EXPLANATORY MEMORANDUM TO

THE COMMONS (REGISTRATION OF TOWN OR VILLAGE GREENS) AND DEDICATED HIGHWAYS (LANDOWNER STATEMENTS AND DECLARATIONS) (ENGLAND) (AMENDMENT) REGULATIONS 2016

2016 No. 1081

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument ('the 2016 Regulations') amends The Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013 ('the 2013 Regulations') to remove the requirement to post notices on land which is the subject of a statement or declaration under section 31(6) of the Highways Act 1980 ('the 1980 Act').

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 31(1) of the 1980 Act provides for the deemed dedication of a way over land as a highway where the public have used the way 'as of right' (i.e. without permission, without force and without secrecy) and without interruption for at least 20 years, unless there is sufficient evidence of the landowner's intention not to dedicate it as such during that period. One method by which landowners can provide sufficient evidence of their intention not to dedicate is in accordance with section 31(6) of the 1980 Act.

4.2 Under that provision a landowner can deposit a statement and map which indicates what highways (if any) the landowner admits to having been dedicated over their land. This is followed by subsequent declarations each to be lodged within 20 years from the previous deposit (or declaration) that no additional ways (other than any specified in the declaration) have been dedicated.

4.3 The 2013 Regulations set out procedural requirements in relation to these statements and declarations. Regulation 4(2) of the 2013 Regulations requires a local authority which receives an application to deposit a statement and map or to lodge a declaration under section 31(6) of the 1980 Act to take steps to publish notice of the application,

including a requirement (at regulation 4(2)(c)) to post notice of the application on the land to which the application relates.

4.4 The 2016 Regulations amend regulation 4(2)(c) of the 2013 Regulations by removing the requirement for local authorities to post notices on land in respect of applications received on or after the coming into force of the 2016 Regulations.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 Following the commencement of the 2013 Regulations, local authorities and landowner representatives reported that the notice requirement for highways statements and declarations created an unnecessary and expensive additional burden. Before the 2013 Regulations there was no requirement to post notices in respect of highways statements or declarations because there is no time limit for applications to be made to record a way following a statement or declaration. Any full period of 20 years' use of the required character prior to the deposit, however many years beforehand, may result in the recording of a public highway. The removal of the notice requirement will therefore not disadvantage users. This is in contrast to landowner statements under section 15A of the Commons Act 2006 as such a statement triggers a time period of one year in which applications can be made to register the land as a town or village green.

7.2 Removal of the notice requirement at regulation 4(2)(c) of the 2013 Regulations will reduce burdens on authorities, by removing the need to expend resource on preparing and posting the notices on land. In turn, this reduces the cost to landowners of making an application to deposit a statement or lodge a declaration under section 31(6) of the 1980 Act.

7.3 The public remain able to access information regarding highways statements and declarations which have been lodged with their local authority. Authorities are required to a keep a public register of highways statements, maps and declarations on their website, and to notify anyone who so requests on receipt of a new application.

Consolidation

7.4 There are no current plans for consolidation of the 2013 Regulations.

8. Consultation outcome

8.1 Defra policy officials have consulted local authorities through the Association of Directors of Environment, Economy, Planning and Transport (ADEPT) Rights of Way Managers Group. Officials have also worked informally with representatives of landowner organisations in developing the 2016 regulations.

9. Guidance

9.1 Existing guidance for local authorities on the GOV.UK website[1] will be updated to be consistent with the 2013 Regulations as amended.

10. Impact

10.1 The impact on business, charities and voluntary bodies is neutral. Where a business, charity or voluntary body makes an application to deposit a statement and map, or lodge a declaration, under section 31(6) of the 1980 Act there will be a small cost saving. Currently, authorities may charge landowners for the posting of notices under regulation 4(2)(c).

10.2 The impact on the public sector is neutral. The removal of the notice requirement at regulation 4(2)(c) of the 2013 Regulations will result in a small reduction in the administrative burden on the local authority dealing with an application, and a corresponding reduction in the costs passed on to the applicant.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The instrument does not make or amend regulatory provision (within the meaning of that term as defined in section 32(4) of the Small Business, Enterprise and Employment Act 2015 (c. 26)) and so the duty under section 28 of that Act does not apply.

12.2 The effect of this instrument will be monitored through regular liaison with representatives of landowner groups and local authority representatives.

13. Contact

13.1 Bryony Thorpe at the Department for Environment, Food and Rural Affairs, Telephone: 0208 026 6590 or email: bryony.thorpe@defra.gsi.gov.uk can answer any queries regarding the instrument.

[1] https://www.gov.uk/government/publications/commons-act-2006-landowner-statements-highways-statements-and-declarations-form