

Title: Reforms to public rights of way in response to Penfold Review IA No: Defra1410 Lead department or agency: Defra Other departments or agencies: Local Authorities and the Planning Inspectorate (PINS)	Impact Assessment (IA)		
	Date: 26/04/2012		
	Stage: Consultation		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Dave Waterman			
Summary: Intervention and Options			RPC: AMBER

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£n/k	£n/k	£n/a	Yes	OUT

What is the problem under consideration? Why is government intervention necessary?

The Penfold Review on non-planning consents (published in July 2010) was concerned with consents that have to be obtained alongside or after, and separate from, planning permission in order to complete and operate a development. The report found that non-planning consents have a serious impact on how efficiently and effectively the end-to-end development process operates. Rights of way consents were seen as a significant source of risk and cost from delay because they are normally dealt with after planning permission has been granted and there is no timetable set for decision makers' consideration of applications.

What are the policy objectives and the intended effects?

The objective is to remove inefficiency in that part of the planning process concerned with rights of way. The Penfold Review specifically recommended that "Government should...[ensure] that the impact of a planning application on rights of way is considered as part of the planning process to reduce the risk of delay arising from challenge to any subsequent diversion (or other) order".

The Government's response to the Penfold Review included a commitment to consider how consents might be streamlined to make the process simpler and reduce the red tape on businesses, this IA examines options to achieve this.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0 - business as usual

Option 1 – Retain the existing legislative framework, improve adherence to Government guidance to ensure that rights of way issues are addressed at an early stage in the process of determining planning applications.

Option 2 – retain the existing rights of way order-making process, but allow it to run concurrently with determination of the planning permission, rather than afterwards as at present.

Option 3 - Create a new integrated process to consider the development proposals and any changes to rights of way as a single package; retain the right of objection to the rights of way changes to an impartial third party (options 2 and 3 would require primary legislation)

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 12/2015						
Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)			Traded:		Non-traded:	
			0		0	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Richard Benyon Date: 4 May 2012

Summary: Analysis & Evidence

Policy Option 1

Description: Retain existing legislative framework, but improve adherence to Government guidance to ensure that rights of way issues are addressed at an early stage of determining planning applications.

FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: n/k	High: n/k	Best Estimate: n/k
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	n/k		n/k		n/k
High	n/k		n/k		n/k
Best Estimate	n/k		n/k		n/k
Description and scale of key monetised costs by 'main affected groups'					
It has not been possible to quantify or monetise any of the impacts at this stage - further information is being sought as part of the consultation.					
Other key non-monetised costs by 'main affected groups'					
Costs to local planning authorities, developers and stakeholders of familiarising themselves with the guidance. There may be additional costs to developers and local authorities if resources are put into assessing rights of way early on when the planning permission is subsequently refused. Costs to central Government of providing guidance.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	n/a		n/k		n/k
High	n/a		n/k		n/k
Best Estimate	n/a		n/k		n/k
Description and scale of key monetised benefits by 'main affected groups'					
It has not been possible to quantify and monetise the benefits of this option at this point - evidence is sought through the consultation.					
Other key non-monetised benefits by 'main affected groups'					
Reduced cost to developers because fewer orders are opposed and referred to the Secretary of State. Reduced cost to local authorities and central Government because fewer orders are opposed and referred to the Secretary of State. Less time and cost spent by rights of way users in opposing 'inappropriate' changes to rights of way.					
Key assumptions/sensitivities/risks					Discount rate (%)
Assumes that guidance would be complied with. Assumes that early dialogue with potential objectors would resolve those objections.					3.5%

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: n/k	Benefits: n/k	Net: n/k	Yes	OUT

Summary: Analysis & Evidence

Policy Option 2

Description: Retain the existing rights of way order-making process, but allow it to run concurrently with determination of the planning permission rather than afterwards as at present.

FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: n/k	High: n/k	Best Estimate: n/k

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/k	n/k	n/k
High	n/k	n/k	n/k
Best Estimate	n/k	n/k	n/k

Description and scale of key monetised costs by 'main affected groups'

It has not been possible to quantify or monetise any of the impacts at this stage - further information is being sought as part of the consultation.

Other key non-monetised costs by 'main affected groups'

Costs to local planning authorities, developers and stakeholders of familiarising themselves with the guidance. There may be additional costs to developers and local authorities as resources will be put into assessing rights of way early on when the planning may be refused. Costs to local authorities of ensuring that the terms of the rights of way orders align with the terms of the planning consent granted at the end of the process, maybe costs to stakeholders if multiple consultations result.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a	n/k	n/k
High	n/a	n/k	n/k
Best Estimate	n/a	n/k	n/k

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to quantify the benefits of this option at this stage - more evidence is sought through the consultation.

Other key non-monetised benefits by 'main affected groups'

Benefit to developers because they do not have to wait until planning consent is granted before applying for changes to rights of way, thus reducing delays. Reduced cost to local authorities and central Government because fewer orders are opposed and referred to the Secretary of State. Less time and cost spent by rights of way users on opposing 'inappropriate' changes to rights of way

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

There is a risk that it would not prove practicable to devise a process that would eliminate disparity between planning consents and rights of way orders. Assumes (as with Option 1) that less rights of way orders would be opposed because rights of way issues would be addressed from the outset. Assumes that developers would want to risk outlay on a rights of way order without being sure of getting planning consent.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: n/k	Benefits: n/k	Net: n/k	Yes	OUT

Summary: Analysis & Evidence

Policy Option 3

Description: Create an integrated process to consider development and rights of way as a package. Let local planning authorities make a decision on the package; retain the right of objection to rights of way changes .

FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)			
			Low: n/k	High: n/k	Best Estimate: n/k	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	n/k		n/k		n/k	
High	n/k		n/k		n/k	
Best Estimate	n/k		n/k		n/k	
Description and scale of key monetised costs by 'main affected groups'						
It has not been possible to quantify or monetise any of the impacts at this stage - further information is being sought as part of the consultation.						
Other key non-monetised costs by 'main affected groups'						
Costs to developers, local authorities and developers of familiarisation with new process. Costs to developers and local authorities from starting rights of way process when planning permission is then refused.						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low	n/a		n/k		n/k	
High	n/a		n/k		n/k	
Best Estimate	n/a		n/k		n/k	
Description and scale of key monetised benefits by 'main affected groups'						
It has not been possible to quantify and monetise the benefits of this option at the stage - more evidence is sought as part of the consultation.						
Other key non-monetised benefits by 'main affected groups'						
Reduced cost to developers as single process. Reduced cost to local authorities because they do not have to undertake a separate process to make rights of way changes. Reduced cost to central Government because fewer rights of way orders would be opposed and referred to the Secretary of State if the rights of way issues were properly considered earlier in the planning process. Benefit to rights of way users because the impact of planning proposals on public rights of way considered early.						
Key assumptions/sensitivities/risks					Discount rate (%)	3.5%
Assumes that local planning authorities would take proper account of public rights of way considerations and that the process would be fair and transparent.						

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: n/k	Benefits: n/k	Net: n/k	Yes	OUT

Evidence Base (for summary sheets)

1. Problem under consideration

This impact assessment is one of three impact assessments supporting a consultation document on proposals for reforms to the policy and legal framework governing public rights of way. The proposals in fall into four groups. This impact assessment relates to the fourth group.

- Simplifying and streamlining the processes for recording and making changes to public rights of way, based on proposals made by Natural England's working group on unrecorded rights of way.
- Examining whether similar improvements to those identified by the Working Group (for recording rights of way) should be applied to procedures for extinguishing or diverting rights of way and for creating new ones, in order to make these processes less burdensome and more responsive to local needs.
- Given that the outcome of an earlier consultation was that the current provisions were unworkable, looking at how it could be made easier for land owners to progress proposals for the diversion or extinguishment of rights of way crossing their land, subject to the current public interest tests.
- Proposing options for improving the way that rights of way changes are dealt with in relation to applications for planning permission. This is one of the ways in which the Government will be addressing barriers to growth which result from non-planning consents – as highlighted in the 2010 Penfold Review.

The Penfold Review (referred to as 'the Review') on non-planning consents was published in July 2010. The Review was concerned with consents that have to be obtained alongside or after, and separate from, planning permission in order to complete and operate a development. The report found that while non-planning consents play an important role in achieving a wide range of government objectives, such as protecting the health and well-being of local communities, they also have a serious impact on how efficiently and effectively the end-to-end development process operates.

Where developments necessitate the diversion or removal of public rights of way, the existing legislative process provides for a right of way diversion order to be made in order to enable a development to be carried out in accordance with a planning permission *that has been granted*. This means that the rights of way order can only be made after the planning application is approved. The rights of way order is subject to public consultation and, if there are objections, the Order must be referred to the Planning Inspectorate. This sequential system was put in place as any changes made through a rights of way order are legally binding and so it was felt that this legal process should be conducted after the planning permission had been granted and the right of way change was certain.

However the current process entails the rights of way issues being considered twice with two rounds of public consultation, albeit that in practice, rights of way are frequently not considered properly or overlooked at the planning permission stage (perhaps because there is a second stage). The Penfold Review cited this as duplication. The Review found that rights of way consents were seen as a significant source of risk and cost from delay, because they are normally dealt with after planning permission has been granted and because there is no timetable set for decision makers' consideration of applications. The delay is more to do with the way the current processes work, than local authorities not acting promptly and can be anything from 10 weeks to 6 months depending on specifics of the case including whether or not there are objections.

Data compiled by the Ramblers suggests that over the 20-year period from 1986 to 2005 the average number of orders applied for each year as a consequence of planning applications ranged from 413 to 489 (page 167 of 'Rights of Way – A guide to law and practice').

Rights of way are public highways. As with all public highways, diverting or extinguishing rights of way often significantly affects people's daily lives – for example safe routes to schools, work or the shops and access to their homes. Changes to rights of way affect people's public and private rights and so the current legislative framework provides the safeguard of a separate order-making process and recourse to an impartial third party where there are objections, these are separate to the planning system which has no such recourse provisions.

2. Rationale for intervention

At present the processes for planning applications involving changes to rights of way is inefficient and leads to duplication and uncertainty for developers. The current processes for enabling changes to be made to public rights of way in order to facilitate development are prescribed in primary and secondary legislation. If changes are to be made to reduce the risk of cost to developers from delay inherent in the current processes, then changes to primary and secondary legislation are required.

3. Policy objective

The objective of this policy is to improve the way that the planning permission and rights of way consent processes work together. The aim is to improve the processes rather than affect the outcomes of applications. The proposals are aimed at reducing duplication between two processes and the elapsed time that the two processes take end-to-end. This has the potential to reduce delay and uncertainty for developers and to ensure that changes to rights of way are properly considered early in the process. The current arrangements where changes to rights of way are authorised only after planning permission has been granted it can lead to inappropriate proposals for changes to rights of way and to objections that slow down the process.

The Penfold Review recommended delivering greater certainty for developers and removing duplication by improving the way planning and non-planning consents operate together. The key conclusions of the Government's response included a commitment to consider how consents might be streamlined and simplified to make the process simpler and reduce the red tape on businesses. The policy objective is to implement the specific recommendation of the review that: *“Government should...[ensure] that the impact of a planning application on rights of way is considered as part of the planning process to reduce the risk of delay arising from challenge to any subsequent diversion (or other) order”*

4. Background – the rights of way network

England's extensive public access network is a unique and valuable resource, which provides the opportunity to experience the immense variety of English landscape and the settlements within it. The access network enables people to get away from roads used mainly by motor vehicles and enjoy the beauty and tranquillity of large parts of the countryside to which they would not otherwise have access. It facilitates various forms of sustainable transport and can play a significant part in reducing traffic congestion and harmful emissions. These are becoming more important as increases in the volume and speed of traffic are turning many once-quiet country roads into unpleasant and sometimes dangerous places for cyclists, equestrians and walkers.

There is a growing body of evidence showing that access to the natural environment and green space can increase mental and physical health and wellbeing and reduce the adverse health effects of social and economic inequalities and therefore contribute to improved quality of life. Department of Health studies into physical activity and obesity suggest that intervention is necessary to reverse worsening trends in public health and that outdoor recreation has a major contribution to make to increasing physical activity. A report in 2005 showed a 1% reduction in the sedentary population of the UK could provide for a £493 million saving in averted healthcare costs. Therefore by providing local opportunities for exercise there is a significant benefit both in health and monetary terms.

Outdoor recreation and tourism can make a significant economic contribution, which is of particular value in rural areas. It helps support sustainable local rural economies and sustainable options for farmers wishing to diversify their business. A report for the Ramblers Association in 2003 estimated there were 527 million walking trips made to the English countryside every year with an estimated £6,320 million spent as a result of those visits. Research shows the South-West Coast Path, Britain's longest national trail, is generating about £300m a year for the economy of its region (research commissioned by the Countryside Agency and South West Regional Development Agency and published in 2003). Recreational tourism i.e. walking, cycling and horse riding encourages people not to take holidays abroad, also helping climate change. Positive engagement with the natural environment may also increase people's understanding of the natural environment and encourage environmentally sustainable behaviours.

Many of the benefits of outdoor recreation and access to high quality landscapes are public goods, which would not be delivered by the market alone. Market failures include a lack of information about the recreational opportunities available and financial pressures to maximise the economic return of development at the expense of social and environmental sustainability.

The current process for diverting and extinguishing rights of way

The existing process for making an order to divert and extinguish a public right of way is set out in the following page. Currently the process is triggered after the planning permission has been granted. The following sets out the role and responsibilities of each of the main sectors in the process and Diagram A illustrates the process.

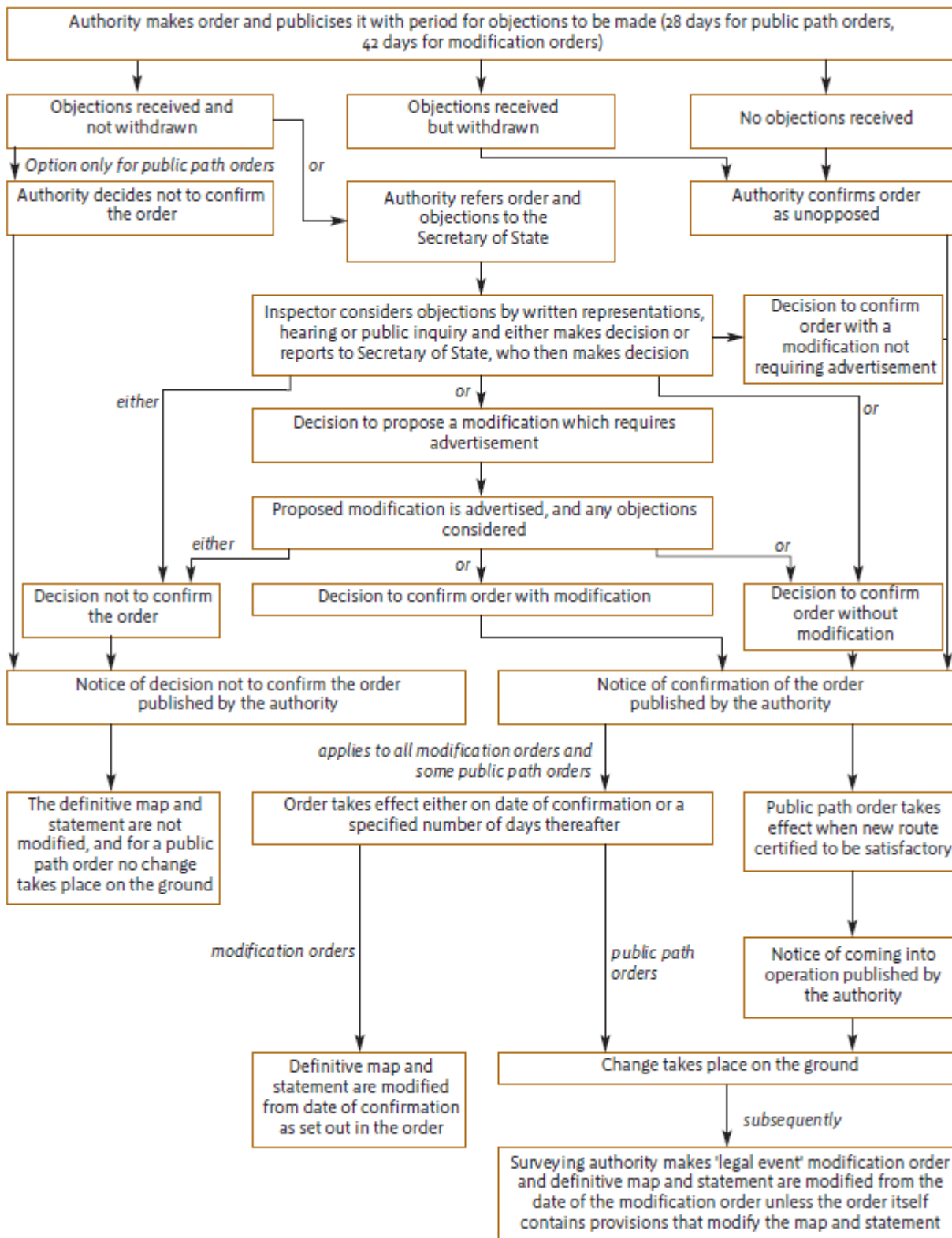
Applicants (i.e. landowners, tenants, farmers, householders, business, public bodies etc) make a request to the local authority for an order. Make a proposal for an alternative route and negotiate over proposals to resolve objections. Make representations to the Secretary of State if there are unresolved objections.

Order making authorities decide whether to make an order. Negotiate with landowner(s) and any statutory undertakers highway authorities and/or other stakeholders affected. Advertise the order. Attempt to resolve any objections. Refer orders to the Secretary of State where there are unresolved objections and make representations to the Secretary of State. Where an order is confirmed, ensure that the new right of way and any gates/stiles etc are constructed or installed correctly.

Statutory undertakers and highway authorities (water, sewerage, power and telecommunications companies) consider how any diversion or extinguishment orders would affect their interests and respond to statutory notifications, adapt services where necessary to accommodate a confirmed order.

Other stakeholder groups (Members of the public, parish councils, local amenity groups and national voluntary organisations) consider the impact of proposals on the rights of way network. Respond to consultations and/or advertised orders. Ensure that the views of their constituent interests are represented. Make representations to the Secretary of State if there are unresolved objections.

Central Government make decisions on opposed orders, through written representations or public inquiry. This is done through the Planning Inspectorate on behalf of the Secretary of State.



5. Description of options considered (including do nothing)

Option 0 – do nothing – business as usual.

Under business as usual, developers can only seek an order to divert or extinguish a public right of way (where the development necessitates this) after a planning consent had been granted. The rights of way order is subject to public consultation and, if there are objections, the Order must be referred to the Planning Inspectorate.

Although developers can not formally seek to divert or extinguish a right of way until after planning permission is granted they can consider the impact of their planning proposal on Rights of Way from the beginning of the process (and there is guidance saying this is best practise) but often this does not happen. Consideration of rights of way impacts after planning has been granted can lead to less publically acceptable outcomes than if the impact is considered earlier, leading to objections to the RoW changes and delays.

Penfold reported that the need to get a separate consent after planning permission has been granted generates delay and uncertainty. Either the process of considering rights of way is effectively carried out twice, which leads to inefficiency, or rights of way impacts are not considered properly until the planning permission is finalised which may result in a less beneficial outcome than would have occurred if it had been considered early on.

If objections to the diversion are received, the consent must be referred to the Planning Inspectorate (PINS) for determination or withdrawn by the local authority. These processes can add further delay and uncertainty.

Option 1 – Retain existing legislative framework, but improve adherence to Government guidance to ensure that rights of way issues are addressed at an early stage of determining planning applications.

Under this option developers would still need to wait until after the planning permission has been granted, for a rights of way order to be issued and consulted upon. But delays could be reduced and the number of public objections minimised, by early dialogue with interested parties. This should enable any potential problems to be identified and resolved at an early stage in the overall process and to save time at the order-making stage. Existing Government guidance on rights of way already advocates this approach, but this guidance is not always evident to developers and local planning authorities. Strengthened Government planning guidance would help ensure that development proposals engage stakeholders earlier in the process which may enable their needs to be better considered with regards to accommodating rights of way.

Option 2 – retain the existing rights of way order-making process, but allow it to run concurrently with determination of the planning permission, rather than afterwards as at present.

Allowing the rights of way process to run concurrently with the planning process would make the overall process shorter. However, the rights of way process may still lag behind the planning process, particularly if there are objections. Orders may require further consultation if new planning conditions were placed upon the development that affected rights of way, and the rights of way order-making process would prove abortive where planning permission was refused in both cases, developers would be expected to pay for redundant or additional stages. Any such arrangements would need to ensure that changes to rights of way are properly considered against the planning application and are made in light of any conditions placed upon the development. There should be provision for developers opt to pursue consecutive procedures in order to minimise their costs. This option would require primary legislation.

Option 3 – Remove the requirement to consult separately on a rights of way order and create a new integrated process to consider the development proposals and any changes to rights of way as a single package. Let local planning authorities decide what rights of way changes

should be made in the course of determining the planning application (currently the local highway authority or rights of way section make the decision on rights of way matters) and retain the right of objection, to any changes to public rights of way, to an impartial third party.

Under this option, rather than trying to run the two current processes in parallel (with all the complications that invokes) as under option 2, a new integrated process would be put in place, whereby the development proposals and any consequent changes to rights of way, including any temporary changes whilst a planning consent was being implemented, would be considered as a single package, or agreement i.e. rather than having two process. The establishment of a new process rather than a combination of two existing process will give greater scope for improving the efficiency of the system. This would remove the risk of duplication entirely, and make the application process shorter as the public would only be consulted once. It would ensure that rights of way implications are considered from the outset by the planning authority and not just by the rights of way officer. It would also be more transparent to users of rights of way because all the temporary and permanent changes would be apparent from the outset. The planning authority would have power to approve the package/agreement and this would form the basis of the rights of way changes. Under the planning process the public are consulted and therefore would be consulted on the changes to the rights of way as part of that. There would be provision for individuals (including both the owners of adjoining land, and members of the public) who might object to the extinguishment or diversion of public rights of way, to make representations to an impartial third party. This option would require primary legislation.

6. Costs and benefits of each option (including administrative burden)

6.1 Methodology

There are a number of sectors impacted by these policy proposals specifically

Developers

Local authorities – local planning authorities, local highways authorities and other rights of way order-making authorities

Other stakeholder groups (Members of the public, parish councils, local amenity groups and national voluntary organisations)

Central Government

At present it is not possible to quantify or monetise the costs and benefits of any of these options as data is unavailable. Evidence will be sought through the consultation – the specific questions asked in the consultation are listed in section 8.

6.2 Assumptions

It is assumed that the outcome of the application is the same as under the current system, only the length of time taken is affected. By engaging stakeholders and considering rights of way earlier in the process the following benefits may be realised

- 1) Stakeholders feel more included in the process and so are less likely to object formally.
- 2) Early engagement means that stakeholders can voice concerns over changes which are not in the public interest and make public rights of way much less easy and convenient for public use before the stage at which the only way to address concerns is to object formally.
- 3) May lead to better rights of way outcomes for both developers and stakeholders as earlier consideration may lead to more innovative solutions.

As the aim of the policy is to simplify the process and not change the outcomes of the process (and because any additional benefit with regards to outcomes will be very locally specific and unquantifiable) it is assumed through the Impact Assessment that the outcomes with respect to the rights of way do not change, just that there may be fewer objections. Therefore it is assumed that there are no impacts on the wider benefits of rights of way such as tourism or health.

Number of applications and orders – Data compiled by the Ramblers suggests that over the 20-year period from 1986 to 2005 the average number of orders applied for each year as a consequence of planning applications ranged from 413 to 489 (page 167 of 'Rights of Way – A guide to law and

practice. Around 40 such orders a year are referred to the Secretary of State for a decision. As such this IA uses the following as an estimate of the number of cases and assumes that 10% will be referred to the Secretary of State.

There may be costs to Government of developing a new processes or guidance and disseminating these. One cost may be of including guidance and a standard application form on the ‘Planning Portal’ (The Planning Portal is the UK Government's online planning and building regulations resource for England and Wales, which provides advice and services for the public, professionals and local government.).

The total cost to central government of the Secretary of State’s role in determining all opposed rights of way orders in 2010 (not just those related to planning applications) was estimated to be around £3,100,000 per year (total estimated full cost of the Planning Inspectorate’s rights of way work – the Planning Inspectorate carries out the work on behalf of the Secretary of State) which is an estimated £6,200 a case (£3,100,000 divided by 500, number of opposed cases).

Table 1: Number of applications and number of cases referred to Secretary of State

Scenario	Number of applications	Number of cases referred to Secretary of State
Low	400	40
Medium	450	45
High	500	50

Under the current system, the planning section of a local authority deals with the planning application and then the highways authority or section of the local authority with responsibility for rights of way deals with the rights of way application. For ease of analysis these are counted together under ‘local authority’ as for example under option 3 the rights of way experts in the local authority would still be involved, because it would be only the overall responsibility that would transfer to the planning officers.

There is a potential additional cost to developers under all options as currently, should their planning permission be refused, they do not incur any costs with regard to rights of way changes. However if rights of way are considered earlier on or as part of the planning process they may incur rights of way costs even though planning permission may be refused. This would be an additional cost compared to business as usual. At this stage it has not been possible to quantify what this cost may be.

Option 1 – Retain existing legislative framework, but improve adherence to Government guidance to ensure that rights of way issues are addressed at an early stage of determining planning applications.

At this stage it is not possible to quantify and monetise the benefits of this option. Table 2 sets out in qualitative terms the potential costs and benefits to the sectors affected. Further information is sought as part of the consultation process.

Table 2: Costs and benefits of option 1

	Costs	Benefits
Developers	There should be no additional costs to all developers; but there may be some costs to some developers associated with making an early and full assessment of the impacts of development on rights of way affected by the development and how these impacts should be addressed to meet the concerns of users – but this is something they should be doing already as a matter of good practice. The additional cost may occur as under	Benefit that rights of way orders are less likely to be opposed with consequent delay to implementation of the planning consent.

	Costs	Benefits
	<p>business as usual developers would have only have incurred rights of way costs once planning permission was granted (there would be no costs if planning permission was declined as they would not have applied for a rights of way change) and so if rights of way are considered early on and planning permission is not granted there will be an additional cost to the developer compared to business as usual.</p> <p>May be costs of familiarising themselves with the new guidance, however this will be minimal.</p>	
Local Authorities	<p>Minimal cost of familiarising staff with guidance.</p> <p>There may be some costs associated with making an early and full assessment of the impacts of development on rights of way affected by the development and how these impacts should be addressed to meet the concerns of users – but this is something they should be doing already as a matter of good practice. The additional cost may occur as under business as usual local authorities would have only have incurred rights of way costs once planning permission was granted (there would be no costs if planning permission was declined as developers would not have applied for a rights of way change) and so if rights of way are considered early on and planning permission is not granted there will be an additional cost to the local authority compared to business as usual.</p>	<p>There should be benefits in terms of having to submit fewer rights of way order to the Secretary of State as engaging affected stakeholders early on in the process should lead to fewer objections – however at present evidence is not available to estimate the reduced number of cases.</p>
Other Stakeholders	<p>There would be no additional costs to other stakeholders.</p>	<p>There would be benefits in terms of less time and cost spent by rights of way users on opposing 'inappropriate' changes to RoW as their concerns would have been addressed earlier in the process and possibly in a less costly way.</p>
Central Government	<p>There would be an additional costs in strengthening guidance and promoting it to local authorities and developers.</p>	<p>There would be benefits in terms of less rights of way orders that have to be determined by the Secretary of State (as fewer stakeholders would object as they would have been engaged early in the process).</p>

Option 2 – retain the existing rights of way order-making process, but allow it to run concurrently with determination of the planning permission, rather than afterwards as at present.

At this stage it is not possible to quantify and monetise the benefits of this option. Table 3 sets out in qualitative terms the potential costs and benefits to the sectors affected. Further information is sought as part of the consultation process.

Table 3: Costs and benefits of option 2

	Costs	Benefits
Developers	<p>There may be an additional cost to developers whose planning permission is refused as they would have had to pay fees to apply to change the right of way up front and that fee would not be refunded if the planning consent was refused.</p> <p>It is proposed that it should still be open to developers to seek a rights of way order after consent is granted, as at present. This would result in no costs or benefits to developers.</p> <p>May be minimal costs of familiarising themselves with the new process.</p>	<p>The benefit to developers is that the overall end-to-end process is less likely to take as long as under business as usual.</p>
Local Authorities	<p>Costs to local authorities in ensuring that there is no disparity between the terms of the rights of way order and the final planning consent.</p> <p>There may be costs to local authorities if conditions on the planning consent mean that the orders have to be consulted on a number of times.</p> <p>There is a risk that local authorities would not actively pursue the application until towards the end of planning permission so as not to incur unnecessary costs if planning permission is denied and so the time the process takes may not be reduced as much as anticipated.</p> <p>May be minimal costs of familiarising themselves with the new process.</p>	<p>The benefit to local authorities is having to submit fewer rights of way order to the Secretary of State as rights of way would have been considered early on in the process.</p>
Other Stakeholders	<p>There may be costs to stakeholders if they have to respond to multiple consultations as a result of conditions on planning consents.</p> <p>May be minimal costs of familiarising themselves with the new process.</p>	<p>There would be benefits to rights of way users in terms of less time and cost spent by rights of way users on opposing 'inappropriate' changes to rights of way as rights of way issues would be considered more fully earlier in the process.</p>
Central Government	<p>Cost of developing guidance to accompany the new process.</p>	<p>There would be benefits in terms of less rights of way orders that have to be determined by the Secretary of State as early consideration may lead to fewer objections.</p>

Option 3 - Create a new integrated process to consider the development proposals and any changes to rights of way as a single package; retain the right of objection to an impartial third party.

At this stage it is not possible to quantify and monetise the benefits of this option. Table 5 sets out in qualitative terms the potential costs and benefits to the sectors affected. Further information is sought as part of the consultation process.

Table 4: costs and benefits of option 3

	Costs	Benefits
Developers	<p>There should be no additional costs to all developers; but there may be some costs to some developers as under business as usual developers would have only have incurred rights of way costs once planning permission was granted (there would be no costs if planning permission was declined as they would not have applied for a rights of way change) and so if rights of way are included (and charged for) as part of an integrated planning process and planning permission is not granted there will be an additional cost to the developer compared to business as usual.</p> <p>May be minimal costs of familiarising themselves with the new process.</p>	<p>The process itself may be less costly. Consent would be achieved more quickly. Simpler process to understand.</p>
Local Authorities	<p>An additional cost may occur as under business as usual local authorities would have only have incurred rights of way costs once planning permission was granted (there would be no costs if planning permission was declined as they would not have applied for a rights of way change) and so if rights of way are included as part of an integrated planning process and planning permission is not granted there will be an additional cost to the local authority compared to business as usual.</p> <p>May be minimal costs of familiarising themselves with the new process.</p>	<p>There would be benefits in terms of the process being simpler and less costly to operate.</p>
Other Stakeholders	<p>There would be no additional costs to other stakeholders except minimal costs of familiarising themselves with the new process.</p>	<p>There would be a benefit to rights of way users because the rights of way proposals would have to be properly considered earlier in the process.</p>
Central Government	<p>Cost of developing guidance to accompany the new process.</p>	<p>There would be benefits because rights of way proposals would be less likely to be opposed and referred to the Secretary of State.</p>

As many of the impacts of the options are not quantified at this stage table 6 sets out the advantages and disadvantages of each of the options for ease of comparison. All options except option 3 are compliant with the European Convention on Human Rights.

Table 6: advantages and disadvantages of the options

	Advantages	Disadvantages
Option 1	<p>Would be relatively cheap and quick solution to a relatively small problem.</p> <p>Requires no legislative change (unless the guidance was made statutory).</p>	<p>Local authorities and developers may not heed the guidance.</p> <p>Does not enable the rights of way consent process to start until the planning permission process has finished.</p>

Option 2	<p>Would make the end-to-end consent process less time consuming.</p> <p>Avoids developers having to go back and change planning proposals if the rights of way changes are rejected as the rights of way and planning application are considered and altered concurrently.</p>	<p>Would need primary legislation.</p> <p>Would need complex checks and balances to ensure that there was no disparity between the final rights of way consent and planning permission.</p>
Option 3	<p>Would make the end-to-end consent process less time consuming.</p> <p>Would ensure that the rights of way changes were properly considered early in the process and that any changes proposed were transparent from the outset</p> <p>Avoids developers have to go back and change planning proposals if the rights of way changes are rejected</p> <p>Opportunity for objection is retained.</p>	<p>Would need primary legislation.</p> <p>Does not allow developers to defer the rights of way costs until they are sure they have planning permission</p>

7. Wider Impacts

Annex 2 details the answers to the specific impacts tests

8. Further Work

Further work is needed to provide evidence to develop the costs and benefits of the options. This evidence is sought through the consultation using the following questions. In addition to responses to the consultation evidence will be sought from specific parties (such as local authorities) through the consultation period.

Information on current system

Are the figures derived from the Ramblers data on the number of rights of way orders that are required as a result of planning permission a fair assumption to use (between 413 and 489 per year)?

Is an assumption that 10% of the applications will be referred to the Secretary of State because they are subject to objections a fair assumption to use? If not, what proportion of applications for rights of way orders are objected to and what proportion of these result in an inquiry?

What evidence is there on how many planning applications have an impact on rights of way but are refused?

What is the current cost to local authorities of dealing with objections?

What is the current charge for applying for a rights of way change following granted planning permission?

What are the costs to other stakeholders of having to respond to consultations on rights of way?

How much time does the additional rights of way process add to development processes? Both in actual time and time planned into the project? Is there any evidence on the cost of these delays?

Information on each of the options

For each option how long would it take developers, local authorities and other stakeholders to familiarise themselves with the guidance? What level of staff would be responsible for this?

All the options should lead to consideration of rights of way earlier in the process as well as earlier engagement with other stakeholders. It is assumed that this will lead to a reduction in the number of objections. Under business as usual it is assumed that 10% of cases go to Secretary of State because of objections. By considering rights of way early on in the process do you think the percentage will change? If so to what? (for each option).

To what extent would the consideration of applications concurrently lead to a streamlining of the process?

Would an integrated system increase or reduce costs (to local authorities, developers and other stakeholders)? If so why and by how much?

9. Risks and assumptions

Associated with the policy options

There is an assumption that Government guidance would be complied with and therefore a risk to Option 1 if it is not. There is an associated risk that the early dialogue with potential objectors, which would be advocated by the guidance, would have little effect in resolving those objections.

There is a risk with Option 2 that it would not prove practicable to devise a process that would eliminate disparity between planning consents and rights of way orders. Option 2 assumes that developers would want to risk outlay on a rights of way order without being sure of getting planning consent.

With Option 3, there is an assumption that local planning authorities would take proper account of public rights of way considerations and that the process would be fair and transparent.

Associated with the impact assessment analysis

Difficulty in determining the additional time that obtaining rights of way incurs and the extent to which delays in obtaining rights of way consent causes additional cost to developers.

10. Direct costs and benefits to business calculations (following OIOO methodology)

At present data is not available that allows the calculation of the costs and benefits to business (and developers specifically) – evidence is being sought through the consultation. Given that it is a simplifying measure it is assumed that this would be classified as an out (or an in with zero costs), however this will be reassessed when further evidence is collected as this will depend on whether the additional costs to developers of having to pay rights of way costs for planning applications which are refused is greater than the benefit of streamlining the system.

Micro businesses are not exempt from this policy because as a simplifying measure it will accrue a benefit to businesses.

11. Summary and preferred option with description of implementation plan.

The preferred option is Option 3. This is because this option would reduce the time required for the end-to-end process to the minimum possible (reducing delay and cost to developers), while retaining a process that is ECHR compliant. In addition considering rights of way as part of an integrated package would ensure that rights of way issues are fully taken into account earlier in the process and not dealt with as an afterthought. The establishment of a new process rather than a combination of two existing process will give greater scope for improving the efficiency of the system.

Option 1 would require only the publication of guidance (although if the guidance was statutory it would require new legislation) and have a very low implementation cost as a response to what is a relatively small problem, given that only 40 or so cases a year are referred to the Secretary of State. But its impact would be uncertain.

Option 2 would in most cases save time and cost for developers, but cannot guarantee eliminating delay where a rights of way order is opposed and there may well be administrative difficulties in ensuring that there is no disparity between the terms of the rights of way order and the final planning consent. Implementation would require primary and secondary legislation.

Option 3 would in most cases save time and cost for developers, local authorities and central Government. There would still be a right of objection to an impartial third party in respect of changes to rights of way affected by the development, so we can be sure that it would be ECHR compliant.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review , or there could be a political commitment to review (PIR)];</p> <p>PIR</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>The nature of the review will depend on the option implemented.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>At this stage the exact nature of the review is unknown – views are being sought as part of the consultation.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>The information used in the final version of the IA will be used as a baseline.</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>Not yet determined</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p> <p>Not yet determined</p>
<p>Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]</p> <p>n/a</p>

Annex 2 – Specific Impact Tests

Equalities Analysis

The changes examined in the IA affects the process for applying for changes to rights of way as a result of planning permission. Any changes would affect all equally and therefore no equalities assessment is needed.

Competition Impact Test

1. Directly limit the number or range of suppliers? No.
2. Indirectly limit the number or range of suppliers? No.
3. Limit the ability of suppliers to compete? No.
4. Reduce suppliers' incentives to compete vigorously? No.

Small Firms Impact Test

Does the proposal affect small business, their customers or competitors? This proposal seeks to reduce burdens on businesses and does not introduce any additional burdens.

Greenhouse Gas Impact Test

This policy will have no impact on GHGs.

Wider environmental Impacts Test

This policy is changing the processes for diverting and extinguishing rights of way as a result of planning permission, it is assumed that any environmental impacts would have been considered under the planning consent process.

Health and Wellbeing Impact Test

1. Will your policy have a significant impact on human health by virtue of its effects on the following wider determinants of health? No

Income
Crime
Environment
Transport
Housing
Education
Employment
Agriculture
Social cohesion

2. Will there be a significant impact on any of the following lifestyle related variables? No

Physical activity
Diet
Smoking, drugs, or alcohol use
Sexual behaviour
Accidents and stress at home or work

Consider risk factors that influence the probability of an individual becoming more or less healthy.

3. Is there likely to be a significant demand on any of the following health and social care services? No

Primary care
Community services Hospital care
Need for medicines
Accident or emergency attendances
Social services
Health protection and preparedness response

Consider the likely contacts with health and social service provision.

If the answer to two or more of these questions is YES you will need to carry out a full health impact assessment.

A health impact assessment is not needed for this IA.

Human Rights

Will the policy decision engage anyone's convention rights? Policy option 3 may not be compliant with the European Convention on Human Rights.

Justice System

Does the proposal affect the justice system? No

Rural Proofing

This policy is changing the processes for modifying and extinguishing Rights of Way in relation to planning permission and therefore there are no specifically rural impacts as it is assumed that the outcome with regards to the right of way is the same as under business as usual.

Sustainable Development

This policy is changing the processes for modifying and extinguishing Rights of Way with regards to planning permission and therefore there are no sustainable development impacts as it is assumed that the outcome with regards to the right of way is the same as under business as usual.

Annex 3: References

Rights of Way – A guide to law and practice by John Riddall and John Trevelyan (published by the Ramblers and Open Spaces Society)