

## **Draft Deregulation Bill – Recent Proposals for Changes to Rights of Way Legislation and Procedures**

Report of the Head of Highways, Capital Development and Waste

***Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.***

**Recommendation:** It is recommended that the Committee consider the report.

### **1. Purpose of Report**

This report aims to keep members informed of recent proposals for changes to the legislative framework and procedures relating to public rights of way.

### **2. Background**

The Council, as surveying authority holds the Definitive Map and Statement for Devon and is under a statutory duty, imposed by section 53(2) of the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review and to make such modifications as appear requisite. It is our policy to undertake this duty by carrying out a review of the Definitive Map and Statement on a parish-by-parish basis.

As highway authority the Council may also make orders, under the Highways Act 1980, to create, divert or extinguish public rights of way where the requisite legal tests are satisfied.

On 1 July 2013, the Government published a Draft Deregulation Bill, which is aimed at reducing unnecessary bureaucracy by amending or repealing 182 different pieces of legislation. It also includes a number of proposed changes to the legislative procedures relating to public rights of way, in particular the processes involved in modifying the Definitive Map and Statement. A Draft Bill is published to enable consultation and pre-legislative scrutiny. After consultation and pre-legislative scrutiny has taken place, the Draft Bill may be introduced formally in House of Commons or the House of Lords. The Draft Deregulation Bill is currently being considered by a Joint Committee of both houses, which is required to make its report by 16 December 2013.

In accordance with its terms of reference, claims for modifications to the Definitive Map and Statement, arising from the parish-by-parish review or formal applications made under Schedule 14 of the Wildlife and Countryside Act, are referred to the Public Rights of Way Committee for determination. The Committee's role is to act in a quasi-judicial capacity to assess the evidence and decide whether the claim meets the legal tests, namely whether the evidence shows that a right of way *subsists on the balance of probabilities*, or is *reasonably alleged to subsist*. The Committee may also be asked to consider whether applications for changes such as diversions under the Highways Act 1980 meet the relevant legislative tests in cases where such proposals are opposed. It is therefore essential that members of the Committee are trained in areas of the law relating to public rights of way, and are kept informed of developments.

The procedures for making orders to amend public rights of way recorded on the Definitive Map and Statement – public path creation, diversion and extinguishment orders – have been

set out in primary legislation and regulations dating from 1980, with some minor amendments as a result of the Countryside and Rights of Way Act 2000 (CROW), Natural Environment and Rural Communities Act 2006 and the Growth and Infrastructure Act 2013. A number of provisions introduced by the CROW Act have not yet been enacted due to concerns that they would place burdens on local authorities and the Secretary of State.

The CROW Act (section 53) set out that pre 1949 rights of way should be extinguished after 1 January 2026 if not recorded by that date. This is not yet in force as there is concern that it could extinguish potentially useful routes, but equally landowners seek certainty. The Draft Bill is intended to address some of these issues, many of the clauses stemming from key recommendations made by the Stakeholder Working Group set up by DEFRA for that purpose.

Schedule 6 of the CROW Act proposed to enable landowners (of land used for agriculture, forestry or the keeping or breeding of horses) to have a right to apply and appeal for diversion and extinguishment of public rights of way. These sections are also yet to be brought into force and the Bill is intended to amend some of these provisions as part of a wider package of proposals for rights of way reform put forward by DEFRA in 2012.

### **3. Main Clauses of the Draft Bill relating to Public Rights of Way**

The relevant sections of the Draft Bill relating to public rights of way are clauses 12 – 18 and in Schedule 6 of the Bill. These are attached to this report at Appendix I. The proposed changes are summarised below.

The proposals in the Draft Bill relating to public rights of way are:

#### Clauses 12 – 17

- i Any public rights of way already shown on the Definitive Map and Statement will be protected from downgrading or deletion if the only basis for making such a modification is evidence that the right of way did not exist before 1 January 1949. (Clause 12)
- ii Certain unrecorded public rights of way may be designated by surveying authorities as exceptions to the extinguishment during a period of one year from the cut-off date. Regulations made by the Secretary of State will set the timescale for determining whether these designated rights of way should be shown on the map or extinguished, including a right to appeal to Magistrates Court if the authority fails to determine in time. (Clause 13)
- iii Protection of private rights of way along a route that would be extinguished as a public right of way after the cut-off date. (Clause 14)
- iv Extension of the right to apply and appeal for public path orders (under the Highways Act 1980) to other types of land, to be specified in regulations. (Clause 15)
- v Extension of the powers to authorise stiles and gates (Highways Act 1980 section 147) to include gates on restricted byways and byways open to all traffic. (Clause 16)
- vi Change to the recovery of costs provisions applicable to applications for public path orders made under the right to apply. The Secretary of State would have the power to enable local authorities to recover all their costs instead of, as currently, a prescribed limit set centrally. It would also enable the Secretary of State to recover their costs at Hearings. (Clause 17)

## Schedule 6 – Part 1 – Amendments to Wildlife and Countryside Act 1981

- vii Raising the threshold at which a surveying authority must make an order, by omitting the reasonably alleged test from section 53(3)(c)(i) of the Act. The authority would be required to modify the Definitive Map and Statement only where it is satisfied on the balance of probabilities that a right of way subsists, the ordinary civil standard of proof. (Sch 6, 2)
- viii Simpler modification order procedure for correction of obvious administrative errors. (Sch 6, 3)
- ix With applications for modification orders based solely on historical evidence there would be an opportunity to make a 'modification consent order', if the landowner consents to the modification. A modification consent order could also include modifications to the route, such as a diversion, amendment to width or limitations if it secures the agreement of the landowner, and the authority is satisfied that the path will not be substantially less convenient to the public as a consequence of those changes. (Sch 6, 5)
- x Requirement of the surveying authority to carry out a preliminary assessment of schedule 14 applications within 3 months of receipt. If satisfied that there is a '*reasonable basis for the applicants belief*' the authority will be required to serve notice of the application on the landowner (currently the applicant has to do this when making the application). The applicant will have a chance to appeal to Magistrates Court if the application is not assessed in time, who may order the authority to take steps. The authority still has twelve months from receipt of application to determine it. If not determined within that time applicant or landowner may appeal to Magistrates Court who may order the authority to take requisite steps. The authority may request extension of twelve months. Currently, appeals against non-determination are referred to the Secretary of State. (Sch 6, 6)
- xi Change of Appeal procedure where the authority decides not to make an order in respect of a schedule 14 application, to avoid cases being submitted to the Secretary of State more than once (once on appeal and again if the authority is directed to make an order which is subsequently opposed). The responsibility to submit the matter to the Secretary of State would be placed on the authority after the applicant has given notice of appeal. The authority would have additional responsibilities relating to the appeal regarding notices, making documents available and giving notice to other parties who may wish to make representations or objections. The Secretary of State would then consider the grounds for appeal in a single procedure, through an Inquiry or Hearing if required. The Secretary of State may agree that an order should not be made; direct the authority to make an order; or make an order. The validity of the order can be questioned through application to the High Court. (Sch 6, 6)
- xii Applicant would be able to transfer ownership of a schedule 14 application to another person, prior to determination of the application. (Sch 6, 6)
- xiii End of the requirement to publicise orders in a newspaper and replace it with a requirement to publicise on the authority's website. (Sch 6, 7 (2))
- xiv Power to enable the Secretary of State to sever an order where objections are made to only part. (Sch 6, 7 (3)).

- xv Power to discount irrelevant objections. Surveying authorities would have a new power to decide not to submit an order if representation or objections were deemed irrelevant and confirm the order, subject to guidance. (Sch 6, 7 (4))
- xvi Where the validity of an order is questioned by application to the high court the court may quash the decision of the Secretary of State rather than the order so that the order-making process does not need to start again from scratch. (Sch 6, 7 (5))

#### Schedule 6 – Part 2 – Amendments to the Highways Act 1980

- xvii End of the requirement to publicise orders in a newspaper and replace it with a requirement to publicise on the authority's website. (Sch 6, 9 (2))
- xviii Power to discount irrelevant objections. Local authorities would have a new power to decide not to submit an order if representation or objections were deemed irrelevant and confirm the order, subject to guidance. (Sch 6, 9 (3))
- xix Power to enable local authorities and Secretary of State to sever an order where objections are made to only part. (Sch 6, 9 (5)).
- xx Where the validity of an order is questioned by application to the high court the court may quash the decision of the Secretary of State rather than the order so that the order-making process does not need to start again from scratch. (Sch 6, 9 (7))

#### **4. Discussion**

These reforms will significantly affect the procedures in relation to the determination and making of Definitive Map Modification Orders. Devon County Council, through its comprehensive review process of the Definitive Map, is likely to be less affected by the cut-off-date in 2026 than many authorities as many historical routes and anomalies will have been identified prior to that date. It is anticipated however that there will be more schedule 14 applications made, which will require staff resources to address.

The new preliminary assessment should reduce the burden on authorities and landowners of investigating and determining applications that are spurious or poorly founded. It will however introduce a further step into the procedure, with a new statutory timescale and extra responsibilities for the authority. These will place a burden on staff resources and will require a review of our policies and procedures.

The proposal to introduce a Magistrates Court process where the authority fails to carry out a preliminary assessment or determine an application within the specified time period is a significant change, shifting administrative burden from the Secretary of State to the courts system and placing extra burden on the authority.

Raising the threshold at which an authority is required to make an evidential order is likely to result in a more lengthy determination process as a more robust test must be applied. Streamlining the Schedule 14 appeals procedure should save time, although it will introduce new responsibilities for the authority. Clear guidance will also be required to ensure all parties are aware of the new procedure and have the opportunity to be heard.

The cost of advertising orders in local newspapers is approximately £600 per order so the removal of the requirement to place in newspapers will reduce the cost of the order. The opportunity to discount irrelevant objections will also save the time taken to submit orders to the Secretary of State where applicable.

It would appear that the Government intends to implement the provisions of the Highways Act (as amended by the CROW Act) whereby landowners have the right to apply and appeal for diversion or extinguishment orders will place a greater burden on authorities. It will introduce a further timescale and administrative procedure and is likely to have an impact on local priorities and policies.

The clauses appear to reduce some areas of bureaucracy whilst introducing new duties for the authority in other areas. The detail of specific regulations and guidelines relating to different parts of the Bill are important and will determine the clarity of processes and the impact on staff and resources.

## **5. Conclusion**

The Draft Bill is still in its early stages, currently going through pre-legislative scrutiny. The proposals if enacted are likely to have a mixed impact on the Council. The Committee's role is to act in an independent and quasi judicial capacity in relation to any application it receives. In this role it is necessary for the law to be applied (either by legislation or case law). It follows therefore that if the Bill is enacted in its current or a modified form that members will apply its provisions and any case law arising from it to any applications which it is asked to determine. There may however be a greater burden on staff resources which is likely to have an impact on local priorities and policies.

## **6. Consultation**

None relating to this report.

## **7. Financial Considerations**

None arising directly from the recommendation to this report. However, it is possible that additional numbers of schedule 14 applications or public path orders may be received as a result of the legislation if introduced, with new statutory duties for the authority and additional costs associated with those. Our policies and procedures for dealing with such applications will be kept under review.

If the Bill is enacted there will be an opportunity for the Secretary of State to enable local authorities to recover all their costs associated with applications for diversion and extinguishment made under the right to apply provisions, instead of a prescribed limit set centrally, which may be lower than the Council's actual costs.

There will be a saving for the authority in not having to pay local newspapers to advertise orders.

This potential income from cost-recovery and savings in advertising would be available to contribute towards any additional costs. Once the final details are announced, it will be necessary to consider whether the anticipated net costs can be contained within the available budget.

## **8. Sustainability Considerations**

None arising from the recommendation in this report.

**9. Carbon Impact Considerations**

None arising from the recommendation in this report.

**10. Equality Considerations**

None arising from the recommendation in this report.

**11. Legal Considerations**

Included in the body of this report, with reference to the Highways Act 1980, the Wildlife and Countryside Act 1981 and the Countryside and Rights of Way Act 2000.

**12. Risk Management Considerations**

None arising from the recommendation in this report.

**13. Public Health Impact**

None arising from the recommendation in this report.

**14. Options/Alternatives**

None.

**15. Reasons for Recommendation/Alternative Options Considered**

To inform the Committee of proposed changes in legislation relating to public rights of way.

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**Electoral Divisions: All**

[Local Government Act 1972: List of Background Papers](#)

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Background Paper	Date	File Ref.
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Draft Deregulation Bill – published on the parliament website:

<http://www.official-documents.gov.uk/document/cm86/8642/8642.pdf>

hc211013prw  
sc/cr/draft deregulation bill changes to rights of way legislation  
02 hq 111113



# Draft Deregulation Bill

Clauses relating to PROW

# Deregulation Bill

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- (2) Where this section applies, the company must give notice to the appropriate audit authority that the auditor is ceasing to hold office.
- (2A) Subsection (2B) applies where –
- (a) the company receives a statement from the auditor under section 519(1),
  - (b) the statement is sent at the time required by section 519(4), and
  - (c) the company agrees with the contents of the statement.
- (2B) Where this subsection applies, the notice is to take the form of a copy of the statement endorsed by the company to the effect that it agrees with the contents of the statement.
- (2C) Where subsection (2B) does not apply, the notice is to take the form of a statement by the company of –
- (a) the reasons for the auditor’s ceasing to hold office, and
  - (b) any matters connected with the auditor’s ceasing to hold office that the company considers need to be brought to the attention of the appropriate audit authority.
- (3) A notice under subsection (2B) must be given within the period of 14 days beginning with the day the company receives the statement.
- (3A) A notice under subsection (2C) –
- (a) must include the information listed in section 519(3), and
  - (b) must be given within the period of 28 days beginning with the day on which the auditor ceases to hold office.”
- (5) Schedule 4 (auditors ceasing to hold office) makes provision about the following matters –
- (a) the notification requirements that apply on an auditor ceasing to hold office;
  - (b) the requirements that apply if there is a failure to re-appoint an auditor;
  - (c) the replacement of references to documents being deposited at a company’s registered office.

## 11 Insolvency and company law: miscellaneous

Schedule 5 makes provision about the following matters –

- (a) deeds of arrangement;
- (b) administration and winding up of companies;
- (c) disqualification of unfit directors of insolvent companies;
- (d) bankruptcy;
- (e) insolvency practitioners;
- (f) liabilities of administrators etc and preferential debts;
- (g) appointment of proxies under company law.

*Use of land*

## 12 Recorded rights of way: additional protection

In the Countryside and Rights of Way Act 2000, after section 55 (bridleway

rights over ways shown as bridleways) insert—

**“55A Other protected rights: England**

- (1) A surveying authority in England may not, at any time after the cut-off date, make a modification to a definitive map and statement under section 53(2)(b) of the Wildlife and Countryside Act 1981 if—
  - (a) the modification might affect the exercise of a protected right of way, and
  - (b) the only basis for the authority considering that the modification is requisite is the discovery by the authority of evidence that the right of way did not exist before 1 January 1949.
- (2) In subsection (1), “protected right of way” means any right of way over land shown in the definitive map and statement on the cut-off date as a footpath, bridleway, restricted byway or byway open to all traffic.
- (3) In this section—
  - (a) “cut-off date” has the meaning given in section 56;
  - (b) “definitive map and statement” has the same meaning as in Part 3 of the Wildlife and Countryside Act 1981;
  - (c) “surveying authority” has the same meaning as in Part 3 of that Act.”

**13 Unrecorded rights of way: protection from extinguishment**

In the Countryside and Rights of Way Act 2000, after section 56 (cut-off date for extinguishment of certain unrecorded rights of way) insert—

**“56A Unrecorded rights of way: protection from extinguishment**

- (1) The provision that may be made by regulations under section 56(2) by the Secretary of State includes—
  - (a) provision enabling a surveying authority to designate, at any time during the period of one year beginning with the cut-off date, public rights of way in their area that were extinguished immediately after that date, subject to any conditions or exceptions specified in the regulations;
  - (b) provision for a designated right of way to cease to be regarded as extinguished as from the time of the designation;
  - (c) provision requiring a surveying authority to determine, within a period specified in the regulations, whether to make an order under section 53(2) of the 1981 Act making modifications to a definitive map and statement to show a designated right of way;
  - (d) provision as to the procedure applicable in relation to such a determination, including provision for an application to be made to a magistrates’ court where a surveying authority fails to make the determination within a period specified in the regulations;
  - (e) provision for a designated right of way to be extinguished if a surveying authority determines not to make an order under section 53(2) of the 1981 Act or if such an order is made but is

- not confirmed or is quashed, subject to any exceptions specified in the regulations;
- (f) provision requiring a surveying authority to keep such information as may be specified in the regulations about designated rights of way in a separate part of the register maintained by them under section 53B of the 1981 Act.
- (2) The provision that may be made by virtue of subsection (1)(d) includes provision applying Schedule 15 to the 1981 Act, subject to such modifications as may be specified in the regulations.
- (3) Regulations under section 56(2) made by the Secretary of State may also provide—
- (a) that an enactment specified in the regulations which would apply in relation to a designated right of way is not to so apply, or is to so apply with modifications specified in the regulations, in relation to times during the designation period (see subsection (4) below);
- (b) where an order under section 53(2) of the 1981 Act making modifications to a definitive map and statement to show a designated right of way takes effect, that the modifications are to be treated, for the purposes of section 55A, as having taken effect immediately before the cut-off date.
- (4) In subsection (3)(a), “the designation period” means the period which—
- (a) begins when the right of way is designated, and
- (b) ends when—
- (i) an order under section 53(2) of the 1981 Act making modifications to a definitive map and statement to show the right of way takes effect, or
- (ii) if no such order is made, the right of way is extinguished in accordance with the regulations.
- (5) In this section—
- (a) “cut-off date” has the meaning given in section 56;
- (b) “definitive map and statement” has the same meaning as in Part 3 of the 1981 Act;
- (c) “enactment” means a provision of an Act or of subordinate legislation (within the meaning of the Interpretation Act 1978);
- (d) “surveying authority” has the same meaning as in Part 3 of the 1981 Act;
- (e) “the 1981 Act” means the Wildlife and Countryside Act 1981.”

#### 14 Conversion of public rights of way to private rights of way

In the Countryside and Rights of Way Act 2000, after section 56A (as inserted by section 13) insert—

##### “56B Conversion of certain public rights of way to private rights of way

- (1) This section applies where—
- (a) a public right of way over land in England would be extinguished under section 53 immediately after the cut-off date, and

- (b) on the cut-off date, the exercise of the right of way –
  - (i) is reasonably necessary to enable a person with an interest in land to obtain access to it, or
  - (ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if the person had an interest in that part only.
- (2) The public right of way becomes, immediately after the cut-off date, a private right of way of the same description for the benefit of the land or (as the case may be) the part of the land.
- (3) For the purposes of subsection (1)(b), it is irrelevant whether the person is, on the cut-off date, in fact –
  - (a) exercising the existing public right of way, or
  - (b) able to exercise it.
- (4) In this section, “cut-off date” has the meaning given in section 56.”

#### 15 Applications by owners etc for public path orders

- (1) The Highways Act 1980 is amended as follows.
- (2) In section 118ZA(1) (which makes provision for owners, lessees or occupiers of certain land to be able to apply for a public path extinguishment order), after “horses” insert “, or of any land in England of a prescribed description,”.
- (3) In section 119ZA(1) (which makes provision for owners, lessees or occupiers of certain land to be able to apply for a public path diversion order), after “horses” insert “, or of any land in England of a prescribed description,”.
- (4) In section 121E(1) (which specifies the duties of the Secretary of State on certain appeals relating to the extinguishment or diversion of public paths), after “section 121D(1)(a) above,” insert “in relation to an application made under section 118C or 119C above or an application made under section 118ZA or 119ZA above to a council in Wales,”.
- (5) After section 121F(1) insert –
  - “(1A) Where an appeal to the Secretary of State is brought under section 121D(1)(a) above, in relation to an application made under section 118ZA or 119ZA above to a council in England, the Secretary of State shall either –
    - (a) determine not to make an order on the application, or
    - (b) take the steps mentioned in subsection (1)(a) to (c).
  - (1B) Where the Secretary of State determines under subsection (1A)(a) not to make an order, the Secretary of State shall inform the applicant of the decision and the reasons for it.”
- (6) In Schedule 6, in paragraph 2A(1)(b), after “section 121E(1)(c)” insert “or (1A)(a)”.

#### 16 Extension of powers to authorise erection of stiles at request of owner etc

- (1) Section 147 of the Highways Act 1980 (which allows highway authorities etc to authorise the erection of stiles etc on footpaths or bridleways crossing agricultural land) is amended as follows.

- (2) In subsection (1), after “For the purposes of this section” insert “as it applies in relation to footpaths or bridleways,”.
- (3) After subsection (1) insert –
- “(1A) The following provisions of this section, so far as relating to the erection of gates, also apply where the owner, lessee or occupier of agricultural land in England, or of land in England which is being brought into use for agriculture, represents to a competent authority in England, as respects a restricted byway or byway open to all traffic that crosses the land, that for securing that the use, or any particular use, of the land for agriculture shall be efficiently carried on, it is expedient that gates for preventing the ingress or egress of animals should be erected on the byway.
- For the purposes of this section the following are competent authorities –
- (a) in the case of a restricted byway which is for the time being maintained by a non-metropolitan district council by virtue of section 42 above, that council and also the highway authority; and
- (b) in the case of any other restricted byway or in the case of a byway open to all traffic, the highway authority.”
- (4) In subsection (3), for “footpath or bridleway” substitute “footpath, bridleway or byway”.
- (5) After subsection (5) insert –
- “(5A) In this section, “byway open to all traffic” has the same meaning as in Part 3 of the Wildlife and Countryside Act 1981 (see section 66(1) of that Act).”
- (6) In consequence of the amendments made by this section to section 147, section 146 of the 1980 Act is amended as follows –
- (a) in subsection (1), after “restricted byway” (in the first place it occurs) insert “or across a byway open to all traffic in England”;
- (b) in that subsection, for “or restricted byway” (in the second place it occurs) substitute “restricted byway or byway open to all traffic”;
- (c) in subsection (2)(b), after “restricted byway” insert “or in the case of a byway open to all traffic”;
- (d) after subsection (5) insert –
- “(6) In this section, “byway open to all traffic” has the same meaning as in Part 3 of the Wildlife and Countryside Act 1981 (see section 66(1) of that Act).”;
- (e) in the heading to the section, for “restricted byways” substitute “byways”.
- (7) In section 53 of the Wildlife and Countryside Act 1981 (duty to keep definitive map and statement under review) –
- (a) in subsection (3), after paragraph (b) insert –
- “(ba) the erection of stiles, gates or other works on a highway shown on the map is authorised by a competent authority in England under section 147 of the Highways Act 1980.”;

(b) in subsection (6), after “paragraph (a)” insert “or (ba)”.

**17 Applications for certain orders under Highways Act 1980: cost recovery**

- (1) The Highways Act 1980 is amended as follows.
- (2) In section 118ZA(3) (which deals with the making of regulations imposing charges in connection with applications by owners etc. for a public path extinguishment order), in paragraph (a), after “this section” insert “to a council in Wales”.
- (3) In section 119ZA(5) (which deals with the making of regulations imposing charges in connection with applications by owners etc. for a public path diversion order), in paragraph (a), after “this section” insert “to a council in Wales”.
- (4) In section 121A(1) (which confers power to make regulations about applications for public path extinguishment and diversion orders), in paragraph (f), for “prescribed charge” insert “charge prescribed under the section”.
- (5) In section 121E(8) (which makes provision about what may be included in regulations about appeals under section 121D(1)), in paragraph (j), for “prescribed charge” substitute “charge prescribed under section 118ZA(3) or 119ZA(5)”.
- (6) In Part 1 of Schedule 6 (procedure for making and confirming certain orders relating to footpaths, bridleways and restricted byways), in paragraph 2B (which makes supplemental provision about hearings held under paragraph 2 of the Schedule), after sub-paragraph (3) insert –
  - “(4) For the purposes of sub-paragraph (1) as it applies in relation to section 250(4) of the Local Government Act 1972, the consideration by a person appointed as mentioned in sub-paragraph (2)(b), (2A)(b) or (3)(b) of paragraph 2 of any representations or objections about an order relating to land in England is to be treated as a hearing which the Secretary of State has caused to be held under that paragraph.”

**18 Ascertainment of public rights of way: procedure**

Schedule 6 makes changes to the procedure for ascertaining public rights of way in England.

**19 Erection of public statues (London): removal of consent requirement**

In the Public Statues (Metropolis) Act 1854, omit section 5 (which requires the consent of the Secretary of State to the erection of public statues in London).

*Housing*

**20 Reduction of qualifying period for right to buy**

- (1) The Housing Act 1985 is amended as follows.
- (2) In section 119 (which sets out the qualifying period for the right to buy), before

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*Deregulation Bill**Schedule 5 – Insolvency and company law**Part 7 – Liabilities of administrators and administrative receivers of companies and preferential debts of companies and individuals*

- regimes), omit subsection (10) (what “wages or salary” includes for the purposes of subsection (9)(a)).
- 25 In section 44 (receivership: agency and liability for contracts), omit subsection (2D) (what “wages or salary” includes for the purposes of subsection (2C)(a)).
- 26 In Schedule B1 (administration of companies), in paragraph 99 (vacation of office by administrator: charges and liabilities), omit sub-paragraph (6)(d) (what “wages or salary” includes for the purposes of sub-paragraph (5)(c)) but not the “and” following it.
- 27 In Schedule 6 (categories of preferential debt), in paragraph 15 (what “wages or salary” includes for the purposes of determining what is a category 5 preferential debt), omit paragraph (b) and the “and” before it.

## PART 8

## REQUIREMENTS OF COMPANY LAW: PROXIES

*Proxies at a poll taken 48 hours or less after it was demanded*

- 28 In section 327(2) of the Companies Act 2006 (which regulates the period of notice required for the appointment of a proxy), in paragraph (c), for “the time at which it was demanded” substitute “the time immediately before the poll is taken”.
- 29 In section 330(6) of that Act (which regulates the period of notice required for the termination of a proxy’s authority), in paragraph (c), for “the time at which it was demanded” substitute “the time immediately before the poll is taken”.

## SCHEDULE 6

Section 18

## ASCERTAINMENT OF RIGHTS OF WAY

## PART 1

## WILDLIFE AND COUNTRYSIDE ACT 1981

- 1 The Wildlife and Countryside Act 1981 is amended as follows.
- 2 In section 53 (duty to keep definitive map and statement under continuous review) –
- (a) in subsection (3)(c)(i), omit “or is reasonably alleged to subsist”;
  - (b) after subsection (3)(c)(i) insert –
    - “(ia) in the case of an authority in Wales, that a right of way which is not shown in the map and statement is reasonably alleged to subsist over land in the area to which the map relates, being such a right of way as is mentioned in sub-paragraph (i);”.



3 After that section insert—

**“53ZA Modifications arising from administrative errors**

- (1) The Secretary of State may by regulations provide for Schedules 14 and 15 to apply with prescribed modifications in relation to the making of orders under section 53(2) in cases where it appears to a surveying authority in England (whether or not on an application under section 53(5)) that—
  - (a) it is requisite to make a modification of a definitive map and statement in consequence of an event mentioned in section 53(3)(c);
  - (b) the need for the modification has arisen because of an administrative error; and
  - (c) both the error and the modification needed to correct it are obvious.
- (2) The Secretary of State may by regulations provide for Schedule 15 to apply with prescribed modifications in cases where an order under section 53(2) is made in accordance with regulations under subsection (1).
- (3) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) At any time when regulations under subsection (1) are in force, a surveying authority shall, in deciding whether paragraphs (a) to (c) of that subsection apply in a particular case (and, accordingly, whether the provision made by the regulations applies in relation to the making of an order under section 53(2) in that case), have regard to any guidance given by the Secretary of State.
- (5) In this section, “prescribed” means prescribed by regulations.”

4 In section 53B (register of applications under section 53), after subsection (4) insert—

- “(4A) Regulations may provide that subsection (1) does not apply, with respect to applications under section 53(5) made to an authority in England, or to any prescribed description of such applications, unless the authority serve notice under paragraph 1A(4)(b) of Schedule 14 in relation to such an application.
- (4B) The making of regulations under subsection (4A) does not prevent an authority including in the register any information that they would be required to include in it had the regulations not been made.”

5 After section 54A insert—

**“54B Modifications of definitive map and statement by consent: England**

- (1) This section applies where—
  - (a) an application under section 53(5) is made to an authority in England for an order under section 53(2) making such modifications as appear to the authority to be requisite in

- consequence of the occurrence of one or more events falling within section 53(3)(b) or (c)(i) or (ii);
- (b) the documentary evidence relied on by the applicant in support of the application is evidence that relates only to the existence of a right of way before 1949; and
  - (c) the authority have served notice under paragraph 1A(4)(b) of Schedule 14 that they are considering the application.
- (2) The authority shall ascertain whether every owner of the land to which the application relates consents to the making of an order under section 53(2) or would so consent if the authority made one or more of the following orders (“special orders”) –
- (a) a diversion order;
  - (b) an order altering the width of the path or way;
  - (c) an order imposing a new limitation or condition affecting the right of way.
- (3) A diversion order is an order which, for the purpose of diverting the line of the path or way or part of it –
- (a) creates any such new path or way (of the same kind) as appears to the authority appropriate; and
  - (b) extinguishes any public right of way over so much of the path or way as appears to the authority to be appropriate.
- (4) If every owner consents to the making of an order under section 53(2) (without the making of a special order), the authority –
- (a) may make the order under section 53(2); and
  - (b) if they do so, shall include in the order a statement that it is made with the consent of every owner.
- (5) If an owner would consent to the making of an order under section 53(2) only if one or more special orders are made, and the other owners (if any) do not object to the making of such an order or orders, the authority may make the special order or orders in question and, if they do so, shall –
- (a) make an order under section 53(2);
  - (b) include in that order a statement that it is made with the consent of every owner; and
  - (c) combine any special orders and the order under section 53(2) in a single document.
- (6) Before making a diversion order, the authority must –
- (a) be satisfied that the path or way will not be substantially less convenient to the public in consequence of the diversion; and
  - (b) have regard to any guidance given by the Secretary of State.
- (7) An order under section 53(2) which includes a statement that it is made with the consent of every owner is referred to in this Act as a modification consent order.
- (8) A modification consent order may not be made after the end of the period of 6 months beginning with the day on which the authority served notice under paragraph 1A(4)(b) of Schedule 14 in the case in question.

- (9) The Secretary of State may by order provide that, in cases or circumstances specified in the order, subsection (8) applies as if for the period of 6 months mentioned in that subsection there were substituted a longer period specified in the order.
- (10) An order under subsection (9) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**54C Modifications of definitive map and statement by consent: supplemental**

- (1) An authority may not make a diversion order under section 54B(5) so as to alter a point of termination of a path or way –
    - (a) if that point is not on a highway; or
    - (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
  - (2) An authority may not make such an order so as to alter the line of a path or way such that it falls on land owned by a person who is not the owner of the land to which the application in question relates, unless that other person consents to the alteration.
  - (3) An authority which makes a modification consent order are responsible, as from the date when the order takes effect, for maintaining any path or way, or any part of a path or way, which is shown in a definitive map and statement in consequence of the making of the order or any special order combined with it under section 54B(5) (including so much of a path or way as has been created by the making of a special order altering the width of an existing path or way).
  - (4) Where it appears to the authority –
    - (a) that if a modification consent order were to take effect, they would be responsible under subsection (3) for the maintenance of a path or way, or part of a path or way, and
    - (b) that work is required to be done to bring the path or way, or the part, into a fit condition for use by the public,
 the authority may not confirm the order under Schedule 15 until they are satisfied that the work has been carried out.
  - (5) Where section 54B applies, Schedule 14 applies with the modifications specified in Schedule 15A to this Act.
  - (6) Where a modification consent order is made, Schedule 15 applies with the modifications specified in Schedule 15A to this Act.”
- 6 (1) Schedule 14 (applications for orders under section 53) is amended as follows.
- (2) In paragraph 1 (form of applications)–
    - (a) the existing text becomes sub-paragraph (1);
    - (b) after that sub-paragraph insert –
      - “(2) Regulations under sub-paragraph (1) must provide for an application to an authority in England to include an explanation as to why the applicant believes that a

definitive map and statement should be modified in consequence of the occurrence of one or more events falling within section 53(3)(b) or (c).

- (3) If an authority in England inform a potential applicant to the authority that they have access to a particular piece of documentary evidence, sub-paragraph (1)(b) does not apply in relation to the documentary evidence.”

- (3) After that paragraph insert—

*“Preliminary assessment and notice of applications: England*

- 1A (1) An authority in England shall, before the end of the period of 3 months beginning with the day on which they receive an application, decide whether the application, and any documentary evidence which the applicant relies on in support of it, show that there is a reasonable basis for the applicant’s belief that a definitive map and statement should be modified in consequence of the occurrence of one or more events falling within section 53(3)(b) or (c).
- (2) In deciding whether there is such a basis, the authority shall have regard to any guidance given by the Secretary of State.
- (3) If they decide that there is no such basis, they shall, before the end of that period, inform the applicant of their decision and the reasons for it.
- (4) If they decide that there is such a basis, they shall, before the end of that period—
- (a) inform the applicant; and
  - (b) serve a notice on every owner and occupier of any land to which the application relates stating that an application has been made and the authority are considering it.
- (5) If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on the person by sub-paragraph (4) may be served by addressing it to the person by the description “owner” or “occupier” of the land (describing it) and by affixing it to some conspicuous object or objects on the land.”

- (4) After paragraph 1A (as inserted by the preceding sub-paragraph) insert—

*“Failure by authority to conduct preliminary assessment: England*

- 1B (1) If an authority in England have not assessed an application under paragraph 1A within the period of 3 months beginning with the day on which they received the application, the applicant may give notice to the authority in the prescribed form of an intention to apply to a magistrates’ court for an order under this paragraph.
- (2) The applicant may apply to a magistrates’ court for an order under this paragraph at any time—

- (a) after the end of the period of 1 month beginning with the day on which notice was given; and
  - (b) before the end of the period of 6 months beginning with that day.
- (3) On hearing an application under this paragraph, a magistrates' court may order the authority to take specified steps for the purposes of discharging the authority's duty under paragraph 1A and to do so within such reasonable period as may be specified.
- (4) An order under sub-paragraph (3) may provide for paragraph 1D(1) to apply in relation to the application made to the authority as if for the period of 12 months beginning with the day on which the authority received the application there were substituted a longer period.
- (5) The authority or the applicant may appeal to the Crown Court against a decision of a magistrates' court under this paragraph.
- (6) An order under this paragraph shall not take effect –
- (a) until the end of the period of 21 days beginning with the day after the day on which the order was made, or
  - (b) if an appeal is brought in respect of the order within that period (whether by way of appeal to the Crown Court or by way of case stated for the opinion of the High Court), until the final determination or withdrawal of the appeal.

*Determination by authority: England*

- 1C (1) As soon as reasonably practicable after serving a notice under paragraph 1A(4)(b), the authority shall –
- (a) investigate the matters stated in the application; and
  - (b) after consulting with every local authority whose area includes the land to which the application relates, decide whether to make or not to make the order to which the application relates.
- (2) As soon as practicable after determining the application, the authority shall give notice of their decision by serving a copy of it on the applicant and any person on whom notice of the application was required to be served under paragraph 1A(4)(b).

*Failure by authority to determine application: England*

- 1D (1) If an authority in England have not determined an application within the period of 12 months beginning with the day on which they received the application, the applicant or any owner or occupier of any land to which the application relates may give notice to the authority in the prescribed form of an intention to apply to a magistrates' court for an order under sub-paragraph (5).
- (2) Sub-paragraph (1) does not apply if the authority have informed the applicant under paragraph 1A(3) of their decision not to consider the application further.

- (3) A person who has given notice under sub-paragraph (1) may apply to a magistrates' court for an order under sub-paragraph (5) at any time—
  - (a) after the end of the period of 1 month beginning with the day on which notice was given; and
  - (b) before the end of the period of 12 months beginning with that day.
- (4) On the hearing of an application under sub-paragraph (3) the other persons by whom a notice under sub-paragraph (1) could have been given have a right to be heard.
- (5) On hearing an application under sub-paragraph (3), a magistrates' court may order the authority to take specified steps for the purposes of discharging its duty under paragraph 1C and to do so within such reasonable period as may be specified.
- (6) The authority may make one application to a magistrates' court for an order extending by up to 12 months the period specified in the order under sub-paragraph (5).
- (7) On the hearing of an application under sub-paragraph (6) in relation to an order under sub-paragraph (5), the person who applied for that order and the other persons by whom a notice under sub-paragraph (1) could have been given have a right to be heard.
- (8) A decision of a magistrates' court under this paragraph may be appealed to the Crown Court by—
  - (a) the authority;
  - (b) the applicant for an order under sub-paragraph (5);
  - (c) any other person by whom a notice under sub-paragraph (1) could have been given.
- (9) An order under this paragraph shall not take effect—
  - (a) until the end of the period of 21 days beginning with the day after the day on which the order was made; or
  - (b) if an appeal is brought in respect of the order within that period (whether by way of appeal to the Crown Court or by way of case stated for the opinion of the High Court), until the final determination or withdrawal of the appeal.

*Failure by English authority to determine application: further provision about notices*

- 1E (1) An applicant for an order under paragraph 1D(5) shall give notice to the court of the names and addresses of any other person by whom a notice under sub-paragraph (1) of that paragraph could have been given.
- (2) If it is not reasonably practicable for an applicant to ascertain such a name and address, the applicant shall be taken to have complied with sub-paragraph (1) if the applicant gives notice to the court that that is the case.
- (3) Notice of the hearing, of the right to be heard and of the right to appeal against a decision on an application under paragraph 1D(3)

shall be given by the court to each person whose name and address is notified to the court under sub-paragraph (1).

- (4) Notice of the hearing, of the right to be heard and of the right to appeal against a decision on an application under paragraph 1D(6) shall be given by the court to—
- (a) the person who applied for the order under paragraph 1D(5) to which the application relates; and
  - (b) each person whose name and address was notified to the court under sub-paragraph (1) by the person mentioned in paragraph (a).
- (5) Where the court is given notice under sub-paragraph (2), notice of the hearing, of the right to be heard and of the right to appeal against a decision on an application under paragraph 1D(3) or (6) shall also be given by the court by affixing it to some conspicuous object or objects on the land to which the application relates.”
- (5) In the italic cross-heading before paragraph 2 (notice of applications), at the end insert “: Wales”.
- (6) In paragraph 2(1), after “sub-paragraph (2),” insert “, where an application is made to an authority in Wales,”.
- (7) In the italic cross-heading before paragraph 3 (determination by authority), at the end insert “: Wales”.
- (8) After paragraph 3 insert—

*“Procedure where authority decide not to make order: England*

- 3A (1) Where an authority in England decide under paragraph 1C not to make an order, the applicant may, at any time within 28 days after service of notice of the decision, give notice to the authority in the prescribed form of the applicant’s wish to appeal against the decision to the Secretary of State and of the grounds on which the applicant wishes to do so.
- (2) If the applicant gives such notice and does not withdraw it—
- (a) the authority shall submit the matter to the Secretary of State; and
  - (b) the Secretary of State shall deal with the matter as an appeal against the decision of the authority.
- (3) The authority may, but need not, act as mentioned in sub-paragraph (2) if the authority are of the opinion that nothing in the grounds of appeal relates to an issue which, if the matter were submitted to the Secretary of State, would be relevant to the Secretary of State’s decision on the appeal.
- (4) In deciding whether to exercise their power under sub-paragraph (3) not to submit the matter, the authority shall have regard to any guidance given by the Secretary of State.
- (5) Where the authority decide not to submit the matter, the authority shall inform the applicant of their decision and the reasons for it.

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- (6) Where the matter is submitted to the Secretary of State, the authority shall give notice in the prescribed form –
- (a) setting out the decision;
  - (b) stating that the matter has been submitted to the Secretary of State;
  - (c) naming a place in the area in which the land to which the decision relates is situated where a copy of the decision may be inspected free of charge, and copies of it may be obtained at a reasonable charge, at all reasonable hours; and
  - (d) specifying the time (not being less than 42 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the decision, which must include particulars of the grounds relied on, may be made to the Secretary of State.
- (7) Sub-paragraphs (2), (2A) and (4) to (8) of paragraph 3 of Schedule 15 apply for the purposes of sub-paragraph (6) above as they apply for the purposes of sub-paragraph (1) of paragraph 3 of that Schedule but with the following modifications –
- (a) any reference in those provisions (however expressed) to an order of the authority is to be read as a reference to a decision of the authority;
  - (b) the reference in sub-paragraph (2)(b)(iii) to sub-paragraph (3) is to be read as a reference to sub-paragraph (8) of this paragraph;
  - (c) the reference in sub-paragraph (8) to preparing the order is to be read as a reference to making the decision.
- (8) Any person may, on payment of such reasonable charge as the authority may consider appropriate, require an authority to give him notice of all such decisions not to make an order as are made by the authority under paragraph 1C during a specified period, are of a specified description and relate to land in a specified area.
- (9) In sub-paragraph (8), “specified” means specified in the requirement.
- (10) Nothing in sub-paragraph (6)(d) shall be construed as limiting the grounds which may be relied on or the documentary or other evidence which may be adduced at any local inquiry or hearing held under paragraph 3B.
- 3B (1) Where a matter is submitted to the Secretary of State under paragraph 3A(2), the Secretary of State shall either –
- (a) cause a local inquiry to be held; or
  - (b) afford the applicant, and any person by whom a representation or objection has been duly made and not withdrawn, an opportunity of being heard by a person appointed by the Secretary of State for the purpose.
- (2) The Secretary of State may, but need not, act as mentioned in sub-paragraph (1)(a) or (b) if, in the opinion of the Secretary of State, nothing in the grounds of appeal, and no representation or objection which has been duly made and not withdrawn, relates to



- an issue which would be relevant to the Secretary of State's decision on the appeal.
- (3) On considering the grounds of appeal, any representations or objections duly made (and not withdrawn) and the report of any person appointed to hold an inquiry or hear representations or objections, the Secretary of State may –
- (a) uphold the authority's decision;
  - (b) direct the authority to make an order in accordance with the direction;
  - (c) make an order.
- (4) Sub-paragraph (5) applies if –
- (a) the Secretary of State proposes to direct an authority to make an order or proposes to make an order, and
  - (b) an order made in accordance with the proposed direction or (as the case may be) the order that the Secretary is proposing to make would differ in a material respect from the order sought by the applicant in his application.
- (5) The Secretary of State shall –
- (a) give such notice as appears to him requisite of the proposal, specifying the time (which shall not be less than 28 days from the date of first publication of the notice) within which, and the manner in which, representations or objections with respect to the proposal, which must include particulars of the grounds relied on, may be made;
  - (b) if any representation or objection duly made is not withdrawn, cause a local inquiry to be held or afford any person by whom any such representation or objection has been made an opportunity of being heard by a person appointed by the Secretary of State for that purpose; and
  - (c) consider the report of any person appointed to hold an inquiry or to hear representations or objections.
- (6) The Secretary of State may, but need not, act as mentioned in sub-paragraph (5)(b) if, in his opinion, no representation or objection which has been duly made and not withdrawn relates to an issue which would be relevant to the Secretary of State's decision on the appeal.
- (7) For the purposes of sub-paragraph (4)(b), an order made in accordance with the proposed direction, or (as the case may be) the order that the Secretary of State is proposing to make, would differ in a material respect from the order sought by the applicant in his application if –
- (a) it would affect land not affected by the order sought by the applicant;
  - (b) it would not show any right of way shown in the order sought by the applicant;
  - (c) it would show any right of way not so shown; or
  - (d) it would show as a highway of a particular description a way which is shown in the order sought by the applicant as a highway of another description.

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- (8) Nothing in sub-paragraph (5)(a) shall be construed as limiting the grounds which may be relied upon or the documentary or other evidence which may be adduced at any local inquiry or hearing held under sub-paragraph (5)(b).
- (9) Paragraphs 10 and 10A of Schedule 15 apply in relation to a decision of the Secretary of State under this paragraph as they apply in relation to a decision of the Secretary of State under paragraph 7 of that Schedule.
- (10) Any person may, on payment of such reasonable charge as the authority may consider appropriate, require an authority to give the person notice of all such orders as are –
- (a) made by the authority in accordance with a direction under sub-paragraph (3)(b) or by the Secretary of State under sub-paragraph (3)(c) during a specified period;
  - (b) are of a specified description; and
  - (c) relate to land in a specified area.
- (11) In sub-paragraph (10), “specified” means specified in the requirement.
- 3C (1) Where an order is made in accordance with a direction given under paragraph 3B(3)(b), Schedule 15 applies –
- (a) as if paragraphs 1, 3 to 5 and 7 to 10A were omitted; and
  - (b) with the following additional modifications.
- (2) Paragraph 2 applies as if for the words from “either by” to the end of the paragraph there were substituted “by the Secretary of State under paragraph 6”.
- (3) Paragraph 6 applies as if for it there were substituted –
- “6 Where an order is made in accordance with a direction given by the Secretary of State under paragraph 3B(3)(b) of Schedule 14, the Secretary of State must confirm the order.”
- (4) Paragraph 12(1) applies as if after “requirements of” there were inserted “Schedule 14 or”.
- 3D (1) Where the Secretary of State makes an order under paragraph 3B(3)(c), Schedule 15 applies –
- (a) as if paragraphs 1, 3 to 5 and 7 to 10A were omitted; and
  - (b) with the following additional modifications.
- (2) Paragraph 2 applies as if for the words from “either by” to the end of the paragraph there were substituted “by the Secretary of State under paragraph 6”.
- (3) Paragraph 6 applies as if for it there were substituted –
- “6 Where an order has been made by the Secretary of State under paragraph 3B(3)(c) of Schedule 14, the Secretary of State must confirm the order.”
- (4) Paragraph 12(1) applies as if after “requirements of” there were inserted “Schedule 14 or”.

- (9) For the italic cross-heading before paragraph 4 substitute “Procedure where authority decide not to make order: Wales”.
- (10) In paragraph 4(1), for “the authority” (in the first place it occurs) substitute “an authority in Wales”.
- (11) After paragraph 4 insert—
- “Transfer of applications: England*
- 4A (1) Where an application is made to an authority in England, the applicant may at any time before the application is determined give notice in the prescribed form to the authority that another person named in the notice is to carry on the application.
- (2) Where such a notice is given, the other person is (in relation to any time after it is given) to be treated as the applicant for the purposes of this Act.”
- 7 (1) Schedule 15 (procedure applicable to the making of orders under section 53 of that Act making modifications to definitive maps and statements showing public rights of way) is amended as follows.
- (2) In paragraph 3 (publicity for orders)—
- (a) in sub-paragraph (2), in paragraph (a), for the words from “in at least one local newspaper” to the end of the paragraph substitute “(within the meaning of sub-paragraph (2A))”;
- (b) after sub-paragraph (2) insert—
- “(2A) In sub-paragraph (2)(a), “publication” means—
- (a) in the case of an authority in England, publication on a website maintained by the authority and on such other websites or through the use of such other digital communications media as the authority may consider appropriate;
- (b) in the case of an authority in Wales, publication in at least one local newspaper circulating in the area in which the land to which the order relates is situated.”
- (3) In paragraph 7 (opposed orders), after sub-paragraph (1) insert—
- “(1A) Where the order is submitted by an authority in England and the representations or objections relate to some but not all of the modifications made by the order, the Secretary of State may, by notice given to the authority, elect that the order shall have effect as two separate orders—
- (a) the one comprising the modifications to which the representations or objections relate (“the opposed order”); and
- (b) the other comprising the remaining modifications.
- (1B) Where notice is given under sub-paragraph (1A), paragraph 6 and the following provisions of this Schedule apply as if only the

opposed order had been submitted to the Secretary of State for confirmation.

- (1C) Any reference in sub-paragraph (1A) to an order includes a reference to any part of an order which, by virtue of one or more previous elections under that sub-paragraph, has effect as a separate order.”

- (4) After paragraph 7 insert –

*“Power to proceed as if order unopposed*

7A (1) If representations or objections have been duly made to an authority in England (and not withdrawn) but the authority considers that none of them are relevant, the authority may proceed under this Schedule as if no representations or objections had been duly made (and the provisions of this Schedule apply accordingly).

- (2) If representations or objections have been duly made to such an authority (and not withdrawn) but the authority consider that at least one of the representations or objections is not relevant, the authority may elect that the order shall have effect as two separate orders –

(a) the one comprising the modifications to which the relevant representations or objections relate; and

(b) the other comprising the remaining modifications;

and the provisions of this Schedule apply accordingly.

- (3) For the purposes of this paragraph a representation or objection is relevant if, were the order to be submitted to the Secretary of State under paragraph 7(1), it would be relevant in determining whether or not to confirm the order (either with or without modifications).

- (4) In deciding whether to exercise their power under sub-paragraph (1) or (2), an authority shall have regard to any guidance given by the Secretary of State.

- (5) Where the authority decide to exercise such a power, the authority shall inform the applicant, and any person who made a representation or objection (and has not withdrawn it), of their decision and the reasons for it.”

- (5) In paragraph 12 (proceedings for questioning validity of orders), after sub-paragraph (2) insert –

“(2A) Sub-paragraph (2B) applies if the application relates to an order of an authority in England that has been submitted to, and confirmed by, the Secretary of State.

- (2B) The High Court may quash the decision of the Secretary of State confirming the order or any part of it (either generally or in so far as it affects the interests of the applicant), instead of quashing the order or any provision of it.”

8 After Schedule 15 insert the following Schedule –

“SCHEDULE 15A

ORDERS BY CONSENT: MODIFICATIONS OF SCHEDULES 14 AND 15

*Modifications of Schedule 14*

- 1 (1) Paragraph 1C applies only if –
  - (a) the authority ascertain that an owner does not consent to the making of an order under section 53(2) (whether with or without the making of a special order mentioned in section 54B(2)(a) to (c));
  - (b) the authority decide for any other reason not to make a modification consent order;
  - (c) the period of 6 months beginning with the date on which notice was served under paragraph 1A(4)(b) expires without the authority having made such an order; or
  - (d) the authority make such an order but decide not to confirm it.
- (2) In any case where paragraph 1C applies in consequence of the occurrence of an event mentioned in sub-paragraph (1)(a) to (d) above, paragraph 1C(1) applies as if it referred to the occurrence of that event instead of the service of a notice under paragraph 1A(4)(b).

*Modifications of Schedule 15*

- 2 For the purposes of the application of the Schedule, any special orders made under section 54B(5) are to be treated as part of the order under section 53(2).
- 3 Paragraph 2 applies as if it provided that an order shall not take effect until confirmed by the authority under paragraph 6 (as modified by paragraph 5 below).
- 4 Paragraph 3 applies as if –
  - (a) in sub-paragraph (4), for the words from the beginning to “but if he so directs” there were substituted “The authority may, in any particular case, decide that it is unnecessary to comply with sub-paragraph (2)(b)(i); but if it so decides”;
  - (b) sub-paragraph (9) were omitted.
- 5 The Schedule applies as if for paragraphs 6 and 7, and the italic cross-heading preceding each of those paragraphs, there were substituted –

*“Confirmation of orders*

- 6 The authority may (whether or not any representations or objections are made) confirm the order –
  - (a) without modifications; or
  - (b) with modifications, if every owner so consents.”
- 6 The Schedule applies as if paragraph 7A were omitted.

- 7 Paragraph 12(1) applies as if for “53 and 54” there were substituted “53, 54, 54B and 54C”.

PART 2

HIGHWAYS ACT 1980

- 9 (1) Schedule 6 to the Highways Act 1980 (procedure applicable to the making etc. of certain orders under the Act relating to footpaths, bridleways and restricted byways) is amended as follows.
- (2) In paragraph 1 (publicity for orders)–
- (a) in sub-paragraph (3), in paragraph (a), for the words from “in at least one local newspaper” to the end of the paragraph substitute “(within the meaning of sub-paragraph (3ZA))”;
- (b) after sub-paragraph (3) insert –
- “(3ZA) In sub-paragraph (3)(a), “publication” means –
- (a) in relation to England, publication on a website maintained by the authority and on such other websites or through the use of such other digital communications media as the authority may consider appropriate;
- (b) in relation to Wales, publication in at least one local newspaper circulating in the area in which the land to which the order relates is situated.”
- (3) In paragraph 2 (opposed and unopposed orders), after sub-paragraph (2) insert –
- “(2ZA) If representations or objections have been duly made to an authority in England other than the Secretary of State (and not withdrawn), but the authority consider that none of the representations or objections are relevant, the authority may proceed under this Schedule as if no representations or objections had been duly made (and the provisions of this Schedule apply accordingly).
- (2ZB) If representations or objections have been duly made to such an authority (and not withdrawn), but the authority consider that at least one of the representations or objections is not relevant, the authority may elect that the order shall have effect as two separate orders –
- (a) the one comprising the modifications to which the relevant representations or objections relate; and
- (b) the other comprising the remaining modifications;
- and the provisions of this Schedule apply accordingly.
- (2ZC) For the purposes of this paragraph, a representation or objection is relevant if, were the order to be submitted to the Secretary of State, it would be relevant in determining whether or not to confirm the order (either with or without modifications).

- (2ZD) In deciding whether to exercise their power under subsection (2ZA) or (2ZB), an authority shall have regard to any guidance given by the Secretary of State.
- (2ZF) Where the authority decide to exercise such a power, the authority shall inform the applicant, and any person who made a representation or objection (and has not withdrawn it), of their decision and the reasons for it.”
- (4) In that paragraph, after sub-paragraph (3) insert—
- “(4) The Secretary of State may, but not need not, act as mentioned in sub-paragraph (2)(a) or (b) or (3)(b) in relation to an order relating to England if, in his opinion, no objection or representation which has been duly made and not withdrawn relates to an issue which would be relevant in determining whether or not to confirm the order (either with or without modifications) or to make it.”
- (5) After paragraph 2 insert—
- “2ZZA(1)Where at any time representations or objections duly made to an authority in England (and not withdrawn) relate to only parts of an order, the authority may elect that for the purposes of paragraph 2 and the following provisions of this Schedule, the order shall have effect as two separate orders—
- (a) the one comprising the parts to which the representations or objections relate; and
  - (b) the other comprising the remaining parts.
- (2) Where the authority is not the Secretary of State, an election for the purposes of sub-paragraph (1) shall be given by notice to the Secretary of State.
- (3) Where an order made by an authority in England (other than the Secretary of State) is submitted to the Secretary of State, and any representations or objections duly made (and not withdrawn) relate to only parts of the order, the Secretary of State may, by notice given to the authority, elect that it shall have effect as two separate orders—
- (a) the one comprising the parts to which the representations or objections relate (“the opposed order”); and
  - (b) the other comprising the remaining parts.
- (4) Where notice is given under sub-paragraph (3), paragraph 2 and the following provisions of this Schedule apply as if only the opposed order had been submitted to the Secretary of State for confirmation.
- (5) Any reference in sub-paragraph (1) or (3) to an order includes a reference to any part of an order which, by virtue of one or more previous elections under that sub-paragraph, has effect as a separate order.”
- (6) In paragraph 4A (publication of orders)—
- (a) the existing text becomes sub-paragraph (1);

- (b) in that sub-paragraph, for the words from “in at least one local newspaper” to the end of the paragraph substitute “(within the meaning of sub-paragraph (2))”;
- (c) after that sub-paragraph insert –
- “(2) In sub-paragraph (1), “publication” means –
- (a) in relation to England, publication on a website maintained by the authority and on such other websites or through the use of such other digital communications media as the authority may consider appropriate;
- (b) in relation to Wales, publication in at least one local newspaper circulating in the area in which the land to which the order relates is situated.”
- (7) In paragraph 5 (proceedings for questioning validity of orders) omit the “and” after paragraph (b) and insert –
- “(ba) the Schedule has effect as if after paragraph 3 there were inserted –
- “3A (1) Sub-paragraph (2) applies if the application relates to an order of an authority in England that has been submitted to, and confirmed by, the Secretary of State.
- (2) The High Court may quash the decision of the Secretary of State confirming the order or any part of it (either generally or in so far as it affects the interests of the applicant), instead of quashing the order or any provision of it.”; and”.

## SCHEDULE 7

Section 22

### PROVISION OF PASSENGER RAIL SERVICES

#### *Consequential amendments*

- 1 The Transport Act 1968 is amended in accordance with paragraphs 2 to 5.
- 2 (1) Section 10(1) is amended as follows.
  - (2) In paragraph (iii), before “(ii)”, in both places, insert “(ia)(b) or”.
  - (3) In paragraph (iv), before “(ii)” insert “(ia)”.
  - (4) After paragraph (viii), insert –
 

“(viiiia) where that area is in England, to let locomotives and other rolling stock on hire to a person not falling within paragraph (viii) for or in connection with the provision of railway passenger services;”.
  - (5) In paragraph (viii), at the beginning insert “where that area is in Wales or Scotland”.