

Report to Governance Committee

27 September 2022

Changes to the Scheme of Delegation re Public Path Orders and Stopping Up Orders

Report by Director of Law and Assurance

Electoral divisions: Not applicable

Summary

In order for future public path orders to be made as combined orders so that they automatically change the definitive map and statement (DMS) and do not require a separate legal event order to be made by the Director of Law and Assurance, it is proposed that authorisation be given to the Assistant Director (Highways, Transport and Planning) to make Combined Public Path Orders pursuant to Section 53A of the Wildlife and Countryside Act 1981.

In order for decisions on applications for stopping up of public rights of way to be made by officers the Delegation Code of Practice for rights of way must be updated. Consequential changes are also proposed to the delegation code of practice for highways and transport matters.

Recommendations

- (1) That the changes to Part 3, Appendix 3 of the Council's Constitution relating to combined orders, as set out in paragraph 2.3, be approved; and
 - (2) That the changes to Appendix 4 of the Council's Constitution relating to stopping up order applications, as set out in paragraphs 2.4 and 2.5 and Appendix A, be endorsed for recommendation to the County Council.
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Proposal

1 Background and context

Combined Orders

- 1.1 Currently paragraph 111 of the Scheme of Delegation to officers, set out in Part 3, Appendix 3 of the Council's Constitution, provides the Director of Law and Assurance with authority to 'keep the definitive map and statement under continuous review and make orders modifying the DMS in consequence of evidence falling within Section 53 or Section 53A of the Wildlife and Countryside Act 1981'.
- 1.2 Section 53A of the Wildlife and Countryside Act 1981 provides the ability to make Combined Orders which allow public path orders made under the

Highways Act 1980 and Town and Country Planning Act 1990 to automatically change the definitive map and statement. If they are made only as Highways Act 1980 and Town and Country Planning Act 1990 orders and not as Combined Orders they do not automatically change the DMS and require a separate legal event order (Definitive Map Modification Order (DMMO)) to amend the definitive map to be made by the Director of Law and Assurance.

- 1.3 The authority for the Director of Law and Assurance to make DMMOs under Section 53 or Section 53A of the Wildlife and Countryside Act 1981 and keeping the DMS under continuous review should still sit with Director of Law and Assurance but it is now the case that the Assistant Director (Highways, Transport and Planning) makes all public path orders. The intention is that future public path orders will be made as combined orders so that they automatically change the DMS and do not require a separate legal event order to be made by the Director of Law and Assurance.

Stopping Up Order Applications

- 1.4 Stopping-Up order applications are usually associated with highways transport and planning matters. There has recently been an increase in the number of stopping up order applications that are associated with public rights of way. The Delegation Code of Practice for Public Rights of Way does not include reference to how delegated decisions on stopping up order applications are to be taken by officers.

2 Proposal details

Combined Orders

- 2.1 Legal Services are currently going through the process of making legal event orders for legal events that have occurred for all 14 definitive map areas. Annual legal event orders will need to be made for those orders which cannot be made as Combined Orders. In order to reduce the amount of orders to be included on any annual legal event order, it is necessary for authority to be given to Assistant Director (Highways, Transport and Planning) under paragraph 110c for public path orders to be made as Combined Orders under S.53A Wildlife and Countryside Act 1981.
- 2.2 It is therefore proposed that paragraph 110c is amended to give authority to make Combined Orders. A further amendment is proposed to make clear that all types of public path order under the Highways Act 1980 can be made. This is because some types of public path order are mentioned but not all. There are also special extinguishment/diversion orders for land occupied for the purposes of a school (S.118B(4)/119B(4) HA 1980), rail crossing extinguishment/diversion orders (S.118A/S.119A HA 1980) as well as other special orders for crime prevention purposes (S.118B/S.119B HA 1980) which are not explicitly mentioned and which can be made under the Highways Act/Town and Country Planning Act 1990.
- 2.3 The proposed change is set out below with deletions struck through and additions shown in bold, italic text. The opportunity is also being taken to correct a numbering error in the subsequent two paragraphs.

S. Rights of way

Section/No.	Function	Officer	Form of shared delegation
110c	To investigate, make, and confirm (or decline), all public path orders under the Highways Act 1980 and Town and Country Planning Act 1990, which shall include but not be limited to public path extinguishment orders, public path diversion orders, public path creation agreements and public path creation orders under the Highways Act 1980 and the Town and Country Planning Act 1990 which orders can be made as combined orders under Section 53A of the Wildlife and Countryside Act 1981.	Assistant Director (Highways, Transport and Planning)	Severally with Director of Law and Assurance
110d	To respond to consultations by borough and district councils in respect of their proposals to make any rights of way orders, including the making of any formal objection.	Assistant Director (Highways, Transport and Planning)	
110e	To consider and accept or decline proposals for new dedicated and permissive paths and to process dedication and permissive path agreements under the Highways Act 1980.	Assistant Director (Highways, Transport and Planning)	Severally with Director of Law and Assurance

Stopping Up Order Applications

- 2.4 It is proposed that applications for the stopping up of public rights of way are dealt with in the same way as public path orders. That is new proposals will be reported in the Bulletin and will not be taken forward for 21 days. Any local member must express a view within 21 days and if there is disagreement with the officer recommendation the matter will be referred to the Planning and Rights of Way committee. Objections from consultees such as district and parish

councils and substantive comments from the public will also bar the delegation to officers. The changes are shown in Appendix A.

- 2.5 It is also proposed to clarify the position for delegation in relation to stopping-up applications that arise through the Highways and Transport teams. Applications will follow the same notification process as those followed for traffic regulation matters. The changes are also shown in Appendix A.

3 Other options considered (and reasons for not proposing)

- 3.1 Not applicable.

4 Consultation, engagement and advice

- 4.1 Not applicable.

5 Finance

- 5.1 There are no financial implications arising from this report.

6 Risk implications and mitigations

Risk	Mitigating Action (in place or planned)
Currently combined orders are not made for public path orders leading to the need for a separate Legal Event Order as the DMS is not automatically updated. This is inefficient and increases office time in preparation of legal orders.	The changes suggested will remove this inefficiency to ensure a smoother process.
Currently there are no provisions with the delegation code of practice for rights of way matters in relation to stopping up order applications. This needs to be addressed to avoid confusion.	The changes proposed clarify the process in relation to rights of way and highways and transport matters.

7 Policy alignment and compliance

- 7.1 There are no implications relating to Council policies.

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Appendices:

Appendix A – Changes relating to stopping up order applications

Background papers: None