

Recreation & Access Policy  
Room 1/02, Temple Quay House  
2 The Square, Temple Quay  
Bristol BS1 6EB

Tel: [REDACTED]  
Fax: [REDACTED]  
Email: [Recreation.Access@defra.gsi.gov.uk](mailto:Recreation.Access@defra.gsi.gov.uk)  
Website: [www.defra.gov.uk](http://www.defra.gov.uk)



The Planning Inspectorate  
Room 4/05, Kite Wing  
Temple Quay House  
2 The Square, Temple Quay  
Bristol, BS1 6PN.

Date: 29th January 2010

Dear [REDACTED]

You asked for a Defra view on modifying Combined Orders. Although the Combined Orders regulations, SI 2008/442, are due to be amended to include a schedule, setting out how the definitive statement is to be modified in consequence of the Order, the current regulations do not provide for inclusion of such a schedule. Moreover, we have previously given advice that an Order that includes such a schedule would not be in the prescribed form, nor could it be considered to be *substantially to like effect* and that such an Order would therefore be flawed and could not be confirmed in that form by an Inspector.

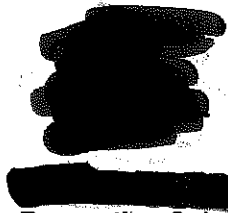
The question is whether it is open to an Inspector to use the powers of modification set out in paragraph 7(3) of schedule 15 to the Wildlife and Countryside Act 1981 to remove the offending schedule if minded to confirm the Order. In other words, is the Order so flawed as to be considered beyond modification, in which case the Order should be rejected.

Our legal advice, based on *R v Minister of Health ex p Yaffe [1931] AC 494* is that unless the relevant legislation specifically proscribes certain modifications, the power of modification is unfettered; there appear to be no such proscribed modifications in this case. The other key consideration is that we have always maintained that an Inspector should not be put in a position of having to infer, or conjecture on, the order-making authority's intentions. However, in this case an Inspector would be removing the schedule in its entirety, rather than making changes that might affect the substance of the Order. Moreover, in the case of a Combined Order, the order-making authority's intentions with regard to the substance of the Order should in any event be clearly set out in the public path order element of the Combined Order.

Therefore, we believe that, notwithstanding whether the Order is correct in any other respects, it would be possible for an Inspector to modify a Combined Order made under SI 2008/442 by removing a schedule, which sets out how

the definitive statement is to be modified in consequence of the Order, in order to make the Order suitable for confirmation.

Yours sincerely

A large, irregular black redaction mark covering the signature area.

Recreation & Access