

## ***RIGHTS OF WAY REPORT***



Date Written	11 <sup>th</sup> February 2014
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Committee Date	24 <sup>th</sup> February 2014

*To: Chairman, Ladies and Gentlemen*

### ***Guidance on the law relating to the diversion of rights of way under Highways Act 1980***

1.0 The following is to remind Members of the criteria for the making of the Orders and to offer some guidance.

1.1 Often the legal test requires the Committee to be satisfied as to the expediency of something. It is suggested that for something to be expedient it is appropriate and suitable to the circumstances and may incline towards being of an advantage even if not particularly fair. Something which is expedient would seem to facilitate your achieving a desired end.

1.2 Whether something is as convenient or not substantially less convenient may need to be considered. It is suggested that convenient refers to being suitable and easy to use.

### **2.0 *TO MAKE AN ORDER***

2.1 To be satisfied that it is expedient in the interests of the owner, lessee or occupier

OR

To be satisfied that it is expedient in the interests of the public

2.2 To be satisfied that the Order will not alter a point of termination at all if it is a cul- de-sac route (ending at a beauty spot for example)

OR

If the route terminates at a highway to be satisfied that the termination point is only being moved to another point on the same highway or to

- another highway connected to it and the point is substantially as convenient to the public
- 2.3 To have due regard to firstly the needs of agriculture and forestry, secondly the desirability of conserving flora and fauna and thirdly geological and physiographical features.
- 2.4 To confirm the order if unopposed or seek confirmation from the Secretary of State (at a Public Inquiry if necessary) if the order is opposed.
- 2.5 To be satisfied that it is expedient in the interests of the owner, lessee or occupier  
OR  
To be satisfied that it is expedient in the interests of the public
- 2.6 To be satisfied that the route will not be substantially less convenient to the public
- 2.7 That it is expedient to confirm it having regard to the effect the diversion would have on public enjoyment of the path or way as a whole
- 2.8 That it is expedient to confirm it having regard to the effect on land served by the existing right of way (compensation can be taken into account)
- 2.9 That it is expedient to confirm it having regard to the effect on the land over which the “new” section runs and any land held with it (compensation can be taken into account)
- 2.10 Also having regard to any material provision of any Rights of Way Improvement Plan
- 2.11 That there is no apparatus belonging to or used by statutory undertakers under in, upon, over, along or across the land crossed by the present definitive route unless the statutory undertakers have consented to the confirmation of the Order (consent not to be unreasonably withheld)

### 3.0 **GUIDANCE**

- 3.1 The point of termination being as substantially convenient is a matter of judgement subject to the test of reasonableness. Convenience would have its natural and ordinary meaning and refer to such matters as whether the new point of termination facilitated the access of the highway network and accommodated user’s normal use of the network.
- 3.2 That the diverted path is not substantially less convenient would mean convenience again being considered. The wording in the Statute allows

the diversion to be slightly less convenient but it must not be substantially less so. Length of the diversion, difficulty of walking it, effect on users who may approach the diversion from different directions are factors to be considered.

- 3.3 The effect on public enjoyment of the whole route has to be considered.
- 3.4 It would be possible that a proposed diversion may be as convenient but made the route less enjoyable (perhaps it was less scenic). Alternatively the diversion may give the route greater public enjoyment but be substantially less convenient (being less accessible or longer than the existing path).
- 3.5 It may be that the grounds to make an Order are satisfied but the Committee may be unhappy that the route can satisfy the confirmation test. It is suggested that in such circumstances the Order should be made but the Committee should consider deferring the decision on whether to confirm it (if there are no objections) or (if there are objections) whether to instruct officers not to even send the Order to the Secretary of State for confirmation or to instruct to submit the Order to the Secretary of State and promote the confirmation of same. The Council has a discretion as to whether to submit this type of Order to the Secretary of State. It is not obliged to just because it has made the Order.
- 3.6 Under amended provisions, the “new” section of route will “appear” on confirmation of the Order (or a set number of days thereafter) but the “old” route will remain until the new route is certified as fit for use. It would appear that the public could quickly have the use of a new section which is fit for use as soon as confirmed but if the new route is unfit for use for a long time, the old line of the Right of Way is still there for the public to use.
- 3.7 It would appear that if a definitive path is not used due to some temporary obstruction e.g. crops, overgrowth, broken stiles, the Order should be considered as if the path was open and in useable condition.
- 3.8 It would appear that a way created by a Diversion Order may follow an existing right of way for some but not most or all of its length.
- 3.9 The reference to having regard to needs of agriculture includes the breeding or keeping of horses.