

EXPLANATORY MEMORANDUM TO
THE HIGHWAYS (SSSI DIVERSION ORDERS) (ENGLAND) REGULATIONS 2007

2007 No. 1494

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. Description

2.1 Sections 119D and 119E of the Highways Act 1980 (“the Act”), inserted by Schedule 6 to the Countryside and Rights of Way Act 2000 (“the CROW Act”), make provision enabling orders (“SSSI diversion orders”) to be made for the diversion of certain highways to prevent damage to the special features of a site of special scientific interest (“an SSSI”). These regulations prescribe the forms and notices to be used, and make provision as to the procedure for SSSI diversion orders.

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

3.1 None

4. Legislative Background

4.1 Sections 119D and 119E of the Highways Act 1980 will be commenced on 21st May by The Countryside and Rights of Way Act 2000 (Commencement No.12) Order 2007 [SI 2007/1493 (C.61)]. The requirements involved in applying for an SSSI diversion order, and in making and determining the application are largely set out in the Act. These regulations are primarily concerned with prescribing forms and other information to be provided, and with procedural aspects.

5. Territorial Extent and Application

5.1 This instrument applies to England.

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

7.1 In England, SSSIs are notified by Nature England under section 28 of the Wildlife and Countryside Act 1981, when in their opinion an area of land “is of special interest by reason of any of its flora, fauna, or geological or physiographical features”.

7.2 SSSIs are nationally important and conserve and protect the best of our wildlife, geological and physiographical heritage for the benefit of present and future generations. They are a key component of the Government's overall nature conservation strategy, set out in *Working with the Grain of Nature: A biodiversity strategy for England*. There is a Government Public Service Agreement (PSA) target to have 95% of the SSSI area in favourable or recovering condition by 2010.

7.3 The CROW Act, which amended section 28 of the Wildlife and Countryside Act 1981, introduced new powers to protect and conserve SSSIs. It gave enhanced powers to Natural England to enable the positive management of SSSIs and restrict damaging activities on SSSIs; introduced new penalties for deliberate damage to SSSIs; and imposed duties on public bodies in respect of SSSIs.

7.4 In line with these changes, during the passage of the CROW Act it was decided that there should also be a power to enable local highway authorities to divert rights of way where the public use of the highway is causing, or continued public use is likely to cause, significant damage to the special interest features of SSSIs. These powers will also ensure that the United Kingdom can meet its international obligations under the *European Habitats and Wild Birds Directives* and the *Ramsar Convention*, as all terrestrial European and Ramsar sites are also SSSIs.

7.5 The power to apply for SSSI diversion orders in England is restricted to Natural England. Applications must be accompanied by a map, an assessment of the effects of public use of the right of way on the SSSI, and any additional information as may be prescribed in regulations. At least 14 days before making an application Natural England must notify any owner, lessee or occupier of land over which the proposed order would create or extinguish a public right of way, and any other persons as may be prescribed, of its intention to do so.

7.6 Between 4 August and 4 November 2005, the Department for Environment, Food and Rural Affairs (Defra) consulted on the Government's proposed approach to implementing SSSI diversion orders. The consultation paper and analysis of the responses received can be found at <http://www.defra.gov.uk/wildlife-countryside/issues/public/sssi-tempdiv.htm>

7.7 Comments were invited on :

- The scope and content of the information that Natural England should be required to include in the initial form of notification;
- Whether any additional persons should be prescribed to receive the initial notification by Natural England;
- The scope and content of the information that Natural England should be required to include in its application to the local highway authority for a SSSI diversion.
- Whether Defra should follow the normal procedures for making, giving notice of, and confirming orders relating to SSSI diversions.

7.8 A total of 145 consultees responded to the consultation. The largest number of respondents came from Local Access Forums and Countryside User Groups, followed by Institutes/Professional Bodies and County Councils. Defra studied all responses carefully and, working closely with Natural England, took account of all relevant suggestions and ideas in drafting the regulations.

7.9 There was general agreement that Defra should follow the established procedures relating to other types of diversion orders. A number of suggestions and comments were received on the scope and content of the form of notification and application by Natural England. Both forms have been substantially revised and are included in these regulations at Schedules 1 and 2.

7.10 A number of responses suggested that Natural England should be required to notify additional persons before making an application. Suggestions included local access forums, rights of way user groups and statutory undertakers. After careful consideration Defra has concluded that the legislation should not require Natural England to send the notification to any additional persons. A statutory list could be too restrictive and might lead to relevant local organisations being left out, or alternatively organisations with no immediate interest in the diversion being unnecessarily included. Natural England have already undertaken to consult widely before making an application. To ensure that this happens Defra will issue non-statutory guidance to Natural England and Local Highway Authorities on the operation of these provisions. This will set out the full range of people and organisations that Natural England should consider consulting before seeking an order. A further guidance note has also been prepared by Defra for Natural England to send with the notification referred to in section 7.5 above.. This sets out the procedure following notification and will incorporate information for land managers about compensation, and on opportunities for making representations.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies. The costs of any diversions will be borne by local authorities rather than by business.

8.2 The impact on the public sector is not expected to result in significant extra costs for local authorities. This is a “last resort” power to prevent significant damage to SSSIs and it is envisaged by Natural England that cases will be few and far between. The assumption is that there will be no more than three cases across the whole of England a year, at an average cost to local authorities of between £ 2 000 and £ 8 000 per case depending on the complexity, and whether a public inquiry is necessary.

9. Contact

Karen Lee-Bapty at the The Department for Environment, Food and Rural Affairs - Tel: 0117 372 8211 or e-mail: Karen.Lee-Bapty@defra.gsi.gov.uk can answer any queries regarding the instrument.