

SUBJECT:	RIGHTS OF WAY ORDERS DECISION MAKING
MEETING:	Council
DATE:	19 September 2019
DIVISION/WARDS AFFECTED:	ALL

1. PURPOSE:

- 1.1 To review rights of way order decision making and remove the need for opposed public rights of way Section 53 Wildlife and Countryside Act and 1980 Highway Act applications to be approved by Individual Cabinet Member Decision (ICMD).

2. RECOMMENDATIONS:

- 2.1 That in accordance with the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2009 the following matters be made non-executive functions for the Licencing and Regulatory Committee, sitting as the Rights of Way Panel, to consider and approve or decline the making of any opposed orders
- a) The functions contained in section 25 of Part III of the Highways Act 1980 (5) (creation of highways):
 - b) The functions contained in section 116 – 120 of Part VIII of the Highways Act 1980 (stopping up and diversion of highways etc.):
 - c) Exercising functions under section 53 of the Wildlife and Countryside Act 1981(11) (duty to keep definitive map and statement under continuous review)

3. KEY ISSUES:

- 3.1 In 2007 changes to the decision making regulations removed the determination of Public Orders under the Highways Act 1980 and Definitive Map Modification Orders from being a non-executive function (i.e. Council) and made their determination an executive function (i.e. cabinet). Since then all diversion, closure, creation and evidential orders have been considered by the Licensing and Regulatory Committee who have made a recommendation to the Cabinet Member who has then made the final decision.
- 3.2 Following representations from a number of local authorities to Welsh Government these functions were returned as ones for local choice by The Local Authorities (Executive arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2009. This enables authorities to decide for themselves whether to maintain these functions as the responsibility of the executive or return them to a committee of the full council. Whilst we did not take the opportunity to return to the original arrangements, it is now timely to review the situation.

3.3 Public rights of way cases under this system are complex and involve the Cabinet Member with responsibility for countryside attending Licencing and Regulatory Committee meetings so that best practice can be followed and the Cabinet Member can see all the evidence available for each case. The current system of both council and cabinet decisions adds a further 6-8 weeks on processes and is confusing to the public. It also places additional burdens on the Cabinet Member and countryside access staff.

3.4 It is therefore recommended that the authority returns to the position whereby the Licencing and Regulatory Committee, sitting as the Rights of Way Panel, makes the decision to approve or decline the making of any opposed orders under section 53 of the Wildlife & Countryside Act 1981 and the Highway Act 1980 (sections, 25, 116 to 120). Where such orders do not have objections then the existing delegated powers would prevail.

4. EQUALITY AND FUTURE GENERATIONS EVALUATION (INCLUDES SOCIAL JUSTICE, SAFEGUARDING AND CORPORATE PARENTING):

4.1 The positive impact is the improving of efficiency and more timely decision making therefore increasing well-being of Stakeholders. (See Appendix 1)

5. OPTIONS APPRAISAL

Option	Benefits	Risks	Comments
No Change (Retain as executive function with advice from rights of way panel)	Status quo	This is time consuming for all involved and adds additional time unnecessarily to the rights of way evidential and order making process, confusing the public and further delaying the order making process.	
Retain as executive function (as ICMD or Cabinet decision) with no role for rights of way panel	Simplifies the process to single stage decision	ICMD places a considerable burden on the Cabinet Member as being the sole assessor of the often complex evidence. Impractical as a cabinet decision due to the legal processes and extensive time involved for each case. This would be a considerable burden on the Cabinet timetable.	Meetings to review evidence last between 3-5 hours and where a site meeting is involved a whole day or more can be required to look at a case. The rights of way cases involved are contentious locally, but legislation does not allow issues such as budget, desirability etc. to be taken into account when making decisions. These are made purely on the individual legal tests that must be applied.

Proposed Change to non-executive function (rights of way panel)	Simplifies the process to single stage decision Allows members to debate and to fully assess the available evidence	None	Those making decisions are acting in a quasi-judicial role and must be trained in the various aspects of reviewing evidence and applying relevant legal tests. Rights of Way Licensing and Regulatory Sub Committee are already trained.
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6. EVALUATION CRITERIA

- 6.1 Each rights of way case will be monitored to see if there is an improvement in the length of time it takes to process rights of way orders, improving the level of service to stakeholders.

7. REASONS:

- 7.1 This decision needs to take place to provide clarity on decision making, increase efficiency, improve stakeholder understanding and service delivery.

8. RESOURCE IMPLICATIONS:

- 8.1 It is estimated that there will be resource savings in terms of staff time. Importantly the timescale for making critical decisions can be reduced by over a month. This is an area of work with considerable pressures and a backlog of determinations. The efficiency benefits will assist in prioritising existing workloads.

9. CONSULTEES:

SLT
Enterprise DMT
Head of Law and Monitoring Officer
Cabinet Member for Children, Young People and MonLife
Head of Tourism Leisure Culture & Youth

10. BACKGROUND PAPERS:

Appendix 1: Equality and Future Generations Evaluation

11. AUTHORS & CONTACT DETAILS:

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