EXPLANATORY MEMORANDUM TO

THE PUBLIC RIGHTS OF WAY (COMBINED ORDERS) (ENGLAND) (AMENDMENT) REGULATIONS 2010

2010 No. 2127

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 Section 53A of the Wildlife and Countryside Act 1981 (the 1981 Act) provides for certain Orders made by local authorities to amend the network of public rights of way in their area to also include provision for the required consequential modification of the definitive map and statement (the local authority's legal record of public rights of way), thereby removing the requirement for a separate modification Order to be made. The Public Rights of Way (Combined Orders) (England) Regulations 2008[1] (the 2008 Regulations) apply section 53A to the types of Order listed in regulation 3 of those Regulations. Orders made under section 53A and the 2008 Regulations, which effect the relevant change to the public right of way and provide for the consequential modification of the definitive map and statement, are referred to as 'combined Orders'.

2.2 This instrument amends the 2008 Regulations by prescribing additional modifications to those Orders for which model forms are prescribed. The additional modifications describe in further detail how the definitive map and statement should be amended to reflect the changes in the network of rights of way. This instrument also inserts references to the modification of the definitive map and statement and the 1981 Act in the forms of those Orders, so as to more clearly identify them as 'combined Orders'.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 53A of the 1981 Act was inserted by section 51 of, and paragraph 2 of Part 1 of Schedule 5 to, the Countryside and Rights of Way Act 2000[2]. Section 53A applies to Orders of a type that are prescribed by Regulations, and regulation 3 of the 2008 Regulations describes the Orders to which section 53A applies. Regulation 5 of the

[1] S.I. 2008/442, which came into force on 6th April 2008.

[2] Paragraph 2 of Part 1 of Schedule 5 to the Countryside and Rights of Way Act 2000 (c. 37), to the extent that it inserts section 53A, was commenced in relation to England on 18 February 2008 by article 2(b) of the Countryside and Rights of Way Act 2000 (Commencement No. 15) Order 2008 (S.I. 2008/308).

2008 Regulations provides that, for those Orders for which model forms are prescribed, the form of the 'combined Order' must substantially follow the model form, as modified in the manner set out in the Schedule to the 2008 Regulations.

4.2. This instrument is being made to effect amendments to the 2008 Regulations requested by practitioners in local authorities. This instrument inserts additional modifications to the model form Orders relating to the amendment of the definitive map and statement, by substituting the Schedule to the 2008 Regulations with the Schedule to this instrument.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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. Although the 2008 Regulations were developed with the assistance of a working group of local authority rights of way practioners, use of the 2008 Regulations in practice has led these practitioners to conclude that amendments to those Regulations are required. The 2008 Regulations facilitate efficiency improvements by enabling local authorities to make one 'combined Order', where before they would have had to make two separate Orders.

7.2. This instrument effects a procedural improvement (requested by practioners in local authorities) to the operation of the definitive map modification part of the process. The improvements enable the inclusion of the form of words that would be used to effect the modification, as well as the inclusion of references to the 1981 Act so as to more clearly identify such Orders as 'combined Orders'. We expect the further clarity provided by this instrument to encourage local authorities to operate more efficiently by making 'combined Orders', rather than separate modification Orders. We also anticipate that the instrument will ensure a consistent approach to the modification of definitive maps and statements is adopted when making such Orders and when consolidating the definitive map and statement under section 57A of the 1981 Act.

- Consolidation

7.3 This is the first amendment to the 2008 Regulations and Defra does not consider that there is a need to consolidate at this stage.

8. Consultation outcome

8.1 In November 2004 Defra consulted on their proposals for implementing the combined Orders provisions and took account of all relevant suggestions and ideas in drafting the 2008 Regulations. Copies of the analysis of responses that was prepared for Defra were deposited in the House library. No formal consultation has been undertaken about this instrument because its key purpose is to implement modifications requested by practitioners in local authorities. However, we have consulted informally with a working group of rights of way practitioners from local authorities; they support the amendments made by this instrument.

9. Guidance

9.1. Defra will issue a revised (online) edition of the guidance to local authorities on making combined Orders and will write to authorities to alert them to the changes.

10. Impact

10.1 This instrument has no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is limited to rights of way officers in local authorities; they will benefit from the amendments made by this instrument, which provide further clarity on how modifications to the definitive map and statement should be reflected in 'combined Orders'.

10.3 An Impact Assessment has not been prepared for this instrument because the foreseen impact on the public sector does not exceed the £5 million threshold and no political or media interest is envisaged.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Defra will review the effectiveness of the instrument by conducting a survey, after the instrument has been in force for a year, amongst those practioners who participated in the working group of local authority practitioners.

13. Contact

13.1 Dave Waterman at the Department for Environment, Food and Rural Affairs, Tel: 0117 3728584 or e-mail: dave.waterman@defra.gsi.gov.uk, can answer any queries regarding the instrument.