluntary Action
Wales Tourist Board
Wales Environment Link
Welsh Local Government Association
Welsh Cycling Union
Welsh Trail Riders Association
Wildlife Trusts Wales
Woodland Trust / Coed Cadw
Wrexham County Borough Council

Wrexham Local Access Forum
Youth Hostels Association (England & Wales)

ANNEX 2

SYNOPSIS OF CONSULTATION PAPER

COUNTRYSIDE & RIGHTS OF WAY ACT 2000

“SPECIAL EXTINGUISHMENT AND DIVERSION ORDERS FOR THE PURPOSES OF PROTECTING PUPILS OR STAFF WHERE A RIGHT OF WAY CROSSES SCHOOL PROPERTY.”

Response to public consultation

Introduction

The Welsh Assembly Government published in December 2004 a consultation paper proposing the implementation of provisions (inserted into section 118B and 119B of the 1980 Highways Act) relating to the stopping up and diversion of certain paths that cross school land.

The consultation paper was distributed in Wales to all Unitary Authorities, National Park Authorities, Local Access Forums and organisations with a recreational interest in the countryside. 36 Responses were received. A list of organisations is at annex A.

Consultation responses and recommendations

PROPOSAL 1- Forms and Content of Notices and Orders

The Assembly does not intend to depart from the format of the forms and notices currently used for special extinguishment and diversion Orders and notices.

The majority of respondents agreed with the Assembly that the existing format of forms for extinguishment and diversion could be applied for school Orders.

A few responders requested further guidance on the definition of “crossing school land” and “school property”. While the Assembly is unable to give a legal definition of “school property” or “crossing school land” we are in discussion with DEFRA, who have already implemented these provisions, to come up with relevant guidance.

The Rights Of Way Review Committee has suggested that where Orders are requested for the purpose of protecting pupils and staff from harm, Police evidence should be submitted about the nature & persistence of the issues being addressed. However, the Orders will require the local authorities to consult with the local police authority; therefore, the Welsh Assembly Government sees this requirement as sufficient without the need for the police to submit evidence.

Furthermore since the purpose of these provisions is to protect pupils and staff from: violence or the threat of violence, harassment, distress or risk to health and safety, we would expect the police to be involved at an early stage.

PROPOSAL 2 - Persons to be given notice of Orders

The provisions contained in sections 118B and 119B require certain persons to be given notice relating to closures and diversions for the purposes of crime prevention. However, since there is nothing in the provisions to prevent the National Assembly for Wales from specifying additional persons to be given notice, the question was asked whether any additional persons should be added to the list?

The majority of respondents agreed with the list of persons to be notified. However, there were some suggestions of amendments to the list of bodies. For example, Carmarthenshire County Council did not feel it was necessary to notify the Auto-cycle Union, British Horse Society, Byways and Bridleways Trust, and Cyclist Touring Club. Powys and Monmouthshire County Councils and several Local Access Forums felt similarly that the inclusion of the Auto-Cycle Union was inappropriate if the Orders only apply to non-mechanically propelled vehicular routes. The definition, however, of a “relevant highway” to which the Orders can apply includes any footpath, bridleway, restricted byway or byways open to all traffic. Officials therefore consider it appropriate to notify the ACU, BHS, BBT and CTC.

Several bodies, for instance Denbighshire County Council, Caerphilly Local Access Forum, and the South Snowdonia Local Access Forum felt that the list should be widened to consider disabled body groups, organisations like Land Access and Recreation Association and the Trail Riders Fellowship as well as the British Driving Society. The Welsh Assembly Government considers that the list is sufficient and while we would want to consult as wide a group as possible, we also intend to avoid lengthy consultations and excessive administration.

PROPOSAL 3 - Recovery of Costs

In cases of public extinguishment and diversions, the local authorities may charge the persons who have requested the Order with an amount determined by the authority under the Local Authorities Regulations 1993, reasoning that the applicant is likely to gain some benefit from the stopping up or diversion. In the cases of schools however the application for stopping up or diversion is based on pupil and staff safety rather than private or commercial gain. Therefore, the Welsh Assembly Government considers it reasonable for local highway authorities to bear the costs of any action as it would be in the public interest.

A number of respondents were against this proposal. Respondents felt that schools, and in particular private schools, were the main benefactor of such Orders and costs should thus lie with them or the local education authorities. Flintshire County Council argued that there was little, or no, difference between these proposed measures and those for other diversion and extinguishments. Similarly, Newport Local Access Forum argued that diversion or extinguishment of paths crossing school property was a land management issue and that the associated costs should consequently be paid for by the school that directly benefits.

The Welsh Assembly Government believes that schools or local education authorities should not have to bear the costs relating to these school security provisions. As is explained above, pupil and staff safety is paramount; therefore, in

relation to these Orders, we consider it reasonable to expect local highway authorities to exercise these powers in the public interest and bear the associated costs.

Countryside Access and Sponsorship Branch
May 2005

Annex A

Responses Received

Arfon & Dwyfor Local Access Forum
Brecknockshire Local Access Forum
Brecon Beakons National Park Authority
Bridgend County Council
British Driving Society Of Wales
Caerphilly Local Access Forum
Carmarthenshire County Council
Ceredigion County Council
Ceredigion County Council
Countryside Council for Wales
Denbighshire County Council
Flintshire Local Access Forum
Forestry Commission
Gwynedd Council
Monmouthshire Council
Montgomeryshire Local Access Forum
National Union of Teachers
Newport Local Access Forum
North & South Snowdonia Local Access Forum
North Wales Police
Open Spaces Society
Powys County Council
Radnorshire Local Access Forum
Ramblers Association
Ramblers Association
Rights of Way Review Committee
Sir Y Fflint County council
Torfaen County Borough Council
Torfaen County Council
Torfaen Local Access Forum
Vale of Glamorgan Local Access Forum
Wales Council for Voluntary Action
Wrexham County council
Wrexham Local Forum