

Public Rights of Way

Register of definitive map modification order applications

**Guidance for English surveying authorities to
accompany Statutory Instrument 2005
No 2461**

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Introduction

1. This guidance is for English surveying authorities, who are required to keep a register under section 53B of the WCA 1981 (which was introduced by paragraph 2 of Schedule 5 to the Countryside and Rights of Way Act 2000). Section 53B WCA 1981 is reproduced in **Annex 1**.
2. The section 53B WCA 1981 register, a register of applications made to surveying authorities under section 53(5) of the WCA 1981 for definitive map modification orders, will help to increase knowledge among landowners, users of rights of way, and the general public about applications which could result or have resulted in changes to the definitive map and/or statement. It will also help to avoid the duplication of work where someone has already made an application for a definitive map modification order in respect of a particular matter. All surveying authorities in England are required to set up and maintain this register. Each authority's register must be established by 31st December 2005.
3. The National Assembly for Wales is responsible for implementing section 53B WCA 1981 in Wales.

General principles

4. The regulations that implement section 53B WCA 1981 in England (SI 2005/2461; the "Regulations") have been prepared in accordance with the general principles set out below.

- **Registers should be flexible.**

People will have different reasons for searching the register. For example, searches may be undertaken to identify: (i) a particular application, (ii) applications relating to a particular parish, ward or district, or (iii) applications near to a particular city, town or village. In setting up registers and search mechanisms, authorities should be aware that, given a reasonable amount of information concerning the location of a way or the date of an application, for example, a search should reveal the information being sought. A search may result in information in addition to that being sought, which can then be refined, but should not result in less or no information (unless, of course, there is no information to be found).

- **Registers should impose the minimum burden on authorities while providing a service to local authorities, users of rights of way, landowners and others.**

In addition to the particulars that must be kept on the register under the Regulations, surveying authorities may record on the register such additional information as they consider appropriate¹. Authorities who have already

¹ In deciding whether it is "appropriate" to include, for example, an objector's name/address on the register (as a result of including the objection itself) under regulation 2(2), an authority should take into account: (i) whether the inclusion or retention of the objector's name and address on the register would, or would be likely to, cause substantial damage or substantial distress to the objector or to another person; and (ii) whether such damage or distress is or would be unwarranted (i.e. mirroring the tests included in relation to applicants' details at regulation

established a register may adapt it to meet the requirements set out in the Regulations.

- **Registers should recognise e-government and should be user-friendly.**

The register must be accessible on surveying authorities' websites (or on a website maintained by the authority). A paper copy of the register must be kept at the principal office of each surveying authority.

2(3)). Indeed, whenever material to be included on the register under regulation 2(2) includes personal details, the issues mentioned in (i) and (ii) will be relevant to the "appropriateness" or otherwise of including such details.

Section 53B WCA 1981 register: Register of applications for definitive map modification orders made under section 53(5) WCA 1981.

5. Section 53B(1) WCA 1981 requires authorities to keep a register of applications made to surveying authorities under section 53(5) WCA 1981 for orders to modify the definitive map and/or statement.
6. The Regulations require authorities to record all applications which have been made and not determined by the surveying authority under Schedule 14 to the WCA 1981 before the "relevant date" (31st December 2005), regardless of when the application was received.
7. An entry in the register must be made by the later of: (a) the date falling 28 days from the date the application is received by an authority, and (b) 31st December 2005. The register must be updated as soon as reasonably practicable thereafter to take account of certain matters set out in the Regulations.
8. In respect of each application under section 53(5) of the Act, the register must contain:
 - ✓ A copy of the application together with a copy of any map submitted with the application.²

² (i) Regulation 2(1)(a) requires the inclusion on the register of a copy of the application together with a copy of any map submitted with the application. While, by virtue of paragraph 3(1) of Schedule 14 WCA 1981, the obligation to investigate the matters stated in the application does not arise until a surveying authority has received a certificate under paragraph 2(3) of Schedule 14 WCA 1981, by virtue of regulation 3(6) the obligation to include an entry in the register relates to the date the application is received by an authority. Thus, the obligation to include an entry in the register is independent of the receipt of certification that paragraph 2 of Schedule 14 WCA 1981 has been complied with. Of course, the fact that there is an entry on the register in relation to an application does not affect: (i) the date on which an authority must begin investigating the application, or (ii) the notice requirements set out in paragraph 2 of Schedule 14 WCA 1981.

(ii) The words "any map" (rather than "the map") were used in regulation 2(1)(a) to cover the situation of an applicant submitting more than one map with his or her application. The words were intended to cover maps submitted by an applicant in accordance with paragraph 1 of Schedule 14 to the WCA 1981 only i.e. maps showing the way or ways to which the application relates, rather than old inclosure award maps, maps accompanying user evidence, etc., submitted by an applicant at the same time as the application. The latter material amounts to evidence submitted by an applicant at the same time as the application, which may, of course, be included on the register under regulation 2(2), subject to any copyright issues.

(iii) In relation to copyright, section 50(1) of the Copyright, Designs and Patents Act 1988 ("CDPA 1988") provides that "Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe copyright." Since section 53B(1) WCA 1981 requires (and hence "specifically authorises") the keeping of a register containing such information as may be prescribed, and since regulation 2(1)(a) of the Regulations prescribes the inclusion of certain maps on the register (in accordance with section 53B(4)(a) WCA 1981), the inclusion of such maps on the register under regulation 2(1)(a) will not infringe copyright. It should, of course, be borne in mind that copyright issues may be raised by the inclusion of material under regulation 2(2).

(iv) Section 47(2) of the CDPA 1988 provides "Where material is open to public inspection pursuant to a statutory requirement, copyright is not infringed by the copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of enabling the material to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed." By virtue of section 47(6) CDPA 1988, the "appropriate person" is "the person required to make the material open to public inspection or, as the case may be, the person maintaining the register". However, section 47(2) CDPA 1988 only applies to maps marked in the following manner (see section 47(4) CDPA 1988 and article 2 of the Copyright (Material Open to Public Inspection) (Marking of Copies of Maps) Order 1989 (SI 1989/1099)): "*This copy has been made by or with the authority of [insert the name of the person*

- ✓ A description of the intended effect of the application.
- ✓ A description of the geographical location to which the application relates³.
- ✓ The applicant's name and address, including postcode⁴.
- ✓ The date the application was received by the surveying authority.
- ✓ Any date set by the authority for determining the application.
- ✓ Any unique reference number the authority allocates to the application together with the details of the person who is responsible for dealing with the application⁵.

Authorities must add to the register entry for each application:

- The terms of any direction by the Secretary of State under paragraph 3(2) of Schedule 14 to the 1981 Act (direction to the authority to determine an application within a specified period).
- The date on which the application was determined by the authority.
- The decision of the surveying authority on determination of the application.
- Where the decision is to make an order, whether or not the order was confirmed (with or without modifications).
- Where the authority refuses an application, the outcome of any appeal against that decision.

9. Authorities must keep their registers in electronic and paper form. The paper version must be kept at the principal office of the surveying authority, where it may be inspected by the public free of charge at all reasonable hours. Copies of

required to make the map open to public inspection or the person maintaining the register] pursuant to [section 47 of the Copyright, Designs and Patents Act 1988 \("the Act"\)](#). Unless the Act provides a relevant exception to copyright, the copy must not be copied without the prior permission of the copyright owner." In relation to the register, it is therefore important that any copies of maps that are taken by, or provided to, members of the public are marked with this wording. Since members of the public may be able to print copies of maps from surveying authorities' websites (as well as to obtain copies from the paper version of the register), a practical way of dealing with the above issue would perhaps be to ensure that the copies of maps included on the electronic version of the register (as well as the copies of maps on the paper version of the register) are marked with the relevant wording set out above.

³ Which is to be identified by reference to: (i) the Ordnance Survey six-figure grid reference in respect of each end of the way, or, where the way is already recorded on the relevant definitive map, the path number, (ii) the address (including postcode) of any property on which the way lies, (iii) the names of the principal cities, towns and villages nearest to the way, and (iv) the parish, ward or district in which the way lies. Where the application relates to part only of a way, the particulars to be recorded on the register as regards geographical location shall relate to that part only.

⁴ However, where a surveying authority is satisfied that: (a) the inclusion or retention of an applicant's name and address on the register would, or would be likely to, cause substantial damage or substantial distress to the applicant or to another person, and (b) such damage is or would be unwarranted, the applicant's name and address must be removed from the register (or must not be included on the register), and must be redacted from any documents contained or to be contained on the register. This is intended to protect applicants from the risk of intimidation, which was highlighted during the consultation exercise. The wording of the test mirrors section 10 of the Data Protection Act 1998, which is cross-referred to in section 40 of the Freedom of Information Act 2000.

⁵ Authorities are not required to include names of individuals, as the individual responsible may change over time. A job title, together with the authority's phone number and e-mail address is adequate.

the paper version of the register can be distributed around the local authority's area. Authorities must make the electronic version of the register available for inspection by the public on a website maintained by the authority. They must also make provision to enable the electronic version of the register to be inspected at the principal office of the authority.

10. The register may be kept in parts so that each part relates to land within a particular parish, ward or district. However, as set out in the paragraph immediately above, the paper version of the register must be kept at the principal office of the surveying authority.

11. The electronic and paper versions of the register should be identical. Authorities should put in place checks to ensure that register entries are correct. Authorities should amend the register if they are satisfied that it contains a material error.

12. Authorities must keep the register in such manner as is suitable to enable a copy of any of the particulars contained in the register to be taken by or for any person who requests a copy in person at the principal office of the surveying authority. Authorities may make a reasonable charge in respect of such copies.

13. Authorities are required to set up their registers by 31st December 2005. The section 53B register is linked to provisions contained in the Natural Environment and Rural Communities Bill ("NERC Bill") which will, amongst other things, extinguish certain unrecorded vehicular rights of way. Since such extinguishment will take place on commencement of the NERC Bill provisions, the section 53B WCA 1981 register will have a significant role to play. For example, the public will be able to search the register to see if an application has been made to record vehicular rights on the definitive map that would otherwise be extinguished on commencement of the NERC Bill provisions.

Annex 1: Terms of the legislation

Section 53B of the Wildlife and Countryside Act 1981 provides as follows:

53B Register of applications under section 53

(1) Every surveying authority shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect to applications under section 53(5).

(2) The register shall contain such information as may be prescribed with respect to the manner in which such applications have been dealt with.

(3) Regulations may make provision for the register to be kept in two or more parts each part containing such information relating to applications under section 53(5) as may be prescribed.

(4) Regulations may make provision—

(a) for a specified part of the register to contain copies of applications and of the maps submitted with them, and

(b) for the entry relating to any application, and everything relating to it, to be removed from any part of the register when—

(i) the application (including any appeal to the Secretary of State) has finally been disposed of, and

(ii) if an order is made, a decision has been made to confirm or not to confirm the order,

(without prejudice to the inclusion of any different entry relating to it in another part of the register).

(5) Every register kept under this section shall be available for inspection free of charge at all reasonable hours.

(6) In this section—

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Secretary of State by statutory instrument;

and a statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.