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# **PUBLIC PATH ORDERS**

**The Planning Inspectorate**

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## Introduction

This booklet sets out the procedure for orders made under Section 26, 118 and 119 of the Highways Act 1980 and 257, 258 and 261 of the Town and Country Planning Act 1990 which have been sent to the Secretary of State for the Environment, Food and Rural Affairs for confirmation because objections have been made and not withdrawn. It also sets out what the Secretary of State and inspectors will take into account when they make decisions on orders. We hope this information will help authorities who make orders and those who support or object to orders.

*This booklet has no legal force.*

Orders made under the Wildlife and Countryside Act 1981 and sent to the Secretary of State are dealt with in a similar booklet. You can get copies from our Bristol office.

## **The Planning Inspectorate**

We are an Executive Agency and we report to the Department for Communities and Local Government and the National Assembly for Wales. Our English Rights of Way Section deals with all public path orders in England which are opposed. The Section is based at:

4/04 Kite Wing  
Temple Quay House  
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Temple Quay  
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You will find more detailed information about us in the Chief Inspector's Annual Report and Accounts. You can get the latest edition from Government bookshops.

Our inspectors have a wide range of qualifications and experience. It is their job to look at each order. They are selected carefully and thoroughly trained.

Our administrative staff in Bristol are responsible for receiving the orders and papers from the authorities which make them. These staff also:

- make up the file which is presented to the inspector;
- answer queries;
- arrange site visits, hearings and inquiries;
- send out inspectors' decision letters.

The main contact for everyone involved in making and opposing the order is the case officer. If the decision is to be taken by the Secretary of State rather than our inspector, responsibility for processing the order will be transferred to the appropriate local Government Office. Usually this happens after an inspector has carried out a local public inquiry, hearing or site visit.

## **1 When we receive an order**

- 1.1 As soon as we receive an order we make some checks. We check that an order made under the Highways Act 1980 is in a form which meets the Public Path Orders Regulations 1993 (Statutory Instrument 1993 Number 11). We check that an order made under the Town and Country Planning Act 1990 is in a form which meets the Town and Country Planning (Public Path Orders) Regulations 1993 (Statutory Instrument 1993 Number 10).
- 1.2 When we check the form of an order we have no power to make a definite ruling on whether it meets the Regulations. This kind of ruling can only be made by the courts. However, if we believe there is something wrong with the order, for example if it is not largely in the correct form, we will reject it. We will then return it to the authority which sent it in with a letter explaining the reason for the rejection and asking the authority to let everyone involved know.
- 1.3 We then check that the authority has sent in all the documents we need to support the order as listed in Department of the Environment Circular 2/93. This includes a statement of the reasons why the authority considers we should confirm the order together with any objections and the authority's comments on these.
- 1.4 The authority's statement should not just repeat the criteria of the Section of the Act under which it has been made. It must also explain why the order meets those criteria.
- 1.5 For an order made under the Highways Act 1980, the authority may need to consult other organisations before the order is made and may need their permission. Under paragraph 4(1) of the Public Path Orders Regulations 1993, the authority must send us a certificate to show that they have consulted these organisations and got any permission they need. They must also send us a statement explaining how they consulted the organisations and what the results of these were.
- 1.6 If the authority does not send us any of the documents we need, we will ask for them. This causes a delay in processing the order.
- 1.7 If the form of the order is correct and we have received all the documents we need, we will write to the authority and those who have made objections. In our letter we will explain whether the Secretary of State plans to continue by written representations, a hearing or through a local public inquiry. (Please see parts 2, 3 or 4 of this booklet.)

- 1.8 At this stage, responsibility for the order passes from the authority to the Secretary of State. This means that, even if the authority no longer supports the order, the Secretary of State or our inspector would be able to take account of any other supporter's comments when deciding whether or not to confirm it. The authority cannot withdraw an order once it has gone to the Secretary of State.

## **2 The procedure for written representations**

- 2.1 By 'written representations' we mean that the Secretary of State or our inspector makes a decision based on the statements sent in by the authority making the order and objectors. There is no inquiry, but our inspector will visit the site before making a decision or writing a report.
- 2.2 By 'objectors' we mean anyone who has made an objection to the authority before the deadline set out in the notice advertising the order. All objectors have a right to be heard by the inspector if they want.
- 2.3 If necessary we will write to objectors and the authority to tell them that the Secretary of State considers the order is suitable for the written representations procedure. For the objectors we will also enclose a copy of the authority's statement of the reasons the order should be confirmed, together with the authority's comments on the objections.
- 2.4 The written representations procedure is most suitable for orders which have attracted only a few objections, with none from a Parish Council. We must be sure that there is not too much evidence to assess or evidence which is too complicated. Otherwise an inquiry or a hearing will be necessary. If any objector or the authority wants to be heard, we will hold a local public inquiry or a hearing following the procedure set out in parts 3 and 4 of this booklet.
- 2.5 Once everyone has agreed to follow the written representations procedure, we allow two weeks for objectors to comment on the authority's statement and comments (mentioned in section 2.3 above). We will send any comments we receive to the authority, who will have 14 days to reply. This exchange of comments will continue until the authority and objectors have no more comments to make. It is important to remember that repeating arguments or dragging out the process will not benefit anyone and will delay the decision on the order. So everyone should make sure that they give a full statement of their case in their first written representation.
- 2.6 Once all comments have been exchanged our inspector visits the site.
- 2.7 If any of the objectors wants to go with the inspector, they must ask us in writing as soon as possible. We will then negotiate a date when the objector, the authority and our inspector can be there.

(The authority must be there.) We will also invite any other objectors to come along if they want to.

- 2.8 The purpose of the site visit is for the inspector to see the order path and surrounding area and to take note of physical features, such as stiles, gates, fences, walls, hedges and trees. During the site visit, the inspector cannot discuss the arguments put forward by the authority or objectors. But both sides may point out physical features they have mentioned in their statements.
- 2.9 Following the site visit, the inspector studies the order and all comments made and then applies the relevant criteria to reach a decision.

*Late representations*

- 2.10 If anyone sends in evidence after the site visit but before the decision has been made, we will pass it to the inspector. The inspector will then decide whether new questions have been raised which may affect the decision. If this is the case, the inspector will send the evidence to everyone who has made written representations, giving them the chance to reply. He or she will also consider whether a local public inquiry or a hearing is necessary.

### **3 The procedure for a local public Inquiry**

#### *The first stages*

- 3.1 We will hold an inquiry if any objector decides that they do not want to follow the procedure for written representations and a site visit, or if we consider that an inquiry is necessary.
- 3.2 We will write to the authority and all objectors to tell them that a local public inquiry will be held into the order and that a date and place will be fixed as soon as possible. For the objectors we will also enclose a copy of the authority's statement of the reasons the order should be confirmed, together with the authority's comments on the objections.
- 3.3 Many people may have objected to the order. So it is not practical for us to consult everyone when fixing dates for inquiries. We will ask the authority to suggest a date, but the date also depends on when the most suitable place is available within reasonable travelling distance of the order site.
- 3.4 Once the date and place have been arranged, we will send the details to the authority, all objectors and certain national and local organisations which have an interest in rights of way orders. Then we will appoint an inspector for the Secretary of State.
- 3.5 We will only put off an inquiry in very special circumstances.

#### *Advertising the inquiry*

- 3.6 The authority must advertise the inquiry in a local newspaper. They must also put up notices at either end of each way affected by the order and wherever public notices are usually displayed in the district. They must do this at least 14 days before the inquiry is due to start.

#### *Who can go*

- 3.7 Anybody can go to the inquiry.
- 3.8 No one has to go, but we expect the authority and anyone who has asked us for the inquiry to be there. (If they cannot they should send a representative.)
- 3.9 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 that evidence which is able to be cross examined.

#### *Proof of evidence*

- 3.10 It is helpful if the authority and objectors prepare a proof of evidence. (A proof of evidence is a written statement of the evidence intended to be given at the inquiry together with a copy of any documents intended to be produced.)
- 3.11 This can save time at the inquiry because each side has a clear idea of what the other will be saying. It can also help avoid people asking for the inquiry to be adjourned (suspended) because they have not had the time to prepare an argument against unexpected evidence (see sections 3.30 and 3.31 of this booklet). People can always add to their proof of evidence at the inquiry.
- 3.12 If anyone decides to prepare a proof of evidence, they should send it to us at least four weeks before the start of the inquiry. Objectors should send copies of their proof of evidence to the authority and us (for the inspector). The authority should send copies of their proof of evidence to the objectors and us.

#### *The length of the inquiry*

- 3.13 Most inquiries take one or two days. However, there is no way of predicting how long an inquiry will last. It depends on the number of people who want to speak and the size of the order. It also depends on the amount of evidence that has to be presented.

#### *The procedure at the inquiry*

- 3.14 The inspector decides the procedure at an inquiry. There are no procedural rules for rights of way inquiries, but the inquiry will usually take the following form.

#### *Opening the inquiry and the inspector's introduction*

- 3.15 The inspector will introduce himself or herself and explain how the law under which the order has been made affects the case. He or she will then explain how the inquiry will continue.
- 3.16 The inspector will ask for the names of those who want to speak and then decide what order they should speak in. Objectors have a right to speak at the inquiry, but the inspector will usually let anyone with something relevant to say speak at the inquiry. Anyone who wants to speak should try to be there at the start of the inquiry, but this is not essential.

- 3.17 It is helpful if everyone at the inquiry writes clearly their name and full address and that of any organisation they may represent on the attendance list that the authority will pass round.
- 3.18 At this stage of the inquiry you should ask any questions about procedure, tell the inspector if you have to leave early or make any other requests for special arrangements. Once the inspector has explained the procedure, he or she will keep to it unless there are very good reasons to change.

*Presenting the cases*

- 3.19 The authority will usually present its case first. But if the authority no longer supports the order, it will be up to another person who supports the order to present the case.
- 3.20 The authority may introduce witnesses to give evidence to the inquiry. If those witnesses have proofs of evidence to put forward as evidence, the authority should provide copies for the objectors and the inspector at the inquiry.
- 3.21 The objectors will normally be allowed to question these witnesses, but the inspector will stop them if it becomes clear that they are making a statement rather than asking questions, or if their questions are repetitive. This procedure is commonly known as 'cross-examination'.
- 3.22 People on the same side will not normally be allowed to cross-examine each other unless they disagree on an important point. The inspector may also want to ask the person speaking some questions.
- 3.23 Anyone who wants to speak in support of the order will normally be heard after the authority. These people and their witnesses may have to answer questions from the objectors.
- 3.24 The objectors will then present their cases and call their witnesses (if any). Other people will then be allowed to speak against the order. Anyone who gives evidence may have to answer questions from the other side.
- 3.25 It is not the idea that everyone should be able to say what they like at the inquiry. The inspector may refuse to hear evidence which is irrelevant, repetitious or offensive.
- 3.26 If someone speaking against the order has presented a lot of evidence and called several witnesses, the inspector will normally allow them to make a closing statement. The closing statement

should be a brief summary of the case. It may also refer to points made by the other side, but should not introduce new evidence.

- 3.27 After the objectors have presented their cases, including any closing statements, the authority will make a closing statement which may also refer to points made by the objectors. The closing statement should not introduce any new evidence, but if the authority suggests a modification (a change) to the order, see section 6.9 of this booklet, the objectors will be given the chance to consider this and reply.

#### *The site visit*

- 3.28 The inspector will usually have visited the site alone before the start of the inquiry.
- 3.29 At the inquiry, usually near the end, the inspector will announce the arrangements for another site visit. Anyone at the inquiry can go with the inspector on this visit. During the site visit, the inspector will look at the physical features of the order path and its surroundings. No new evidence can be given, but anyone may point out the features mentioned at the inquiry.

### **Other general points about local inquiries**

#### *Professional representation*

- 3.30 No one has to have a professional representative, but anyone can instruct a lawyer or another professional to present their case. The inspector will treat all arguments with the same care, whoever presents them, and will make sure that the inquiry is carried out fairly.

#### *When new questions come up unexpectedly*

- 3.31 If unexpected questions are raised and the other side has not had the chance to consider them, the inquiry may have to be adjourned. This is up to the inspector.
- 3.32 Before adjourning the inquiry, the inspector will announce when and where it will start again. Adjourning the inquiry may delay the inspector's decision. So everyone giving evidence should try to make sure they do not introduce unexpected questions.

### *Late evidence*

- 3.33 If evidence is introduced after the inquiry but before the decision, what happens to the evidence depends on who is to decide the case. If the inspector is to make the decision, we will pass the evidence to him or her. The inspector will decide whether new questions have been raised which may affect the decision. If this is the case, the inspector will send the evidence to everyone who presented their case or objected at the inquiry, giving them the chance to reply. He or she will also consider whether the inquiry should be re-opened. All this takes time, so everyone should try to make sure that they make the full case at the inquiry. If anyone holds evidence back deliberately from the inquiry and then introduces it late to get the inquiry re-opened, they may have to pay the costs of the inquiry. If the Secretary of State is to make the decision, the inspector will only report on the evidence available at the inquiry. We will send any later evidence to the Secretary of State.

### *Comments on procedure*

- 3.34 If anyone wants to comment on the way the order has been made or processed by the authority, or the way we have dealt with the order since we received it, they should speak to the inspector at the start of the inquiry. The inspector will normally ask the authority to confirm that all the legal procedures have been carried out.

### *Legal submissions*

- 3.35 When someone at the inquiry challenges the order or an objection on a question of law, it is known as a 'legal submission'. A legal submission should be put in writing and given to the inspector and everyone else at the inquiry. Everyone will have a chance to comment on the submission.
- 3.36 The inspector will usually consider legal submissions after closing the inquiry. It would be unusual for an inspector to consider them at the inquiry unless they threatened to prevent the inquiry continuing.
- 3.37 The inspector cannot give a legal ruling on the questions raised by a legal submission and any challenges to it or comments on it. This can only be done by the courts. However, if the legal documents are relevant to the inspector's decision on the order, he or she will have to make a decision on them.

### *Scope of the inquiry*

- 3.38 The purpose of the inquiry is to hear evidence in relation to the order, in line with the Act under which the order was made (see part 5 of this booklet). The inquiry is not an opportunity to challenge the authority's administration or to put forward political arguments.

## 4 The hearing procedure

- 4.1 Authorities send rights of way orders to the Planning Inspectorate so that the Secretary of State can decide whether they should be confirmed. In practice, an inspector makes this decision. In the past, we dealt with orders in one of two ways. Either by written representations or by holding a local public inquiry. (Please see parts 2 and 3 of this booklet.)
- 4.2 We have been told that local public inquiries can be too formal and intimidating for members of the public. So we have decided that if possible, we should have a hearing instead of an inquiry.
- 4.3 A hearing is a discussion led by the inspector who will decide the case. It is a simple and informal way of considering the reasons for and against confirming an order. To help with this, everyone involved in the discussion should sit around a table. A small committee room is usually suitable for a hearing. The council chamber with its more formal atmosphere should not normally be used. We expect a hearing will benefit everyone who attends, not only those directly involved. So, if we offer a hearing instead of a local public inquiry, we hope the offer will be accepted.
- 4.4 Hearings have become a successful way of deciding planning appeals. Our experience with hearings has shown that because of the 'round-table' format, a hearing is not suitable if one or more of the following apply:
- So many people want to speak that a round-table discussion would not be possible.
  - There are complicated policy matters.
  - There are important legal issues.
  - Cross-examination is needed.

### *Agreeing the procedure*

- 4.5 We will look at all cases where we would normally hold an inquiry to see whether a hearing would be suitable. If we think it would, we will offer a hearing. We ask everyone involved to let us know, within 10 working days of the date of the offer, whether they want us to hold a hearing. They should bear in mind that if we hold a hearing they cannot apply for a summons to force anyone to attend. We will only arrange a hearing if everyone involved agrees.

- 4.6 We will aim to arrange the hearing within 12 weeks from the date of the agreement. And we will give everyone involved at least 28 days' notice of the date, time and place of the hearing. We will tell the objectors about the hearing, and the authority will tell anyone else who has an interest in the land in question, or has written to them about the order. The authority will also let those people know:
- Where and when they can inspect copies of the pre-hearing statements and any other relevant documents.
  - That if the inspector agrees, they can take part in the discussion at the hearing.

The authority will also advertise the hearing in the local area. We suggest that the authority should at least put notices with information about the date, time and place of the hearing at both ends of the relevant path.

#### *Giving information*

- 4.7 We will only get the full benefits of a hearing if everyone involved agrees to give us the documents, other evidence and arguments they intend to rely on, well before the hearing. This means that everyone involved can study the issues thoroughly beforehand. The hearing can then be an open discussion of the main issues, without witnesses having to be examined and re-examined in the traditional way. So it is very important that the objectors and the authority send us a written statement at least 4 weeks before the date of the hearing. The statement should provide full details of the case they will make at the hearing, including a list of any documents they will refer to and, if possible, copies of the relevant sections from those documents.
- 4.8 The statements will be given to the inspector to study. At the same time, the objectors should send copies of their statements to the authority. We will send a copy of the authority's statement to the objectors. If the authority produces an extra statement, they should send a copy to us, and to the objectors.
- 4.9 Everyone involved must meet the timetable if we are to shorten the procedures. If the inspector is not given the information he or she needs at the right time, we may have to delay the hearing, or hold a local public inquiry instead.
- 4.10 We will arrange a local public inquiry if, before the hearing opens, an objector, the authority, or we decide a hearing is no longer suitable. During the hearing, if an objector or the authority decides the procedure is not appropriate, they should tell the inspector who

will talk to everyone involved, and decide whether we should hold a local public inquiry instead. If the inspector decides that the hearing procedure is no longer appropriate, he or she may stop the hearing and ask for us to arrange a local public inquiry.

*The procedure at the hearing*

4.11 The inspector will explain what the hearing is about. He or she will:

- Ask any questions he or she has about the order or the plans.
- Describe the case as he or she understands it having read the papers and visited the site.
- Say what the concerns appear to be and check whether everyone agrees.

After that, the concerns will be discussed in turn.

4.12 The authority will normally start by explaining their case. They may be represented by their legal adviser, but this is not essential. Everyone involved should have had the chance to read all the written material beforehand so it should not need to be read out. If possible, new material and documents should not be produced once the hearing has opened, because the hearing may have to be postponed to give everyone time to consider them. If new documents are produced, the inspector may say whether he or she thinks the hearing should be postponed, and ask everyone at the hearing for their views. If everyone agrees that it should continue, the inspector will allow them to ask questions about any matters which need extra information or explanation. Everyone taking part in the hearing will be encouraged to ask as many relevant questions as they like. The authority will be asked if they want to make any final comments before the discussion closes and the site visit takes place.

4.13 The inspector may decide that certain matters could be dealt with more easily if the discussion continued at the site in question. He or she will only do this when satisfied that:

- The weather conditions are suitable.
- The discussion can continue without anyone being at a disadvantage.
- Everyone at the hearing agrees and can attend.

- 4.14 If the hearing is closed before the site visit takes place, the issues cannot be discussed at the site. The objectors and the authority will be asked if they want to go with the inspector to the site visit. Anyone at the hearing can also go.
- 4.15 Once the hearing and site visit have ended, the inspector will study all the evidence that was presented, both in writing and verbally, at the hearing. Then, he or she will write a decision letter. A copy of the letter will be sent to the authority, the objectors, and anyone else who has asked for a copy.

## **5 The main points which the Secretary of State or Inspector has to take into account**

5.1 The Act and Section under which an order is made will govern the matters which the inspector can take into account when considering a decision. Below is a guide to the main questions to be considered for each type of order which this booklet covers.

### **The Highways Act 1980**

#### **Section 26 (creation orders)**

5.2 Section 26 of the Highways Act gives an authority the power to create a footpath or bridleway. The authority can do this without getting permission from the person who owns the land that the proposed path will run over.

#### *The questions that will affect the decision*

5.3 The Secretary of State or inspector will only confirm the order if they are satisfied that the reason for making the order is one of those given in Section 26 of the Highways Act 1980. These reasons are as follows:

- There is a need for the new path.
- It is a good idea to create the new path, taking account of:
  - How it will be more convenient or enjoyable for most of the people living locally or other members of the public.
  - How it will affect the rights of those with an interest in the land (after considering the compensation they could receive).

#### **Section 118 (extinguishment orders)**

5.4 Section 118 gives an authority the power to extinguish a footpath or bridleway (remove its status as a public right of way). In making the order the authority must be satisfied that the path should be extinguished because it is not needed by the public.

#### *The questions that will affect the decision*

5.5 The questions which must be asked in deciding whether to confirm an extinguishment order are as follows:

- Is it right to close the path after taking into account how often it is or could be used?
- How will closing the path affect the land next to the path (after considering the compensation those who own the land could receive)?

5.6 When considering an extinguishment order, the Secretary of State or inspector will normally ignore any obstructions to the path, even if they are already blocking the way. He or she will consider how much more the path would be used if the obstructions were taken away.

### **Section 119 (diversion orders)**

5.7 Section 119 of the Highways Act 1980 gives an authority the power to divert a footpath or bridleway in the interests of the owner, tenant or person using the land crossed by the path or in the interests of the public.

5.8 In making the order, the authority must be sure that unless the existing path connects with another highway the diverted route will end at the same place. If the existing path does connect with another highway and the order will change the place it ends, it must still connect to another point on the same highway or a highway which is connected to it. Any change in the place a path ends must be as convenient to the public as the original end of the path. The authority must also make sure that not all of the route shown in the order as the alternative path is an existing public right of way. Otherwise the order would have the effect of removing a path, rather than diverting one.

#### *The questions that will affect the decision*

5.9 The Secretary of State or the inspector must be sure of the following:

- The order is in the best interests of the person or people named in it (see section 5.7 ).
- The diverted path will not be much less convenient to the public.
- It is a good idea to divert the path, taking into account:
  - How it will affect the public's use of the path.
  - How it will affect the land next to the existing path.

- How it will affect the land it is diverted through (after considering the compensation those affected could receive).

5.10 When considering an order made under section 118 of the Highways Act, the Secretary of State or inspector can take account of section 118(6) which allows for temporary circumstances preventing the use of the way being disregarded. Whilst there is no direct read across for orders made under section 119, it is considered that the Secretary of State or inspector should use his/her best judgment according to the particular circumstances. For example, if the route to be diverted is overgrown, it would be sensible for the Secretary of State or Inspector to compare the convenience or how enjoyable the new route would be compared to the old route, notwithstanding the fact that it is currently overgrown.

### **Concurrent Highways Act orders**

- 5.11 Sometimes an authority will ask the Secretary of State to consider a creation or diversion order together with an extinguishment order. Under Section 118(5) of the Highways Act 1980 the Secretary of State or inspector can consider whether a certain route is still needed if a new one is being created or diverted.
- 5.12 The most important point to consider here is how convenient the new or diverted path will be. If the Secretary of State or inspector finds it will be much less convenient than the path which is to be closed, he or she may not confirm the extinguishment order (see section 5.5). However, applying for two orders at the same time does not mean that they are bound to have the same decision made on them. For example, an inspector may not be able to confirm one of the orders because it does not meet the criteria set out in the Act, but may find that the other order, when considered alone, should be confirmed.

### **The Town and Country Planning Act 1990**

#### **Section 257 (diversion and stopping-up orders)**

- 5.13 Section 257 gives an authority the power to divert or stop up (extinguish) footpaths or bridleways to develop the land they are on. The development must be:
- In line with planning permission given under Part III of the Act or;
  - by a government department.

- 5.14 The Secretary of State or the inspector must be sure that-to stop up or divert the path is necessary for the development to be carried out.
- 5.15 If the Secretary of State or inspector finds that the order is necessary, he or she may consider any disadvantages or loss likely to be caused as a result of the order. If the disadvantages or loss are too great, the order may not be confirmed.
- 5.16 The Secretary of State or the inspector will not consider the need for the development. But he or she will be aware of the purpose of the development and how important it was considered to be when planning permission was granted. When reaching a decision on the order, he or she must take into account the advantages gained by closing or diverting the path, as well as the disadvantages.
- 5.17 There are no arrangements for compensating landowners whose land is needed for a new public right of way under this section, or for compulsorily purchasing that land. So the authority must have the landowner's permission to create a new right of way over the land.

### **Section 258 (extinguishment orders)**

- 5.18 Section 258 gives an authority the power to stop up a footpath or bridleway on its own land if it plans to develop the land.
- 5.19 The Secretary of State or the inspector must be sure that either:
- The authority has provided or will provide an alternative right of way.
  - An alternative right of way is not needed.

### **Section 261 (temporary stopping-up orders)**

- 5.20 Section 261 gives an authority the power to stop up or divert a footpath or bridleway for a while so that minerals can be mined from the surface. The authority must restore the path afterwards to a reasonable condition.
- 5.21 The Secretary of State or inspector will consider the same criteria as for a Section 257 diversion and stopping-up order (see 5.13 and 5.14).

## **6 The Decision**

- 6.1 Nearly all orders are decided by an inspector on behalf of the Secretary of State. The Secretary of State will make the decision for a small number of orders. When this happens, we will tell everyone involved why.
- 6.2 Whether the Secretary of State or the inspector makes the decision does not affect the procedures or considerations set out in the other chapters of this booklet. We will explain clearly, in writing, who will be making the decision on any order.

### **Decision by an inspector**

- 6.3 The inspector will explain his or her decision in a letter to the authority. The letter will usually:
- Briefly describe the paths in the order;
  - Summarise the main points raised; and
  - Set out the inspector's conclusions and decision.
- 6.4 We will send copies of the inspector's letter to objectors, other people who were given permission by the inspector to speak at the inquiry and other people who have asked for a copy.

### **Decision by the Secretary of State**

- 6.5 The inspector will send a report to the Secretary of State and make a recommendation as to whether the order should be confirmed, confirmed with modifications or not confirmed at all.
- 6.6 The Secretary of State does not have to accept the inspector's recommendation and must consider everything which is relevant. The letter to the authority will be signed by an officer of the Secretary of State.
- 6.7 Copies of the Secretary of State's letter and the conclusions from the inspector's report will go to the authority and other people mentioned in section 6.4.

The types of decision the Secretary of State or inspectors can make

- 6.8 When making a decision, the Secretary of State or the inspector has three options:
- To confirm the order as made;
  - To confirm the order with some modifications to it; or
  - Not to confirm the order.
- 6.9 When the Secretary of State or inspector confirms the order with some modifications to it, he or she is actually changing its content. The changes may be quite small or they may be major. The inspector will explain the exact modifications clearly in the letter.
- 6.10 If the inspector proposes to move the line of the path or for the path to be widened, the Secretary of State must advertise this. This will give people the chance to object to the modifications.
- 6.11 Objections to the modification will be considered by the Secretary of State or an inspector (usually the same inspector who suggested them). There may also be another inquiry.

## 7 Costs

- 7.1 If a decision is made following the written representations procedure there is no power to make those who make representations responsible for some or all of the other party's costs.
- 7.2 Authorities, objectors and anyone else involved with the order are normally expected to cover their own expenses in inquiry cases. However, anyone can ask the Secretary of State to order that one side pays some or all of the other side's costs.
- 7.3 Before agreeing to this, the Secretary of State will have to be sure that the person applying had to pay unnecessary costs because of the unreasonable behaviour of the other side.
- 7.4 There is no legal definition of the phrase *unreasonable behaviour* in this context. *Unreasonable* here has its ordinary meaning. Either side may have to pay all the costs if the inquiry could reasonably have been avoided. For example, the authority may have to pay everything if the inspector finds a basic defect in the order and rejects it, so that the objectors have wasted money going to the inquiry or hearing.
- 7.5 An objector may make an objection which is later found not to be relevant to a decision on the order. If we have given the objectors the chance to change an irrelevant objection and they have not done so, they may be treated as having acted 'unreasonably' by taking the irrelevant objection to the inquiry.
- 7.6 Whether or not an objection to an order is irrelevant will depend on the type of order and the circumstances of the case. As a guide to what the inspector will consider for each type of order, see part 5 of this booklet.
- 7.7 The Secretary of State may decide that it is necessary to hold an inquiry even though no one else wants one. In these circumstances, objectors do not have to go to the inquiry but should let us know if they cannot or do not want to go. Their choice not to take part in the inquiry will not be treated as 'unreasonable behaviour'.

- 7.8 If an objector who asks for an inquiry or hearing fails to turn up or be represented without telling us, they may have to pay at least part of the authority's inquiry or hearing costs. To avoid these costs, they would have to show that there is a good reason why they should not pay.
- 7.9 For orders made under the Town and Country Planning Act 1990, who pays the costs will not depend on the result of the order.
- 7.10 However, the decision on certain orders made under the Highways Act 1980 may result in the authority automatically having to pay the costs. These types of cases are known as 'analogous' orders and are mentioned in section 7.13 below.

#### *Applying for costs*

- 7.11 If you want to apply for costs, you should tell the inspector after the authority has made its closing statement but before the hearing or local inquiry is officially closed. The inspector will normally remind you of this at the start of the hearing or inquiry. It should then be clear whether you have a case for arguing that someone has acted unreasonably. The inspector will listen to your case for costs and invite the other side to answer. After the hearing or inquiry, the inspector will make a decision on your application for costs. If, however, the inspector proposes modifications to the order in question s/he will make a report on your application for costs to the Secretary of State, who will decide it. When you apply for costs you will not be expected to work out the amount you are claiming straight away. This will be dealt with when a decision has been made on whether you are entitled to costs.

#### *Late application*

- 7.12 We will only accept an application for costs after the inquiry or hearing has closed if you can show you had a good reason for not applying earlier.

To make a late application, please write to:

The Planning Inspectorate  
4/10 Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol  
BS1 6PN

If your late application is accepted, we will tell you and the other people involved and arrange for both sides to make written representations before the Secretary of State makes a decision.

*'Analogous' orders*

- 7.13 An order made under Section 26 of the Highways Act 1980 is considered to be similar, to a compulsory purchase order in that, if it is accepted, the order takes away the landowner's rights to or interest in the land. The landowner then has a right to compensation. This kind of order, where compensation may be paid, is known as 'analogous'. Extinguishment and diversion orders made under sections 118 and 119 of the Act may be analogous depending on the circumstances of the case.
- 7.14 What this means is that if a person with an interest in land over which a path is to be created, diverted or closed objects at a local inquiry or hearing and is successful, that person's costs will automatically be paid by the authority.
- 7.15 If costs are awarded for an analogous order, it does not imply that the authority has behaved unreasonably.
- 7.16 You will find a fuller statement of the Secretary of State's policy on awarding costs in Department of the Environment Circulars 8/93 and 2/93 (Annex A, paragraphs 11 to 16 were revised by a Department for Environment, Food and Rural Affairs' letter to all local authorities in England dated 2 August 2004). These statements can be viewed on our website at [www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk).

## 8 Complaints

### *Complaining to us*

- 8.1 The letter we send out to let people know we have received the order will give the name of the officer dealing with the case. You should contact this person first if you have any questions or complaints. If you are unhappy about the way your problem has been dealt with, you can contact our Quality Assurance Unit at:

The Planning Inspectorate  
Quality Assurance Unit  
4/11 Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol  
BS1 6PN

Telephone: 0117 372 8252

Fax: 0117 372 8139

Email: [complaints@planning-inspectorate.gsi.gov.uk](mailto:complaints@planning-inspectorate.gsi.gov.uk)

- 8.2 If you have any complaints or questions about a decision, or about the way we have handled the Order, please write to the Quality Assurance Unit at the above address.

The Quality Assurance Unit will either respond directly to you, or ask a section within the Inspectorate to reply, because they have specific knowledge.

We will investigate your complaint and you can expect a full reply within three weeks. However, we can't reconsider an Order if we have already given our final decision on it. The only time we will reconsider an Order is if you successfully challenge our decision in the High Court.

### *The High Court*

- 8.3 You can challenge the decision of the Secretary of State or the inspector on legal grounds in the High Court.
- 8.4 If the inspector has confirmed the order, you must apply to the High Court within 6 weeks of the decision being published in the newspaper.
- 8.5 If the inspector has not confirmed the order, you must apply to the High Court within 3 months of the date of the inspector's decision.
- 8.6 For your challenge to be successful, you would have to show that either:
- The inspector or the Secretary of State had overstepped their powers in some way; or
  - Any relevant criteria had not been met and this has damaged your interests.

The Parliamentary Commissioner for Administration (the Ombudsman)

- 8.7 If you think that you have been treated unfairly because we or the inspector have not done our job properly, you can ask the Parliamentary Commissioner for Administration (the Ombudsman) to investigate. You cannot contact the Ombudsman direct. You must go through a Member of Parliament (MP). This does not have to be your local MP, but in most cases this will be the easiest person to approach. (You will find their name and address in the local library.) The Ombudsman has no power to question the merit of the order or to change the decision.

### *The Administrative Justice & Tribunals Council*

- 8.8 If you consider that there was something wrong with the basic procedure we used to process the order, you can complain to the Administrative Justice & Tribunals Council at:

81 Chancery Lane  
London  
WC2A 1BQ

The Council will take the matter up if they think it comes within their powers. They are **not** concerned with the merit of the order and have no powers to change the decision.

### *The Local Ombudsman*

- 8.9 If you have a complaint about the way the authority has handled the order the Local Ombudsman may be able to help.

But the Local Ombudsman cannot question the merit of an order or change the decision. You can get a booklet explaining how to make a complaint by writing to:

There are three Local Government Ombudsmen in England. Each of them deals with complaints from different parts of the country:

You can get a booklet explaining how to make a complaint by writing to :

London boroughs North of the River Thames (including Richmond but not including Harrow or Tower Hamlets), Essex, Kent, Surrey, Suffolk, East and West Sussex, Berkshire, Buckinghamshire, Hertfordshire and the City of Coventry:

Tony Redmond  
Local Government Ombudsman  
10th Floor  
Millbank Tower  
Millbank  
London SW1P 4QP  
Phone: 020 7217 4620  
Fax: 020 7217 4621

London Borough of Tower Hamlets, City of Birmingham, Solihull MBC, Cheshire, Derbyshire, Nottinghamshire, Lincolnshire, Warwickshire and the North of England (except the cities of Lancaster, Manchester and York:

Anne Seex  
Local Government Ombudsman  
Beverley House  
17 Shipton Road  
York YO30 5FZ  
Tel: 01904 380200  
Fax: 01904 380269

London boroughs South of the River Thames (except Richmond) and Harrow; the cities of Lancaster, Manchester and York; and the rest of England, not included in the areas of Tony Redmond and Anne Seex:

Jerry White  
Local Government Ombudsman  
The Oaks No 2  
Westwood Way  
Westwood Business Park  
Coventry CV4 8JB  
Phone: 024 7682 0000  
Fax: 024 7682 0001

## **Annex A - Some publications on Rights of way orders**

### **Acts of Parliament and Regulations**

1 *The Highways Act 1980*

Sections 26, 118 and 119 cover creation, extinguishment and diversion orders. Schedule 6 sets out the procedures for making and confirming these orders.

Note - The Highways Act 1980 has been amended by several Acts of Parliament. The changes which relate to public path orders include those made under Schedule 16 of the Wildlife and Countryside Act 1981 (amending Section 119 and Schedule 6 of the 1980 Act).

2 *The Public Path Orders Regulations 1993 (Statutory Instrument 1993 Number 11)*

There give the form that orders made under sections 26, 118 and 119 should be in, and the form for notices advertising the order. Please also see 5 below.

3 *The Town and Country Planning Act 1990*

Sections 257, 258 and 261 cover diversion and stopping up orders to allow development. Schedule 14 sets out the procedures for making and confirming these orders.

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

These give the form that orders made under section 257 should be in, and the form for notices advertising the order. Please also see 5 below.

5 *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)*

These include amendments to the Town and Country Planning (Public Path Orders) Regulations and the Public Path Orders Regulations 1993.

## **Circulars**

*Department of the Environment Circular 2/93, Public rights of way*

This gives advice on many issues connected with recording, maintaining, protecting and changing the rights of way network.

Department of the Environment Circular 8/93, Awards of costs incurred in planning and other (including compulsory purchase order) proceedings

This gives advice on awarding inquiry costs, including cases involving rights of way orders.

*Department of the Environment Circular 7/95, Amendment regulations and advice on public path orders*

This describes the conditions contained in The Rail Crossing Extinguishment and Diversion Orders, the Public Path Orders and the Definitive Maps and Statements (Amendment) Regulations 1995 (Statutory Instrument 1995/451). It also gives guidance on how the Highways Act 1980 can be used to close a public path and create or divert another path which can be used as an alternative.

### *Note*

You can get the publications listed above from SO bookshops. You can also look at copies in your local libraries or council offices.

## **Other publications**

*A guide to definitive maps and changes to public rights of way.*

This booklet is produced by Natural England (originally by the Countryside Agency) and is available from:

<http://www.naturalengland.org.uk/>

## ADDENDUM TO THE PUBLIC PATH AND DEFINITIVE MAP ORDER BOOKLETS – CHAPTER 5

To assist Inspectors in their decision making, the Planning Inspectorate has developed a set of Rights of Way Advice Notes. These Advice Notes provide guidance to Inspectors on the latest developments in rights of way law and practice. They currently cover the following subjects:

<b>Subject</b>	<b>Advice Note No.</b>
Conduct of inquiries where the Order Making Authority do not actively support an order.	1
Conduct of site visit relating to rights of way orders.	2
Introduction of case law by the parties to an order; legal submissions at inquiries; and consideration of new evidence by Inspectors.	3
Definition of "cross roads".	4
Definitive Map & Statement – Precedence.	5
The Sunningwell judgment and the meaning of "as of right".	6
Interpretation of the Mayhew and Lasham judgments.	7
Advice on the definition of 'byway open to all traffic' and the effect of the Masters judgment.	8
General guidance to Inspectors on public rights of way matters.	9
Inquiries and Hearings into proposed modifications – the Marroitt judgment.	10

Wildlife and Countryside Act 1981 – The meaning of “private carriage road” – Dunlop judgment.	11
Wildlife and Countryside Act 1981 – vehicles in the countryside. Robinson v Adair, Stevens v SSE, R v Planning Inspectorate Cardiff ex parte Howell.	12
Definitive Map and Reclassification Orders.	13 (withdrawn – now covered in the Consistency Guidelines)
Legal Memory	14
Breaks in user caused by Foot and Mouth Disease.	15
Widths on Orders.	16
Guidance for Inspectors on cycle and horse-drawn carriage use: claims for byways open to all traffic under s31 of the Highways Act 1980 and common law.	17 (now withdrawn)
Roads Used as Public Paths (RUPPS) reclassified under the Countryside Act 1968.	18 (now withdrawn)
Human Rights Act 1998.	19
Inspectors’ Power to Modify Definitive Map Modification Orders.	20

These notes are publicly available and can be found on our website at [www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk) under ‘publications’ followed by ‘Rights of Way’.

Paper copies are available from:

The Planning Inspectorate  
4/04 Kite Wing  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

In addition to the Advice Notes, the Inspectorate has also produced a document called the Consistency Guidelines. The Guidelines have been written to assist Inspectors in their consideration of orders made under the Wildlife and Countryside Act 1981. The Guidelines set out the various types of evidence Inspectors are likely to be presented with and provides them with a benchmark for the treatment of this evidence.

The Consistency Guidelines are available on our website. Paper copies are also available on written request to the above address.

Both the Advice Notes and Consistency Guidelines are subject to change and revision from time to time. When amendments are made, or new Advice Notes are prepared, we will update our website and ensure the date of revision is clear. If you intend to rely upon any information contained in these documents as part of your case, you will need to check that the information is the latest available by either checking our website, contacting the case officer responsible for your case or by phoning 0117 372 8896.