

**EXPLANATORY MEMORANDUM TO**  
**THE PUBLIC RIGHTS OF WAY (REGISTER OF APPLICATIONS UNDER**  
**SECTION 53(5) OF THE WILDLIFE AND COUNTRYSIDE ACT 1981)(ENGLAND)**  
**REGULATIONS 2005**

**2005 No. 2461**

**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 Section 53B of the Wildlife and Countryside Act 1981 (“**WCA 1981**”) requires local authorities to keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect to applications made under section 53(5) WCA 1981. Section 53(5) WCA 1981 allows any person to apply to a local authority for an order modifying the authority’s definitive map and statement, which is each local authority’s record of public rights of way in its area. These Regulations prescribe the manner in which local authorities are to keep, and the information to be kept on, the section 53B WCA 1981 register.

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

3.1 None.

**4. Legislative Background**

4.1 The Countryside and Rights of Way Act 2000 (“**CROW 2000**”) introduced section 53B WCA 1981 (introduced by section 51 of, and paragraph 2 of Schedule 5 to, CROW 2000), which requires local authorities to set up a register of applications made under section 53(5) WCA 1981. The register is described in paragraph 2.1 above.

**5. Extent**

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 The register described in paragraph 2.1 above is intended to help to: (i) increase knowledge among landowners, users and the general public about applications which could result in changes to the definitive map and/or the rights of way network, and (ii) avoid duplication where more than one person may be thinking of applying to an authority for a change to the definitive map. The register should also help local authorities to manage their rights of way functions.

7.2 The section 53B WCA 1981 register of applications is particularly important for two reasons. First, sections 53 and 56 of CROW 2000, will, once commenced, set a deadline of 2026 for the making of certain modifications to the definitive map and statement. The combined effect of sections 53 and 56 CROW 2000 will not be to close the definitive map, but instead will be to extinguish certain unrecorded public rights of way created before 1949, the year of the original definitive map legislation (the National Parks and Access to the Countryside Act 1949). The section 53B WCA 1981 register will record applications made up to the cut off date of 2026; applications that are recorded on the register before the cut off date will be processed to a conclusion. Second, the Government has introduced legislation (Part 6 of the Natural Environment and Rural Communities Bill (“**NERC Bill**”)) which is intended to limit the vehicular rights that can be recorded on local authorities’ definitive maps and statements. The legislation does this by halting implied creation of rights of way for mechanically propelled vehicles, preventing post-1930 use of a way by a mechanically propelled vehicle from giving rise to any future public right of way, and (subject to certain exceptions) extinguishing existing public rights of way for mechanically propelled vehicles if those rights are not already recorded on the definitive map and statement. 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.

7.3 In November 2004, the Department for Environment, Food and Rural Affairs consulted on the contents of the section 53B WCA 1981 register. The consultation period closed in January 2005. The consultation paper can be found at <http://www.defra.gov.uk/wildlife-countryside/cl/publicrow.htm>.

7.4 A total of 117 consultees responded to the consultation paper. The largest number of respondents came from Countryside User Groups (21.4%), followed by County Councils (20.5%) and District, Borough and Local Councils (12.8%). Other respondents included Local Access Forums 12.0%, Parish Councils 4.3%, Government Departments/Agencies/Utilities 4.3% and National Park Authorities 2.6%.

7.5 85.6% of respondents agreed with the general guiding principles of the section 53B WCA 1981 register. Of the remaining 14.4%, 5.3% disagreed with the general guiding principles, 4.4% were uncertain of their response, and 4.4% expressed no preference. 70.8% respondents agreed that the proposed content of the register meets the principles of minimising the regulatory burden on authorities while providing helpful information to the public. Of the 29.2% respondents that did not agree, 8% disagreed, 9.7% expressed no view at all and 11.5% were undecided as to their response. Defra studied all responses carefully and took account of all relevant suggestions and ideas in drafting the Regulations. For example, a number of respondents raised concerns in relation to the inclusion of an applicant’s name and address on the register, because of the perceived risk of intimidation. To meet these concerns, these Regulations allow such information to be excluded from the register in certain circumstances. Copies of the analysis of responses that was prepared for Defra have been deposited in the House library.

## **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.

8.2 The impact on the public sector will be that surveying authorities will need: (i) to keep a register under section 53B WCA 1981 (as a result of the coming into force of section 53B WCA 1981 on 27<sup>th</sup> September 2005 under the Countryside and Rights of Way Act 2000 (Commencement No 9) Order 2005), which will involve establishing and maintaining the register, and (ii) to keep such register in accordance with the terms of these Regulations.

## **9. Contact**

Paula Reading at the Department for Environment, Food and Rural Affairs (Tel: 0117 3728585 or e-mail: [Paula.Reading@defra.gsi.gov.uk](mailto:Paula.Reading@defra.gsi.gov.uk)) can answer any queries regarding the instrument.