



The Planning Inspectorate

Guidance on procedures for
considering objections to

**DEFINITIVE MAP
and
PUBLIC PATH ORDERS**

in England

March 2013

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About the Planning Inspectorate

The Planning Inspectorate is an Executive Agency. We report to the Department for Communities and Local Government and the Welsh Assembly Government. We work closely with other government departments – in particular, on rights of way, with the Department for Environment, Food and Rural Affairs (Defra).

There is more information about us in the Annual Report and Accounts at www.planningportal.gov.uk/planninginspectorate. The latest Annual Report is available on the website.

Our Inspectors have a wide range of qualifications and experience, including rights of way experience. We run regular training courses for them and provide Advice Notes and guidelines – which are available to the public - to ensure that they are acting consistently and in accordance with the latest statute and case law on rights of way.

Introduction

This booklet describes the procedure for rights of way orders made by English local authorities under the Highways Act 1980, the Wildlife and Countryside Act 1981 and the Town and Country Planning Act 1990 which have been sent to the Secretary of State for Environment, Food and Rural Affairs for a decision because people have made representations or objections; or because an order requires modification. It accompanies the Rights of Way (Hearings and Inquiries Procedure) (England) Rules 2007 (attached to this guidance as Annex A) which came into force on 1 October 2007; along with the new procedure for orders being considered by written representations (Annex B).

A main feature of the Rules is the requirement for all evidence to be submitted **before** a hearing or inquiry opens. This gives all parties who are involved, including the Inspector, the opportunity to see and consider all of the evidence, both in support of and objection to an order, well in advance. That is, the hearing or inquiry is not primarily the process for gathering evidence, but is the forum for the relevant evidence to be assessed and tested.

Orders are processed by the Planning Inspectorate's Rights of Way Section. Each order is assigned to a case officer, who is the contact for everyone involved with it. All decisions are made by the Planning Inspectorate acting on behalf of the Secretary of State.

You can contact us at: Room 3/25 Hawk Wing
 Temple Quay House
 2 The Square
 Temple Quay
 Bristol
 BS1 6PN

If you want advice about orders in Wales you should contact our Cardiff office:

Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

We hope this explanatory booklet will help people who apply for orders, local authorities who make them, and those who support them or make representations or objections to them. This booklet has no legal status.

The Planning Inspectorate
September 2007 (updated 2013)

Glossary

Applicant - a person who applied for an order.

This is set out in full in Rule 4(4)(b) of The Rights of Way (Hearing and Inquiry Procedure (England) Rules 2007, (Annex A to this booklet).

Authority - the local authority responsible for the order in question.

The local authority – for the purpose of this booklet the local authority is the Council who made the order (i.e. the Order Making Authority). Please see Advice Note No 9 for further information on our website at www.planningportal.gov.uk/countryside.

Definitive map and statement – the legal record of public rights of way in an area. A way shown on the map is conclusive evidence that the public has the rights shown unless there has been a legal change. Definitive Map evidence is without prejudice to any other rights which might exist.

Document – includes a photograph, plan or map.

Duly made – a representation or objection is 'duly made' if it is received by the order making authority within the deadline set out in the notice advertising the order. This deadline is prescribed in the Act under which the order is made. Duly made representations or objections to Wildlife and Countryside Act orders must also include the grounds of the representation or objection. (Where an Inspector advertises a proposal to modify an order, representations or objections must be received within the deadline set out in the notice and must be relevant to the proposed modification.)

Hearing – a discussion led by an Inspector. Hearings are less formal and usually much quicker than inquiries. There is usually no formal cross-examination and they normally last no more than one day.

In-House decision – a decision made on the basis of the papers supplied by the Order Making Authority. (see section 1 for more details)

Inquiry – a formal setting where evidence is heard and witnesses are open to cross-examination.

Inspector – person appointed by the Secretary of State to act on their behalf.

Legal submission – a challenge to an order or a representation or objection on a question of law. Legal submissions should be submitted at the statement of case stage or they can be submitted to the Inspector on the day of the inquiry/hearing.

Order Making Authority – (sometimes referred to as the OMA) the local authority which has made the order to create, delete or modify a right of way (or where they have declined to make an order and have been directed to do so by the Secretary of State).

Prescribed persons - organisations entitled to be served with a notice of an order, as prescribed in Schedule 14 of the Town and Country Planning Act 1990, Schedule 15 of the Wildlife and Countryside Act 1981 and Schedule 6 to the Highways Act 1980.

Proof of evidence - a document containing the written evidence which a person at a public inquiry will speak about. It should not rehearse all of the available evidence but should focus on the matters in dispute. It should not contain supporting documents. This is set out in full in Rule 20 of The Rights of Way (Hearing and Inquiry Procedure) (England) Rules 2007, (Annex A to this booklet).

Relevant person – a person who has duly made and not withdrawn a representation or objection to an order.

The Rules - The Rights of Way (Hearings and Inquiries Procedure) (England) Rules 2007.

Start date – the date specified in the notice and also the date of the initial letter setting out the timetable for the order.

Statement of case – a written statement containing full particulars of the case which a person proposes to put forward at a hearing or inquiry: it includes copies of any supporting documents which that person intends to refer to or put in evidence, and a list of those documents. Where the written representations procedure is to be followed, any person who wishes to give evidence shall submit a statement of case. The local authority's statement of case may be the same as the statement of reasons setting out the grounds on which the local authority consider the order should be confirmed that it sent in with the order.

Written representations – an alternative to the hearing and inquiry procedure where there is a written exchange of evidence only.

1 When we receive an order

- 1.1 We aim to process all orders promptly. However, we cannot process orders which are in the wrong form or which are not accompanied by all the supporting documents. (See paragraph 1.4 below).

The correct form

- 1.2 When we receive an order we check that it has been made under the right Act and section and that it is in the same, or more or less the same, form as that set out in the appropriate regulations:
- the form for orders made under sections 26, 118 and 119 of the Highways Act 1980 is in the Public Path Orders Regulations 1993 (SI 1993 No 11 amended by SI 1995/451);
 - the form for orders made under sections 118A and 119A of the Highways Act 1980 is in the Rail Crossing Extinguishment and Diversion Orders Regulations 1993 (SI 1993 No 9 amended by SI 1995/451);
 - the form for orders made under sections 118B or 119B of the Highways Act 1980 is in the Highways, Crime Prevention etc. (Special Extinguishment and Special Diversion Orders) Regulations 2003 (SI 2003 No 1479);
 - the form for orders made under section 119D of the Highways Act 1980 (diversion of certain highways for protection of sites of special scientific interest) is in Schedule 3 of the Highways (SSSI Diversion Orders) (England) Regulations 2007 (SI 2007 No. 1494)
 - the form for orders made under the Wildlife and Countryside Act 1981 is in the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993 No 12 amended by SI 1995/451); and
 - the form for orders made under sections 257 and 258 of the Town and Country Planning Act 1990 is in the Town and Country Planning (Public Path Orders) Regulations 1993 (SI 1993 No 10 amended by SI 1995/451).
- 1.3 If an order is not in the same form, or in more or less the same form as set out in the regulations, we return it to the local authority with a letter explaining why we have done so.

The supporting documents

- 1.4 We check that the local authority has sent all the supporting documents. We have given all local authorities a checklist of the documents we need. The checklist sets out our preferred order

for the file documents – councils should use it as a guide when putting together their bundle for submission of orders. The checklist is on our website at www.planningportal.gov.uk/countryside.

- 1.5 One of the documents we need is a 'statement of reasons'. In this the local authority explains why it considers that the order should be confirmed. The local authority should not just repeat the criteria of the section of the Act under which the order has been made. It must explain how the order meets all the relevant criteria that will need to be considered by the Inspector, even if these have not been disputed by the objector(s). We also need the local authority's comments on the representations and objections made to the order.
- 1.6 The local authority should also confirm that it has consulted other local authorities or statutory undertakers, or any other organisations, where it is required to do so by the Act under which the order is made. We need to know the outcome of those consultations.

Options for dealing with representations or objections

- 1.7 When we receive an order responsibility for it passes from the local authority to the Secretary of State. If all the representations and objections to a Highways Act 1980 or Town and Country Planning Act 1990 order are withdrawn we ask the local authority if it wants to confirm the order itself. However, we cannot pass an order made under the Wildlife and Countryside Act 1981 back to the local authority even if all the representations or objections are withdrawn (see paragraph 1.16 below).
- 1.8 Everyone who has duly made a representation or objection ("relevant persons") is entitled to be heard by an Inspector, through a hearing or a local public inquiry. If a local authority has made a duly made representation (other than the one that made the order) or objection to a Town and Country Planning Act or Highways Act Order we must arrange for an inquiry to be held.
- 1.9 We decide whether to hold a hearing or an inquiry, or whether a written exchange of evidence and comments would be the most efficient way to decide the case. We use the written representations procedure (see section 2 of this guidance) and hearings (see section 3) rather than inquiries in all suitable cases (see section 4).
- 1.10 Having received an order from a local authority, we aim to issue the notice containing the 'start date' to all the parties within 10 weeks. In the event of a hearing or inquiry, we will write to the local authority, applicant and all relevant persons before we send out the notice, to inform them of the procedure. This gives them the opportunity to let us know of any dates they will be

unavailable before we arrange a date. Similarly, where we believe the written representation procedure will be appropriate, we will write to the local authority, applicant and relevant persons offering them this procedure before the notice is issued.

Written Representations

- 1.11 This procedure is the exchange of evidence and comments without recourse to holding a meeting in public; the Inspector considers all evidence and correspondence submitted, normally with a visit to the site - which is generally unaccompanied.
- 1.12 From receipt of the order, we aim to issue a decision on cases which proceed by way of written representations within 37 weeks.

Inquiries and hearings

- 1.13 An inquiry or a hearing is a procedure where evidence is presented by persons who are supporting and opposing an order. The procedure is organised according to the Rules and is conducted by an Inspector. The role of the Inspector is to hear all the evidence for and against confirming an order in an open, fair and impartial manner. The Inspector therefore acts in a neutral capacity; they represent the Secretary of State and must implement the published policies on rights of way matters. The evidence presented should focus on the legal requirements set out in the legislation and clear conclusions should be identified from the evidence presented. The legislation is quite limited in some rights of way casework as to what can be accepted as relevant matters for discussion (see Section 6) and the Inspector will intervene to stop the giving of irrelevant evidence. An inquiry or hearing is not a forum to negotiate alternative routes, but it may be appropriate to explain why a modification of a published order route should be made before the order is confirmed.
- 1.14 From receipt of the order, we aim to issue a decision on cases which proceed by way of local inquiry within 45 weeks, and cases which proceed by way of a hearing within 39 weeks.

Wildlife and Countryside Act orders

- 1.15 Section 6 of this booklet (paragraphs 6.32 to 6.33) sets out the criteria Inspectors are required to consider in making their decisions on orders made under the Wildlife and Countryside Act 1981. As the criteria are quite limited, we check all the representations and objections made on these orders to make sure that they are relevant to the Inspector's consideration.
- 1.16 If we think a representation or an objection contains no material that is relevant, we write to the person to give them the opportunity to say why they think it is relevant, to amend the

representation or objection so that it is relevant, or to withdraw it. However, if none of the representations or objections is relevant, an Inspector can decide the order without hearing the evidence or exchanging written representations¹. In these cases, we let everyone know that the Inspector intends to decide the order on the basis of the information already on file. This is known as an '**in-house decision**' – there is no hearing, inquiry or exchange of written representations. Other circumstances where an in-house decision may be appropriate include:

- where an unopposed order has been submitted to the Secretary of State for confirmation with a request for modification (order making authorities do not have the power to confirm orders with modifications);
- where all the objections to an order have been withdrawn; and
- where an order making authority decide they no longer wish to proceed with an order (this does not apply to an order made under the Wildlife and Countryside Act 1981; where evidence exists, the Secretary of State still has the duty of establishing whether the right of way exists or not).

The appointed Inspector is unlikely to visit the site when completing an in-house decision.

¹ Paragraph 7(2A) and paragraph 8(3) of Schedule 15 to the Wildlife and Countryside 1981 allows us to do this.

2 Written representations

- 2.1 Some orders are decided after exchanges of written evidence; there is no hearing or inquiry, but everyone involved has to agree to use this procedure. It is best suited to orders where there is only a little evidence, the issues are relatively straightforward and there are only a few relevant persons. Where we have an order which meets these criteria, we write to the local authority, the applicant and the relevant persons asking for their agreement to using this procedure. We also ask them to adopt the procedures for handling the exchanges of evidence and comments (Annex B).
- 2.2 We then **give notice** in writing to the local authority, the applicant, relevant persons and any other person who has written expressing an interest in the order that the written representations procedure is to be used. We also inform the prescribed organisations and everyone who the local authority were required to inform when they made the order.

Preparing the evidence

- 2.3 The local authority, the applicant, relevant persons and other persons who wish to submit evidence each prepares a "statement of case" (see Annex E). This is a written statement containing full details of the case which each of them wishes the Inspector to consider. It should include copies of all documents on which they wish to rely. The local authority does not need to prepare a statement of case if it has nothing to add to the statement of reasons which it sent in with the order.
- 2.4 According to the Procedure for Written Representations, the local authority sends us its statement of case, a copy of the documents it is submitting as evidence and a list of all these documents within **2 weeks of the start date**. We copy the local authority's statement of case to the applicant, relevant persons and any other person who has written expressing an interest in the order. If you want to examine the documents submitted with the local authority's statement of case, you can inspect them at the places listed in our notice informing the parties of the procedure. The statement of case can be inspected at the local authority's offices. We do not normally accept late statements (please see paragraph 2.13 for guidance on late submissions).
- 2.5 The applicant and the other persons have a bit longer to submit their statements of case. This gives them the opportunity to examine the local authority's statement and supporting documents. If a document is included in the local authority's statement of case, the applicant or other persons do not have to supply a copy – they can refer to the copy of the document sent in by the local authority.
- 2.6 According to the Procedure for Written Representations, the applicant, relevant persons and any other person who wishes to

give evidence should ensure that their statement is received by us **not later than 8 weeks after the start date**. We copy these statements including the documents to the local authority, which makes them available for public inspection. We also copy the applicant's statement excluding the documents to the relevant persons and any other person who has submitted a statement of case. We then copy the relevant and other persons' statements to the applicant, every relevant person and the other persons who have submitted a statement of case. We do not normally accept late statements (please see paragraph 2.13 for guidance on late submissions).

2.7 The local authority, applicant, relevant persons and other persons comments on any or every other statement of case has to be received by us **not later than 14 weeks after the start date**. We copy these to the local authority, the applicant, relevant persons and anyone else who has submitted a statement of case. We do not normally accept evidence received more than 14 weeks after the start date. (Please see paragraphs 2.13 – 2.15 for guidance.)

2.8 Usually, there are no further exchanges of comments. If we need to, we ask the local authority, the applicant, relevant persons and anyone else who has made comments for further information about their statements or their comments. However, from our experience, further exchanges do not usually add to the case for or against an order.

What happens if you think written representations is no longer appropriate?

2.9 We can change the procedure to decide an order at any time before the decision is issued. The other options are a hearing or an inquiry. If the local authority or applicant thinks the written representations procedure is no longer appropriate, they should let us know, with reasons why we should change the procedure. We will then consider the request having consulted with the other parties to the order, as necessary. Anyone who has made a duly made objection or representation to an order has a statutory right to be heard; where a party who has made a duly made objection or representation subsequently decides to exercise their right to be heard we will determine the procedure – hearing or inquiry, taking account of the circumstances of the order.

What happens if people do not abide by the Procedure for Written Representations?

2.10 We may take the decision to hold a hearing or local inquiry if it becomes clear that the Procedure for Written Representations is not being adhered to correctly.

Site visits

- 2.11 The purpose of a site visit is for the Inspector to see the land to which the order relates and the surrounding area, and to note physical features such as stiles, gates, fences, walls, hedges and trees. The Inspector usually visits the site when the exchange of comments is complete and makes this visit alone unless the local authority, the applicant or a relevant person asks to accompany the Inspector. If the Inspector decides an accompanied visit is necessary, or a request for an accompanied visit is received by any of the above, we give the local authority, the applicant and relevant persons **not less than 2 weeks notice** of the date and time it will take place.
- 2.12 Those accompanying the Inspector may only point out physical features that they have mentioned in their evidence. The Inspector will not discuss the case for or against the order. Nor will the Inspector defer the site visit in the absence of anyone who has asked to be present. If an objector to an order requests to accompany the Inspector then the local authority are required to send a representative however if the request is made by the local authority, the applicant or a supporter we will write to the objector(s) seeking their confirmation that they are prepared to attend the site visit. If representatives from both sides are not present, the Inspector will have to conduct an unaccompanied site visit instead.

Late evidence on cases being dealt with by way of written representations

- 2.13 Sending late material is unfair on others who have an interest in the order. Unless there are extraordinary circumstances² for submitting late statements of case, we will return them if they are received by us outside of the deadline from an already involved party (2 weeks from the start date for OMAs and 8 weeks from the start date for all other parties, the specific dates will be set out in the order start notice).
- 2.14 When making a decision, the Inspector may disregard any written representation, evidence or other documents received after the exchange period (14 weeks from the start date), even if it raises new issues (unless the Inspector has asked for further information). If an already involved party's comments on the statements of case are received after the 14 week deadline, the Inspector will only look at the material if there are extraordinary circumstances for its late submission. If the Inspector concludes that there are extraordinary circumstances, we will circulate a copy to all other parties giving them two weeks to make written representations or ask to be heard.

² Please see paragraph 15 of the Circular for Rights of Way Orders which is attached to the back of this booklet.

- 2.15 If an entirely new interested party submits correspondence after the 14 week deadline, we will not accept it unless the author can provide us with a good reason for it being late. An acceptable reason might be that they have only just become aware of the order, for example by coming across the site notice. If no reason is given, or we do not find the reason given acceptable, we will return the correspondence. Otherwise we will circulate a copy to all the other parties giving them two weeks to make written representations or ask to be heard.

Legal submissions

- 2.16 A challenge to an order or a representation or objection on a question in law is known as a "*legal submission*". If you want to make a legal submission it should be submitted with your statement of case³. Legal submissions received after this time will be circulated to the other parties for comment if the issues are central to the consideration of the case. On receipt of a legal submission we will need to decide whether the written representation procedure is still appropriate for determining the order or whether a hearing or inquiry needs to be arranged instead. In any event, the Inspector will not give a ruling on legal submissions, but usually responds to them in the decision. Further advice on legal submissions is given in PINS' Rights of Way Advice Note No. 3. The advice note is on our website at www.planningportal.gov.uk/countryside.

What happens next?

- 2.17 After the site visit, the Inspector writes the decision.
- 2.18 If, as part of the written representations process you have submitted original documents that you would like us to return, please let us know. We will return your documents to you after the period for challenging the decision has ended. Once a final decision has been issued and all our actions have been completed the case file will be sent into storage, normally for 12 months, before being destroyed.

³ As far as possible, a legal submission should be submitted as a separate document alongside the statement of case, rather than being an integral part of it.

3 The hearing procedure

- 3.1 A hearing is a discussion led by an Inspector. Hearings are less formal, simpler and usually quicker than inquiries. There is usually no formal cross-examination. They usually last no more than a day. They work best where only a few people wish to be heard, where the issues to be considered are relatively straightforward, and where there is relatively little dispute over documentary or user evidence. Hearings are not usually suitable for cases which rely on user evidence which may best be tested by cross-examination.

Arranging the date, time and place

- 3.2 Where we have an order which seems suitable for a hearing, we arrange a date, time and place for the hearing in consultation with the local authority. The arrangements for a hearing and the conduct of it are designed to create the right atmosphere for discussion and to remove or reduce the formalities of the traditional public inquiry. Wherever practicable, the Inspector and the parties sit round a table. A small, local authority committee room is usually satisfactory, and the more formal atmosphere of a Council chamber should be avoided. The venue for the hearing should provide adequate facilities for those with special needs. The Inspectorate has produced a *Facility Note for Public Inquiries and Hearings* to help local authorities choose suitable venues. The Facility Note is on our website at www.planningportal.gov.uk/countryside.
- 3.3 We **give notice** in writing to the local authority, other local authorities, the applicant, land owners and occupiers, relevant persons, prescribed organisations, everyone the local authority were required to inform when they made the order and anyone else who has indicated an interest in the order. If anyone else expresses an interest in the order after we have issued this notice, we will write to them. The notice tells people that there is to be a hearing, the start date (see Annex D), the date, time and place for the hearing, describes the land to which the order relates and the effect of the order, where documents relating to the hearing can be inspected and copied, and when statements of case must be sent to us. We also put a copy of the notice on our website at www.planningportal.gov.uk/countryside. We aim to hold the hearing **within 20 weeks of the date of this notice**.
- 3.4 Once the date and place of a hearing have been notified we change them only in very special circumstances. The non-availability of the person you have chosen to represent you, school holidays or holiday season is not normally considered special circumstance. Adjournments for ill health will be considered, but we will require a doctor's note. For this reason you should tell us in advance of any dates you are unavailable and notify us immediately if any other

dates become inconvenient to you so that we can take this into account in arranging a date, if possible.

Who can attend

- 3.5 Anyone can go to a hearing. The Inspector usually allows everyone who wishes to speak to do so. No-one is obliged to attend, but the local authority, the applicant, relevant persons and any other person who has submitted a statement of case is entitled and expected to be there (see paragraph 8.4). If an applicant or a relevant person decides not to attend, they should let us know as soon as possible. Most people present their own case at a hearing but you can appoint someone to speak for you if you wish. However, formal legal representation (that is, a barrister or solicitor acting as an advocate) is not appropriate for a hearing.

Preparing the evidence

- 3.6 It is important for everyone to assemble all their evidence well before the hearing starts. The local authority, the applicant, each relevant person and every person who wishes to be heard prepares a "statement of case" (see Annex E). This is a written statement containing the full details of the case which each of them proposes to put before the Inspector. Included in the statement of case is a copy of each document to which the statement refers (except where the local authority has already included a document as part of its statement of case. In this case, you need only include a reference to the document).
- 3.7 We write to tell everyone involved when we need their statements of case. There is plenty of time to do this between the date when we notified you of our intention to hold a hearing and the start of the hearing. Everyone has the chance to examine these statements and the accompanying documents. This opportunity to examine the evidence before the hearing ensures that the most efficient use is made of everyone's time. The Inspector reads every statement and examines all the documents before the hearing.
- 3.8 One of the objectives of the Rules is to ensure that everyone who is involved in the procedure is fully aware of each other's views and the evidence supporting those views before the hearing opens. No-one should hold back evidence with the intention of surprising the other parties after the hearing has started. To do so might be regarded as unreasonable behaviour and, if this leads to adjournments or other delays which incur additional expenditure, this could leave the person submitting late evidence vulnerable to an application for an award of costs against them (see section 8 and paragraphs 8.3 for more information). The Inspector does not have to consider evidence sent in after the close of the hearing and will only do so if there are extraordinary circumstances. (Please see paragraph 15 of the Circular for Rights of Way Orders which is attached to back of this booklet).

Not later than 8 weeks after the start date

- 3.9 The local authority sends us a copy of its statement of case. The statement of case includes a copy of the documents it is submitting as evidence and a list of all these documents. In turn, we send a copy of its statement of case - **excluding copies of documents** themselves but including the list of documents - to the applicant and relevant persons, and anyone else who we know wishes to give evidence at the hearing. If you want to examine the documents submitted with the local authority's statement of case, you can inspect them at the places listed in the notice of intention to hold a hearing. The local authority's statement of case has to be received by us **not later than 8 weeks after the start date**. We do not normally accept late statements (please see section 5 paragraphs 5.3 – 5.5 for further information).
- 3.10 If it is not possible to copy a document (e.g. because it is too fragile), the statement should say where it can be inspected.

Not later than 12 weeks after the start date

- 3.11 We give the applicant, relevant persons and other persons who have asked to be heard a bit longer to submit their statements of case. This gives them the opportunity to examine the local authority's statement of case and supporting documents. If a document is included in the local authority's statement others do not have to supply a copy – they can refer to the copy of the document sent in with the local authority's statement.
- 3.12 The applicant, each relevant person and any other person sends their statement of case to us, along with a list of those documents in the local authority's list and copies of every other document that they wish to submit as evidence. We copy these statements and documents to the local authority, which makes them available for inspection. We also send a copy of the applicant's statement excluding the documents to relevant and other persons, and a copy of every other statement excluding the documents to the applicant and every relevant and other person. The applicant's, relevant persons' and other persons' statements of case have to be received by us **not later than 12 weeks after the start date**. We do not normally accept late statements (please see section 5 paragraphs 5.3 – 5.5 for further information).

What happens if you think a hearing is no longer appropriate?

- 3.13 We can change the procedure for deciding an order before the hearing starts or during it. The other options are an inquiry or written representations. If, having seen the statements of case, the local authority, the applicant or a relevant person thinks that a hearing is not appropriate, they should let us know, with reasons

why we should change the procedure. If we conclude that a hearing is not suitable we will hold an inquiry or arrange for exchanges of written representations instead. If, during the hearing, the local authority, the applicant, a relevant person or anyone who has submitted a statement of case thinks that the procedure is not appropriate, they should tell the Inspector. The Inspector may also conclude that an inquiry should be arranged. In either case, the Inspector will consult the local authority, the applicant, and relevant persons and anyone else who has submitted a statement of case who is present about whether the hearing should be closed and an inquiry arranged instead.

Advertising the hearing

3.14 The local authority must advertise the hearing in the local area **not less than 4 weeks** before it is due to start. The local authority puts notices:

- i) at both ends of the part of the way(s) affected by the order;
 - ii) at places where notices are usually situated in the local area;
- and
- iii) in at least one local newspaper.

The notices shall state the date, time and place of the hearing, the section of the Act under which the order was made, a description of the land to which the order relates, the effect of the order and where copies of the orders and documents relating to the hearing can be inspected and copied.

At the hearing

3.15 So that the Inspector has an accurate record of everyone at the hearing, it is important that you complete the attendance list⁴ that the local authority passes round. If you do not wish to speak at the hearing but you would like a copy of the Inspector's decision, you can ask us for one, otherwise the decision will be available online at www.planningportal.gov.uk/countryside.

3.16 The Inspector decides the procedure at the hearing. In most cases the Inspector opens the hearing, introduces themselves and explains the law under which the order has been made. The Inspector will ask for the names of those who wish to speak. If you want to comment on the way the order has been made or processed by the local authority, have any questions about procedure, need to leave early or have any other requests, now is the time to speak. Once

⁴ If you do not want your details to be seen a separate form can be completed which can be handed to the Inspector by the end of the hearing.

the Inspector has decided on the order of proceedings, they keep to it unless there are very good reasons to change.

3.17 The Inspector leads the discussion by:

- identifying what they see as the main issues from reading the statements of case and any site visit; and
- identifying matters on which they require further explanation.

This does not prevent anyone else from identifying other issues for consideration or referring to other issues which they consider relevant to the consideration of the order.

3.18 The Inspector encourages everyone at the hearing to enter the discussion. Because a hearing is only arranged where there is likely to be little dispute over documentary or user evidence, cross-examination of opposing parties is not usually appropriate or necessary. Exceptionally, the Inspector may allow cross-examination, but only if they consider it is necessary in order to explore fully the issues. The Inspector normally asks everyone who has contributed to the debate if they wish to make any final remarks before the discussion closes, usually concluding with the local authority.

3.19 The Inspector will stop the giving or production of evidence, putting of questions or the presentation of any other matter if they consider it to be repetitive or irrelevant. They will also stop aggressive or offensive questioning or any other behaviour that they consider inappropriate. If a person is prevented by the Inspector from completing his or her evidence, they can give the Inspector that evidence or any other matter in writing before the close of the hearing.

Site visits

- 3.20 The purpose of a site visit is for the Inspector to see the land to which the order relates and the surrounding area, and to note physical features such as stiles, gates, fences, walls, hedges and trees. The Inspector usually visits the site alone before the start of the hearing. They may also visit the site after the hearing has closed. The Inspector must visit the site if the local authority, the applicant, a relevant person, or anyone else who has submitted a statement of case asks him/her to do so. Anyone at the hearing can accompany the Inspector on this second visit so long as representatives from both sides can be present (paragraph 3.23 refers) and, where a site visit is being held on private land, the landowner has given his/her consent. Where there is no general right of access, the Inspector has no right to give access. Due to practicality and safety issues that may arise, the Inspector has discretion to limit the numbers attending a site visit as appropriate.
- 3.21 Those present may point out physical features that they have mentioned in their evidence but, because the visit is made after the hearing has closed, the Inspector will not discuss the case for or against the order or any other matters.
- 3.22 Occasionally, the Inspector may decide during the hearing that certain matters could be dealt with more easily if the discussion continued at the site. If an Inspector decides to do this, they announce the details before adjourning to the site, but will do so only if they are satisfied that:
- the weather conditions are suitable;
 - everyone at the hearing who wants to do so can attend;
 - no-one will be placed at a disadvantage; and
 - there are no reasonable objections to continuing the hearing at the site.
- 3.23 Inspectors make sure that accompanied site visits are made when representatives of both sides (for and against the order) can be present but they need not defer an inspection if anyone who has said they intend to attend is not present. If representatives from both sides are not present the Inspector will visit the site alone.

What happens next?

- 3.24 After the close of the hearing, the Inspector writes the decision.
- 3.25 If, as part of the hearing process you have submitted original documents that you would like us to return, please let us know. We will return your documents to you after the period for challenging the decision has ended. Once a final decision has been issued and

all our actions have been completed the case file will be sent into storage, normally for 12 months, before being destroyed.

4 Local public inquiries

- 4.1 Public inquiries are formal settings where evidence is heard and witnesses are open to cross-examination. Inquiries are the best option when there is a lot of evidence, or there is conflicting evidence, or there are numerous relevant persons.

How long is an inquiry?

- 4.2 Most inquiries last one or two days. We can advise on how long an inquiry is likely to last, but there is no way of knowing how long it will actually take, nor can we set a limit on how long it will be. The time each inquiry takes depends on the number of people who want to speak, the amount of evidence that is presented and the extent of cross-examination. However, with all evidence from the main parties being submitted and exchanged well in advance of the inquiry – as required by the Rules - this is likely to shorten proceedings. It should give the opportunity for participants to help the Inspector to programme the inquiry by giving a sensible estimate of how long it will take to present their case, including cross-examination of the opposing party's witnesses, and their closing submissions. If you cannot attend on each day of an inquiry, you should let the Inspector know during his/her introduction so arrangements can be made for you to present your evidence on a certain day.
- 4.3 Please be aware that there may be a need to cross-examine your evidence. If this is not possible, due to your non attendance, it may lead to the Inspector giving it less weight than evidence which is able to be cross examined.

Meetings before an inquiry

- 4.4 These are very rare but if an inquiry is likely to last more than 8 days, we arrange a pre-inquiry meeting. We will tell you if we are going to do this and give you at least 14 days' notice of the date, time and place of the meeting. The meeting will deal with such things as the sequence in which persons will give evidence or, if the order contains several routes, the sequence in which the routes will be dealt with.

Arranging the date, time and place

- 4.5 We arrange a date, time and place for the inquiry in consultation with the local authority. When they are choosing a venue, local authorities should follow the guidelines in the Inspectorate's Facility Note for Public Inquiries and Hearings. Among other things, the note contains guidance on the location of the venue, how the inquiry room should look and the facilities that should be available. The note is on our website at www.planningportal.gov.uk/countryside.

- 4.6 We **give notice** in writing to the local authority, other local authorities, the applicant, land owners and occupiers, relevant persons, prescribed organisations, everyone the local authority were required to inform when they made the order, and anyone else who has indicated an interest in the order. If anyone else expresses an interest in the order after we have issued this notice, we will write to them. The notice tells people the start date (see below), that there is to be an inquiry, the date, time and place for the inquiry, describes the land to which the order relates and the effect of the order, where documents relating to the inquiry can be inspected and copied, and when statements of case and proofs of evidence must be sent to us. We also put a copy of the notice on our website at www.planningportal.gov.uk/countryside. We aim to hold the inquiry **within 26 weeks of the date of this notice**.
- 4.7 Once the date and place have been notified, we change them only in very special circumstances. The non-availability of the person you have chosen to represent you, school holidays or holiday season is not normally considered special circumstance. Adjournments for ill health will be considered, but we will require a doctor's note. For this reason you should tell us in advance of any dates you are unavailable and notify us immediately if any other dates become inconvenient to you so that we can take this into account, if possible.

Who can attend

- 4.8 Anyone can go to an inquiry. The local authority, the applicant, each relevant person and anyone else who has submitted a statement of case is entitled to appear at the inquiry but the Inspector usually allows everyone else who has a relevant contribution to do so. No-one is obliged to attend, but we expect the local authority, the applicant, relevant persons and any other persons who have submitted a statement of case to be there (see section 8 paragraph 8.4). If an applicant or a relevant person decides not to attend, they should let us know as soon as possible. People may send representatives if they cannot themselves attend.
- 4.9 Many people speak on their own behalf, but you can appoint someone - a professional, an acquaintance or a friend - to speak for you. Appointing a professional does not mean that your case carries more weight than if you present it yourself. At most inquiries the local authority and major parties may have legal representation (a barrister or solicitor acting as advocate). Nevertheless, however relevant evidence is presented, the Inspector considers everyone's case with equal care.

Preparing the evidence

- 4.10 It is important for everyone to assemble all their evidence well before the inquiry starts. The local authority, the applicant,

relevant persons and other persons who wish to appear at the inquiry each prepares a "statement of case" (see Annex E). This is a written statement containing full details of the case which each of them proposes to put before the Inspector. It includes copies of any documents to which they intend to refer or put in evidence. The local authority does not need to prepare a statement of case if it has nothing to add to the statement of reasons which it sent in with the order.

- 4.11 We write to tell everyone when we need their statements of case and proofs of evidence. Everyone has the chance to examine these statements of case and to make further comments in their proofs of evidence, concentrating on the matters in dispute. This opportunity to inspect evidence before the inquiry ensures that the most efficient use is made of everyone's time. The Inspector reads every statement of case and proof of evidence before the inquiry.
- 4.12 One of the objectives of the Rules is to ensure that everyone who is involved in the procedure is fully aware of each other's views and the evidence supporting those views before the inquiry opens. No-one should hold back evidence with the intention of surprising the other parties after the inquiry has started. The Inspector can refuse to accept any late evidence put forward at the inquiry. If, however, the Inspector decides to accept late evidence, and this leads to adjournments or other delays which incur additional expenditure, this could leave the person submitting late evidence vulnerable to an application for an award of costs against them (see Section 8 for more details). The Inspector will not consider any evidence sent in after the close of the inquiry unless there are extraordinary circumstances for doing so.

Not later than 8 weeks after the start date

- 4.13 The local authority sends us a copy of its statement of case including a copy of the documents it is submitting as evidence and a list of all those documents. In turn, we send a copy of its statement of case - **excluding copies of documents** themselves but including the list of documents - to the applicant, relevant persons and anyone else who we know wishes to give evidence at the inquiry. If you want to examine the documents submitted with the local authority's statement of case, you can inspect them at the places listed in the notice of intention to hold an inquiry. The local authority's statement of case has to be received by us **not later than 8 weeks after the start date**. We do not normally accept late statements (please see section 5 paragraphs 5.3 – 5.5 for guidance).
- 4.14 If it is not possible to copy a document (e.g. because it is too fragile), the statement of case should say where it can be inspected.

Not later than 14 weeks after the start date

- 4.15 We give the applicant, relevant persons and other interested persons a bit longer to submit their statements of case. This gives them the opportunity to examine the local authority's statement and supporting documents. If a document is included in the local authority's statement of case, the applicant, relevant persons and other persons do not have to supply a copy – they can refer to the copy of the document sent in with the local authority's statement.
- 4.16 The applicant, each relevant person and any other interested person sends his/her statement of case to us and any supporting documents that they wish to submit as evidence as well as a list of those documents. We copy these statements and documents to the local authority. The local authority makes them available for inspection. We also copy the applicant's statement excluding the documents to relevant persons and other persons who have sent us a statement of case and copy relevant and other persons' statements of case excluding the documents to the applicant and to every other relevant and other person. You can examine all the documents at the places listed in the notice of intention to hold an inquiry. The applicant's, relevant persons' and other persons' statements of case have to be received by us **not later than 14 weeks after the start date**. We do not normally accept late statements (please see section 5 paragraphs 5.3 – 5.5 for guidance).

Not later than 4 weeks before the start of the inquiry

- 4.17 As the time for the inquiry date approaches, the local authority, the applicant, relevant persons and other interested persons should be preparing the case - "proof of evidence" - that they intend to present to the inquiry⁵. This should focus on the matters that are in dispute rather than rehearsing all of the available evidence. (Remember that everyone has had the opportunity to examine everyone else's statement of case.) Indeed, it can be helpful to identify areas of agreement. You can use your proof of evidence to comment on or add to your evidence in the light of what others have said in their statements of case (to rebut what has been said). As a general rule, proofs of evidence should not contain supporting documents (all such documents should be submitted with your statement of case) nor should they contain entirely new evidence⁶. However, appendices submitted as part of a rebuttal proof of evidence would be acceptable. If, though, you have nothing to add to your statement of case, you should write and let us know. In this case, we regard your statement of case as your proof of evidence.

⁵ It is not necessary for an advocate to prepare a proof of evidence of their own unless they are planning to give evidence in their own right. Unless this is the case, the advocate cannot be cross-examined. The Inspector may however, pose questions if it is considered necessary and relevant to do so.

⁶ This could be viewed by other parties to be unreasonable behaviour and may lead to other parties seeking an award of costs against you at the inquiry. – Section 8 refers.

- 4.18 If your proof of evidence (or statement of case where you are not submitting a proof) is longer than 1,500 words (about three typed A4 sheets) you must supply a written summary which you then present at the inquiry rather than reading out the whole proof of evidence. The summary should be proportionate to the main proof of evidence but should not exceed 1500 words. The summary should be provided at the same time as the main proof of evidence is submitted. Please note, however, that witnesses will be open to cross-examination on the whole of the main proof of evidence.
- 4.19 Proofs of evidence (or notice that a statement of case is to be regarded as a proof of evidence) and any summaries have to be received by us **not later than 4 weeks before the start of the inquiry**. We do not normally accept late proofs of evidence (please see section 5 paragraphs 5.3 – 5.5 for guidance).
- 4.20 In turn, we send copies of everyone's proof of evidence and any summary to the local authority. We also send copies, **excluding any attached appendices**, to the applicant, each relevant person and other persons who have submitted a statement of case. The local authority makes copies of all the proofs of evidence and summaries available for public inspection.

Advertising the inquiry

- 4.21 The local authority must advertise the inquiry in the local area **not less than 4 weeks** before it is due to start. The local authority puts notices:
- i) at both ends of that part of the way(s) affected by the order;
 - ii) at places where notices are usually situated in the local area;
- and
- iii) in at least one local newspaper.

The notices contain the date, time and place of the inquiry, the section of the Act under which the order has been made, a description of the land to which the order relates, the effect of the order and details of where and when copies of all the documents relating to the inquiry can be inspected and copied.

At the inquiry

- 4.22 So that the Inspector has an accurate record of everyone at the inquiry, it is important that you complete the attendance list⁷ that the local authority passes round. If you do not wish to speak at the

⁷ If you do not want your details to be seen please complete a separate form and hand it to the Inspector by the end of the inquiry.

inquiry but you would like a copy of the Inspector's decision, you can ask us for a copy, otherwise the decision will be available online at www.planningportal.gov.uk/countryside.

- 4.23 The Inspector decides the procedure at the inquiry. In most cases the Inspector opens the inquiry, introduces themselves and explains the law under which the order has been made. The Inspector asks for the names of those who wish to speak. They will identify what they consider to be the main issues. If you want to comment on the way the order has been made or processed by the local authority, have any questions about procedure, need to leave early or have any other requests, now is the time to speak. The Inspector will ask the main parties for an estimate of how long they consider it will take for them to present their cases, cross-examine the opposing party's witnesses and make their closing submissions. This will give the Inspector the opportunity to draw up an approximate timetable for the inquiry.
- 4.24 The Inspector decides the order in which the local authority, the applicant, relevant persons and other persons speak. Once the Inspector has decided on the order of proceedings, they will keep to it unless there are very good reasons to change.

Presenting the cases

- 4.25 Usually, the local authority presents its case first, followed by those in support of the order, those opposed to the order and anyone else who the Inspector allows to speak. Each of the main parties will be offered the opportunity to make a brief opening statement to outline their case before calling their witnesses to give evidence. The Inspector will stop anyone who unnecessarily repeats evidence or makes irrelevant remarks.
- 4.26 If you give evidence, you may have to answer questions about that evidence from the supporters (if you are an objector) or vice versa. You can, in turn, put questions to witnesses who are opposing your own position once they have given their evidence. This procedure is known as cross-examination. The Inspector may also have questions of their own to put to witnesses, but this is not part of cross-examination.
- 4.27 If you are unfamiliar with how or when cross-examination is to take place the Inspector will guide you. Supporters of an order, or objectors, do not normally cross-examine each other unless they disagree on an important point⁸. The Inspector will halt cross-examination if the questions are repetitive or irrelevant. The Inspector will also stop aggressive or offensive questioning or any other behaviour that they consider inappropriate. If a person is prevented by the Inspector from completing their evidence, they

⁸ Authorities should call supporters and those with user evidence as witnesses if their evidence forms an essential part of its case.

can give the Inspector evidence or any other matter in writing before the close of the inquiry.

- 4.28 The Inspector usually allows anyone speaking for or against the order who has presented a lot of evidence and called several witnesses to make a closing statement. The local authority usually makes its closing statement after everyone else has spoken. Closing statements are brief summaries of the case already presented. They should not include any new evidence. However, if a party raises new issues at this point, or if a party makes a submission about a point of law, the Inspector will give the other parties the opportunity to respond. The Inspector will allow the party who introduced the issue or made the legal submission the final right of reply. (More information on legal submissions is at section 5 paragraph 5.16). It is helpful to the Inspector for closing statements to be put in writing and submitted to them before the close of the inquiry.

Site visits

- 4.29 The purpose of a site visit is for the Inspector to see the land to which the order relates and the surrounding area, and to note physical features such as stiles, gates, fences, walls, hedges and trees. The Inspector usually visits the site alone before the start of the inquiry. They may also visit it after the inquiry has closed. The Inspector must visit the site if the local authority, the applicant, a relevant person, or anyone else who has submitted a statement of case asks them to do so. Anyone at the inquiry can accompany the Inspector on this second visit so long as representatives from both sides can be present (see paragraph 4.31 below) and, where a site visit is being held on private land, the landowner has given his/her consent. Where there is no general right of access, the Inspector has no right to give access. Due to practicality and safety issues that may arise, the Inspector has discretion to limit the numbers attending a site visit as appropriate.
- 4.30 Those present may point out physical features that they have mentioned in their evidence but, because the visit is made after the inquiry has closed, the Inspector will not discuss the case for or against the order.
- 4.31 Inspectors make sure that accompanied site visits are made when representatives of both sides (for and against the order) can be present but they need not defer an inspection if anyone who has said they intend to attend is not present. If representatives from both sides are not present the Inspector will visit the site alone.

What happens next?

- 4.32 After the close of the inquiry, the Inspector writes the decision.

4.33 If, as part of the inquiry process you have submitted original documents that you would like us to return, please let us know. We will return your documents to you after the period for challenging the decision has ended. Once a final decision has been issued and all our actions have been completed the case file will be sent into storage, normally for 12 months, before being destroyed.

5 Other issues relevant to hearings and inquiries

Orders which the local authority does not support

- 5.1 Local authorities do not always support orders that they have made. A local authority may have been directed to make an order by the Secretary of State, or new evidence may have come to light after the order was made which leads the local authority to change its view. If the local authority sends such an order to us the local authority should explain that it does not support it. But it still has to supply all the documents on the checklist (see section 1 paragraph 1.4), provide a venue for and attend any hearing or inquiry. In these circumstances the applicant, if there is one, or a supporter for the order will be asked if they wish to make the case in support of the order. If they agree they would be expected to submit their statement of case at the time when the local authority would have submitted theirs (i.e. not later than 8 weeks after the start date). This will be the same for the local authority. Whilst we would expect the person taking the case forward to submit their statement of case as if they were the local authority, the Rules do not state that they must and therefore if one is received at the same stage for all other parties (14 weeks from the start date for inquiries and 12 weeks from the start date for hearings) it will be accepted. Nonetheless, regardless of the local authority's stance, the Rules make the local authority responsible for ensuring that documents are submitted according to the timetable.
- 5.2 Where the local authority holds the view that the order should not be confirmed, this includes any orders they have been directed to make by the Secretary of State, it would be entirely appropriate for the local authority to appear at the inquiry or hearing as an objector, rather than assuming a neutral stance. Indeed, such a position can be helpful to the parties concerned, as well as the Inspector. Rights of Way Advice Note 1 gives more information about handling these orders. The note is on our website at www.planningportal.gov.uk/countryside.

What if I am one of the main parties, (OMA, relevant person etc) and have late evidence or cannot meet the dates for sending evidence for cases being dealt with by way of a hearing or local inquiry?

- 5.3 Sending late material which causes the hearing or inquiry to be delayed is unfair on others who have an interest in the order. We will return late documents. But we may accept material after the times set out in the Rules if you persuade us that there were extraordinary circumstances⁹ why you could not meet the timetable. Good reasons might include where material is delayed because of a

⁹ Please see paragraph 15 of the Circular for Rights of Way Orders which is attached to the back of this booklet.

postal strike, or ill-health (but we will require a doctor's note), or where there is a last minute change in circumstances which is relevant to the hearing or inquiry.

- 5.4 The Inspector may allow people to alter or add to their statements of case, or their proofs of evidence, during an inquiry. If you make a request to submit revised or additional rebuttal evidence to the Inspector at the hearing or inquiry, or if your request concerns substantial or entirely new matters, you should make sure you bring enough copies for everyone, in the event that it is accepted. The local authority ought to provide copying facilities but you should not assume that facilities will be available. If the submissions are considered to be relevant and are accepted, the Inspector may adjourn the proceedings to give others present time to consider these changes.
- 5.5 You should be aware that if you unreasonably cause others to suffer additional costs as a result of your submitting material late, or by bringing forward altered or new evidence at the proceedings, or by altering or adding to evidence afterwards they can apply for an award of costs against you (see section 8).

What if I am not a relevant person and have relevant evidence but I do not want to appear at the hearing or inquiry?

- 5.6 You should tell us in good time that you do not want to appear. We would expect you to send us your written representations, evidence or comments within the deadlines set out in the Rules. However, we will accept late material if you can provide us with a good reason for it being late. An acceptable reason might be that you have only just become aware of the order, for example by coming across the site notice. If no reason is given, or we do not find your reason acceptable, we will return the correspondence to you. In this case you may hand your evidence to the Inspector at the hearing or inquiry. It will be for the Inspector to decide whether to accept it. If the Inspector decides to take your evidence into account, the Inspector will disclose that they have received your material. You should bear in mind however that the Inspector may not be able to give as much weight to evidence which has not been heard at the hearing or inquiry and been open to cross examination. Please also see paragraph 5.5 above.
- 5.7 If we do accept your reasons for submitting late correspondence, we will circulate a copy to all the other parties.

What if I do not turn up?

- 5.8 If you asked to be heard, we expect you or your representative to attend. However, the Inspector can proceed with a hearing or an inquiry even if a person entitled to speak does not turn up.

What happens if someone disrupts the hearing or inquiry?

- 5.9 The Inspector can require anyone behaving in a disruptive manner to leave the proceedings and refuse to allow them to return, or allow them to return only if they agree to conditions which they set out. But if the Inspector asks anyone to leave or refuses permission for anyone to give evidence in person, that person can give evidence or any other matter in writing before the close of the hearing or inquiry.

What if I discover new evidence after the close of the hearing or inquiry?

- 5.10 This should happen only rarely. In most cases the parties will have had many months to research and prepare their evidence prior to the opening of the inquiry or hearing. There would have to be extraordinary circumstances for why such late evidence could not have been made available within the inquiry or hearing timetable set out in the Rules.
- 5.11 We will only pass any written representation, evidence or any other document sent to us after the hearing or inquiry has closed to the Inspector if the author has extraordinary circumstances for its late submission. The Inspector may disregard any material received after the close of the proceedings, even if it raises new issues. However, if there are extraordinary circumstances and the Inspector proposes to consider this material in the decision, and concludes that it is relevant to the decision, we notify the local authority, the applicant, everyone who appeared at the hearing or inquiry and anyone who sent in written evidence. We will give them three weeks to make written representations or ask for the hearing or inquiry to be re-opened.
- 5.12 If the Inspector decides that the hearing or inquiry should be re-opened, we send a written statement of the matters to be considered to everyone whom we notified about the new evidence. We also make arrangements for the reopened hearing or inquiry.

Will the hearing or inquiry be recorded?

- 5.13 Local inquiries and hearings into rights of way orders are not routinely recorded. Some council committee rooms have digital recording facilities but the cost of such equipment would be prohibitive for it to be available at other public venues. However, personal handheld devices are now more readily available.
- 5.14 If a request is made at the opening of an inquiry or hearing, it will be for the Inspector to state the terms on which recordings will be

acceptable. Permission will be denied if other parties at the hearing or inquiry object to being recorded. Permission cannot be granted prior to the event.

- 5.15 Any party permitted to record the inquiry or hearing, must first confirm in writing that (i) they will not undertake any editing whatsoever of the recording and (ii) that they will promptly provide a copy of the recording to the Inspectorate and any other party who requests it at the event, reaffirming that it has not been edited.

Legal submissions

- 5.16 A challenge to an order or a representation or objection on a question in law is known as a "*legal submission*". If you want to make a legal submission you should submit it with your statement of case (so that it can be circulated in advance of the event)¹⁰. Otherwise it should be put in writing and copies handed to the Inspector and the other parties at the start of the hearing or inquiry.
- 5.17 We will return legal submissions received after the date for statements of case with a request that copies are submitted at the start of the inquiry/hearing.
- 5.18 The Inspector will not give a ruling on legal submissions, but usually responds to them in the decision. However, if the submission calls the running of the hearing or inquiry into question, the Inspector will consider whether to continue with the hearing or inquiry. Further advice on legal submissions is given in PINS' Rights of Way Advice Note No.3. The advice note is on our website at www.planningportal.gov.uk/countryside.

¹⁰ As far as possible, a legal submission should be submitted as a separate document alongside the statement of case, rather than being an integral part of it.

6 What the Inspector considers in reaching a decision

The Highways Act 1980 (as amended)

Creation orders made under section 26

- 6.1 Section 26 of the Highways Act 1980 gives an authority the power to create a footpath, bridleway or restricted byway. To confirm a creation order, an Inspector must be satisfied that:

There is a need for a footpath, bridleway or restricted byway and it is expedient to create it having regard to:

- (a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public or to the convenience of persons resident in the local area; and*
- (b) the effect the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation.*

- 6.2 The Inspector must also have regard to any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the proposed footpath, bridleway or restricted byway would be created (26(3A)).

Extinguishment orders made under section 118

- 6.3 Section 118 gives an authority the power to extinguish a footpath, bridleway or restricted byway. In making the order the authority must be satisfied that it is expedient that the way should be stopped up because it is not needed for public use. To confirm an extinguishment order, an Inspector must be satisfied that:

It is expedient that a path or way should be stopped up having regard to:

- (a) the extent that it appears that the path or way would, apart from the order, be likely to be used by the public; and*
- (b) the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation. Also*
- (c) Section 118(6), which allows for temporary circumstances preventing the use of the way being disregarded.*

- 6.4 The Inspector normally ignores any obstructions blocking the way and considers how much more the path would be used if the obstructions were not there. The Inspector also has to have regard to any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.

Rail crossing extinguishment orders made under section 118A

- 6.5 Special powers to close or divert footpaths, bridleways or restricted byways that cross railway lines on the level were introduced in the Highways Act 1980 by the Transport and Works Act 1992. Section 118A gives an authority the power to extinguish a footpath, bridleway or restricted byway which crosses a railway line, otherwise than by tunnel or bridge. In making the order the authority must be satisfied that it is expedient to do so in the interests of the safety of members of the public using it or likely to use it. So as to avoid creating a cul-de-sac that might encourage people to trespass onto the railway, an order may also provide for the extinguishment or diversion of any sections of path that lead up to the level crossing. To confirm a rail crossing extinguishment order, an Inspector must be satisfied that:

It is expedient to stop up the path or way having regard to all the circumstances, in particular:

- (a) whether it is reasonably practicable to make the crossing safe for use by the public; and*
 - (b) what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.*
- 6.6 The Secretary of State may consult the Secretary of State for Transport on whether a bridge or tunnel should be provided at or reasonably near to the crossing as an alternative.

Special extinguishment orders made under section 118B

- 6.7 Section 118B gives an authority the power to extinguish a footpath, bridleway or restricted byway for the purposes of crime prevention or school security. Before making a special extinguishment order, the authority must consult the police authority for the area in which the highway lies.

Crime prevention – section 118B(1)(a)

- 6.8 An order under this section can be made only in respect of a highway in an area designated by the Secretary of State for the purpose. In making the order, the authority must be satisfied that it is expedient, for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, that the highway should be stopped up and that the following conditions are met:

- (a) that premises adjoining or adjacent to the highway are affected by high levels of crime; and*
- (b) that the existence of the highway is facilitating the persistent commission of criminal offences.*

6.9 To confirm a crime prevention extinguishment order, an Inspector must be satisfied that conditions (a) and (b) above are satisfied and that:

- (a) *it is expedient for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, that the highway be stopped up; and*
- (b) *that it is expedient to confirm the order having regard to all the circumstances, in particular:*
 - *whether and, if so, to what extent the order is consistent with any strategy for the reduction of crime and disorder prepared under section 6 of the Crime and Disorder Act 1998;*
 - *the availability of a reasonably convenient alternative route or, if no reasonably convenient route is available, whether it would be reasonably practicable to divert the highway under section 119B rather than stopping it up; and*
 - *the effect which the extinguishment of the right of way would have as respects land served by the highway, account being taken of the provisions as to compensation.*

School security – section 118B(1)(b)

6.10 An order under this section can be made only in respect of a highway which crosses land occupied for the purposes of a school. In making the order, the authority must be satisfied that it is expedient to stop up the highway, for the purpose of protecting the pupils or staff from:

- (i) violence or the threat of violence,
- (ii) harassment,
- (iii) alarm or distress arising from unlawful activity, or
- (iv) any other risk to their health or safety arising from such activity.

6.11 To confirm a school security extinguishment order, an Inspector has to be satisfied that:

- (a) *it is expedient, for the purpose of protecting the pupils or staff from (i)-(iv) above, that the highway should be stopped up; and*
- (b) *it is expedient to confirm the order having regard to all the circumstances, in particular :*

- *any other measures that have been or could be taken for improving or maintaining the security of the school;*
- *whether it is likely that the coming into operation of the order will result in a substantial improvement in that security,*
- *the availability of a reasonably convenient alternative route or, if no reasonably alternative route is available, whether it would be reasonably practicable to divert the highway under section 119B rather than stopping it up; and*
- *the effect the extinguishment of the right of way would have as respects land served by the highway, account being taken of the provisions as to compensation.*

Diversion orders made under section 119

- 6.12 Section 119 of the Highways Act gives an authority the power to divert a footpath, bridleway or restricted byway in the interests of the owner, tenant or person using the land crossed by the way or in the interests of the public.
- 6.13 In making the order, the authority must make sure that the alternative way is not already a public right of way. Otherwise the order would have the effect of removing a way, rather than diverting one (but part of the alternative way can follow an existing right of way).
- 6.14 The authority must also be sure that, unless the existing way connects with another highway, the diverted route ends at the same place. If the existing way connects with another highway and the order changes the place that it ends, it must still connect to another point on the same highway or a highway which is connected to it, and which is substantially as convenient to the public¹¹.
- 6.15 To confirm a diversion order, an Inspector has to be satisfied that:
- it is expedient in the interests of (the owner, lessee or occupier of the land crossed by the path or of the public) that the line of the path or way, or part of that line should be diverted; and*
 - that the path or way will not be substantially less convenient to the public; and*
 - that it is expedient to confirm the order having regard to the effect which:*

¹¹ Whether that connection is substantially as convenient for the public is a matter of judgement for the Inspector subject to the test of reasonableness.

- *the diversion would have on public enjoyment of the path or way as a whole; and*
- *the coming into operation of the order would have as respects other land served by the existing right of way; and*
- *any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it, account being taken of the provisions as to compensation..*

6.16 Whilst there is no direct read across from section 118(6) to section 119 as far as temporary obstructions are concerned (paragraph 6.3 above), when considering under section 119(6) whether the right of way will not be substantially less convenient to the public in consequence of the diversion, a fair 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.

6.17 The Inspector has to have regard to any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.

Rail crossing diversion orders made under section 119A

6.18 Section 119A gives an authority the power to divert a footpath, bridleway or restricted byway which crosses a railway line otherwise than by a tunnel or bridge. In making the order the authority must be satisfied that it is expedient to do so in the interests of the safety of members of the public using it or likely to use it.

6.19 The authority must be sure that, unless the existing way connects with another like right of way, the diverted route ends at the same place. If the existing way connects with another highway and the order changes the place that it ends, it must still connect to another point on the same highway or a highway which is connected to it.

6.20 To confirm a rail crossing diversion, an Inspector has to be satisfied that:

It is expedient to divert the path or way having regard to all the circumstances, in particular:

- (a) *whether it is reasonably practicable to make the crossing safe for use by the public; and*

(b) what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.

6.21 The Secretary of State may consult the Secretary of State for Transport on whether a bridge or tunnel should be provided at or reasonably near to the crossing as an alternative measure.

Special diversion orders made under section 119B

6.22 Section 119B gives an authority the power to divert a footpath, bridleway or restricted byway for the purposes of crime prevention or school security. Before making a special diversion order, the authority must consult the police authority for the area in which the highway lies.

6.23 The authority must be sure that, unless the existing way connects with another highway, the diverted route ends at the same place. If the existing way connects with another highway and the order changes the place that it ends, it must still connect to another point on the same highway or a highway which is connected to it.

Crime prevention – s119B(1)(a)

6.24 An order under this section can only be made in respect of a highway in an area designated by the Secretary of State for the purpose. In making the order, the authority must be satisfied that it is expedient, for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, that the line of the highway, or part of that line should be diverted and that the following conditions are met:

(a) that premises adjoining or adjacent to the highway are affected by high levels of crime, and

(b) that the existence of the highway is facilitating the persistent commission of criminal offences.

6.25 To confirm a crime diversion order, an Inspector has to be satisfied that conditions (a) and (b) above are satisfied and that:

(a) it is expedient for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, that the line of the highway, or part of that line should be diverted; and

(b) that it is expedient to confirm the order having regard to all the circumstances, in particular :

- whether and, if so, to what extent the order is consistent with any strategy for the reduction of crime and disorder*

prepared under section 6 of the Crime and Disorder Act 1998;

- *the effect which the coming into operation of the order would have as respects land served by the existing public right of way; and*
- *the effect which any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it, taking into account the provisions as to compensation.*

School security – s119B(1)(b)

6.26 An order under this section can only be made in respect of a highway which crosses land occupied for the purposes of a school. In making the order, the authority must be satisfied that it is expedient that the line of the highway, or part of that line be diverted, for the purpose of protecting the pupils or staff from:

- violence or the threat of violence,*
- harassment,*
- alarm or distress arising from unlawful activity, or*
- any other risk to their health or safety arising from such activity.*

6.27 To confirm a school security diversion order, an Inspector has to be satisfied that:

(a) it is expedient, for the purpose of protecting the pupils or staff from (i)-(iv) above, that the line of the highway, or part of that line should be diverted; and

(b) it is expedient to confirm the order having regard to all the circumstances, in particular :

- *any other measures that have been or could be taken for improving or maintaining the security of the school;*
- *whether it is likely that the coming into operation of the order will result in a substantial improvement in that security;*
- *the effect which the coming into operation of the order would have as respects land served by the existing public right of way; and*
- *the effect which any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it, account being taken of the provisions as to compensation.*

SSSI diversion order made under section 119D

6.28 Section 119D gives an authority, on application from Natural England, the power to divert a highway which is in, forms part of, or is close to or adjoining a Site of Special Scientific Interest (SSSI) for the purpose of protection. In making the order the authority must be satisfied that:

- (a) *public use of the highway is causing, or that continued use of the highway is likely to cause, significant damage to the flora, fauna or geological or physiographical features by reason of which the site of special scientific interest is of special interest; and*
- (b) *it is expedient that the line of the highway, or part of that line should be diverted for the purpose of preventing such damage.*

6.29 The authority must be sure that, unless the existing way connects with another highway, the diverted route ends at the same place. If the existing way does connect with another highway and the order changes the place that it ends, it must still connect to another point on the same highway or a highway which is connected to it.

6.30 To confirm a SSSI diversion order, an Inspector must be satisfied that the conditions in (a) and (b) above are satisfied and that:

It is expedient to confirm the order having regard to the effect which:

- (a) *the diversion would have on public enjoyment of the right of way as a whole;*
- (b) *the coming into operation of the order would have as respects other land served by the existing public right of way; and*
- (c) *any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it, account being taken of the provisions as to compensation.*

Concurrent Highways Act orders

6.31 Creation and diversion orders can be considered together with extinguishment orders. The Inspector can consider the extent to which creation or diversion orders made in association with an extinguishment order would, *if confirmed*, provide an alternative way to that proposed for closure. Where, having considered the alternative, the Inspector cannot confirm the extinguishment order, he/she will not generally confirm the creation or diversion orders.

The Wildlife and Countryside Act 1981

Definitive map modification orders made under section 53

6.32 Section 53 of the Act places local authorities under a duty to keep their definitive maps and statements under continuous review and to modify the map and statement to :

- record ways which should be shown but are not;
- amend the status of ways recorded on the map incorrectly;
- delete ways that should not be recorded on the map; and
- delete or amend any other details which are wrong.

6.33 In making a decision on a definitive map modification order, an Inspector can consider only the rights which exist. The Inspector cannot consider the suitability of the way for public use or any other effects of confirming an order. Where we receive representations or objections that appear to us not to relate to any matters that the Inspector can take into consideration, we write to those objectors to let them know. We give them the opportunity to amend their representation or objection so that it does include such matters, to say why they think it is relevant, or alternatively invite them to withdraw their representation or objection¹².

Orders to reclassify Roads Used as Public Paths(RUPPs) made under section 54

6.34 Section 47 of the Countryside and Rights of Way Act 2000 is now in force and local authorities are relieved of their duty under section 54 of the 1981 Act to reclassify RUPPs. All RUPPs are now designated as restricted byways. Any applications or orders for RUPPs which are still outstanding have to be determined.

The evidence which can be put forward

Documents

6.35 Many different types of maps, plans and other documents are presented as evidence to prove that public rights of way do or do not exist, or that the definitive map and statement needs modifying in some other way. How relevant a document is depends on what type of document it is, why it was produced and what information it contains about the way shown in the order. It is not unusual for each side to argue a differing meaning for the same document.

¹² The duty to inform objectors about the non relevance of their objections was placed on the Secretary of State in the High Court judgment *Lasham Parish Meeting v Hampshire County Council* (1992).

- 6.36 If you present a document as evidence, you should also provide an explanation to show the Inspector its meaning and relevance to the decision. The document should be in a form as close to the original as possible. For example, a black and white photocopy of a colour-coded map would be of limited value.
- 6.37 We have produced *Definitive Map Orders: Consistency Guidelines*, which contains reference material to help Inspectors to determine orders made under the Wildlife and Countryside Act 1981. The guidelines are on our website at www.planningportal.gov.uk/countryside.

User evidence

- 6.38 This is evidence of the actual use of the way, supporting the claim that the landowner has allowed a public right of way to become established over his/her land.
- 6.39 User evidence can take the form of:
- written or spoken statements by witnesses; or
 - legal declarations by users about how and when they used the way.

Where the order is being considered at an inquiry or hearing user evidence given orally can be very helpful to the Inspector. Witnesses can speak about their evidence and answer questions (or be cross-examined). Evidence which has been heard and questioned may carry more weight than evidence which has not.

- 6.40 The Inspector considers all the evidence for and against the order before reaching a decision. Inspectors are experienced in dealing with user evidence and understand that people's memories of past events are likely to differ. Because it relies on people's memories, user evidence may contradict other evidence that is presented about the use or status of the way.
- 6.41 Further information is available in our Consistency Guidelines on our website at www.planningportal.gov.uk/countryside.

Orders made following an appeal under paragraph 4(1) of Schedule 14

- 6.42 Anyone can apply to the relevant authority for a definitive map modification order to be made. If the authority refuses to make an order, the applicant may appeal to the Secretary of State (through the Planning Inspectorate) to direct the authority to make one. The order may then come to the Inspectorate for a decision because there have been representations and objections to it. The fact that the Secretary of State directed the authority to make the order has no bearing on the Inspector's decision: based on the evidence

presented the Inspector can confirm it, confirm it with modifications, or not confirm it.

- 6.43 If an authority fails to determine an application within 12 months, the applicant can ask the Secretary of State (in practice the Planning Inspectorate) to direct the authority to determine the application within a given period of time.

The Town and Country Planning Act 1990

Stopping up and diversion orders made under section 257

- 6.44 Section 257 gives an authority the power to divert or extinguish footpaths, bridleways or restricted byways if it is satisfied that it is necessary to do so in order to enable development be carried out:

- (a) *in accordance with planning permission granted under Part III (of the Act); or*
- (b) *by a government department.*

Where land which is not owned by the authority or the person who has been granted planning permission that is needed to divert the right of way, the landowner's permission for the new route must have been given.

To confirm a stopping up or diversion order, an Inspector must be satisfied that the criteria (a) and (b) above are met. The Inspector does not consider the need for the development.

- 6.45 However, account must be taken of the effect of the order on those entitled to the rights which would be extinguished¹³.

Extinguishment orders made under section 258

- 6.46 Section 258 gives an authority the power to stop up a footpath, bridleway or restricted byway on its own land if it plans to develop the land.

- 6.47 To confirm an extinguishment order, an Inspector must be satisfied that:

- (a) *an alternative right of way has been or will be provided; or*
- (b) *the provision of an alternative right of way is not required.*

Temporary stopping-up orders made under section 257

- 6.48 Section 261 gives an authority the power to make orders under section 257 to stop up or divert a footpath, bridleway or restricted

¹³ Defra Circular 1/09 (version 2) paragraph 7.15.

byway for a period of time so that minerals can be worked from the surface. The Inspector, must be satisfied that:

- (a) *the way needs to be stopped up to enable minerals to be worked by surface working; and*
- (b) *the way can be restored afterwards to a condition not substantially less convenient to the public.*

7 The decision

- 7.1 We send copies of the decision and a copy of the order map to the local authority, the applicant, everyone who spoke at the hearing or inquiry or made written representations, other relevant persons, prescribed organisations, everyone else who was given notice of the hearing or inquiry, and any other person who has expressed an interest or asked for a copy.
- 7.2 In their decision the Inspector will:
- briefly describe the effect of the order;
 - set out the main issues and cover the relevant points raised by the different parties; and
 - set out the conclusions and decision.

The types of decision

- 7.3 A decision can be to:
- confirm the order; or
 - confirm the order with modifications which do not require advertisement (such as correcting a spelling error or adding a grid reference); or
 - confirm the order with modifications which **do** require advertisement (see paragraph 7.4 – 7.7 below), or
 - not confirm the order.
- 7.4 In such cases where the Inspector's modifications do have to be advertised we will write to everyone who received notice of the hearing or inquiry and anyone else who appeared or has made written representations to explain why he/she proposes to modify the order.
- 7.5 Types of modification that need to be advertised are;
- those affecting land that is not the subject of the original order. For example; moving the line of the way, adding a width to an order, widening a way or increasing its length.
 - those changing the described status of the way. For example a footpath to a bridleway;
 - those that delete all or part of a way; and

- those that show a way not previously shown or not to show one that was previously shown.
- 7.6 Representations and objections can be made to advertised modifications in the same way as to the original order. We arrange for a notice to be published in a newspaper circulating in the local area. The notice explains how and when representations or objections to the proposed modifications can be made. A copy of the notice is sent to everyone who received a copy of the Inspector's letter.
- 7.7 If no objections are received to the proposed modifications, the Inspector will confirm the order with the advertised modifications.

*How we deal with any representations/objections we receive*¹⁴

Representations/objections to proposed modifications only

- 7.8 If we receive representations or objections to the proposed modifications, we may arrange a hearing, inquiry or exchange of written representations. The Inspector will only be able to consider evidence which relates to their proposed modifications – the evidence relating to proposed modifications may be old or new. The Inspector cannot consider evidence which is not related to the proposed modifications (see paragraphs 7.14 and 8.4 below).
- 7.9 If anyone at a hearing or inquiry arranged to deal with advertised modifications asks to give evidence relating to the unmodified part of the order, the Inspector will ask them to submit it in writing to the Inspectorate (within a given period of time). After the close of the hearing or inquiry, the Inspector will read the representation and if they consider that it raises questions likely to affect the decision, it may be necessary to re-open the original hearing or inquiry (if one was held). However, if the Inspector considers that the matter could be dealt with by written representations, we will offer this procedure to everyone involved.

Representations/objections to the unmodified part of the order only

- 7.10 If, when we advertise proposed modifications, we receive representations and objections which relate only to those parts of the order that it is not proposed to modify, we may, exceptionally, decide to re-open the original hearing or inquiry or invite written representations. Where a hearing or inquiry is held, the Inspector will only be able to consider **new** evidence which relates to the unmodified part of the order. The Inspector cannot re-consider evidence which has already been heard or presented, nor can they

¹⁴ The procedures for dealing with representations and objections following the advertisement of proposed modifications are based on the principles established in the High Court judgment *Marriott v Secretary of State for the Environment, Transport and the Regions* (2000). More information on this judgment can be found in Rights of Way Advice Note 10 which is available at www.planningportal.gov.uk/countryside.

consider any evidence which relates to the proposed modifications (see paragraph 7.15 below).

- 7.11 The Inspector will follow a similar procedure to that outlined in paragraph 7.9 above if anyone at the hearing or inquiry asks to give evidence relating to the modified part of the order.

Representations/objections to both the modified and unmodified parts of the order

- 7.12 Sometimes, we receive representations and objections which relate to both the proposed modifications and the unmodified part of the order. In these circumstances and if the representations or objections raise evidence which could affect the Inspector's decision, we may arrange a hearing, an inquiry or invite written representations in relation to the evidence on both parts of the order. However, in relation to the unmodified part of the order, the Inspector cannot re-consider evidence which has already been heard or presented. In other words the evidence must be **new** (see paragraph 7.17 below).

- 7.13 After these further representations or objections have been considered, we issue a decision. More guidance is in Rights of Way Advice Note 10, on our website at www.planningportal.gov.uk/countryside.

Procedure for second and subsequent hearings and inquiries following modifications

- 7.14 The procedure for a second or subsequent hearing and inquiry will be the same as the procedure for the first hearing or inquiry (refer to sections 3 and 4 of this booklet). The only difference is that unless we decide otherwise¹⁵, the local authority, the applicant, relevant persons and any other person have to ensure their statements of case is received by us **not later than 8 weeks after the date of our notice**. We will write to you with the timetable.

Procedure for re-opened hearings and inquiries following modifications

- 7.15 The procedure for a re-opened hearing or inquiry is the same as the procedure for the original hearing or inquiry (refer to sections 3 and 4 of this booklet). The only difference is that unless we decide otherwise, the local authority, the applicant, relevant persons and any other person have to ensure their statements are received by us **not later than 8 weeks after the date of our notice**. In addition, the Inspector will first send a written statement outlining the matters to be discussed and the matters on which further evidence is invited (i.e. what should be covered in the statements of case) to the local authority, the applicant, any other person who

¹⁵ Paragraph 28 of the Rules states that the Secretary of State may allow further time for the taking of any step.

appeared at the original hearing or inquiry and any person who submitted written representations, evidence or any other document. In most cases this written statement will be issued when we notify the parties about the procedure (i.e. hearing, inquiry, written representations) to be followed.

- 7.16 If you are happy with the Inspector's proposals and do not wish to submit any further evidence you may still want to attend the re-opened hearing or inquiry. The Inspector's proposals are not final until a final decision has been issued. Evidence may be submitted at the hearing or inquiry which leads the Inspector to a different conclusion to that contained in his/her previous decision.

Procedure for hearings and inquiries into both the proposed modifications and the unmodified part of the order

- 7.17 The procedure will be the same for second and subsequent hearings and inquiries as the first hearing or inquiry (refer to sections 3 and 4 of this booklet). The only difference is that unless we decide otherwise, the local authority, the applicant, relevant persons and any other person have to ensure their statements are received by us **not later than 8 weeks after the date of our notice**. In relation to the unmodified part of the order, the Inspector will also send a written statement outlining the matters to be discussed and the matters on which further evidence is invited (i.e. what should be covered in the statements of case) to the local authority, the applicant, any other person who appeared at the original hearing or inquiry and any person who submitted written representations. In most cases this written statement will be issued when we notify the parties about the procedure (i.e. hearing, inquiry, written representations) to be followed.

- 7.18 As per 7.16 above, if you are happy with the Inspector's proposals and do not wish to submit any further evidence you may still want to attend the hearing or inquiry into the proposed modifications and unmodified part of the order. The Inspector's proposals are not final until a final decision has been issued. Evidence may be submitted at the hearing or inquiry which leads the Inspector to a different conclusion to that contained in his/her previous decision.

Procedure for written representations following modifications

- 7.19 The procedure will be as set out in section 2 of this booklet. The only difference is that unless we decide otherwise, the local authority, the applicant, relevant persons and any other person have to ensure their statements are received by us **not later than 8 weeks after the date of our notice**. We will write to you with the timetable.
- 7.20 As the Inspector will already have visited the site, it is unlikely that they will need to do so again.

8 Costs

- 8.1 The object of the award of costs regime is to reinforce the obligations on all parties to an order which are codified in the Procedure Rules for hearings and inquiries and explained in this booklet.
- 8.2 All the parties to a hearing or inquiry (local authorities, applicants, relevant persons and anyone else) normally pay their own expenses, no matter what the decision on the order is. But if the order is decided by way of a hearing or an inquiry, anyone can apply for an award of costs against another party. To be awarded costs, you need to show that you incurred unnecessary or wasted expense because another party acted unreasonably. The costs must be quantifiable and incurred in the hearing or inquiry process. (If the case is decided by written representations, no-one can apply for costs.)
- 8.3 Any party may have to pay costs if a hearing or an inquiry could reasonably have been avoided or if it is unreasonably delayed or extended. For example, the local authority could be at risk if an Inspector halts a hearing or an inquiry because they find that the order is defective. Anyone who does not comply with the timetables set out in the Rules (unless there is a good reason why they could not do so) could also be at risk if they cause a hearing or inquiry to be adjourned, or to last longer than it would have done if they had complied with the timetables, and by doing so they cause others to incur unnecessary or wasted expense in the process.
- 8.4 Applicants and relevant persons do not have to attend a hearing or an inquiry. They may decide to rely on their written evidence, although if they do they should tell us in good time. But if an applicant asks to be heard (and an inquiry or hearing is held as a result) or a relevant person exercises their right to be heard and then fails to turn up or be represented without good reason, they risk an award of costs for unreasonable behaviour. Similarly, a person who has made an irrelevant objection and who unreasonably insists on being heard at a hearing or an inquiry risks an award of costs. (If we believe that your representation or objection is irrelevant, we write to you to give you the opportunity to withdraw or amend it.) There is also a risk of an award of costs in the event that an inquiry or hearing has to be cancelled as a result of an objection being withdrawn at a late stage in the proceedings.

Applying for costs

- 8.5 Applying for costs is easy - there is no application form. If you believe that a party has acted unreasonably and caused you to incur unnecessary expense, and you want to apply for an award of the expense incurred, **you should tell the Inspector before they**

close the hearing or inquiry. You can advise the other party at any time before the hearing or inquiry closes that you intend to apply for costs and why. **But you should make your application to the Inspector.** The Inspector will ask you to explain why you believe the party has acted unreasonably and put you to unnecessary expense. The Inspector will listen to your case and will invite the party you have named to respond. If that person is no longer at the hearing or inquiry, we will invite them to write to us after the close of the proceedings.

- 8.6 It is very helpful, and indeed encouraged, if you can provide in advance of the inquiry or hearing notification to the opposing party of the possibility of your intention to apply for costs and the reasons for it. Also, to have ready to hand to the Inspector at the appropriate part of the proceedings, a written statement setting out the basis for the costs application, referring to the relevant passages of the Circulars. Having been previously made aware of the possibility of a costs application being made, the opposing party will then be properly prepared to give their response – again, preferably in writing. In this way the inquiry/hearing time can be saved by avoiding the possible need for an adjournment for a response to be prepared.
- 8.7 If you apply for costs you do not have to provide evidence to support the amount involved. The Inspector does not determine the amount, only the broad extent of any award (if made). You only need to show that you have incurred quantifiable expense as result of the other party's unreasonable behaviour.
- 8.8 After the proceedings have closed, the Inspector decides the application or, if appropriate, writes a report on it. If a report is made, the Inspectorate's Costs and Decisions Team issues the decision on costs, after considering the report and any further correspondence with the parties.
- 8.9 Costs decisions are only issued when the Inspector has issued their final decision on the order. If the Inspector proposes modifications to an order that need to be advertised, a decision on the costs application will be delayed.

Applications for costs after the hearing or inquiry has closed

- 8.10 We accept applications for costs after a hearing or an inquiry has closed only if you can show you had a good reason for not applying before the close of the proceedings. If, exceptionally, your application is accepted, we tell the other people involved and arrange for them to make written representations before we reach a decision.

Orders where compensation may be involved

- 8.11 Anyone who can show that the value of his/her interest in land is depreciated or that he/she has suffered damage by being disturbed in his/her enjoyment of land as a result of a Highways Act 1980 creation, extinguishment or diversion order may claim compensation from the local authority which made the order. Compensation may be paid only where a loss can be shown. If you think you may be such a person, you should write to the local authority. The Inspectorate does not handle claims for compensation.
- 8.12 If you are such a person and you make representations or objections to an order where compensation for loss of rights or interest would be payable but the order is not confirmed, the costs you have incurred in making your representations or objections will normally be paid by the local authority. We will write to you if this is the case and invite you to apply for costs, but an award of costs in these cases does not mean that the local authority has acted unreasonably.
- 8.13 More information about costs is given in Defra Circular 1/09 and Department for Communities and Local Government Circular 03/2009. The 1/09 Circular can be found on Defra's website and the 03/2009 Circular on our website www.planningportal.gov.uk/planning/appeals/guidance/costs.

9 Complaints

Complaining to us

- 9.1 You should contact our Quality Assurance Unit if you have a complaint about the way the order is being, or has been handled, either by the Inspector or by our case officer. They can be contacted at:

The Planning Inspectorate
Quality Assurance Unit
4/06 Kite Wing
Temple Quay House
2 The Square Temple Quay
Bristol
BS1 6PN

Telephone: 0303 444 5884

Alternatively, you can submit a query or complaint to the Quality Assurance Unit electronically via the link available on our website at www.planningportal.gov.uk/uploads/pins/planning_inspectorate_feedback/pdf.

- 9.2 Your complaint will be investigated impartially and we will reply as soon as we can. If an error has been made, we will explain this and offer our apologies, but the law does not allow us to change the decision in any way.

The High Court

- 9.3 Once an order decision is issued we have no power to amend or change it. The only way that a decision may be reviewed is following a successful challenge or a judicial review. To be successful, you would have to show that the Inspector had misinterpreted the law or that some relevant criteria had not been met. If the Court considers that any errors of fact or judgment are significant enough to substantially prejudice the interests of a party, it will either quash the decision and return the case to us to be decided again or it will quash the order. You should apply to:

The Administrative Court
Royal Courts of Justice
Queen's Bench Division
The Strand
London WC2 2LL

- 9.4 If the order has been confirmed, you must apply to challenge the decision in the High Court within 6 weeks of the date on which the local authority publishes notice of the decision. If the decision was not to confirm the order, you must apply to the High Court for a Judicial Review promptly and in any event not later than 3 months from the date of the decision.

- 9.5 If you wish to pursue this course of action, you may want to consider seeking advice from a solicitor or the Citizens Advice Bureau.

The Parliamentary Commissioner for Administration (the Ombudsman)

- 9.6 If you think you have been treated unfairly because we or the Inspector have not done our jobs properly, you can ask an MP to approach the Ombudsman (your local MP is usually the easiest person to ask). The Ombudsman will not usually investigate unless you have complained to us.

The Administrative Justice & Tribunals Council

- 9.7 If you have a complaint about the procedure that we used for an order, you can complain to the Administrative Justice & Tribunals Council. (The Council has no power to question the merits of the order or to change the decision.) Their address is:

81 Chancery Lane
London
WC2A 1BQ

The local authority monitoring officer and the Local Government Ombudsman

- 9.8 If you have a complaint about the way the local authority has handled the order you should write to the local authority's monitoring officer. This is usually the Chief Executive or someone associated with their office. If they do not explain the local authority's action to your satisfaction, the Local Government Ombudsman might be able to help.
- 9.9 Your local authority, or local library, will be able to tell you how to contact the Ombudsman for your area.

More information can be found in the following leaflets; 'Our Complaints Procedures' and 'Challenging the Decision in the High Court' which are on our website www.planningportal.gov.uk/countryside.

ANNEX A

A Rights of Way (Hearings and Inquiries Procedure) (England) Rules 2007

Link to web site for Rules:

<http://www.opsi.gov.uk/si/si2007/20072008.htm#30>

B Procedure for written representations

PUBLIC RIGHTS OF WAY
ORDERS TO BE DECIDED BY THE SECRETARY OF STATE

PROCEDURES FOR WRITTEN REPRESENTATIONS

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1. Interpretation

1.1 In these Procedures unless the context otherwise requires:

“the 1980 Act” means the Highways Act 1980;

“the 1981 Act” means the Wildlife and Countryside Act 1981;

“the 1990 Act” means the Town and Country Planning Act 1990;

“applicant” has the meaning given by Procedure 3.4(b);

“the authority” means the authority who made the order in
question;

"a decision by the Secretary of State as respects an order" does not include a transferred decision;

"inspector" means—

- (a) a person appointed by the Secretary of State to make a transferred decision, or
- (b) a person making a report to the Secretary of State in order for him/her to make a decision on whether or not to confirm the order in question;

"order", save where the context otherwise requires, means an order (other than an order made by the Secretary of State) to which the provisions of Schedule 6 to the 1980 Act, Schedule 15 to the 1981 Act or Schedule 14 to the 1990 Act apply;

"relevant person" has the meaning given in Procedure 3.4(f);

"start date" has the meaning given in Procedure 3.3(a);

"statement of case" means a written statement containing full particulars of the case which a person proposes to put forward and includes—

- (a) copies of any supporting documents which that person intends to refer to or put in evidence, and
- (b) a list of those documents;

"transferred decision" means a decision made by a person appointed by the Secretary of State pursuant to paragraph 2A of Schedule 6 to the 1980 Act, paragraph 10 of Schedule 15 to the 1981 Act or paragraph 4 of Schedule 14 to the 1990 Act.

2. Application of this procedure

- 2.1 This Procedure applies in relation to orders made by local authorities under Schedule 6 to the Highways Act 1980, Schedule 15 to the Wildlife and Countryside Act 1981 and Schedule 14 of the Town and Country Planning Act 1990 which have been submitted to the Secretary of State for decision, and where the authority, relevant persons, applicant and the Secretary of State agree that the order should be decided after exchanges of statements of case and comments on statements of case.
- 2.2 These Procedures cease to apply if the Secretary of State informs the authority, the applicant and relevant persons that he proposes to terminate them and arrange for a hearing or an inquiry to be held.

3. Notice to be given by the Secretary of State

- 3.1 The Secretary of State shall give notice which complies with Procedure 3.3, to the persons mentioned in Procedure 3.4.
- 3.2 The notice shall be given as soon as practicable after an order has been submitted to the Secretary of State for confirmation in accordance with—
 - (a) regulation 4 of the Public Path Orders Regulations 1993;

- (b) regulation 7 of, and Schedule 4 to, the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993; or
- (c) regulation 4 of the Town and Country Planning (Public Path Orders) Regulations 1993;

3.3 Subject to Procedure 3.5, the notice under Procedure 3.1 shall—

- (a) be dated, and such date shall be the “start date” for the purposes of this procedure;
- (b) state that the consideration of the order will take the form of exchanges of statements of case and comments on statements of case;
- (c) give a brief description of—
- (d) the land to which the order relates; and
- (e) the effect of the order;
- (f) state the address (including an e-mail address) to which communications are to be sent;
- (g) state the time and place where the order, statements of case and comments on statements of case are to be made available by the authority under Procedure 14 (inspection and copying of documents);
- (h) explain the requirements of Procedures 4 and 5 (exchanges of statements of case and comments on statements of case).

3.4 The notice under Procedure 3.1 shall be given to—

- (a) the authority;
- (b) every person (in this procedure referred to as “the applicant”) who applied for an order under—
 - (i) sections 118ZA or 119ZA of the 1980 Act (application for a public path extinguishment order or public path diversion order);
 - (ii) sections 118C and 119C of the 1980 Act (application by a proprietor of a school for a special extinguishment or a special diversion order); or
 - (iii) section 53(5) of the 1981 Act (which relates to applications for a definitive map modification order);
- (c) in the case of an order to which the provisions of Schedule 6 to the 1980 Act (provisions as to making, confirmation, validity and date of operation of certain orders relating to footpaths, bridleways and restricted byways) apply, every person who was required to be given notice of that order by paragraph 1(3)(b)(i), (ii) and (iv) of that Schedule;
- (d) in the case of an order to which the provisions of Schedule 15 to the 1981 Act (procedure in connection with certain orders under Part III) apply, every person who was required to be given notice of that order by paragraph 3(2)(b)(i), (ii) and (iv) of that Schedule;

- (e) in the case of an order to which the provisions of Schedule 14 to the 1990 Act (procedure for footpaths, bridleways and restricted byways orders) apply, every person who was required to be given notice of that order by paragraph 1(2)(b)(i) to (iii) and (v) of that Schedule; and
 - (f) every person (in this procedure referred to as a "relevant person") who has duly made, and not withdrawn, any representation or objection in respect of an order as mentioned in paragraph 2(2) of Schedule 6 to the 1980 Act (provisions as to making, confirmation, validity and date of operation of certain orders relating to footpaths, bridleways and restricted byways), paragraph 7(1) of Schedule 15 to the 1981 Act (procedure in connection with certain orders under Part III), or paragraph 3(1) of Schedule 14 to the 1990 Act (procedure for footpaths, bridleways and restricted byways orders), as the case may be.
- 3.5 Procedures 3.4(c),(d) and (e) (as the case may be) do not apply in the case of an order in respect of which the Secretary of State has given a direction to which this paragraph applies.
- 3.6 Procedure 3.5 applies to-
- (a) a direction under paragraph 1(3C) of Schedule 6 to the 1980 Act (provisions as to making, confirmation, validity and date of operation of certain orders relating to footpaths, bridleways and restricted byways) that it shall not be necessary to comply with paragraph 1(3)(b)(i) of that Schedule;
 - (b) a direction under paragraph 3(4) of Schedule 15 to the 1981 Act (procedure in connection with certain orders under Part III) that it shall not be necessary to comply with paragraph 3(2)(b)(i) of that Schedule; and
 - (c) a direction under paragraph 1(6) of Schedule 14 to the 1990 Act (procedure for footpaths, bridleways and restricted byways orders) that it shall not be necessary to comply with paragraph 1(2)(b)(i) of that Schedule.
- 3.7 Where the Secretary of State has given a direction referred to in Procedure 3.6, the authority shall give a notice complying with Procedure 3.3 addressed to the "owners and any occupiers" of the land in question, by affixing a copy or copies of the notice to some conspicuous object or objects on the land.
- 3.8 The Secretary of State shall ensure that a copy of the notice given by him/her under Procedure 3.1 is available for inspection on a website maintained by him/her until the decision is notified under Procedure 9 or 10 (as the case may be).

4. Submission of statements of case

- 4.1 The authority shall ensure that, within 2 weeks after the start date, the Secretary of State has received their statement of case, and the Secretary of State shall, as soon as practicable, send a copy of that statement to the applicant and to every relevant person.

- 4.2 The applicant shall ensure that, within 8 weeks of the start date, the Secretary of State has received his/her statement of case, and the Secretary of State shall, as soon as practicable, send a copy of that statement to the authority and to every relevant person.
- 4.3 Every relevant person and every other person who wishes to give evidence shall ensure that, within 8 weeks of the start date, the Secretary of State has received his/her statement of case and the Secretary of State shall, as soon as practicable, send a copy of that statement to the authority, to the applicant and to every other relevant person.

5. Commenting on statements of case

- 5.1 The authority, the applicant and relevant persons shall ensure that, within 14 weeks of the start date, the Secretary of State has received their comments on any or every other statement of case.
- 5.2 As soon as practicable after receipt, the Secretary of State shall send a copy of these comments to the authority, the applicant and relevant persons.

6. Provision of further information

- 6.1 The Secretary of State may require such further information as he may specify from any person in respect of his/her statement of case as mentioned in Procedure 4 and that information shall be provided in writing within such period as the Secretary of State may reasonably require.
- 6.2 The Secretary of State or the inspector shall, as soon as practicable after receipt of the further information required under Procedure 6.1, send a copy to the authority, the applicant and relevant persons.

7. Procedure after exchanges of statements of case and comments – decisions by the Secretary of State

- 7.1 This Procedure applies where a decision is to be made by the Secretary of State as respects an order.
- 7.2 After receipt of statements of case and comments described in Procedures 4 and 5, and any further information described in Procedure 6, the inspector shall make a report in writing to the Secretary of State which shall include his/her conclusions and either his/her recommendations or his/her reasons for not making any recommendations.
- 7.3 When making their decision the Secretary of State may disregard any written representations, evidence or other document received after 14 weeks of the start date.
- 7.4 Procedure 7.5 applies where the Secretary of State–
- (a) differs from the inspector on any matter of fact mentioned in, or appearing to them to be material to, a conclusion reached by the inspector, and is, for that reason, minded

to disagree with a recommendation made by the Inspector,
or

- (b) takes into consideration any subsequent material which they consider to be relevant to the decision.

7.5 Where this Procedure applies, the Secretary of State shall not come to a decision without first giving notice to the authority, the applicant and relevant persons and any other person who submitted a statement of case or commented on a statement of case –

- (i) that they are minded to disagree with a recommendation made by the Inspector, and of the reasons for being so minded, or
- (ii) of the subsequent material which they consider to be relevant to the decision; and

affording them an opportunity to make written representations to them or of asking to be heard.

7.6 Those persons making written representations or requesting to be heard under Procedure 7.5 shall ensure that such representations or requests are received by the Secretary of State within three weeks of the date of the Secretary of State's notice under that Procedure.

7.7 The Secretary of State may, if he thinks fit, cause a hearing or inquiry to be opened, and he shall do so if asked in the circumstances mentioned in Procedure 7.5 and within the period mentioned in Procedure 7.6 [and where a hearing or inquiry is opened the Secretary of State shall send to every person who is entitled to appear a written statement of the matters with respect to which further evidence or argument is invited.]

8. Procedure after exchanges of statements of case and comments—transferred decisions

8.1 This Procedure applies where a decision has been transferred to an inspector.

8.2 When making his/her decision the inspector may disregard any written representation, evidence or other document received after 14 weeks of the start date.

8.3 If the inspector proposes to take into consideration any new evidence or matter of fact which was not received within 14 weeks of the start date and which the Inspector considers to be material to the decision, he/she shall not come to a decision without first–

- (a) giving notice of the subsequent material they consider to be relevant to the decision to the authority, the applicant and every relevant person and any other person who submitted a statement of case or commented on a statement of case;
- (b) affording such persons an opportunity to make written representations to them or of asking to be heard.

- 8.4 Those persons making written representations or requesting to be heard under Procedure 8.3 shall ensure that such representations or requests are received by the Secretary of State within three weeks of the date of the notification in Procedure 8.3.
- 8.5 The inspector may, if he/she thinks fit, cause a hearing or inquiry to be opened and shall do so if asked in the circumstances and within the period mentioned in Procedure 8.4 [and where a hearing or inquiry is opened the Secretary of State shall send to every person who is entitled to appear a written statement of the matters with respect to which further evidence or argument is invited.]

9. Notification of decision—decisions by the Secretary of State

- 9.1 This Procedure applies where a decision is to be made by the Secretary of State as respects an order.
- 9.2 The Secretary of State shall, as soon as practicable, give notice of their decision and their reasons for reaching it, to –
- (a) the authority;
 - (b) the applicant;
 - (c) every relevant person;
 - (d) every person who submitted a statement of case;
 - (e) every person who submitted comments; and
 - (f) every other person who was notified by the Secretary of State in accordance with Procedure 3.4(b) to (f).
- 9.3 Where a copy of the inspector's report is not sent with the notice of the decision given under Procedure 9.2, that notice shall include a statement of his/her conclusions and of any recommendations made by him/her; and if a person entitled to be notified of the decision has not received a copy of that report, he/she shall be supplied with a copy of it on written application made to the Secretary of State.
- 9.4 As soon as practicable after giving notice of the decision under Procedure 9.2, the Secretary of State shall make a copy of that notice available for inspection for a period of three months on a website maintained by them.
- 9.5 In this procedure, "report" does not include any documents appended to the inspector's report; but any person who has received a copy of the report may apply in writing to the Secretary of State for an opportunity to inspect any such documents and the Secretary of State shall afford him/her that opportunity.

10. Notification of decision—transferred decisions

- 10.1 This procedure applies where a decision has been transferred to an inspector.
- 10.2 The inspector shall, as soon as practicable, give notice of his/her decision and his/her reasons for it, to—

- (a) the authority
 - (b) every person who submitted a statement of case;
 - (c) every person who submitted comments; and
 - (d) every other person who was notified by the Secretary of State in accordance with Procedure 3.4 (b) to (f).
- 10.3 Any person entitled to be notified of the inspector's decision under Procedure 10.2 may apply in writing to the Secretary of State for an opportunity of inspecting any documents referred to in that notification and the Secretary of State shall afford him/her that opportunity.
- 10.4 The Secretary of State shall ensure that, as soon as practicable after the notice has been given under Procedure 10.2, a copy of that notice is made available for inspection for a period of 3 months on a website maintained by him.

11. Site inspections

- 11.1 The inspector may make an unaccompanied inspection of the land to which the order relates during or after exchanges of statements of case and comments have been completed without giving notice of his/her intention to do so.
- 11.2 The inspector—
- (a) may inspect the land to which the order relates in the company of the authority and any person entitled or permitted to submit a statement of case or comments; and
 - (b) shall make such an inspection if so requested by the authority, the applicant or a relevant person.
- 11.3 In all cases where the inspector intends to make an accompanied inspection under Procedure 11.2, he/she shall, giving not less than 2 weeks notice, announce the date and time at which he/she proposes to make it.
- 11.4 The inspector shall not be bound to defer an inspection if any person entitled or permitted to attend is not present at the appointed time.

12. Modification of Orders

- 12.1 This procedure applies where the Secretary of State has given notice of their proposal to modify an order under paragraph 2(3)(a) of Schedule 6 to the 1980 Act, paragraph 8(2)(a) of Schedule 15 to the 1981 Act or paragraph 3(6)(a) of Schedule 14 to the 1990 Act.
- 12.2 Where in accordance with the notice referred to in Procedure 12.1 any person has duly made and not withdrawn any representation or objection with respect to the proposal to modify the order, and where the authority, relevant persons, applicant and Secretary of State agree that the order should be decided after exchanges of statements of case and comments on statements of case, the

Secretary of State shall, subject to Procedure 3.5, give notice to the persons referred to in Procedure 3.4.

12.3 Procedure 3.3 (requirements of the notice) shall apply to a notice given under Procedure 12.2 above as it applies to a notice given under Procedure 3.1 except that the notice given under Procedure 12.2 shall also describe the effect of the proposal of the Secretary of State to modify the order.

12.4 Procedures 3.8, 4 to 11 and 13 to 16 shall apply to written exchanges of statements of case and comments of statements of case held under Procedure 12.1 above, except that in the application of Procedure 4.1, for the reference to "2 weeks of the start date" there shall be substituted "8 weeks of the start date".

13. Further time

13.1 The Secretary of State may, at any time in any particular case, allow further time for the taking of any step or the doing of any thing which is required or enabled to be taken or done by virtue of these Procedures; and references in these Procedures to a period within which any step or thing is required or enabled to be taken or done shall be construed accordingly.

14. Inspection and copying of documents

14.1 The authority shall afford any person who so requests, an opportunity to inspect and take copies of—

- (a) the order as submitted to the Secretary of State for confirmation;
- (b) any representations or objections duly made and not withdrawn in respect of the order;
- (c) the notice given by the Secretary of State pursuant to Procedure 3.1 and 12.2;
- (d) any statement of case or comments as mentioned in Procedures 4 and 5;
- (e) any further information as mentioned in Procedure 6;
- (f) any representations which have been made in consequence of Procedure 7 & 8; and
- (g) any other document which is in the possession of the authority and which relates to the decision of the Secretary of State or the inspector's report in respect of the order.

15. Notices

15.1 Subject to Procedure 16, any notice required under these Procedures shall be in writing.

16. Use of electronic communications

- 16.1 Any requirement imposed under these Procedures as to the giving or sending by one person to another of a notice or other document may be met by means of an electronic communication if–
- (a) the use of such a communication results in the information contained in that notice or document being available to the other person in all material respects as it would appear in a notice or document given or sent in printed form; and
 - (b) the other person has consented to the information being made available to him/her by such means.
- 16.2 Where, under procedure 16.1, an electronic communication is used for the purposes of giving or sending a document, any requirement for the notice or document to be given or sent by a particular time shall be met in respect of an electronic communication only if the conditions mentioned in procedure 16.1 are met by that time.
- 16.3 For the purposes of Procedure 16.1(a) “in all material respects” means in all respects material to an exact reproduction of the information that the notice or document would contain were it to be given or sent in printed form.

Planning Inspectorate

1 October 2007 *(revised July 2011 to take account of change of Secretary of State)*

C Some relevant publications

Acts of Parliament, statutory instruments, circulars

You can get these from The Stationary Office (you can contact them by telephone on 0870-600-5522 or on their website www.tso.co.uk), also the Office of Public Sector Information on their website www.opsi.gov.uk) or you can look at copies at your local library.

Highways Act 1980

The Public Path Order Regulations 1993 (Statutory Instrument 1993 Number 11)

The Rail Crossing Extinguishment and Diversion Orders Regulations 1993

The Rail Crossing Extinguishment and Diversion Orders, the Public Path Orders and the Definitive Maps and Statements (Amendment) Regulations 1995 (Statutory Instrument 1995 Number 451)

The Highways, Crime Prevention etc. (Special Extinguishment and Special Diversion Orders) Regulations 2003 (Statutory Instrument 2003/1479)

The Town and Country Planning Act 1990

The Town and Country Planning (Public Path Orders) Regulations 1993 (Statutory Instrument 1993 Number 10)

The Wildlife and Countryside Act 1981

The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (Statutory Instrument 1993 Number 12)

The Public Rights of Way (Combined Orders) (England) (Amendment) Regulations 2010 (Statutory Instrument 2010 Number 2127)

Circulars

Department for Environment, Food and Rural Affairs *Rights of Way Circular 1/09 – Guidance for Local Authorities Version 2, October 2009*

Department for Communities and Local Government Circular 03/2009, *Costs Awards in Appeal and Other Planning Proceedings (Advice on awards of costs)*

Circular for procedure rules for rights of way orders (Defra) dated July 2007.

Other publications

Consistency Guidelines Available on our website at www.planningportal.gov.uk/countryside.

Advice Notes Available on our website at www.planningportal.gov.uk/countryside.

Facility Note for Public Inquiries and Hearings Available on our website at www.planningportal.gov.uk/countryside.

A guide to definitive maps and changes to public rights of way – 2008 Revision (NE112). Available from:

Natural England Publications
Communis Print Management
Balliol Business Park West
Benton Lane
Newcastle upon Tyne
NE12 8EW

Email: natural.England@communis.com
Telephone: 0800 694 0505
Facsimile: 0191 2015003

D – Timetable and action to be taken leading up to hearings and inquiries and decisions in written representations*

Written representations

Timetable	Action to be taken
<p>Notice of intention to use the written representations procedure (start date)</p>	<p>We notify the local authority, other local authorities, landowners and occupiers, the applicant, each relevant person, each prescribed organisation and any other person who has asked to be notified that the written representations procedure is to be used. The notice includes the places where documents can be inspected.</p>
<p>Within 2 weeks of the start date</p>	<p>The local authority submits its statement of case, including a copy of the accompanying documents and a list of those documents.</p> <p>As soon as possible after the deadline we copy the statement, with the list of documents, to the applicant and each relevant person and any other person who has indicated that they wish to make written representations.</p>
<p>Within 8 weeks of the start date</p>	<p>The applicant, each relevant person and any other person submits their statements of case, including a list of those documents on the local authority's list and a copy of any other document that make up their evidence.</p> <p>As soon as possible after the deadline we copy the statements to the local authority, the applicant, every relevant person and every other person who has submitted a statement.</p>
<p>Within 14 weeks of the start date</p>	<p>The local authority, the applicant, each relevant person and any other person submits any comments on any or every statement of case.</p> <p>As soon as possible after the deadline we copy these comments to the local authority, the applicant, relevant persons and anyone else who has submitted comments.</p>
<p>Within 18 weeks of the start date</p>	<p>The site visit is held.</p>

Hearings

Timetable	Action to be taken
Notice of intention to hold a hearing given (start date)	We notify the local authority, other local authorities, landowners and occupiers, the applicant, each relevant person, each prescribed organisation and any other person who has asked to be notified. The notice includes the places where documents relating to the hearing can be inspected.
Within 8 weeks of the start date	The local authority submits its statement of case, including a copy of the accompanying documents, and a list of those documents. As soon as possible after the deadline we copy the statement and the list of documents to the applicant, each relevant person and any other person who has indicated that they wish to appear at the hearing. We will return late statements
Within 12 weeks of the start date	The applicant , each relevant person and any other person who has indicated that they wish to appear at the hearing submit their statements of case, including a list of those documents on the local authority's list and a copy of any other document that makes up their evidence. As soon as possible after the deadline we copy the statements and the documents to the local authority, the applicant, every relevant person and any other person who has submitted a statement. We will return late statements
4 weeks before the hearing	The local authority advertises the hearing in a local paper, at both ends of the way and in a place where notices are normally placed in the local area.
Within 20 weeks of the start date	The hearing is held.

Inquires

Timetable	Action
Notice of intention to hold an inquiry given (start date)	We notify the local authority, other local authorities, landowners and occupiers, the applicant, each relevant person, each prescribed organisation and any other person who has asked to be notified. The notice includes the places where documents relating to the inquiry can be inspected.
Within 8 weeks of the start date	The local authority submits its statement of case, including a copy of all the accompanying documents and a list of those documents.

	<p>As soon as possible after the deadline we copy the statement and the list of documents to the applicant, each relevant person and any other person who has indicated that they wish to appear at the inquiry.</p> <p>We will return late statements</p>
Within 14 weeks of the start date	<p>The applicant, each relevant person and any other person who has indicated that they wish to appear at the inquiry submits their statement of case, including a list of those documents on the local authority's list and a copy of any other document that make up their evidence.</p> <p>As soon as possible after the deadline we copy the statements and the documents to the local authority, applicant, each relevant person and every other person who has submitted a statement.</p> <p>We will return late statements</p>
4 weeks before the inquiry	<p>The local authority, each relevant person and any other person submits their proofs of evidence and any summary.</p> <p>As soon as possible after the deadline we copy the local authority's proof and any summary to the relevant and other persons and their proofs and any summaries to the local authority.</p> <p>We will return late proofs of evidence</p> <p>The local authority advertises the inquiry in a local paper, at both ends of the way and in a place where notices are normally placed in the local area.</p>
Within 26 weeks of the start date	<p>The inquiry is opened.</p>

* In the event of written representations, hearings or inquiries held following proposed modifications, and unless we decide otherwise, the local authority, the applicant, relevant persons and any other person have to ensure that their statements of case are received by us **not later than 8 weeks after the date of our notice**. This also applies to re-opened hearings or inquiries. Section 7 refers.

ANNEX E

E - Preparing statements of case and proofs of evidence

Statements of case

1. Statements of case should contain the full particulars of the case which the local authority, those making representations or objections, the applicant, and anyone else proposes to put forward at a hearing or inquiry, or in written representations. They should include the Inspectorate's reference number for the order. Statements should include copies of documentary evidence and a list of these documents (see paragraph 4 below).
2. Statements may also cite the case law that a party intends to call in support of its arguments. If case law is cited, the full report reference should be given. A copy of the case report should be included as an appendix.
3. The order making authority's statement should be set out so as to include an introduction, background information (where necessary), details of the claim or application, the legal tests to be applied, the documentary evidence, user evidence, comments on objections or representations and include a summary. This list is not exhaustive and should only be used as a guide.
4. Case reports, and other supporting material should be put in appendices to the evidence with one volume for each witness' evidence. (Except where a party is relying on evidence already contained in the local authority's statement of case. In this case, the appendix should refer to the document and where it can be found in appendices to the local authority's statement.) Appendices should be bound into a separate volume (or volumes), with a title page and a contents list for each volume. Each page of each volume should be numbered. Each appendix should be separated by an index tabbed divider and numbered or otherwise individually identified within the volume of appendices.
5. Both statements and appendices should be A4 size, and bound or placed in a ring binder so that when opened they can be laid flat. To enable notes to be made on them, statements should be typed on only one side of the paper. Where appendices include larger documents such as plans, these should be folded to A4. (A transparent, plastic wallet to hold them may be useful.) Photographs should be mounted on A4 card, and should be prefaced by a plan showing the viewpoints from which they were taken. Other relevant details, such as their time and date, should be given.
6. In relation to the submission of documents as evidence, Section 46 of the Copyright, Designs and Patents Act 1988 states that '(1) *Copyright is not infringed by anything done for the purposes of the proceedings of a Royal Commission or statutory inquiry..*'. It is our view that this applies to a rights of way inquiries and arguably cases dealt with by hearing or written representations.

7. However, use of copyright material outside of our statutory functions may need permission from the copyright holder. You are reminded that if you are **copying material to send to us**, this must **only** be done with the **owner's permission**, with any licence fee paid. Documents obtained from any previous rights of way case must not be further copied without the permission of the copyright holder (such as Ordnance Survey maps, articles by the Rights of Way Law Review or copies of judgments owned by the transcribers etc).

Proofs of evidence

8. A proof of evidence is the document containing the written evidence which a person appearing at a public inquiry will speak about. There is no equivalent document for hearings or written representations.
9. Proofs of evidence should be concise and concentrate on points in dispute (which those appearing at the inquiry will have identified from examining the other statements of case). They should not rehearse all of the matters which are not in dispute, nor should they refer to new material not previously mentioned in the statement of case. Where it is important to include facts in detail, the proof should focus on what is necessary to make the case. Where the proof makes a point which relies on a document included in a statement of case, the page and paragraph number in that document should be given.
10. The pages and paragraphs of proofs should be numbered. Proofs should not exceed 3000 words and a summary should be provided when a proof exceeds 1500 words. Any summary should be proportionate to the length of the proof but should not exceed 1500 words. Summaries should accurately condense the gist of the proof of evidence, concentrating on the main points at issue. Where a party has provided a summary it is normally only the summary which is read out at the inquiry. The summary should be provided at the same time as the main proof of evidence is submitted.

Inspecting statements of case and proofs of evidence

11. We copy the order making authority's statement of case, without all the supporting documents but including the list of documents put in evidence by the local authority, to all the parties involved in a hearing or inquiry. (We do not copy the order making authority's appendices of evidence – these can be inspected at the order making authority's offices.) The order making authority makes copies of all their documents, including appendices containing documentary evidence, available for public inspection. We copy the other parties' statements of case and documents put in as evidence to the order making authority, who will also make these available for public inspection. We also copy relevant persons' statements of case to the applicant and the applicant's statement of case to relevant persons. We copy every proof of evidence to everyone entitled to appear at the inquiry, and the local authority makes copies available for inspection.

F - Data protection and privacy in the Planning Inspectorate

The Personal Information we process

When we process an order, we may receive personal information from different sources including you, the order making authority and other objectors and supporters to the order.

The type of personal information we will usually process includes your name, address and other contact details. This information is typically contained in letters of support or objection, user evidence forms and other representations submitted to us.

How we use your personal information

We use your personal information only for the purpose of dealing with and considering the relevant order or orders. We hold your personal information only for as long as is reasonably necessary. This is usually 12 months after the issue of the decision, although there is no limit on how long we retain a copy of the decision. The decision on the order may contain some personal data and will be kept permanently.

Who has access to your personal information?

The papers associated with an order are available for public inspection at the local authority's offices. Anyone can view them.

Any person entitled to be notified of a decision can ask to inspect the documents, photographs and plans listed in the decision. We normally agree to other requests to inspect these papers.

Protecting your personal information

You should provide your personal information only if you are happy for it to be placed in the public domain.

Please do not include information about another person (including family members) unless you have told them and they are happy for you to do so.

Your rights to access personal information

For any enquiry or concern about our privacy policy, or to ask for a copy of your personal information, contact:

The Planning Inspectorate
Customer Support Team
Room 3/13
Temple Quay House
2 The Square
Temple Quay

Bristol
BS1 6PN

Telephone: 0303 444 5000

Email: enquiries@planning-inspectorate.gsi.gov.uk

**G – Circular for procedure rules for rights of way orders
issued July 2007**

Link to web for this Circular:

<http://archive.defra.gov.uk/rural/documents/countryside/prow/hipr-circ2007.pdf>