

Title: The 'Right to Apply' for extinguishments and diversions of rights of way IA No: Defra1403 Lead department or agency: Defra Other departments or agencies: Local Authorities and the Planning Inspectorate (PINS)	Impact Assessment (IA)			
	Date: 23/04/2013			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
Contact for enquiries: Dave Waterman				

Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
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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, Measure qualifies as One-Out?
n/a	£0m	£0m	No
			NA

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

Local authorities currently have powers to extinguish and divert rights of way in the interests of landowners. These powers are discretionary and it can be difficult for landowners to persuade authorities to act, even where strong land management reasons exist. To overcome these difficulties, a statutory right to apply was introduced by the Countryside and Rights of Way Act 2000. There are some major drawbacks in that legislation that require primary legislation to rectify and therefore the powers have not yet been implemented. Given that these provisions in the 2000 Act already exist, Government intervention is necessary either to make them workable or replace them with alternative process.

What are the policy objectives and the intended effects?

The right of access is a public good provided through common law, Government intervention is needed through statute law to determine the way in which the right is regulated. Parliament has already made an intervention in providing for right to apply for diversion of extinguishment of rights of way, but this has not been implemented. The objective of this policy is to develop and implement an effective mechanism which provides landowners with a service which will benefit them by enabling them to apply for diversions and extinguishments to the rights of way on their land, while minimising the impact on public expenditure.

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

The preferred option is to put in place a system whereby landowners have

- a statutory right to apply for an extinguishment or diversion of a right of way on their land,
- a statutory right for the landowner to appeal the decision, or failure to make a decision
- a system whereby the costs to both local and central government of this process is recovered from the applicant.

This option is compared to business as usual .
 This is the preferred option because it removes the disincentive to local authorities to act, which is not being able to recover public expenditure in full, but provides statutory recourse to an independent third party for the landowner where the local authority does not act for other reasons.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 12/2016					
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 No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: n/a	Non-traded: n/a	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: Richard Benyon Date: 26/04/2013

Summary: Analysis & Evidence

Policy Option 1

Description: a statutory right to apply combined with full public expenditure recovery

FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: n/a	High: n/a	Best Estimate: n/a

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a	n/a	n/a
High	n/a	n/a	n/a
Best Estimate	n/a	9.6m	80m

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

The monetised costs are the costs to applicants of the application process, plus the costs to the applicant from the recovery of costs to local authorities from the submission of opposed orders and orders requiring modification etc and costs to central government of dealing with additional appeals and opposed orders. There are also costs to statutory undertakers and highway authorities from considering additional applications and costs to parish council and local amenity groups of having to respond to additional consultations etc.

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

There may be a loss of public benefit, even though the applications are subject to the public impact test (i.e. application will only be granted if they pass the public impact test and therefore there is minimal impact on the public benefit), however this is assumed to be negligible.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a	n/a	n/a
High	n/a	n/a	n/a
Best Estimate	n/a	3.9m	32.1m

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

The quantified benefits are the benefits to applicants of the changes to rights of way they receive should their application be successful. It is assumed that the benefit to applicants is at least equal to the cost as otherwise they would not pay for the application. There are also savings to local authorities from not having to meet the Secretary of State's costs in relation to the process for example erecting notices

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

The main benefit is to land owners of being able to apply for orders, and appeal against decisions. It has not been possible to monetise the benefits to applicants, for example from lower direct management cost and increased land value; it has been assumed that these are at least equal to the cost of the application, the quantified benefits are therefore assumed to be an underestimation. May be benefits to users if there are improvements to the network

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
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The extent to which the option is cost beneficial depends on the magnitude of the benefit to landowners from successful applications compared to their deadweight costs from unsuccessful applications. It is anticipated that the price of an application will result in a more efficient ratio of applications to orders, reducing the deadweight cost, leading to a welfare enhancement. As such the quantified costs and benefits do not fully represent what is likely to occur and so a NPV is not presented

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0	No	NA
Benefits: 0		
Net: 0		

Evidence Base (for summary sheets)

1. Problem under consideration

This impact assessment is one of three impact assessments relating to a public consultation, which closed on 6 August 2012. The consultation contained proposals for improvements to the policy and legal framework governing public rights of way.

Given that the outcome of an earlier consultation was that the current 'right to apply' provisions were unworkable, this Impact Assessment looks 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.

Public rights of way are public highways in the same way as the 'ordinary roads' network. Although many carry only rights on foot or on horseback, they exist for the benefit of the public. The rights therefore effectively belong to the public and local authorities have a statutory duty to assert and protect the right of the public to use them. However, as many rights of way have their origins in history, it can be the case that an existing public right of way bears little relation to current land uses and, whilst the right of way is still of significant benefit to the public, this can cause difficulties for landowners (examples of this could be rights of way that go through farmyards or domestic gardens). Rights of way that are of little public benefit are unlikely to be a problem for landowners, because they are little used.

Local authorities currently have powers to make legal orders to extinguish and divert rights of way. They may do so for a variety of reasons, which include improving the network of rights of way for the benefit of the public (for which they bear the cost), but may also include making such orders in the interests of the landowner, perhaps to alleviate the difficulties resulting from an historical right of way that does not correspond with current land use.

Under the present system local authorities can charge for a proportion of their costs of making this change but cannot recover: (i) any costs incurred where it is decided not to make an order (for example if it fails the public interest test); (ii) any additional costs involved in pursuing an opposed order; and (iii) are required to refund any charges where an order is made but not confirmed (for example because a case is referred to the Secretary of State who decides that the order does not meet the statutory criteria) There is therefore a high degree of risk to the local authority that it will carry out work for which it cannot recover the cost. As local authorities have no statutory obligation to consider requests from landowners the inability to recover all the public expenditure acts as a disincentive for local authorities to respond positively to requests from landowners for an extinguishment or diversion order, unless it can be shown that the order would also be in the interests of the public.

Under existing arrangements approximately 650 orders per year are made that are wholly or partly in the interests of the owner, lessee or occupier, the number of requests that local authorities receive but do not deal with is not known (as there is no formal system under which this would be recorded). Previous impact assessments undertaken in 2000 (for the Countryside and Rights of Way Act 2000) and in 2007 (for the 'right to apply' regulations) found, from discussion with stakeholders, that the number of 'applications' from land owners in a year would be expected to be some 2,630. As it is not known how many requests local authorities currently receive but do not act on this figure is assumed to be the number of additional 'applications' that the local authorities would deal with.

Local authorities currently have a power to make a diversion or extinguishment order, but no duty to use it and also that there is no statutory framework containing a formal process for applying for an order. This means that at present landowners can ask the local authority to consider making an order but have no recourse to an appeal mechanism if a local authority refuses or does not respond to a request. As the local authorities' power to make diversion or extinguishment orders is discretionary and in most cases would result in a cost burden to the public, it can be difficult for landowners to persuade authorities to make diversion or extinguishment orders, even where strong land management reasons exist and so those landowners have to bear any cost that the continued existence of the right of way on its current course might impose.

The problem can be characterised as an economic model where the supply of orders is rationed at a suboptimal level compared to the efficient point, considering the balance of private benefits to landowners and social and administrative costs. As a result there is effectively a missing market as there is a demand for the service from landowners, but there is a lack of supply from the local authorities because they are not able to recover their costs of providing the service. Annex 4 illustrates the model. In order to address this market failure a statutory right to apply and to appeal was introduced by the Countryside and Rights of Way Act 2000. However it was never implemented as there are some drawbacks in that legislation that require primary legislation to correct.

The option put forward in this Impact Assessment is intended to remove the key disincentives (i.e. the inability to recover costs in full) to local authorities to respond positively to requests from landowners for an order to extinguish or divert a right of way on their land and to correct some flaws inherent in the legislation. In other words: to make it financially viable (i.e. cost neutral) for local authorities to provide the service without using public funds for private gain. If the extinguishment of diversion order is ultimately successful, this then reduces the ongoing cost to the landowner of the right of way. Providing the service would however not guarantee that the diversion or extinguishment that the landowner has asked for would succeed. The local authority's decision whether to make an order (or the Secretary of State's decision in the case of an opposed order) will be subject to the current public interest tests. Therefore the negative impact on the existing benefit to the public, that the rights of way provide, are expected to be minimal (i.e. if there is a large negative impact on the existing public benefit then the application would not be granted); if it does not meet these tests, the local authority would be exceeding its powers in making an order.

2. Rationale for intervention

The right of access is a public good provided through common law, Government intervention is needed through statute law to determine the way in which the right is regulated.

Two of the Government's key aims are:

- (i) to move to full cost recovery (Managing Public Money. HM Treasury, October 2007) and
- (ii) wherever possible to devolve power to a local level.

The options considered in this impact assessment seek to further both of those aims.

At present landowners find it difficult to apply for diversions or extinguishments for rights of way on their land. This is because local authorities often do not provide a service on request because they cannot fully recover the costs of the service – should they provide the service, taxpayers would be paying for something that provides the landowner with a private benefit (if there is a need for an diversion or extinguishment for the public's benefit the local authority are more likely to do it). In order to incentivise local authorities to provide a service, a system is needed that will enable them to fully recover the costs of processing a diversion and extinguishment order thus enabling the landowner to apply but without it being a burden on the taxpayer. The aim is for local authorities to be incentivised to set up a system whereby landowners can apply for a diversion or extinguishment of their right of way should they wish to – this will not mean they are guaranteed a certain outcome to the application.

An attempt was made in the Countryside and Rights of Way Act 2000 to try and tackle this issue. However the provisions in the Act were never implemented as a consultation in 2007 found that there are flaws with the primary legislation that could not be satisfactorily resolved through regulations. The key flaws are as follows:

- application charges would be prescribed by regulations with little scope for local authorities to use their discretion;
- the right could prove costly, to both land owners and the Secretary of State, and, given that there is no guarantee of the outcome of an application, be of doubtful benefit;
- if a landowner appealed against an LA refusal to make an order, the Secretary of State would be compelled to make an order, regardless of the merits of the case. Therefore, local authorities could easily shift the burden and cost of order-making onto the Secretary of State by refusing applications.
- the right to apply would only be available to certain prescribed categories of landowners.

The proposed changes to primary legislation will address these flaws by:

- giving the Secretary of State discretion not to make a draft order on appeal if the application does not merit it;
- enabling the possibility of extending the scope of the right to apply to other categories of landowner by regulations made by the Secretary of State;
- enabling scope for the Secretary of State's costs to also be recovered.

3. Policy objectives

The policy objective is to develop and implement a system which incentivises local authorities to provide a service whereby landowners can 'apply' for extinguishments and diversions to the rights of way on their land. There will be no guarantee that landowners 'applications' would be successful as they would have to pass the public interest test which ensures there is no significant impact on public benefits.

4. Background

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 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.

Good footpaths and bridleways encourage sustainable alternative modes of transport to car travel and therefore reduced carbon emissions. 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 by a request to the local authority from the land owner (or any other person), but, as set out above, the local authority is under no obligation to make an order.

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.

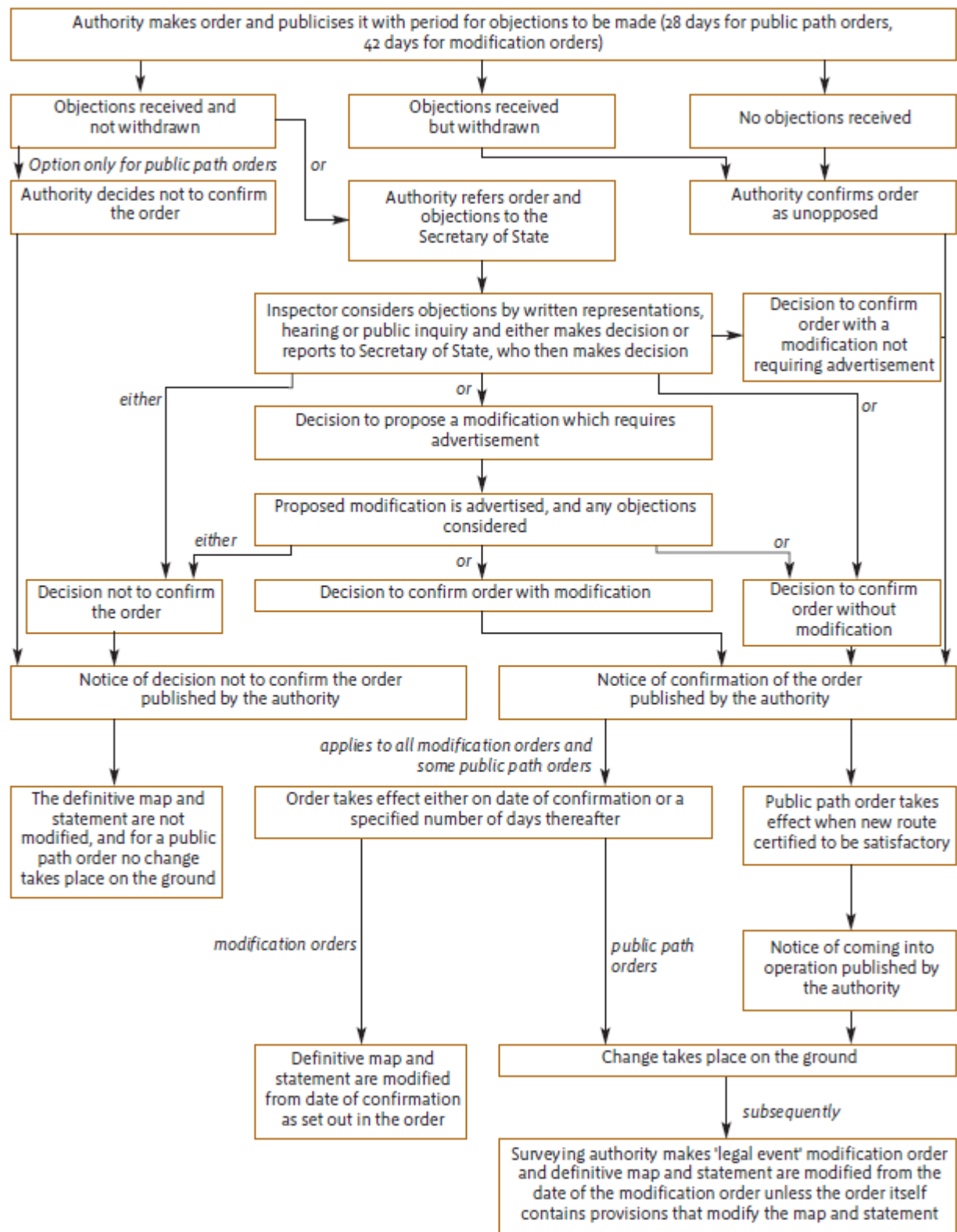
Order making authorities decide whether to make an order. Negotiate with landowner(s) and any statutory undertakers highway authorities and/or other stakeholders affected. Advertise the order. Attempt to resolve any objections. Refer orders to the Secretary of State where there are unresolved objections 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.

Diagram A: Process for diverting and extinguishing Rights of Way



5. Description of the preferred option

Under current legislation, landowners who incur an ongoing cost or inconvenience from the existence of a right of way on their land, can only request that the local authority make an order to divert or extinguish a right of way on their land. The local authority has no compulsion or incentive to act.

Although local authorities have no incentive or compulsion to act at present, around 650 orders each year are nevertheless made wholly or partly in the interests on the landowner (the number of requests made is not known as there is no formal system of recoding). It is believed that in the main these orders are made because there is also an element of benefit to the public as well as the landowners.

Under the current system, authorities are entitled to levy charges in accordance with the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993. This means that when making a public path extinguishment or diversion order on behalf of a land owner, lessee or occupier, charges may be imposed to recover the costs of making and advertising orders, including any pre-order consultation. However authorities cannot recover any costs incurred where it is decided not to make an order nor recover additional costs involved in pursuing an opposed order. They are required to refund any charges where an order is made but not confirmed. This acts as a deterrent to deal with any applications. The costs to order-making authorities of making orders will vary according to the circumstances; figures from the 2007 RIA indicate that the typical cost to an order-making authority would be between £1,700-2,000 for an unopposed order, which they may recover in full, with opposed orders typically incurring an additional costs of the order of £1,400, which order-making authorities cannot currently recover.

Currently the Secretary of State only gets involved in the order-making process where the local authority decides to make an order and the order is opposed (ie an objection from a third party).

Defra undertook a public consultation (in 2007) on implementing the 'right to apply' provisions in the CRoW Act. In scrutinising the primary legislation, and in light of the consultation and discussions with practitioners in local authorities and others, it was concluded that the legislation as it stands contains some major drawbacks. It was clear that a change of approach through amending legislation would be required in order to implement a workable mechanism for making it easier for landowners to apply for a diversion or extinguishment of public rights of way on their land. This legislative opportunity has arisen in the third session of this Parliament because other reforms to the rights of way legislative framework are under consideration.

This option would see the unimplemented provisions in the CRoW Act being modified and implemented. This would happen through three elements:

- a statutory right to apply for an extinguishment or diversion of a right of way on their land,
- a statutory right for the landowner to appeal the decision, or failure to make a decision,
- a system whereby the costs to both local and central government of this process is recovered from the applicant.

This would give certain landowners (land used for agriculture, forestry or horses) and school proprietors a statutory right to apply to a local authority for an order to extinguish or divert public rights of way across their land. It would also enable the possibility of extending the scope of the provisions to other types of landowner in the future by regulation.

Including full public expenditure recovery in this option seeks to create conditions where local authorities are less reluctant to actively consider requests to make orders to divert or extinguish public rights of way, by removing the risk of public funds being expended or even wasted on orders that are for private benefit. These orders will only be made where requests meet the existing statutory criteria (i.e. they do not cause a reduced public benefit). There is a residual risk that local authorities will refuse to provide this service if other pressures within the authority are greater, however it is assumed that this will not be the case as indications are that local authorities would be better placed and more likely to pursue

proposed diversions of rights of way if they could recover the full costs that they incur by dealing with applications to divert or extinguish rights of way.

Under this option local authorities would be able to recover (* indicates charges which are additional to the current arrangements).

- 1) the costs of making and advertising orders including any pre-order consultation.
- 2) costs incurred where it is decided not to make an order*,
- 3) costs involved in pursuing an opposed order*
- 4) costs where an order is made but not confirmed*.

There are a number of ways in which local authorities could provide this service, they could use the fees to employ specific officers to deal with these cases, they could allocate some of the time of current rights of way staff to deal with cases (this could help ensure that staff could be retained on a full time basis in a time of fiscal constraint) or they could outsource the work which may remove the risk for the local authority by only paying for the service when cases come in.

Landowners would benefit from this option as they would have a significantly improved prospect of the local authority responding positively to a request for an extinguishment or diversion of their right of way and should their proposal pass the public interest test they would no longer face the ongoing cost of have the right of way in a particular place on their land. They would only apply for an extinguishment or diversion if the expected benefit of the application exceeded the price of applying.

This proposal of enabling full cost recovery by local authorities has been approved by HMT.

6. Costs and benefits

6.1 Methodology

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

- Applicants (i.e. landowners, tenants, farmers, householders, business, public bodies etc)
- Order making authorities (assumed to be local authorities)
- Statutory undertakers and highway authorities (water, sewerage, power and telecommunications companies)
- Other stakeholder groups (Members of the public, parish councils, local amenity groups and national voluntary organisations)
- Central Government

This impact assessment uses the information from the partial Regulatory Impact Assessment produced for the consultation on the implementation of a statutory right of application, and rights of appeal, in respect of orders to extinguish or divert public rights of way for the CRoW act, which was not implemented. It also includes evidence received as part of the consultation process for this impact assessment and a subsequent research project.

6.2 Assumptions

- The price base year is 2010.
- The present value base year is 2013 as this is when a decision on the options would be made.
- The analysis is conducted over a 10 year period.
- All the data used for these options are taken from the 2007 Public Rights of Way consultation on implementation of the right to apply for orders to extinguish and divert public rights of way, and associated rights of appeal. These data have been tested against the information received

from the consultation and subsequent research project (Asken (2013) Evidence to develop impact assessment for rights of way reforms 2012/13).

The data from the 2007 Public Rights of Way consultation states that the figures used are for illustrative purposes and are based on assumptions which may or may not be accurate. Soundings with stakeholders (the Planning Inspectorate and a local authority) and responses from the consultation and Asken report suggest that these are reasonable assumptions on which to base the analysis.

Number of applications and orders

The 2007 RIA estimated that under the current system around 650 diversion or extinguishment orders are made each year that are wholly or partly in the interests of the landowner. The analysis did not make an assessment of how many requests are put to local authorities but not considered. The analysis did however ask stakeholders how many additional applications could be expected as a result of implementing the right to apply. This resulted in an estimate of an additional applications of 2,630 – it may be that a large number of these are requested already but local authorities do not deal with them, or it could be that as landowners know there is no statutory process, they do not request that local authorities consider them. However as the current number of un-actioned requests is not known it is assumed that all 2,630 applications are additional. The RIA stated that this is likely to be towards the upper end of what could be expected. Not all of these applications would be successful (as they have to pass the public interest test to show there is no major impact on the public) and so the RIA assumed that there will be 1,072 confirmed diversion or extinguishment orders, i.e. successful applications compared to the baseline. The original IA estimated that the number of additional cases would be 4,300, the 2007 RIA then reduced this number by 25% to reflect that it was covering England only (the original figure included England and Wales) and then by a further 20% to reflect that the new rights would be restricted to certain categories of land manager; these are: owners, lessees and occupiers of land used for agriculture, forestry or for the breeding or keeping of horses. The original rationale was to limit the public expenditure impact of these proposals, although full cost recovery is proposed and therefore there is no additional public expenditure the restrictions on who can apply will to begin with stand, but there is an option of changing this at a later stage through secondary legislation. Therefore these estimates will be applied throughout this analysis. The costs and benefits are proportional to the number of applications and therefore a reduction in applications will lead to a proportional reduction in costs and benefits.

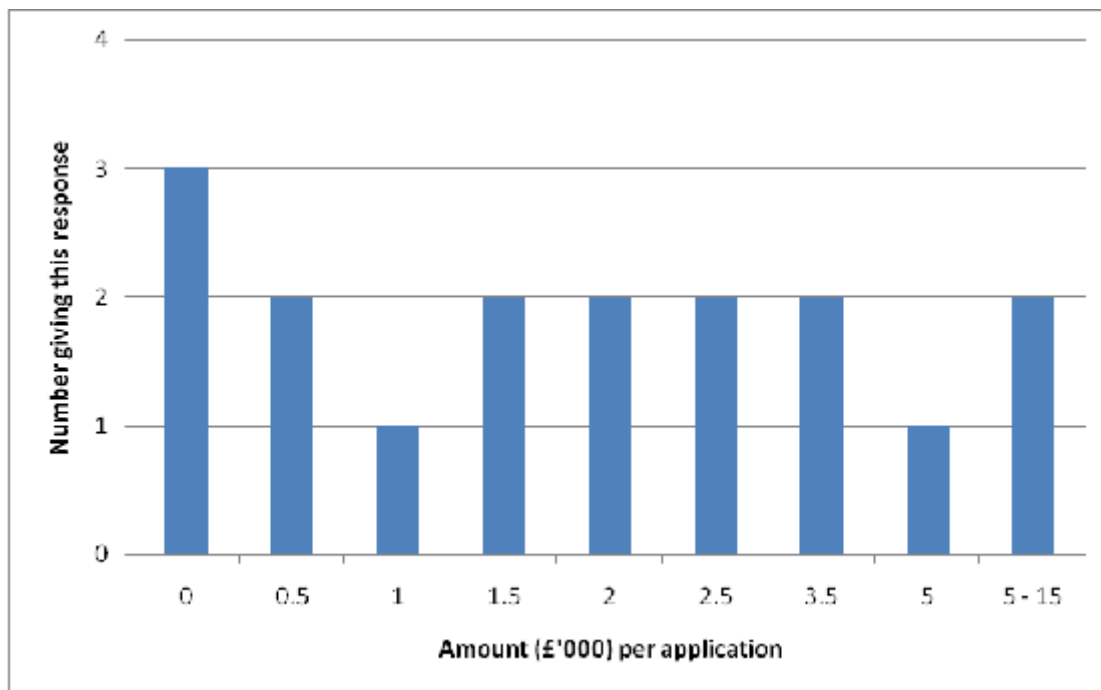
The number of changes made to rights of way is lower than the number of requests as applications will be turned down if they do not meet the statutory requirement i.e. the requests would be turned down if it reduced the existing positive public benefit that the right of way provides. For this reason, it is assumed that, from this policy, there will be no reduction in the overall public benefit that the current rights of way network already provides, because requests with a social cost would be declined.

The extent to which the number of applications is determined by the charges made for them is not known. Evidence was sought through the consultation and the Asken project however sufficiently robust evidence was not provided alter the assumptions behind the analysis.

The Asken study surveyed local authorities asking the maximum they could charge for making an order that . Values were provided by 20 authorities (out more than 300 authorities that have the potential to make orders and 198 that were sampled) found the average charge of £5,338, with £3,000 the modal value (n=5). This average charge is higher than the assumed charge in this analysis.

Consultees to the Consultation Paper were also asked a question around the maximum they would be willing to pay; it elicited a number (44) of comments (from a possible 92), although nearly two thirds of these 44 were caveated with a 'Not sure' tag. Seventeen responses provided a figure which was either the current charge made by a local authority or what they felt should be an appropriate charge (see Figure 2 below). There is a wider and more even spread of figures than the responses given by the LHAs only. This may reflect a different perspective amongst respondents; for example, 3 respondents said £0 which is clearly incorrect as under current arrangements many landowners are willing to pay to have orders made. At the other end of the scale, it is perhaps accurate to suggest that some will pay £5,000 to £15,000 but the higher end of this range would clearly be too high for all but a small minority of potential applicants. The average of the responses from the consultation was nearly £2,900. This is lower than the estimated charge that would occur as a result of full cost recovery.

Figure 2: Applicants' willingness to pay according to Consultation Paper respondents



Four of the respondents suggested that the amount charged should be based on a formula, although no actual formulae were submitted. A further 13 said that charges should reflect the benefit likely to be gained by the applicant, some giving as an example the large benefit that might arise if diverting a footpath could open the way to achieving consent for building development. A further consideration is whether there were any public benefits, in which case charges should be reduced.

Some of the other stakeholders responded to this question. One had asked its members but failed to gain consensus so ultimately decided that a 'reasonable figure' would be £1,000 per case, although this should be reduced or waived if the change generated sufficient public benefit. Another suggested that the 'willingness to pay' approach was the wrong one and the applicant should only have to pay what it costs the Order Making Authority (i.e. a 'cost recovery' basis), adding that £1,500 is a lot for some small landowner.

Therefore the evidence from the Askens report and consultation responses show that there is no consensus around charging rates. The basis for this impact assessment is however full cost recovery and therefore the figure used for the charge is the figure required to recover all costs. This may in reality act as a constraint on the number of applications made as the higher the charge the higher the benefits of the change need to be to make it an application from a landowner worthwhile. This does not fundamentally change the approach to the analysis – the benefits will still be dependent on the benefit of the application for each owner exceeding the costs. What is currently unclear is the extent to which the fee level will impact the number of applications made. It is therefore not possible to alter the numbers used in the analysis to account for this in a robust way but it is important to note that given that charges would almost certainly reduce the number of applications submitted this means that the number of applications (and the associated costs) are very likely to be an overestimate.

Central Government costs

The cost to the secretary of state of dealing with opposed orders is estimated using the percentage of public path orders which are opposed and sent to the secretary of state (40%), this results in an estimate of 429 rights to apply cases being sent to the SofS each year. The cost to the Secretary of state of dealing with these orders is also assumed to be the same as public path orders. The current cost of the Secretary of State's role in dealing with opposed public path orders is £3.1m per year. This equates to a cost of £6,200 per case (500 cases are dealt with per year). It is therefore assumed the cost per case for the Secretary of State dealing with opposed Right to Apply cases is also £6,200 per case resulting in a cost per year of £2.7m.

The costs to Central Government of the appeals process is estimated to be £1.832m per year (£1.96m in 2010 prices). This is based on the assumption that 432 appeals are made each year.

It is however assumed at this stage that both of these costs will be passed onto the applicant.

Costs of the process to local authorities

The cost of the process has been calculated using the data from the 2007 RIA on the total costs to local authorities. The additional cost to the order-making authority of carrying out this work is £2.017 per year (£2.2m in 2010 prices). These costs are passed onto the applicant.

Costs of the process to applicants and local authorities

The cost of the process has been calculated using the data from the 2007 RIA on the total costs to applicants. The total costs to applicants each year under the provisions in the CRoW Act is estimated to be £4.7m (£5m in 2010 prices) which is made up of the costs of preparing the applications, application charges, further charges, consultation, submission to the Secretary of State appeal representation and appeal charges. This is the annual figure as given in the RIA.

In addition to the process costs the applicant will also bear the costs incurred by local authorities and central government as set out above.

Costs to Statutory undertakers and highway authorities

The costs to statutory undertakers and highway authorities estimated to be £0.07m per year (£0.075 in 2010 prices).

Costs to other stakeholders

The cost to other stakeholders (for example parish councils and volunteer groups) is estimated to be £0.155m per year (£0.17m in 2010 prices). This is the same under all options as it is dependent on the number of cases rather than the system through which they are processed.

The public interest test helps to ensure that there is not a significant impact on the public from the extinguishment or diversion of a right of way (i.e. an application will only be granted if it passes the public interest test and therefore does not have a significant negative impact on the public) however it may be that there is a minor public impact (such as a walker having to walk slightly further around a garden rather than through it). Is it not possible to quantify these impacts as they will be site specific but it is assumed, because of the public impact test, that they will not be significant.

Benefits to Landowners

Under business as usual landowners experience a negative impact (or cost) of having a rights of way on their land and they are generally unable to persuade the local authority to act to consider removing this impact. Under the proposed changes local authorities are more likely to provide a system whereby landowners can apply for extinguishments or diversions and where the application passes the public impact test they can have the right of way extinguished or diverted thus removing the negative impact they were experiencing.

When deciding whether or not to apply for a diversion or extinguishment the landowner will calculate their expected benefit (i.e. the benefit they receive from a successful application multiplied by the probability of being successful). Given that this is a service that is being provided, the expected benefits that landowners receive from applying must be at least equal to the charge that they pay i.e. the expected benefit multiplied by the probability of achieving the desired outcome must be at least equal to the charge. Actual benefits however will only accrue to those landowners whose applications result in a granted order. Those applicants who misjudge the public interest test in making their applications and see these turned down will suffer a deadweight loss (see diagram in annex 4). The benefits can therefore be assumed to be at a minimum at least equal to the cost of those applications for which an order is granted.

It is assumed that the annual benefit to landowners is around £4.8m (which is the cost of to the successful applicant calculated by multiplying the unit cost of applications to landowners with the number of orders granted).

Benefit to Order Making Authorities

There is assumed to be a benefit to order-making Authorities of £20k (£21k in 2010 prices) per year from no longer having to meet costs resulting from public inquiries because appealed applications would lead to the Secretary of State having to make the diversion or extinguishment order (instead of the order-making authority) and meet the public inquiry costs.

Table 2: Summary of assumptions used

Assumption	Values per annum
Number of additional applications	2,630
Number of orders made as a result of applications	1,072
Cost of the process to applicants and local authorities (which is passed onto applicant)	£7.2m
SofS cost of dealing with opposed orders(which is passed onto applicant)	£2.7m
SofS cost of dealing with the appeals process(which is passed onto applicant)	£1.96m
Costs to statutory undertakers and highway authorities	£0.075m
Costs to other stakeholders	£0.17m
Minimum expected benefits to landowners	£4.8m
Benefit to Local Authorities	£0.02m

Figures (with the exception of benefits to landowners) likely to be overestimates

Preferred option: Implement changes to the process for applying and appealing against orders for extinguishment and diversion of public rights of way and include full cost recovery for central and local government costs

The data used for calculating the costs and benefits of this option have been taken from the 2007 Partial Regulatory Impact Assessment which accompanied the Public Rights of Way consultation on implementation of the right to apply for orders to extinguish and divert public rights of way, and associated rights of appeal and were tested as part of the consultation stage impact assessment. The RIA divided the costs and benefits between 5 sectors; these are discussed in turn with a summary table (table 3) which shows the average annual and present value costs and benefits for each sector. Overall the costs and benefits of this option can be summarised as:

Benefits: certain owners, leases and occupiers would be able to apply for orders, and appeal, at reasonable cost, and would have more certainty that the order making authorities would assess the application within a reasonable timeframe. Prescribed charges would reduce the likelihood of frivolous, speculative or marginal applications and ensure that authorities are funded to undertake order-making work.

Costs: Applicants would pay prescribed charges to meet all most of the authorities' and central government costs. Increased volume of casework overall plus a new right to appeal would mean higher costs for other interested parties.

Applicants

Benefits

Benefits will accrue to individuals, businesses and schools who obtain extinguishment or diversion orders where they would not have obtained them under the previous arrangements or would have taken longer to obtain. Benefits arise for a number of reasons including

- Lower direct land-management costs (e.g. maintenance of fences along the route);
- improved security and/or privacy for the land owner/occupier (e.g. reduced likelihood of theft, vandalism, escape of stock, or non-intentional damage to machinery/stock/crops/ walls/gates, etc);
- more effective, flexible, convenient and profitable use of the land (e.g. ability to keep dairy bulls in a field, improved crop yields, no need to keep route clear of obstructions or make good after ploughing, gates can be kept locked);
- greater convenience because the route is no longer defined as a 'public place' in law (e.g. in relation to the use of motor vehicles, the muzzling of certain dangerous dogs, use of fire arms, etc);
- reduced risk of liability; reduced risk of confrontation or disputes with the public; and an increase in capital and rental values of land.

The 2007 RIA found that placing a monetary value on these factors is difficult - many are intangible and not readily measurable in financial terms (e.g. greater peace of mind and reduced disturbance) and this was borne out by the fact that the six landowners surveyed in the preparation of the partial RIA were unable to put a precise monetary value on the benefits they expected to gain from the order they had recently obtained (or wished to obtain). The 2007 provided an estimate of possible increases in land owners from changes however the basis of these estimates are not available and therefore they have not been used as they were not deemed to be sufficiently robust. As data on the benefits to landowners is not available it can be assumed that the benefit of this action be at least equal to the cost to the landowner as otherwise they would not avail themselves of the service. Therefore in this Impact Assessment it is assumed that the benefit to landowners is equal to the cost of successful applications. Further unquantifiable benefits may exist for example landowners may value the fact that a system is in place through which they can apply for a diversion or extinguishment.

Costs

The costs to applicants of preparing applications, application charges further charges, consultation, submission to the Secretary of State appeal representation and appeal charges is £4.688m per year, updated to 2010 prices this is £5.0m. In addition to this applicants will be expected to pay for the costs to central and local government of £11.8m. This equates to a cost of £4,490 per application. A research study commissioned following the consultation ("Evidence to develop impact assessments for rights of way reforms 2012/13, Final report by Asken Ltd, January 2013") suggested that applicants would be willing to pay between £2500 and £2900 per application with a maximum average of around £5,300. The cost per application of £4,490 is clearly getting towards the maximum that owners would be willing to pay and therefore may affect the number of applications submitted, however sufficient evidence was not presented to enable a robust re estimation of the number of applications to be made, the number of applications is therefore likely to be an overestimate.

Order Making Authorities

Benefits

This change is not intended to benefit authorities, although it has the potential to offer the following benefit: Authorities will no longer (generally) be required to meet the Secretary of State's costs in relation to erecting site notices, newspaper costs and hire of venue required in connection with holding a public inquiry or hearing into opposed 'right to apply' orders submitted to him for confirmation, as they will be able to recover the costs from the applicant. Assuming that half of the orders currently submitted fall within this definition, this could save authorities the cost of notices/venue hire for approximately 25 inquiries/hearings per year. At an estimated average cost of £800 per inquiry, the cost saving would be £20,000 per year (£21,405 in 2010 prices).

There may be a benefit of better quality applications as having to pay a fee may encourage landowners to invest more in their applications, this may increase as the price landowners pay increases.

Costs

The costs to order-making authorities arise from the submission of opposed orders and orders requiring modification to the Secretary of State, a reduction in being able to make land owners make compensatory improvements, pre application advice, negotiation, consultation and consideration in

respect to orders made and appeal related costs for 442 appeals. This is estimated to cost £2.017m per year (£2.2m per year in 2010 prices), however this is passed onto the applicant.

Statutory undertakers and highway authorities

Benefits

No benefits identified

Costs

Statutory undertakers (water, sewerage, power and telecommunications companies) and highway authorities would receive requests from land managers seeking consent to the making of any applications which propose the creation of a new right of way over land covered by works used by any statutory undertakers for the purposes of their undertaking or within the curtilage of such land. The impact would be as follows:

- costs incurred in receiving and responding to enquires about whether or not a proposed diversion route affects works belonging to the statutory undertaker;
- costs of considering the impact which proposed diversions may have (where the diversion route crosses land used by a statutory undertaker);
- the cost of issuing a written decision (refusal or consent) and stipulating any conditions; and
- risks to reputation, etc, in dealing with land managers where a response is not given as quickly as the land manager would like, or where consent is withheld, etc.

These costs are estimated to total £0.07m per year (£0.075 in 2010 prices).

Other stakeholder groups

Benefits

This option does not directly deliver benefits for other stakeholder groups, but there may be benefits for users of rights of way, because the proposals may lead to improvements in the rights of way network which might not otherwise take place (e.g. regularise informal diversions and reduce the number of illegal obstructions). However, any such benefits are unlikely to be significant as we assume that if there was a significant public benefit the local authority would have acted.

Costs

Members of the public, parish councils, local amenity groups and national voluntary organisations (e.g. the Auto-Cycle Union, British Horse Society, Byways and Bridleways Trust, Open Spaces Society, Ramblers Association and the Cyclists Touring Club) could incur additional costs, because an increase in orders could lead to more consultations, inquiries, hearing, etc. The impact on most parish councils and local amenity bodies should be very low because they will only occasionally be consulted on an order. However, the impact on national bodies (which are notified of every order) could be more significant. It is estimated that this cost is £0.155m per year (£0.17m in 2010 prices).

Central Government

Benefits

No direct benefits to Central Government have been identified, although the new rights will help to achieve the policy objective of ensuring that the rights of way network continues to evolve in ways which take proper account of the needs of land managers and schools.

Costs

The costs to Central Government arise from additional appeals arising from these changes (432) is estimated to be £1.832m per year (£1.96m in 2010 prices) and the cost to government of dealing with opposed orders estimated to be £ 2.7m (2010 prices), however these costs are passed onto the applicant.

Table 3: costs and benefits of option 1 relative to option 0

Sector	Costs (£'s)		Benefits (£'s)	
	Annualised	Present value	Annualised	Present value
Applicants	9,430,638	78,430,893	3,843,971	31,968,790
Order Making Authorities	-	-	17,093	142,159
Statutory Undertakers and Highway Authorities	59,827	497,556	-	-
Other stakeholder groups	132,474	1,101,732	-	-
Central Government	-	-	-	-
Total	9,622,938	80,030,181	3,861,064	32,110,949
Net Present Value				- 47,919,232

The aim of the preferred consultation option was to put in place an incentive for local authorities to provide the service, with no statutory obligation for local authorities to do so. It was recognised that should full cost recovery not provide a sufficient incentive for local authorities to provide the service (for example because of wider pressures in the organisation) there is a risk that the number of applications dealt with will not increase above that of the baseline. Evidence was sought through the consultation on whether full cost recovery will provide sufficient incentive for them to provide a service for applying for diversions or extinguishments of rights of way and some research was commissioned to supplement the consultation responses. The consultation responses and research both suggest that full cost recovery alone would not make a significant improvement in the response by local authorities to requests for PPOs.

6.6 Summary

A comparison of the quantified costs and benefits for the preferred option shows a negative net present value for two reasons: the first is because of the additional costs on the statutory undertakers and highways authority and other stakeholder groups who would have to deal with engaging with applications which are additional to business as usual. The second and more significant is because it has not been possible to assess the value of the benefits to landowners if being having an application approved. Although the quantified net present values for are negative, it is the preferred option for the following reasons.

- There is effectively a missing market as there is a demand for the service from landowners, but there is a lack of supply from the local authorities as they are not able to recover their costs of providing the service.
- Combining a statutory approach with full cost recovery significantly reduces any incentive for local authorities to pass on the burden of costs to the Secretary of State by refusing to act on applications.
- It is anticipated that although the quantified impacts show a negative net present value in practice the options will be welfare enhancing. The extent to which the option is cost beneficial depends on the magnitude of the benefit to landowners from successful applications compared to the deadweight cost to landowners of unsuccessful applications (see diagram in annex 4). It is likely that the price of an application will lead to a more efficient ratio between applications and orders made (i.e. less applications will be submitted and more will be successful), this will mean that the size of the deadweight cost will fall (i.e. less landowners would apply with applications that would not meet the public interest tests) and the net benefit rise, leading to a positive NPV. Although this is the logical result of the proposed system, lack of data means that this cannot be modelled.

- Parliament's resolve to introduce a mechanism to make it easier for landowners to secure a diversion or extinguishment (subject to the current public interest tests) remains unrealised and Government has committed to developing a solution to this problem.

7. Wider Impacts

Annex 2 details the answers to the specific impacts tests.

8. Further work

The 2012 consultation was used to seek views on the assumptions used and seek further evidence on the impacts of the proposals. Specifically with regards to the Impact Assessment the consultation sought views on the following questions.

- The IA assumes that the number of applications per year would be 2,630 – is this a reasonable assumption?
- Will local authorities, as a result of being able to recover their costs, provide a service to landowners for extinguishing or diverting rights of way on their land?
- How much would applicants be willing to pay to have their application considered?
- How would the number of applications vary with the cost of the application? How would the number of applications change in moving from option 1 to option 2?
- What evidence is there on the value of the benefits to landowners of having their application considered and accepted?
- The Impact Assessment assumes that, because of the public interest tests in the current order making process, public goods would not be affected by the policy – is this a fair assumption?
- Are the assumptions that the Impact Assessment calculations have been based on reasonable?
- Are the costs and benefits identified a reasonable estimation?
- Have any costs or benefits been overlooked for example any impacts on businesses?
- When and how should this policy be reviewed?
- Do the proposals strike a fair balance between public and private costs and benefits? If not, how could a better balance be obtained?

9. Risks

The risks associated with the preferred option are as follows.

There is a risk that local authorities will not be incentivised to deal with applications, because they perceive no advantage in being able to recover their costs (i.e. this is a cost neutral measure that, while it would reduce the barrier to local authorities acting, may not provide sufficient incentive to ensure they act) and therefore the situation may not change from business as usual and 650 orders being made. There is equally a risk that local authority may switch resources from other rights of way work , which is not 'self financing'(i.e. there may be a loss of public benefits as other rights of way work is dropped in favour of fee gaining work which means staff can be retained at no cost to authorities).

There is a risk that potential applicants will have unrealistically high expectations of the prospects of an application resulting in a diversion or extinguishment (i.e. applicants think that they are paying for an extinguishment or diversion rather than paying for the ability to apply – as with a planning application).

The risks associated with the impact assessment analysis are

- The forecast volumes of applications/requests for public path orders and the number of public path orders made are based on predictions about how local authorities and potential applicants and will behave in response to the proposed measures. Variations in these figures may skew the figures, but should not invalidate the conclusions drawn from them.
- The majority of the data used is based on estimates made by practitioners and other experts and therefore all data should be treated with caution.

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

The Better Regulation Executive have confirmed that this measure does not fall within the scope OIOO. This is because it is putting in place a system of incentives which should help encourage local authorities to provide a service to landowners which is often not available at present, it does therefore not place a burden on businesses. Although there will be a charge for this service, land owners do not have to avail themselves of it and it is assumed that should they only use the service if the expected benefits they gain will be greater than the charge (otherwise they would not participate).

The consultation sought view on whether any impacts on businesses had been overlooked and nothing significant emerged from the responses.

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

The preferred option is to remove the disincentive to local authorities to act, by enabling them to recover costs in full, but also provide statutory recourse to an independent third party for the landowner where the local authority does not act for other reasons. This requires rectification of flaws in the existing primary legislation. This is the preferred option because it removes the disincentive to local authorities to act, which is not being able to recover public expenditure in full, but provides statutory recourse to the landowner where the landowner does not act for other reasons.

The flaws inherent in the existing right to apply provisions will be corrected by amendments to the primary legislation, which will also make possible recovery of the Secretary of State's costs. Full cost recovery for local authorities can be effected through amending existing regulations.

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.

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)];

PIR

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?]

To evaluate whether the incentives put in place have led to an increased level of service being provided by local authorities.

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]

At this stage the exact nature of the review is unknown – views are being sought as part of the consultation.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

The information used in the final version of the IA will be used as a baseline.

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]

Not yet determined

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

Not yet determined

Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]

n/a

Annex 2 – Specific Impact Tests

Equalities Analysis

The changes examined in the IA affects the processes for recording rights of way. 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? No – this proposal does not impose additional burdens on businesses.

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 and there are no discernable environmental impacts.

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? No

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 and therefore there are no specifically rural impacts.

Sustainable Development

This policy is changing the processes for modifying and extinguishing Rights of Way and therefore there are no sustainable development impacts.

Annex 3: References

No.	Legislation or publication
	Natural England (March 2010), <u>Stepping Forward, The Stakeholder Working Group on Unrecorded Public Rights of Way: Report to Natural England.</u> http://naturalengland.etraderstores.com/NaturalEnglandShop/NECR035
	Managing Public Money. HM Treasury, October 2007 http://hmtreasury.gov.uk/documents/public_spending_reporting/governance_risk/psr_managingpublicmoney_publication.cfm
	Defra (May 2007) Public Rights of Way: Consultation on implications of the right to apply for orders to extinguish and divert public rights of way, and associated rights of appeal. (including RIA)
	Natural Environment and Rural Communities Act 2006
	Countryside and Community Research Unit (2002) <u>Discovering Lost Ways</u> , University of Gloucestershire
	Regulatory Impact Assessment for Part 2 of the Countryside and Rights of Way Act 2000
	Countryside and Rights of Way Act 2000
	Wildlife and Countryside Act 1981
	Highways Act 1980
	Countryside Act 1968
	National Parks & Access to the Countryside Act 1949

Annex 4: Problem under Consideration – Economic Model

The problem under consideration is one where by the supply of orders is rationed at a sub optimal level (Q_0) compared to the efficient level considering the balance of private benefits to landowners, social costs in terms of any reduction in the provision of public goods and the administrative cost of dealing with applications. The graph below illustrates this point, it should be seen as illustrating the problem under consideration rather than an exact representation of the situation.

The shape and location of the marginal benefit curve is not known and so it is not possible to estimate the how a change in the price charged for an application will affect the number of applications nor the size of the surplus from having an application approved. The shape of the marginal social cost curve is also not known, however the application process means that applications will not be granted if there is a negative public impact.

Area A of the graph is the net social benefit. The landowner has to pay the application fee whether or not the application is granted (Area under the 'supply under cost recovery' curve) and therefore when calculating whether or not to apply the landowner will consider the cost of the application compared to the expected benefit (i.e. the benefit from the application being granted multiplied by the probability that they will be successful) and will apply if the expected benefit is greater than the costs.

Due to lack of information on the price elasticity of demand the analysis in the IA assumes that demand is price inelastic and therefore the increase in charges between the options does not have an impact on demand. The model illustrates that this will lead to a deadweight cost where landowners are paying for applications which are not successful. The extent to which the policy will be cost beneficial under this assumption will depend on the size of area A compared to area B (i.e. beneficial if $A > B$), data needed in order to calculate this is not available. An additional benefit to landowners is the intangible benefit they gain from just knowing there is a system in place where they can make changes in the future.

At its most efficient, the system would work such that landowners would have perfect information with regards to the probability of their application being successful and therefore the number of applications would reduce to equal the number of orders created (i.e. only applications that would be successful would be submitted) leading to maximum efficiency. Should this occur the number of applications would be expected to fall from Q_2 to Q_1 , with no deadweight and a benefit of A.

Although the degree to which the options are cost beneficial depend on the size of area A compared to area B under the assumptions used, it can be logically concluded that a positive NPV is likely as the charges are estimated to be sufficiently high as to incentivise rational behaviour with regards to applying moving towards the efficient scenario in the long term. Evidence was sought through the consultation on the price elasticity of demand of applications, however sufficiently robust evidence was not presented.

