

Consultation relating to the amendment of the Local Access Forums (England) Regulations 2002

September 2005

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Chapter 1: Introduction

1.1 This consultation paper sets out the Department's proposals for amending the *Local Access Forums (England) Regulations 2002* ("the Regulations"). Most forums have been in operation for two years, and during this time we have gained experience of how they are working in practice. This has indicated a number of amendments that could be made to help the effectiveness of forums.

1.2 The amendments are intended to assist all those involved with forums in carrying out their functions. The proposals, which are set out in Chapter 3, introduce greater flexibility in how appointing authorities carry out their duties, and place new duties on authorities to supply the Countryside Agency with basic information on their forum(s). Views are also invited on whether to extend the number of bodies to whom it is the function of forums to provide advice; whether the Secretary of State should prescribe additional matters on which forums provide advice, or, whether to amend the regulations in any other ways.

1.3 Research has recently been undertaken by the University of Gloucester's Countryside and Community Research Unit (CCRU) on behalf of the Countryside Agency, to look at how the forums have worked in the short time they have been in operation.¹ The research suggested some changes to the regulatory framework, and this consultation paper incorporates these as proposals. In addition, the Department and the Countryside Agency are considering other measures to support the work of forums, such as through better information provision, communication and regional co-ordination arrangements.

1.4 Amending the regulatory framework will only achieve so much because the key ingredients in the success of a forum are factors such as the commitment, confidence, energy, abilities and insights which the forum members contribute, together with the quality of the relationship with the appointing authority or authorities. The Department issues guidance to support appointing authorities and forums. We are considering issuing revised guidance, and are inviting views on how the guidance might be revised, and examples of good practice which might be used in preparing the guidance.

1.5 The Department welcomes comments on this consultation paper by the closing date of **29th November 2005**. Practical guidance on submitting your comments is set out in Annex B.

1.6 References to the Countryside Agency and English Nature: One of the major changes under the Government's *Modernising Rural Delivery Programme* is the creation of a new integrated agency comprising English

¹ *Review of Local Access Forums*, University of Gloucestershire, Countryside & Community Research Unit, C Short, K Taylor, N Curry, R Boase and C Kambites (2005). Copies have been sent to all forums and appointing authorities. Copies are also available from the Countryside Agency (telephone 01242 533261).

Nature; the Landscape, Access and Recreation Directorate of the Countryside Agency and most of Defra's Rural Development Service. Subject to the successful passage of the Natural Environment and Rural Communities Bill through Parliament, the new Agency, which will be known as "Natural England" will be formally vested in October 2006

1.7 This consultation document relates to England only.

Chapter 2: Background

2.1 Local access forums are established under sections 94 and 95 of the *Countryside and Rights of Way Act 2000* (“the Act”).²

2.2 Section 94 imposes a duty on local highway authorities and National Park authorities (“appointing authorities”) to establish forums for their area to advise as to the improvement of public access to land in the area for the purposes of open-air recreation and the enjoyment of the area, and on such other matters as may be prescribed. The councils of London boroughs are excluded from this duty but have powers to set up forums if any so resolve. Section 95 contains supplementary provisions relating to the appointment of members, the making of regulations by the Secretary of State, and other matters.

2.3 Following a public consultation in 2001,³ the *Local Access Forums (England) Regulations 2002* came into force on 7 August 2002.⁴ These required forums to be established by 8 August 2003 and contained provisions relating to their establishment, membership and proceedings, as well as public access to meetings and documents, the appointment of secretaries, financial provisions, preparation of annual reports, joint forum arrangements and application of the Regulations to London borough councils. The Regulations were accompanied by a circular letter to all local authorities dated 26 July 2002.⁵

2.4 On 14 November 2002 the Secretary of State issued guidance to forums in England.⁶ Under section 94(6)(c) of the Act, forums must have regard to this guidance in carrying out their functions.

2.5 Some 80 forums have been established in England, of which 12 are joint forums established by two or more appointing authorities. The Secretary of State has directed that the requirement to establish a forum should not apply in the Isles of Scilly and the City of London where special circumstances exist. A further three authorities have yet to establish a forum for their area.

² Published by The Stationery Office, price £15.55, ISBN 0 10 543700 2, and available on the internet at: www.legislation.hmsso.gov.uk/acts/acts2000/20000037.htm .

³ The Analysis of responses is available at: www.defra.gov.uk/wildlife-countryside/consult/localaccess/responses.pdf .

⁴ SI 2002 No. 1836

⁵ Available at: www.defra.gov.uk/wildlife-countryside/consult/localaccess/Circletternbcc.pdf .

⁶ Available at: www.defra.gov.uk/wildlife-countryside/cl/accessguidance/lafguidance.pdf .

Chapter 3: Amendments which we propose to make to the Regulations

3.1 We propose to make the amendments set out below to the *Local Access Forums (England) Regulations 2002*. The amendments build on the existing policy approach and the regulatory framework under which forums already operate. Our aim is to improve the operation of forums without increasing the burden on appointing authorities or forum members.

Duty on appointing authorities to have a forum

3.2 Regulation 3(1) currently requires forums to be established by 8 August 2003. This deadline is no longer relevant. It is proposed to amend the Regulations to remove that deadline, thereby ensuring that there is a continuing duty on all appointing authorities, including any newly created appointing authorities, to always have a forum (or forums) for their area.

Proposal 1: We invite views on whether the Regulations should be amended so that the deadline in those Regulations is removed, thereby ensuring that there is a continuing duty on appointing authorities to have a forum (or forums) which cover their area.

Making changes to forum coverage

3.3 The Regulations currently contain no provisions to enable appointing authorities to make changes to the forum arrangements within their area. The CCRU research report suggested that there is a need to provide greater flexibility for forums to “re-group/re-form”.

3.4 Appointing authorities may, from time to time, wish to make changes to the forum arrangements in response to various factors (e.g. it may be decided to combine two adjoining forums so that the new forum can function more effectively and provide better quality advice reflecting its wider geographical coverage, or it may be decided to set up a new forum with boundaries drawn around an Area of Outstanding Natural Beauty or other area with common issues so that the forum can focus on specific local circumstances). Changes might involve :-

- extending or reducing the area covered by a forum,
- combining a forum with other forums,
- establishing a new forum, or
- abolishing an existing forum.

3.5 Where a forum is abolished or its area is reduced in extent, then neighbouring forum(s) will have to be extended or a new forum created. Where the changes extend across appointing authority boundaries then this will require authorities to enter into, or withdraw from, joint arrangements.

3.6 We propose to amend the Regulations to enable an appointing authority to make the type of changes outlined in the paragraphs above. However, we propose that this increased flexibility be accompanied by a duty to consult any other appointing authorities that would be affected, and any existing forums that would be affected. This recognises that forums, as much as the appointing authorities, will have useful experience and views on how the advisory arrangements should best operate in the local area.

Proposal 2: We invite views on whether the Regulations should be amended to give appointing authorities the power to extend or reduce the area covered by a forum; combine forums with other forums; establish new forums; abolish forums; and/or, enter into or withdraw from joint arrangements.

Proposal 3: We invite views on whether an appointing authority, before making any of the changes referred to in Proposal 2, should be required to consult any other appointing authorities that the authority considers would be affected by the proposal. Similarly, we invite views on whether the authority should be required to consult any existing forums that the authority considers would be affected.

Appointment of forum members

3.7 We also propose to introduce a power to enable an appointing authority, when making the types of changes outlined in Proposal 2, to appoint members to any new forum established from amongst the membership of any forum(s) previously established by that appointing authority, without a requirement for the authority to advertise vacancies or consult. However, any appointments made in this way shall still be subject to the provisions on maximum size of forum membership and balance of interests. Such an appointment will also remain subject to the existing requirement for the period of appointment not to exceed three years in total, taking into account the period served on the previous forum. A member who is appointed to a new forum in this way will be required to accept the new terms of appointment as determined by the appointing authority(ies) and as notified to him or her in writing.

3.8 It will be for the appointing authority to determine whether to make use of this power, and (subject to the statutory limit on the maximum size of a forum and the need to have a reasonable balance of interests) to determine the criteria for selecting the individuals reappointed in this way.

3.9 This is intended to reduce the administrative burden on the appointing authorities and allow continuity in the membership, experience and business of forums.

Proposal 4: We invite views on whether the Regulations should be amended to give an appointing authority the power, when establishing a forum or entering into joint arrangements, to appoint members from amongst the membership of any forum(s) previously established by that authority, without a requirement for vacancies to be advertised or for the appointing authority to consult.

Notifying the Countryside Agency of changes

3.10 There is currently no requirement for an appointing authority to notify the Countryside Agency whenever a new forum secretary is appointed or the secretary's contact details (postal address, e-mail address and telephone number) change. Lack of up to date information has caused problems in contacting forums, including time wasted in having to redirect correspondence and verify new contact details.

3.11 Better quality and up-to-date information will enable the Countryside Agency to maintain accurate and up to date information on forums, which can be used by the Agency and other relevant bodies, and which can also be made publicly available, thereby helping to raise the profile of forums and enabling organisations and individuals to engage more effectively with forums.

3.12 We propose to introduce a new requirement for appointing authorities to notify the Countryside Agency whenever a new forum secretary is appointed or their contact details change.⁷ This will formalise what takes place on a less efficient and ad hoc basis already, and will not significantly increase the burden on appointing authorities.

3.13 Authorities will also be required to notify the Agency whenever they make the type of changes referred to in Proposal 2.

Proposal 5: We invite views on whether the Regulations should require appointing authorities to notify the Countryside Agency whenever (a) a new forum secretary is appointed or their contact details change or (b) whenever they make the type of changes referred to in Proposal 2.

Submitting annual reports of a local access forum to the Countryside Agency

3.14 There is currently no requirement for an appointing authority to submit a copy of the forum's annual report to the Countryside Agency. However, a

⁷ The names and contact details of individual forum members would not be required.

number of forums' reports have been submitted to the Agency, and these have provided valuable information on the work of the forums. In future we would like to collect this information in a more comprehensive way.

3.15 We propose to introduce a new requirement for an appointing authority to submit a copy of its forum's annual report to the Countryside Agency. This information will be used to help the Agency build a picture of the work which forums are undertaking across England, and to help inform future measures taken at the national or regional levels to support the work which forums undertake. The burden this will place on the appointing authorities will be insignificant and in many cases will formalise what already takes places on an ad hoc basis.

Proposal 6: We invite views on whether the Regulations should require an appointing authority to submit a copy of its forum's annual report to the Countryside Agency.

Size of forum membership

3.16 Regulation 4 currently stipulates that a local access forum shall consist of no fewer than 10 and not more than 22 members. The upper limit does not appear to have caused problems and we think that a forum any larger than this would be unlikely to operate effectively. We do not therefore propose to change the upper limit. However, there is evidence that the lower limit has caused difficulties for some appointing authorities.

3.17 When difficulties are encountered in recruiting or retaining sufficient members the appointing authority ought to consider whether this can be addressed through changes to the recruitment process or whether there are underlying issues in the way the forum operates which is causing members to leave. Alternatively, proposals to give appointing authorities the option of establishing a joint forum with a neighbouring forum may provide a solution (see Proposal 2). However, for some forums, especially those covering small urbanised areas without much open access land, these measures may not be sufficient to recruit/retain members.

3.18 For the above reasons, we have considered either abolishing the lower limit on the numbers of members or reducing the minimum size threshold. However, we have also considered that a small forum might be less effective, making it more difficult to ensure that a forum represents an appropriate *balance* and *range* of local interests and increasing the share of the burden falling on individual members.

3.19 On balance, we propose to give appointing authorities more flexibility by reducing the lower limit on the number of members of a forum. We consider that eight members is the absolute minimum with which a forum, including a joint forum, could operate (taking into account that up to two of the members can be local authority elected members). We therefore propose to allow appointing authorities to establish or maintain a forum with a minimum of eight members.

Proposal 7: We invite views on whether the Regulations should be amended to reduce the minimum number of forum members from 10 to 8.

Bodies which a local access forum should advise

3.20 Section 94(4) of the Act provides that it is the function of a local access forum, as respects the area for which it is established, to advise -

- (a) the appointing authority,
- (b) any body exercising functions under Part I (of the Act) in relation to land in that area (*see below*),
- (c) if the appointing authority is a National Park authority, the local highway authority for any part of that area, and
- (d) such other bodies as may be prescribed (*by regulations*),

as to the improvement of public access to land in that area for the purposes of open-air recreation and the enjoyment of the area, and as to such other matters as may be prescribed.

3.21 Section 94(4)(b) refers to bodies exercising functions under Part I (of the Act) in relation to land in their areas. These bodies are:

- the Secretary of State
- Countryside Agency
- Forestry Commissioners
- English Nature
- English Heritage; and
- district councils

3.22 The CCRU research found that there was some uncertainty over the role of forums and recommended that the function of forums should be expanded and clarified.

3.23 It is already the function of forums to advise the bodies listed above as to the improvement of public access to land in their area for the purposes of open-air recreation and the enjoyment of the area. Such advice may be given in respect of any of the functions carried out by these bodies. This means, for example, that a forum can give advice to the Secretary of State on issues relating to common land or public rights of way, or to English Nature or English Heritage on their access policies or site management, or to district councils on the formulation of local planning policies.

3.24 Views are invited on whether it would be appropriate to prescribe by regulation any additional bodies (e.g. the Environment Agency, AONB Conservation Boards or other named bodies with particular outdoor recreational objectives) to whom it is the function of forums to provide advice and, if so, which bodies these should be, and why.

3.25 It will be important to ensure that forums continue to focus their attention on those bodies who have most influence on open-air recreational issues within their areas, and not to over burden forums. If additional bodies are prescribed by regulation, we will issue guidance to forums on how best to engage with, and provide advice to, these bodies.

We invite views on: (A) whether to extend the list of bodies to whom it is the function of local access forums to provide advice, and if so, which bodies should be included and why.

Matters on which a local access forum should provide advice

3.26 The Secretary of State also has the power to prescribe, by regulation, additional matters on which forums should provide advice. We are conscious that doing so would increase the burden on forum members and could reduce the amount of time which they have available to deal with their existing business. However, we would be prepared to consider prescribing additional matters if it would be advantageous or beneficial to do so, and invite views on whether or not the Secretary of State should prescribe any additional matters.

We invite views on: (B) whether the Secretary of State should prescribe additional matters on which local access forums should provide advice, and if so, what these additional matters should be and why.

Other Amendments to the Regulations

3.27 Views are invited on whether any other amendments should be made to the Regulations, in order to improve the effectiveness, operation or administration of forums.

We invite views on: (C) whether any other amendments should be made to the Regulations, in order to improve the effectiveness, operation or administration of forums, and if so, what these should be and why.

Guidance to forums and appointing authorities

3.28 Section 94(6) of the Act requires forums to have regard to any guidance issued by the Secretary of State. The Secretary of State issued guidance in 2002, but in the light of the CCRU's report, is considering whether this should now be supplemented or revised.⁸ The CCRU report recommends that reformulated guidance be issued (to forums and appointing authorities), which clarifies the role of forums and draws on examples of good practice such as:

- setting the future agenda on access issues
- influencing the appointing authority
- ensuring the membership reflects changing needs
- the approach to dealing with site-specific issues
- maintaining interest and relevance for members
- working methods, developing work programmes and reporting on achievements.

3.29 Although this consultation paper is primarily concerned with proposed amendments to the Regulations, we invite views on how guidance to forums and local authorities should be revised, and examples of good practice which can be used by Defra in developing the guidance.

We invite views on: (D) how the Secretary of State's guidance to forums and local authorities should be revised.

We invite views on: (E) examples of good practice which can be used in developing guidance for forums and local authorities.

⁸ Guidance available at: www.defra.gov.uk/wildlife-countryside/cl/accessguidance/lafguidance.pdf.

Annex A: Summary of proposals

We invite views on whether Regulations should be amended in the following proposed ways:-

Proposal 1: We invite views on whether the Regulations should be amended so that the deadline in those Regulations is removed, thereby ensuring that there is a continuing duty on appointing authorities to have a forum (or forums) which cover their area

Proposal 2: We invite views on whether the Regulations should be amended to give appointing authorities the power to extend or reduce the area covered by a forum; combine forums with other forums; establish new forums; abolish forums; and/or, enter into or withdraw from joint arrangements.

Proposal 3: We invite views on whether an appointing authority, before making any of the changes referred to in Proposal 2, should be required to consult any other appointing authorities that the authority considers would be affected by the proposal. Similarly, the authority should be required to consult any existing forums that the authority considers would be affected.

Proposal 4: We invite views on whether the Regulations should be amended to give an appointing authority the power, when establishing a forum or entering into joint arrangements, to appoint members from amongst the membership of any forum(s) previously established by that authority, without a requirement for vacancies to be advertised or for the appointing authority to consult.

Proposal 5: We invite views on whether the Regulations should require appointing authorities to notify the Countryside Agency whenever (a) a new forum secretary is appointed or their contact details change or (b) whenever they make the types of changes referred to in Proposal 2.

Proposal 6: We invite views on whether the Regulations should require an appointing authority to submit a copy of their forum's annual report to the Countryside Agency.

Proposal 7: We invite views on whether the Regulations should be amended to reduce the minimum number of forum members from 10 to 8.

We are also inviting views on:-

(A) whether to extend the list of bodies to whom it is the function of local access forums to provide advice, and if so, which bodies should be included and why.

(B) whether the Secretary of State should prescribe additional matters on which local access forums should provide advice, and if so, what these additional matters should be and why.

(C) whether any other amendments should be made to the Regulations, in order to improve the effectiveness, operation or administration of forums, and if so, what these should be and why;

(D) how the Secretary of State's guidance to forums and local authorities should be revised; and

(E) examples of good practice which can be used in developing guidance for forums and local authorities.

Annex B: Practical guidance on submitting views

To facilitate subsequent analysis, please ensure your comments clearly refer to proposal numbers. If you are responding as a representative organisation, please also include a summary of the people and organisations that you represent.

Please send your response by **29th November 2005** to:-

E-mail: LAF.Consultation@defra.gsi.gov.uk .

Alternatively, if you do not have access to e-mail please send your response by post to the following address:-

The Sponsorship, Landscape & Recreation Division
Department for Environment, Food and Rural Affairs
Zone 1/02
2 The Square
Temple Quay
BRISTOL
BS1 6EB

Or by Fax: 0117 372 8587

Please send your response using only **one** of these options. If it is being posted, please provide a second copy if possible.

Confidentiality

In line with Defra's policy of openness, at the end of the consultation period copies of the responses we receive may be made publicly available through the Defra Information Resource Centre, Lower Ground Floor, Ergon House, 17 Smith Square, London, SW1P 3JR. The information they contain may also be published in a summary of responses.

If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in e-mail responses will not be treated as such a request. You should be aware that there may be circumstances in which Defra will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations.

The Information Resource Centre will supply copies of consultation responses to personal callers or in response to telephone or e-mail requests (tel: 020 7238 6575, e-mail: defra.library@defra.gsi.gov.uk). Wherever possible, personal callers should give the library at least 24 hours notice of their requirements. An administrative charge will be made to cover photocopying and postage costs.

If you submit comments in response to this consultation, we may keep your name and address on a list that will be used for future consultation exercises on related topics.

Enquiries

Enquiries about the contents of this consultation paper should be made to:-

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E-mail: LAF.Consultation@defra.gsi.gov.uk

The consultation paper, together with the list of bodies to who this consultation paper has been sent, is available on the Department's internet site, at: www.defra.gov.uk/corporate/consult/current.htm.

If you think any other person or organisation should see the consultation paper, or if you would like more copies, please let us know.

Complaints or comments about this consultation

The consultation document has been drafted in accordance with the Cabinet Office's code of practice on national public consultations. The code may be viewed on the Cabinet Office's web site at: www.cabinet-office.gov.uk/servicefirst/index/consultation.htm.

The Code requires that we:-

1. Consult widely throughout the process, allowing a minimum of twelve weeks for written consultation at least once during the development of policy;
2. Be clear about what proposals are, who may be affected, what questions are being asked and the timescale for responses;
3. Ensure that consultation is clear, concise and widely accessible;
4. Give feedback regarding the responses received and how the consultation process influenced the policy;
5. Monitor the department's effectiveness at consultation, including through the use of a designated consultation co-ordinator;
6. Ensure the consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

If you have any comments or complaints about this consultation process, other than comments on the consultation document itself, you should write, to:-

The Consultation Co-ordinator
Department for Environment, Food and Rural Affairs
Room 547
Nobel House
LONDON
SW1P 3HX

E-mail: consultation.coordinator@defra.gsi.gov.uk