EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (PUBLIC PATH ORDERS) (AMENDMENT) (ENGLAND) REGULATIONS 2013

2013 No. 2201

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 12 of the Growth & Infrastructure Act 2013 amended section 257 of the Town & Country Planning Act 1990, by removing a constraint whereby an order to divert or extinguish a public right of way needed in order to enable a planning permission to be implemented could only be made after the planning permission had been granted. The amendment enables an order stopping up or diverting a public path to be made in anticipation of planning permission.

2.2 The Town and Country Planning (Public Path Orders) Regulations 1993, prescribe the form that such rights of way orders must take. An amendment is required to the prescribed form of order set out in the regulations to accommodate the amendments to the Town & Country Planning Act made by the Growth & Infrastructure Bill. This will avoid the risk of orders needed to implement planning permissions being delayed by a legal challenge on the grounds that they do not conform to the prescribed form of order, or are not 'substantially to like effect'.

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

3.1 None.

4. Legislative Context

4.1 Part X of the Town & Country Planning Act 1990 contains provision for the stopping up or diversion of highways and other related ancillary matters in relation to the implementation of planning permission. In particular section 257 provides for a local authority to by order authorise the stopping up or diversion of any footpath or bridleway if they are satisfied that it is necessary to do so in order to enable development to be carried out.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

Richard Benyon, the Parliamentary Under Secretary of State, Department for Environment, Food and Rural Affairs, has made the following statement regarding Human Rights:

In my view the provisions of the Town and Country Planning (Public Path Orders) (Amendment) (England) Regulations 2013 are compatible with the Convention rights.

7. Policy background

7.1 The change to section 257 of the Town & Country Planning Act 1990 was made in response to a recommendation in the 2010 Penfold Review of no planning consents and will enable the rights of way order to be considered at alongside the planning application. It will therefore help to save time in the end-to-end process of obtaining all the planning and non-planning consents required before a development can be carried out. It will also enable any issues associated with the rights of way order to be tackled earlier in the process, instead of being left until the end, when they are more difficult to resolve.

8. Consultation outcome

8.1 A public consultation carried out between May and August 2012 indicated that there was widespread agreement to the amendment made by section 12 of the Growth & Infrastructure Act 2013.

9. Guidance

9.1 Existing guidance in Defra Circular 1/09 on public rights of way will be updated when the guidance as a whole is next reviewed.

10. Impact

10.1 There will be no regulatory requirements placed on business, charities or the voluntary sector as a result of this instrument. The changes may help to speed up the implementation of planning permission in certain cases.

11. Regulating small business

11.1 The regulations impose no new or additional regulation on business.

12. Monitoring & review

12.1 It is intended that these regulation will be reviewed at the end of 2015 as a part of a wider package of rights of way reforms.

13. Contact

Dave Waterman at the Department for Environment, Food and Rural Affairs Tel: 0117 372 3570 or email: dave.waterman@defra.gsi.gov.uk can answer any queries regarding the instrument.