

# Legislation after the implementation of the Defra “rights of way reform package”

## NOTES

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The effects of the CROW Act 2000 (as not yet commenced) and the Deregulation Act 2015 are shown in **red**.

JT

14/1/19 (corrected in respect of a previous omission of HA 1980 s 118C)

### ABBREVIATIONS

CRWA 2000	Countryside and Rights of Way Act 2000
DA 2015	Deregulation Act 2015
NERCA 2006	Natural Environment and Rural Communities Act 2006
para	paragraph
s	section
Sch	Schedule

# HIGHWAYS ACT 1980 (c. 66)

## 25. Creation of footpath, bridleway or restricted byway by agreement

- (1) A local authority may enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a footpath, bridleway or restricted byway over land in their area.  
An agreement under this section is referred to in this Act as a 'public path creation agreement'.
- (2) For the purposes of this section 'local authority'-
  - (a) in relation to land outside Greater London means a county council, a district council; and
  - (b) in relation to land in Greater London means a London borough council or the Common Council.
- (3) Before entering into an agreement under this section a local authority shall consult any other local authority or authorities in whose area the land concerned is situated.
- (4) An agreement under this section shall be on such terms as to payment or otherwise as may be specified in the agreement and may, if it is so agreed, provide for the dedication of the footpath, bridleway or restricted byway subject to limitations or conditions affecting the public right of way over it.
- (5) Where a public path creation agreement has been made it shall be the duty of the local authority who are a party to it to take all necessary steps for securing that the footpath, bridleway or restricted byway is dedicated in accordance with it.
- (6) As soon as may be after the dedication of a footpath, bridleway or restricted byway in accordance with a public path creation agreement, the local authority who are party to the agreement shall give notice of the dedication by publication in at least one local newspaper circulating in the area in which the land to which the agreement relates is situated.

## 26. Compulsory powers for creation of footpaths, bridleways and restricted byways

- (1) Where it appears to a local authority that there is a need for a footpath, bridleway or restricted byway over land in their area and they are satisfied that, having regard to-
  - (a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
  - (b) the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 28 below,it is expedient that the path or way should be created, the authority may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order, create a footpath, bridleway or restricted byway over the land.  
An order under this section is referred to in this Act as a 'public path creation order'; and for the purposes of this section 'local authority' has the same meaning as in section 25 above.
- (2) Where it appears to the Secretary of State in a particular case that there is need for a footpath, bridleway or restricted byway as mentioned in subsection (1) above, and he is satisfied as mentioned in that subsection, he may, after consultation with each body which is a local authority for the purposes of this section in relation to the land concerned, make a public path creation order creating the footpath, bridleway or restricted byway.
- (3) A local authority shall, before exercising any power under this section, consult any other local authority or authorities in whose area the land concerned is situated.
- (3A) The considerations to which-
  - (a) the Secretary of State is to have regard in determining whether or not to confirm or make a public path creation order, and
  - (b) a local authority are to have regard in determining whether or not to confirm such an order as an unopposed order,include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the proposed footpath, bridleway or restricted byway would be created.
- (4) A right of way created by a public path creation order may be either unconditional or subject to such limitations or conditions as may be specified in the order.

- (5) A public path creation order shall be in such form as may be prescribed by regulations made by the Secretary of State, and shall contain a map, on such scale as may be so prescribed, defining the land over which a footpath, bridleway or restricted byway is thereby created.
- (6) Schedule 6 to this Act shall have effect as to the making, confirmation, validity and date of operation of public path creation orders.

## **27. Making up of new footpaths, bridleways and restricted byways**

- (1) On the dedication of a footpath, bridleway or restricted byway in pursuance of a public path creation agreement, or on the coming into operation of a public path creation order, being-
  - (a) an agreement or order made by a local authority who are not a highway authority for the path in question; or
  - (b) an order made by the Secretary of State under section 26(2) above in relation to which he directs that this subsection shall apply,
 the highway authority shall survey the path or way and shall certify what work (if any) appears to them to be necessary to bring it into a fit condition for use by the public as a footpath or bridleway, as the case may be, and shall serve a copy of the certificate on the local authority mentioned in paragraph (a) above or, where paragraph (b) applies, on such local authority as the Secretary of State may direct.
- (2) It shall be the duty of the highway authority to carry out any works specified in a certificate under subsection (1) above, and where the authority have carried out the work they may recover from the authority on whom a copy of the certificate was served any expenses reasonably incurred by them in carrying out that work, including any expenses so incurred in the discharge of any liability for compensation in respect of the carrying out thereof.
- (3) Notwithstanding anything in the preceding provisions of this section, where an agreement or order is made as mentioned in subsection (1)(a) above, the local authority making the order may-
  - (a) with the consent of the highway authority carry out (in place of the highway authority) the duties imposed by that subsection on the highway authority; and
  - (b) carry out any works which, apart from this subsection, it would be the duty of the highway authority to carry out under subsection (2) above.
- (4) Where the Secretary of State makes a public path creation order under section 26(2) above, he may direct that subsection (5) below shall apply.
- (5) Where the Secretary of State gives such a direction-
  - (a) the local authority who, on the coming into force of the order, became the highway authority for the path or way in question shall survey the path or way and shall certify what work (if any) appears to them to be necessary to bring it into a fit condition for use by the public as a footpath, bridleway or restricted byway, as the case may be, and shall furnish the Secretary of State with a copy of the certificate;
  - (b) if the Secretary of State is not satisfied with a certificate made under the foregoing paragraph, he shall either cause a local inquiry to be held or shall give to the local authority an opportunity of being heard by a person appointed by him for the purpose and, after considering the report of the person appointed to hold the inquiry or the person so appointed as aforesaid, shall make such order either confirming or varying the certificate as he may think fit; and
  - (c) subject to the provisions of the last foregoing paragraphs, it shall be the duty of the highway authority to carry out the work specified in a certificate made by them under paragraph (a) above.
- (6) In this section 'local authority' means any council.

## **28. Compensation for loss caused by path creation order**

- (1) Subject to the following provisions of this section if, on a claim made in accordance with this section, it is shown that the value of an interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of a public path creation order, the authority by whom the order was made shall pay to that person compensation equal to the amount of the depreciation or damage.
- (2) A claim for compensation under this section shall be made within such time and in such manner as may be prescribed by regulations made by the Secretary of State, and shall be made to the authority by whom the order was made.

- (3) For the purposes of the application of this section to an order made by the Secretary of State under section 26(2) above, references in this section to the authority by whom the order was made are to be construed as references to such one of the authorities referred to in that subsection as may be nominated by the Secretary of State for the purposes of this subsection.
- (4) Nothing in this section confers on any person, in respect of a footpath, bridleway or restricted byway created by a public path creation order, a right to compensation for depreciation of the value of an interest in the land, or for disturbance in his enjoyment of land, not being in either case land over which the path was created or land held therewith, unless the creation of the path or way would have been actionable at his suit if it had been effected otherwise than in the exercise of statutory powers.
- (5) In this section 'interest', in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an interest in land or by virtue of a licence or agreement, and in particular includes sporting rights.

## **29. Duty to have regard to agriculture, forestry and nature conservation**

- (1) In the exercise of their functions under this Part of this Act relating to the making of public path creation agreements and public path creation orders it shall be the duty of councils to have due regard to-
  - (a) the needs of agriculture and forestry, and
  - (b) the desirability of conserving flora, fauna and geological and physiographical features.
- (2) In this section, 'agriculture' includes the breeding or keeping of horses.

## **30. Dedication of highway by agreement with parish and community council**

- (1) The council of a parish or community may enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a highway over land in the parish or community or an adjoining parish or community in any case where such a dedication would in the opinion of the council be beneficial to the inhabitants of the parish or community or any part thereof.
- (2) Where the council of a parish or community have entered into an agreement under subsection (1) above for the dedication of a highway they may carry out any works (including works of maintenance or improvement) incidental to or consequential on the making of the agreement or contribute towards the expense of carrying out such works, and may agree to combine with the council of any other parish or community to carry out such works or to make such a contribution.

## **118. Stopping up of footpaths, bridleways and restricted byways**

- (1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.  
An order under this section is referred to in this Act as a 'public path extinguishment order'.
- (2) The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (3) A public path extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.
- (4) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.
- (5) Where, in accordance with regulations made under paragraph 3 of the said Schedule 6, proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order, public path diversion order or rail crossing diversion order then, in considering-

- (a) under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use; or
- (b) under subsection (2) above to what extent (if any) that path or way would apart from the order be likely to be used by the public;

the council or the Secretary of State, as the case may be, may have regard to the extent to which the public path creation order, public path diversion order or rail crossing diversion order would provide an alternative path or way.

- (6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.

(6A) The considerations to which-

- (a) the Secretary of State is to have regard in determining whether or not to confirm a public path extinguishment order, and
- (b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.

### **118ZA. Application for a public path extinguishment order.**

- (1) The owner, lessee or occupier of any land used for agriculture, forestry or the breeding or keeping of horses, or of any land in England of a prescribed description, may apply to a council for the area in which the land is situated for the making of a public path extinguishment order in relation to any footpath or bridleway which crosses the land.
- (2) An application under this section shall be in such form as may be prescribed and shall be accompanied by a map, on such scale as may be prescribed, showing the land over which it is proposed that the public right of way should be extinguished, and by such other information as may be prescribed.
- (3) Regulations may provide-
  - (a) that a prescribed charge is payable on the making of an application under this section to a council in Wales, and
  - (b) that further prescribed charges are payable by the applicant if the council make a public path extinguishment order on the application.
- (4) An application under this section is not to be taken to be received by the council until the requirements of regulations under section 121A below have been satisfied in relation to it.
- (5) A council which receives an application under this section shall determine the application as soon as reasonably practicable.
- (6) Before determining to make a public path extinguishment order on an application under this section, the council may require the applicant to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards, any compensation which may become payable under section 28 above as applied by section 121(2) below.
- (7) Where-
  - (a) an application under this section has been made to a council, and
  - (b) the council have not determined the application within four months of receiving it,
 the Secretary of State may, at the request of the applicant and after consulting the council, by direction require the council to determine the application before the end of such period as may be specified in the direction.
- (8) As soon as practicable after determining an application under this section, the council shall-
  - (a) give to the applicant notice in writing of their decision and the reasons for it, and
  - (b) give a copy of the notice to such other persons as may be prescribed.
- (9) The council to whom an application under this section has been made may make a public path extinguishment order on the application only if the land over which the public right of way is to be extinguished by the order is that shown for the purposes of subsection (2) above on the map accompanying the application.
- (10) Any reference in this Act to the map accompanying an application under this section includes a reference to any revised map submitted by the applicant in prescribed circumstances in substitution for that map.
- (11) This section has effect subject to the provisions of sections 121A and 121C below.

(12) In this section-

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Secretary of State."

Sources: CRWA 2000 Sch 6 para 7, DA 2015 ss 23(2) and 25(2).

**118A. Stopping up of footpaths, bridleways and restricted byways crossing railways.**

- (1) This section applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath or bridleway in their area which crosses a railway, other than by tunnel or bridge, should be stopped up.
- (2) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the right of way over the path or way-
  - (a) on the crossing itself, and
  - (b) for so much of its length as they deem expedient from the crossing to its intersection with another highway over which there subsists a like right of way (whether or not other rights of way also subsist over it).
- (3) An order under this section is referred to in this Act as a 'rail crossing extinguishment order'.
- (4) The Secretary of State shall not confirm a rail crossing extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to all the circumstances, and in particular to-
  - (a) whether it is reasonably practicable to make the crossing safe for use by the public, and
  - (b) what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.
- (5) Before determining to make a rail crossing extinguishment order on the representations of the operator of the railway crossed by the path or way, the council may require him to enter into an agreement to defray, or to make such contribution as may be specified in the agreement towards, any expenses which the council may incur in connection with the erection or maintenance of barriers and signs.
- (6) A rail crossing extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.
- (7) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of rail crossing extinguishment orders.
- (8) In this section-  
'operator', in relation to a railway, means any person carrying on an undertaking which includes maintaining the permanent way;  
'railway' includes tramway but does not include any part of a system where rails are laid along a carriageway.

**118B. Stopping up of certain highways for purposes of crime prevention, etc.**

- (1) This section applies where it appears to a council-
  - (a) that, as respects any relevant highway for which they are the highway authority and which is in an area designated by the Secretary of State by order for the purposes of this section, the conditions in subsection (3) below are satisfied and it is expedient, for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, that the highway should be stopped up, or
  - (b) that, as respects any relevant highway for which they are the highway authority and which crosses land occupied for the purposes of a school, it is expedient, for the purpose of protecting the pupils or staff from-
    - (i) violence or the threat of violence,
    - (ii) harassment,
    - (iii) alarm or distress arising from unlawful activity, or
    - (iv) any other risk to their health or safety arising from such activity,that the highway should be stopped up.

- (2) In subsection (1) above 'relevant highway' means-
  - (a) any footpath, bridleway or restricted byway,
  - (b) any highway which is shown in a definitive map and statement as a footpath, a bridleway, or a restricted byway, but over which the public have a right of way for vehicular and all other kinds of traffic, or
  - (c) any highway which is shown in a definitive map and statement as a byway open to all traffic, but does not include a highway that is a trunk road or a special road.
- (3) The conditions referred to in subsection (1)(a) above are-
  - (a) that premises adjoining or adjacent to the highway are affected by high levels of crime, and
  - (b) that the existence of the highway is facilitating the persistent commission of criminal offences.
- (4) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the highway.
- (5) An order under subsection (4) above is in this Act referred to as a 'special extinguishment order'.
- (6) Before making a special extinguishment order, the council shall consult the police authority for the area in which the highway lies.
- (7) The Secretary of State shall not confirm a special extinguishment order made by virtue of subsection (1)(a) above, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the conditions in subsection (3) above are satisfied, that the stopping up of the highway is expedient as mentioned in subsection (1)(a) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to-
  - (a) whether and, if so, to what extent the order is consistent with any strategy for the reduction of crime and disorder prepared under section 6 of the Crime and Disorder Act 1998,
  - (b) the availability of a reasonably convenient alternative route or, if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the highway under section 119B below rather than stopping it up, and
  - (c) the effect which the extinguishment of the right of way would have as respects land served by the highway, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (8) The Secretary of State shall not confirm a special extinguishment order made by virtue of subsection (1)(b) above, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the stopping up of the highway is expedient as mentioned in subsection (1)(b) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to-
  - (a) any other measures that have been or could be taken for improving or maintaining the security of the school,
  - (b) whether it is likely that the coming into operation of the order will result in a substantial improvement in that security,
  - (c) the availability of a reasonably convenient alternative route or, if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the highway under section 119B below rather than stopping it up, and
  - (d) the effect which the extinguishment of the right of way would have as respects land served by the highway, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (9) A special extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be prescribed, defining the land over which the public right of way is thereby extinguished.
- (10) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of special extinguishment orders.

### **118C. Application by proprietor of school for special extinguishment order.**

- (1) The proprietor of a school may apply to a council for the making by virtue of section 118B(1)(b) above of a special extinguishment order in relation to any highway for which the council are the highway authority and which-

- (a) crosses land occupied for the purposes of the school, and
  - (b) is a relevant highway as defined by section 118B(2) above.
- (2) Subsections (2) to (11) of section 118ZA above shall apply to applications under this section as they apply to applications under that section, with the substitution for references to a public path extinguishment order of references to a special extinguishment order; and regulations made under that section by virtue of this subsection may make different provision for the purposes of this section and for the purposes of that section.

Source: CRWA 2000 Sch 6 para 8.

### **119. Diversion of footpaths, bridleways and restricted byways**

- (1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,-
- (a) create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion; and
  - (b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.
- An order under this section is referred to in this Act as a 'public path diversion order'.
- (2) A public path diversion order shall not alter a point of termination of the 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.
- (3) Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall-
- (a) specify a date under subsection (1)(a) above, and
  - (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.
- (4) A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.
- (5) Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,-
- (a) any compensation which may become payable under section 28 above as applied by section 121(2) below; or
  - (b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public; or
  - (c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.
- (6) The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which-
- (a) the diversion would have on public enjoyment of the path or way as a whole;
  - (b) the coming into operation of the order would have as respects other land served by the existing public right of way; and



(c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it;

so, however, that for the purposes of paragraph (b) and (c) above the Secretary of State, or as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) above.

(6A) The considerations to which-

- (a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and
- (b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.

(7) A public path diversion order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed,-

- (a) showing the existing site of so much of the line of the path or way as is to be diverted by the order and the new site to which it is to be diverted;
- (b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a footpath, bridleway or restricted byway; and
- (c) where some part of the new site is already so comprised, defining that part.

(8) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path diversion orders.

(9) Section 27 above (making up of new footpaths, bridleways and restricted byways) applies to a footpath, bridleway or restricted byway created by a public path diversion order with the substitution, for references to a public path creation order, of references to a public path diversion order and, for references to section 26(2) above, of references to section 120(3) below.

### **119ZA. Application for a public path diversion order.**

(1) Subject to subsection (2) below, the owner, lessee or occupier of any land used for agriculture, forestry or the breeding or keeping of horses, or of any land in England of a prescribed description, may apply to a council for the area in which the land is situated for the making of a public path diversion order in relation to any footpath or bridleway which crosses the land, on the ground that in his interests it is expedient that the order should be made.

(2) No application may be made under this section for an order which would create a new footpath or bridleway communicating with-

- (a) a classified road,
- (b) a special road,
- (c) a GLA road, or
- (d) any highway not falling within paragraph (a) or (b) above for which the Minister is the highway authority,

unless the application is made with the consent of the highway authority for the way falling within paragraph (a), (b), (c) or (d) above.

(3) No application under this section may propose the creation of a new right of way over land covered by works used by any statutory undertakers for the purposes of their undertaking or the curtilage of such land, unless the application is made with the consent of the statutory undertakers; and in this subsection "statutory undertaker" and "statutory undertaking" have the same meaning as in Schedule 6 to this Act.

(4) An application under this section shall be in such form as may be prescribed and shall be accompanied by a map, on such scale as may be prescribed-

- (a) showing the existing site of so much of the line of the path or way as it is proposed to divert and the new site to which it is proposed to be diverted,
- (b) indicating whether it is proposed to create a new right of way over the whole of the new site or whether some of it is already comprised in a footpath or bridleway, and
- (c) where some part of the new site is already so comprised, defining that part,

and by such other information as may be prescribed.

- (5) Regulations may provide-
  - (a) that a prescribed charge is payable on the making of an application under this section to a council in Wales, and
  - (b) that further prescribed charges are payable by the applicant if the council make a public path diversion order on the application.
- (6) An application under this section is not to be taken to be received by the council until the requirements of regulations under section 121A below have been satisfied in relation to it.
- (7) A council which receives an application under this section shall determine the application as soon as reasonably practicable.
- (8) Where-
  - (a) an application under this section has been made to a council, and
  - (b) the council have not determined the application within four months of receiving it, the Secretary of State may, at the request of the applicant and after consulting the council, by direction require the council to determine the application before the end of such period as may be specified in the direction.
- (9) As soon as practicable after determining an application under this section, the council shall-
  - (a) give to the applicant notice in writing of their decision and the reasons for it, and
  - (b) give a copy of the notice to such other persons as may be prescribed.
- (10) The council to whom an application under this section has been made may make a public path diversion order on the application only if-
  - (a) the land over which the public right of way is to be extinguished by the order, and
  - (b) the new site to which the path or way is to be diverted,
 are those shown for the purposes of subsection (4) above on the map accompanying the application.
- (11) Any reference in this Act to the map accompanying an application under this section includes a reference to any revised map submitted by the applicant in prescribed circumstances in substitution for that map.
- (12) This section has effect subject to the provisions of sections 121A and 121C below.
- (13) In this section-
 

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Secretary of State."

Sources: CRWA 2000 Sch 6 para 10, DA 2015 ss 23(3) and 25(3).

### **119A. Diversion of footpaths, bridleways and restricted byways crossing railways.**

- (1) This section applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath, bridleway or restricted byway in their area which crosses a railway, otherwise than by tunnel or bridge, should be diverted (whether on to land of the same or another owner, lessee or occupier).
- (2) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order-
  - (a) create, as from such date as may be specified in the order, any such new footpath or bridleway as appears to the council requisite for effecting the diversion, and
  - (b) extinguish, as from such date as may be specified in the order or determined under subsection (7) below, the public right of way over the crossing and over so much of the path or way of which the crossing forms part as appears to the council requisite as aforesaid
- (3) An order under this section is referred to in this Act as a 'rail crossing diversion order'.
- (4) The Secretary of State shall not confirm a rail crossing diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient to do so having regard to all the circumstances, and in particular to-
  - (a) whether it is reasonably practicable to make the crossing safe for use by the public, and
  - (b) what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.
- (5) A rail crossing diversion order shall not alter a point of termination of a path or way diverted under the order-

- (a) if that point is not on a highway over which there subsists a like right of way (whether or not other rights of way also subsist over it); or
  - (b) (where it is on such a highway) otherwise than to another point which is on the same highway, or another such highway connected with it.
- (6) A rail crossing diversion order may make provision requiring the operator of the railway to maintain all or part of the footpath, bridleway or restricted byway created by the order.
- (7) Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall-
- (a) specify a date under subsection (2)(a) above, and
  - (b) provide that so much of the order as extinguishes (in accordance with subsection (2)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.
- (8) Before determining to make a rail crossing diversion order on the representations of the operator of the railway crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,-
- (a) any compensation which may become payable under section 28 above as applied by section 121(2) below;
  - (b) any expenses which the council may incur in connection with the erection or maintenance of barriers and signs;
  - (c) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public;
  - (d) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (11) below.
- (9) A rail crossing diversion order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed,-
- (a) showing the existing site of so much of the line of the path or way as is to be diverted by the order and the new site to which it is to be diverted;
  - (b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a footpath, bridleway or restricted byway; and
  - (c) where some part of the new site is already so comprised, defining that part.
- (10) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of rail crossing diversion orders.
- (11) Section 27 above (making up of new footpaths, bridleways and restricted byways) applies to a footpath, bridleway or restricted byway created by a rail crossing diversion order with the substitution, for references to a public path creation order, of references to a rail crossing diversion order and, for references to section 26(2) above, of references to section 120(3) below.
- (12) In this section and in section 120 below-
- 'operator', in relation to a railway, means any person carrying on an undertaking which includes maintaining the permanent way;
- 'railway' includes tramway but does not include any part of a system where rails are laid along a carriageway.

### **119B. Diversion of certain highways for purposes of crime prevention, etc.**

- (1) This section applies where it appears to a council-
- (a) that, as respects any relevant highway for which they are the highway authority and which is in an area designated by the Secretary of State by order under section 118B(1)(a) above, the conditions in subsection (3) below are satisfied and it is expedient, for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, that the line of the highway, or part of that line should be diverted (whether on to land of the same or another owner, lessee or occupier), or
  - (b) that, as respects any relevant highway for which they are the highway authority and which crosses land occupied for the purposes of a school, it is expedient, for the purpose of protecting the pupils or staff from-

- (i) violence or the threat of violence,
  - (ii) harassment,
  - (iii) alarm or distress arising from unlawful activity, or
  - (iv) any other risk to their health or safety arising from such activity,
- that the line of the highway, or part of that line, should be diverted (whether on to land of the same or another owner, lessee or occupier).
- (2) In subsection (1) above 'relevant highway' means-
- (a) any footpath, bridleway or restricted byway,
  - (b) any highway which is shown in a definitive map and statement as a footpath, a bridleway, or a restricted byway, but over which the public have a right of way for vehicular and all other kinds of traffic, or
  - (c) any highway which is shown in a definitive map and statement as a byway open to all traffic, but does not include a highway that is a trunk road or a special road.
- (3) The conditions referred to in subsection (1)(a) above are-
- (a) that premises adjoining or adjacent to the highway are affected by high levels of crime, and
  - (b) that the existence of the highway is facilitating the persistent commission of criminal offences.
- (4) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order-
- (a) create, as from such date as may be specified in the order, any such-
    - (i) new footpath, bridleway or restricted byway, or
    - (ii) in a case falling within subsection (2)(b) or (c) above, new highway over which the public have a right of way for vehicular and all other kinds of traffic,
  - (b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (8) below, the public right of way over so much of the highway as appears to the council to be requisite as mentioned in paragraph (a) or (b) of subsection (1) above.
- (5) An order under subsection (4) above is in this Act referred to as a 'special diversion order'.
- (6) Before making a special diversion order, the council shall consult the police authority for the area in which the highway is situated.
- (7) A special diversion order shall not alter a point of termination of the highway-
- (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.
- (8) Where it appears to the council that work requires to be done to bring the new site of the highway into a fit condition for use by the public, the council shall-
- (a) specify a date under subsection (4)(a) above, and
  - (b) provide that so much of the order as extinguishes (in accordance with subsection (4)(b) above) a public right of way is not to come into force until the local highway authority for the new highway certify that the work has been carried out.
- (9) A right of way created by a special diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations and conditions as may be specified in the order.
- (10) The Secretary of State shall not confirm a special diversion order made by virtue of subsection (1)(a) above, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the conditions in subsection (3) above are satisfied, that the diversion of the highway is expedient as mentioned in subsection (1)(a) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to-
- (a) whether and, if so, to what extent the order is consistent with any strategy for the reduction of crime and disorder prepared under section 6 of the Crime and Disorder Act 1998,
  - (b) the effect which the coming into operation of the order would have as respects land served by the existing public right of way, and
  - (c) the effect which any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,

so, however, that for the purposes of paragraphs (b) and (c) above the council shall take into account the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

- (11) The Secretary of State shall not confirm a special diversion order made by virtue of subsection (1)(b) above, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the diversion of the highway is expedient as mentioned in subsection (1)(b) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to-
- (a) any other measures that have been or could be taken for improving or maintaining the security of the school,
  - (b) whether it is likely that the coming into operation of the order will result in a substantial improvement in that security,
  - (c) the effect which the coming into operation of the order would have as respects land served by the existing public right of way, and
  - (d) the effect which any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,
- so, however, that for the purposes of paragraphs (c) and (d) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (12) A special diversion order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed-
- (a) showing the existing site of so much of the line of the highway as is to be diverted by the order and the new site to which it is to be diverted,
  - (b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a highway, and
  - (c) where some part of the new site is already so comprised, defining that part.
- (13) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of special diversion orders.
- (14) Section 27 above (making up of new footpaths, bridleways and restricted byways) applies to a highway created by a special diversion order with the substitution-
- (a) for references to a footpath, bridleway or restricted byway of references to a footpath, a bridleway, a restricted byway or a highway over which the public have a right of way for vehicular and all other kinds of traffic,
  - (b) for references to a public path creation order of references to a special diversion order, and
  - (c) for references to section 26(2) above of references to section 120(3) below.
- (15) Neither section 27 nor section 36 above is to be regarded as obliging a highway authority to provide on any highway created by a special diversion order a metalled carriage-way.

### **119C. Application by proprietor of school for special diversion order.**

- (1) The proprietor of a school may apply to a council for the making by virtue of section 119B(1)(b) above of a special diversion order in relation to any highway for which the council are the highway authority and which-
- (a) crosses land occupied for the purposes of the school, and
  - (b) is a relevant highway as defined by section 119B(2) above.
- (2) No application may be made under this section for an order which would create a new highway communicating with-
- (a) a classified road,
  - (b) a special road,
  - (c) a GLA road, or
  - (d) any highway not falling within paragraph (a) or (b) above for which the Minister is the highway authority,

unless the application is made with the consent of the highway authority for the way falling within paragraph (a), (b), (c) or (d) above.

- (3) Before determining to make a special diversion order on an application under this section, the council may require the applicant to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards-
  - (a) any compensation which may become payable under section 28 above as applied by section 121(2) below, or
  - (b) where the council are the highway authority for the highway in question, any expenses which they may incur in bringing the new site of the highway into fit condition for use by the public, or
  - (c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by section 119B(14) above.
- (4) Subsections (3) to (12) of section 119ZA above shall apply to applications under this section as they apply to applications under that section, with the substitution-
  - (a) for references to a public path diversion order of references to a special diversion order, and
  - (b) for references to a footpath or bridleway of references to a highway,
 and regulations made under that section by virtue of this subsection may make different provision for the purposes of this section and for the purposes of that section.

Source: CRWA 2000 Sch 6 para 12.

#### **119D. Diversion of certain highways for protection of sites of special scientific interest.**

- (1) Subsection (3) below applies where, on an application made in accordance with this section by the appropriate conservation body, it appears to a council, as respects any relevant highway for which they are the highway authority and which is in, forms part of, or is adjacent to or contiguous with, a site of special scientific interest-
  - (a) that public use of the highway is causing, or that continued public use of the highway is likely to cause, significant damage to the flora, fauna or geological or physiographical features by reason of which the site of special scientific interest is of special interest, and
  - (b) that it is expedient that the line of the highway, or part of that line should be diverted (whether on to land of the same or another owner, lessee or occupier) for the purpose of preventing such damage.
- (2) In subsection (1) "relevant highway" means-
  - (a) a footpath, bridleway or restricted byway,
  - (b) a highway which is shown in a definitive map and statement as a footpath, a bridleway or a restricted byway but over which the public have a right of way for vehicular and all other kinds of traffic, or
  - (c) any highway which is shown in a definitive map and statement as a byway open to all traffic, but does not include any highway that is a trunk road or special road.
- (3) Where this subsection applies, the council may, subject to subsection (4) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,-
  - (a) create, as from such date as may be specified in the order, any such-
    - (i) new footpath, bridleway or restricted byway, or
    - (ii) in a case falling within subsection (2)(b) or (c) above, new highway over which the public have a right of way for vehicular and all other kinds of traffic, as appears to the council requisite for effecting the diversion, and
  - (b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (6) below, the public right of way over so much of the way as appears to the council to be requisite for the purpose mentioned in subsection (1)(b) above.
- (4) An order under this section is referred to in this Act as an "SSSI diversion order".
- (5) An SSSI diversion order shall not alter a point of termination of the highway-(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.
- (6) Where it appears to the council that work requires to be done to bring the new site of the highway into a fit condition for use by the public, the council shall-
  - (a) specify a date under subsection (3)(a) above, and

- (b) provide that so much of the order as extinguishes (in accordance with subsection (3)(b) above) a public right of way is not to come into force until the local highway authority for the new highway certify that the work has been carried out.
- (7) A right of way created by an SSSI diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.
- (8) Before determining to make an SSSI diversion order, the council may require the appropriate conservation body to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—
- (a) any compensation which may become payable under section 28 above as applied by section 121(2) below,
- (b) to the extent that the council are the highway authority for the highway, any expenses which they may incur in bringing the new site of the highway into fit condition for use for the public, or
- (c) to the extent that the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by section 119E(6) below.
- (9) The Secretary of State shall not confirm an SSSI diversion order, and a council shall not confirm such an order as an unopposed order, unless he, or as the case may be, they are satisfied that the conditions in subsection (1)(a) and (b) are satisfied, and that it is expedient to confirm the order having regard to the effect which—
- (a) the diversion would have on public enjoyment of the right of way as a whole;
- (b) the coming into operation of the order would have as respects other land served by the existing public right of way; and
- (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,
- so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (8)(a) above.
- (10) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of SSSI diversion orders.
- (11) This section has effect subject to section 119E below.
- (12) In this section—
- "the appropriate conservation body" means—
- (a) as respects England, Natural England, and
- (b) as respects Wales, the Countryside Council for Wales;
- "site of special scientific interest" has the same meaning as in the Wildlife and Countryside Act 1981.

### **119E. Provisions supplementary to section 119D.**

- (1) An application under section 119D above shall be in such form as may be prescribed and shall be accompanied by—
- (a) a map, on such scale as may be prescribed,—
- (i) showing the existing site of so much of the line of the highway as would be diverted if the order were made and the new site to which it would be diverted,
- (ii) indicating whether a new right of way would be created by the order over the whole of the new site or whether some of it is already comprised in a highway, and
- (iii) where some part of the new site is already so comprised, defining that part,
- (b) by an assessment in the prescribed form of the effects of public use of the right of way on the site of special scientific interest, and
- (c) by such other information as may be prescribed.
- (2) At least fourteen days before making an application under section 119D above, the appropriate conservation body shall give a notice in the prescribed form of their intention to do so—
- (a) to any owner, lessee or occupier of land over which the proposed order would create or extinguish a public right of way;

- (b) to such persons as may be prescribed; and
  - (c) in the case of English Nature, to the Countryside Agency.
- (3) A council, in determining whether it is expedient to make or confirm an SSSI diversion order, and the Secretary of State, in determining whether to confirm such an order, shall, in particular, have regard to the following questions-
- (a) whether the council would be able to prevent damage of the kind referred to in section 119D(1) above by making a traffic regulation order, and
  - (b) if so, whether the making of a traffic regulation order would cause less inconvenience to the public than that which would be caused by the diversion of the highway.
- (4) The Secretary of State, in determining whether it is expedient to make an SSSI diversion order under section 120(3) below in a case where by virtue of section 22(4) of the Road Traffic Regulation Act 1984 he has power to make a traffic regulation order shall, in particular, have regard to the following questions-
- (a) whether he would be able to prevent damage of the kind referred to in section 119D(1) above by making a traffic regulation order, and
  - (b) if so, whether the making of a traffic regulation order would cause less inconvenience to the public than that which would be caused by the diversion of the highway.
- (5) An SSSI diversion order shall be in such form as may be prescribed and shall contain a map, on such scale as may be prescribed,-
- (a) showing the existing site of so much of the line of the highway as is to be diverted by the order and the new site to which it is to be diverted,
  - (b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a highway, and
  - (c) where some part of the new site is already so comprised, defining that part.
- (6) Section 27 above (making up of new footpaths and bridleways) applies to a highway created by an SSSI diversion order with the substitution-
- (a) for references to a footpath or bridleway of references to a footpath, a bridleway, a restricted byway or a highway over which the public have a right of way for vehicular and all other kinds of traffic,
  - (b) for references to a public path creation order, of references to an SSSI diversion order, and
  - (c) for references to section 26(2) above, of references to section 120(3) below.
- (7) Neither section 27 nor 36 above is to be regarded as obliging a highway authority to provide on any highway created by an SSSI diversion order a metalled carriage-way.
- (8) In this section-
- "the appropriate conservation body" has the same meaning as in section 119D above;
  - "prescribed" means prescribed by regulations made by the Secretary of State;
  - "site of special scientific interest" has the same meaning as in the Wildlife and Countryside Act 1981;
  - "traffic regulation order" means an order under section 1 or 6 of the Road Traffic Regulation Act 1984.

## **120. Exercise of powers of making public path extinguishment and diversion orders**

- (1) Where a footpath, bridleway or restricted byway lies partly within and partly outside the area of a council the powers conferred by section 118, 118A, 119 and 119A above on the council extend, subject to subsection (2) below, to the whole of the path or way as if it lay wholly within their area.
- (1A) Where a council are the highway authority for only part of a highway, the powers conferred on the council by sections 118B, 119B and 119D above are exercisable with respect to the whole of the highway, but subject to subsection (2) and only with the consent of every other council which is a highway authority for any other part with respect to which the powers are exercised.
- (2) The powers of making orders under sections 118 to 119D above are not exercisable by a council—
  - (a) with respect to any part of a highway which is within their area, without prior consultation with any other council in whose area that part of the footpath or bridleway is situated;
  - (b) with respect to any part of a highway which is outside their area, without the consent of every council in whose area it is; and



- (c) with respect to any part of a highway in a National Park, without prior consultation with Natural England (if the National Park is in England) or the Countryside Council for Wales (if the National Park is in Wales).
- (3) Where it appears to the Secretary of State as respects a footpath, bridleway or restricted byway that it is expedient as mentioned in section 118(1) or 118A(1) or 119A(1) above that the path or way should be stopped up or diverted or where it appears to the Secretary of State as respects a relevant highway as defined by section 118B(2), 119B(2) or 119D(2) that it is expedient as mentioned in section 118B(1)(a) or (b), 119B(1)(a) or (b) or 119D(1)(b) that the highway should be stopped up or diverted, or where an owner, lessee or occupier of land crossed by a footpath, bridleway or restricted byway satisfies the Secretary of State that a diversion of it is expedient as mentioned in section 119(1) above, then if—
- (a) no council having power to do so have made and submitted to him a public path extinguishment order, a rail crossing extinguishment order, a special extinguishment order, a public path diversion order, a rail crossing diversion order, a special diversion order or an SSSI diversion order, as the case may be, and
  - (b) the Secretary of State is satisfied that if such an order were made and submitted to him, he would have power to confirm the order in accordance with the provisions in that behalf of sections 118 to 119D above,
- he may himself make the order after consultation (subject to the following provisions of this section) with the appropriate authority and, in the case of an SSSI diversion order, with the appropriate conservation body.
- (3ZA) Where an appeal to the Secretary of State is brought under section 121D(1) below, paragraph (a) of subsection (3) above does not apply, and the power conferred on him by that subsection may be exercised without consultation with the appropriate authority.**
- (3A) Where—
- (a) the operator of a railway makes a request to a council to make an order under section 118A or 119A above in respect of a crossing over the railway,
  - (b) the request is in such form and gives such particulars as are prescribed by regulations made by the Secretary of State, and
  - (c) the council have neither confirmed the order nor submitted it to the Secretary of State within 6 months of receiving the request,
- the power conferred on the Secretary of State by subsection (3) above may be exercised without consultation with the council.
- (3B) **Unless an appeal to the Secretary of State is brought under section 121D(1) below,** the power conferred on the Secretary of State by subsection (3) above to make a special extinguishment order or a special diversion order is exercisable only after consultation with the police authority in whose area the highway lies.
- (3C) The power conferred on the Secretary of State by subsection (3) above to make an SSSI diversion order may be exercised even though the appropriate conservation body has not made an application under section 119D above to the council who are the highway authority for the highway.
- (3D) Where—
- (a) the appropriate conservation body has made an application under section 119D above to a council in respect of a highway for which the council are the highway authority, and
  - (b) the council have neither confirmed the order nor submitted it to the Secretary of State for confirmation within 6 months of receiving the application,
- the power conferred on the Secretary of State by subsection (3) above to make an SSSI diversion order may be exercised without consultation with the council.
- (4) A council proposing to make a public path diversion order, a rail crossing diversion order, a special diversion order or an SSSI diversion order such that the authority who will be the highway authority for a part of the highway after the diversion will be a different body from the authority who before the diversion are the highway authority for it shall, before making the order, notify the first mentioned authority.
- (5) The Secretary of State may, before determining—
- (a) under subsection (3) above, to make a public path diversion order,

- (b) under subsection (3) above, to make a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order on an appeal under section 121D(1)(a) below,
- (c) to confirm a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order in respect of which an appeal under section 121D(1)(b) or (c) below has been brought, or
- (d) under subsection (3) above, to make a rail crossing diversion order on the representations of the operator of the railway concerned,

require the appropriate person to enter into such agreement as he may specify with such council as he may specify for that person to defray, or to make such contribution as may be specified in the agreement towards, any such compensation or expenses as are specified in paragraphs (a), (b) and (c) of section 119(5), or as the case may be, 118ZA(6), 119A(8) or 119C(3) above.

- (6) In subsection (5) above 'the appropriate person' means—
  - (a) in a case falling within paragraph (a) of that subsection—
    - (i) where an appeal under section 121D(1)(a) below has been brought, the appellant, or
    - (ii) in any other case, the person on whose representations the Secretary of State is acting,
  - (b) in a case falling within paragraph (b) or (c) of that subsection, the appellant, and
  - (c) in a case falling within paragraph (d) of that subsection, the operator of the railway concerned.
- (7) Where under subsection (3) above the Secretary of State decides to make an SSSI diversion order he may require the appropriate conservation body to enter into an agreement with such council as he may specify for the body to defray, or to make such contribution as may be specified in the agreement towards, any such compensation or expenses as are specified in paragraphs (a), (b) and (c) of section 119D(8) above.
- (8) In this section “the appropriate conservation body” has the same meaning as in section 119D above.

Source: CRWA 2000 Sch 6 para 13.

## **121. Supplementary provisions as to public path extinguishment and diversion orders**

- (1) A public path extinguishment order, a rail crossing extinguishment order, a special extinguishment order, a public path diversion order, a rail crossing diversion order, special diversion order or an SSSI diversion order affecting in any way the area of more than one council may contain provisions requiring one of the councils to defray, or contribute towards, expenses incurred in consequence of the order by another one of the councils; and a public path diversion order, a rail crossing diversion order, special diversion order or an SSSI diversion order diverting a part of the line of the highway from a site in the area of one local highway authority to a site in the area of another may provide that the first mentioned authority are to continue to be the highway authority for the part of the way after the diversion.
- (2) Section 28 above (compensation for loss caused by public path creation order) applies in relation to public path extinguishment orders, rail crossing extinguishment orders, special extinguishment orders, public path diversion orders, rail crossing diversion orders, special diversion orders and SSSI diversion orders as it applies in relation to public path creation orders but as if—
  - (a) the references in it to section 26(2) above were references to section 120(3) above, and
  - (b) in relation to special extinguishment orders, special diversion orders and SSSI diversion orders, the reference in section 28(4) to a footpath, bridleway or restricted byway included a reference to a highway over which the public have a right of way for vehicular and all other kinds of traffic.
- (3) Section 29 above (duty to have regard to agriculture, forestry and nature conservation) applies in relation to the making of public path extinguishment orders, rail crossing extinguishment orders, special extinguishment orders, public path diversion orders, rail crossing diversion orders, special diversion orders and SSSI diversion orders as it applies in relation to the making of public path creation agreements and public path creation orders.

- (4) The Secretary of State shall not make or confirm a public path extinguishment order, a rail crossing extinguishment order, a special extinguishment order, a public path diversion order, a rail crossing diversion order, a special diversion order or an SSSI diversion order and a council shall not confirm such an order as an unopposed order, if the order extinguishes a right of way over land under, in, upon, over, along or across which there is any apparatus belonging to or used by statutory undertakers for the purpose of their undertaking unless the undertakers have consented to the making or, as the case may be, confirmation of the order.
- (5) A consent under subsection (4) above may be given subject to the condition that there are included in the order such provisions for the protection of the undertakers as they reasonably require, but a consent under that subsection shall not be unreasonably withheld, and any question whether the withholding of such a consent is unreasonable or whether any requirement is reasonable shall be determined by the appropriate Minister.
- (5A) Before making a determination under subsection (5) above the appropriate Minister may, if he thinks fit, give any person an opportunity to be heard on the question, and he must either give such an opportunity or cause a local inquiry to be held if a request to be heard with respect to the question to be determined is made-
- (a) by the statutory undertakers,
  - (b) in the case of an order made on an application under section 118ZA, 118C, 119ZA or 119C above, by the person who made the application, and
  - (c) in the case of an order to be made on an appeal under section 121D(1)(a) below, by the appellant.
- (5B) The appropriate Minister may appoint any person to exercise on his behalf, with or without payment, the function of determining a question falling to be determined under subsection (5) above.
- (5C) Schedule 12ZA to this Act shall have effect with respect to appointments under subsection (5B) above; and subsection (5A) above has effect subject to the provisions of that Schedule.
- (5D) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (giving of evidence at, and defraying of costs of, inquiries) shall apply in relation to hearings or local inquiries which the appropriate Minister causes to be held under subsection (5A) above as they apply (by virtue of section 302(1) of this Act) to local inquiries which the Secretary of State causes to be held under this Act.
- (5E) Section 322A of the Town and Country Planning Act 1990 (orders as to costs where no hearing or inquiry takes place) applies in relation to a hearing or inquiry under subsection (5A) above as it applies in relation to a hearing or local inquiry for the purposes referred to in that section, but as if references to the Secretary of State were references to the appropriate Minister.
- (6) In subsections (5) to (5E) above the 'appropriate Minister' means-
- (a) in relation to statutory undertakers carrying on an undertaking for the supply of electricity or hydraulic power, the Secretary of State; and
  - (b) in relation to any other statutory undertakers, the Minister.

Source: CRWA 2000 Sch 6 para 14.

### **121A. Regulations with respect to applications for orders.**

- (1) The Secretary of State may by regulations make provision as respects applications under section 118ZA, 118C, 119ZA or 119C above-
- (a) requiring the applicant to issue a certificate as to the interests in, or rights in or over, the land to which the application relates and the purpose for which the land is used,
  - (b) requiring the applicant to give notice of the application to such persons as may be prescribed,
  - (c) requiring the applicant to certify that any requirement of regulations under this section has been complied with or to provide evidence that any such requirement has been complied with,
  - (d) as to the publicising of any application,
  - (e) as to the form, content and service of such notices and certificates, and
  - (f) as to the remission or refunding in prescribed circumstances of the whole or part of any charge prescribed under the section.
- (2) If any person-
- (a) issues a certificate which purports to comply with any requirement imposed by virtue of subsection (1) above and contains a statement which he knows to be false or misleading in a material particular; or

- (b) recklessly issues a certificate which purports to comply with any such requirement and contains a statement which is false or misleading in a material particular, he shall be guilty of an offence.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Notwithstanding section 127 of the Magistrates' Courts Act 1980 (limitation of time for taking proceedings) summary proceedings for an offence under this section may be instituted at any time within three years after the commission of the offence.

Sources: CRWA 2000 Sch 6 para 15.

### **121B. Register of applications.**

- (1) Every council shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect to applications under section 118ZA, 118C, 119ZA or 119C above.
- (2) The register shall contain such information as may be prescribed with respect to the manner in which such applications have been dealt with.
- (3) Regulations may make provision for the register to be kept in two or more parts, each part containing such information relating to applications under section 118ZA, 118C, 119ZA or 119C above as may be prescribed.
- (4) Regulations may make provision-
  - (a) for a specified part of the register to contain copies of applications and of the maps submitted with them, and
  - (b) for the entry relating to any application, and everything relating to it, to be removed from any part of the register when the application (including any appeal to the Secretary of State) has been finally disposed of (without prejudice to the inclusion of any different entry relating to it in another part of the register).
- (5) Every register kept under this section shall be available for inspection by the public free of charge at all reasonable hours.
- (6) In this section-
  - "prescribed" means prescribed by regulations;
  - "regulations" means regulations made by the Secretary of State.

Source: CRWA 2000 Sch 6 para 15.

### **121C. Cases where council may decline to determine applications.**

- (1) A council may decline to determine an application under section 118ZA, 118C, 119ZA or 119C above if, within the period of three years ending with the date on which the application is received, the Secretary of State-
  - (a) has refused to make an order on an appeal under section 121D(1)(a) below in respect of a similar application, or
  - (b) has refused to confirm an order which is similar to the order requested.
- (2) Before declining under subsection (1) above to determine an application under section 118C or 119C above, the council shall consider whether since the previous decision of the Secretary of State was made the risks referred to in subsection (1)(b)(i) to (iv) of section 118B or of section 119B have substantially increased.
- (3) A council may decline to determine an application under section 118ZA, 118C, 119ZA or 119C above if-
  - (a) in respect of an application previously made to them under that section which is similar to the current application or relates to any of the land to which the current application relates, the council have not yet determined whether to make a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order, or
  - (b) the council have made a similar order or an order which relates to any of the land to which the current application relates but no final decision as to the confirmation of the order has been taken.
- (4) For the purposes of this section an application or order is similar to a later application or order only if they are, in the opinion of the council determining the later application, the same or substantially the same, but an application or order may be the same or substantially the same as a later application or order even though it is made to or by a different council.

Source: CRWA 2000 Sch 6 para 15.

### **121D. Right of appeal to Secretary of State in respect of applications for orders.**

- (1) Subject to the provisions of this section, where, in relation to an application made under section 118ZA, 118C, 119ZA or 119C above, the council to which the application was made—
  - (a) refuse to make an order on the application,
  - (b) refuse to confirm as an unopposed order an order made on the application, or
  - (c) refuse to submit to the Secretary of State an order which is made on the application and against which any representation or objection has been duly made and not withdrawn,
 the applicant may, by giving notice to the Secretary of State, appeal to the Secretary of State.
- (2) Subsection (1)(a) above does not confer any right to appeal to the Secretary of State where—
  - (a) the council have no power to make the order requested without the consent of another person and that consent has not been given, or
  - (b) the reason, or one of the reasons, for the refusal to make the order is that the applicant has refused to enter into an agreement required by the council—
    - (i) in the case of a public path extinguishment order, under subsection (6) of section 118ZA above,
    - (ii) in the case of a special extinguishment order, under that subsection as applied by section 118C(2) above,
    - (iii) in the case of a public path diversion order, under section 119(5) above,
    - (iv) in the case of a special diversion order, under section 119C(3) above.
- (3) Paragraph (b) of subsection (1) above does not confer any right to appeal to the Secretary of State in a case where the council has no power to confirm the order without the consent of another person and that consent has not been given; and paragraph (c) of that subsection does not confer any right to appeal to the Secretary of State in a case where, if the order had been unopposed, the council would have had no power to confirm it without the consent of another person and that consent has not been given.

Source: CRWA 2000 Sch 6 para 15.

### **121E. Determination of appeals.**

- (1) Where an appeal to the Secretary of State is brought under section 121D(1)(a) above, 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, the Secretary of State shall—
  - (a) prepare a draft of a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order under section 120(3) above giving effect to the application and containing such other provisions as, after consultation with such persons as he thinks fit, the Secretary of State may determine,
  - (b) give notice of the draft order in accordance with paragraph 1(2) of Schedule 6 to this Act, and
  - (c) subject to subsection (6) below and to paragraph 2 of that Schedule, determine whether to make the order (with or without modifications) under section 120(3) above.
- (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.
- (2) Where an appeal to the Secretary of State is brought under section 121D(1)(b) or (c) above, the order made on the application shall be treated as having been submitted to him for confirmation (with or without modifications).
- (3) Where an appeal to the Secretary of State is brought under section 121D(1) above, the Secretary of State may not make or confirm a public path diversion order or special diversion order if it appears to him that—

- (a) work is necessary to bring the new highway created by the order into a fit condition for use by the public;
  - (b) if the order were made, the work could not be carried out by the highway authority without—
    - (i) the consent of another person, or
    - (ii) any authorisation (however described) which is required by or under any enactment, and
  - (c) the consent or authorisation has not been obtained.
- (4) Where an appeal to the Secretary of State is brought under section 121D(1) above, the Secretary of State may not—
- (a) make a public path diversion order or special diversion order so as to create a public right of way over land covered by works used for the purposes of a statutory undertaking or the curtilage of such land, or
  - (b) modify such an order so as to create such a public right of way, unless the statutory undertaker has consented to the making or modification of the order.
- (5) In subsection (4) above "statutory undertaker" and "statutory undertaking" have the same meaning as in Schedule 6 to this Act.
- (6) Subsection (1)(c) above does not apply where any consent required by section 121(4) above has not been obtained.
- (7) The Secretary of State may by regulations make further provision with respect to appeals under section 121D(1) above.
- (8) Regulations under subsection (7) above may, in particular, make provision—
- (a) as to the manner in which, and time within which, notice of an appeal is to be given,
  - (b) as to the provision of information to the Secretary of State by the council to which the application to which the appeal relates was made,
  - (c) for the payment by the applicant of any expenses incurred by the Secretary of State—
    - (i) in preparing a draft order,
    - (ii) in giving any notice required by subsection (1)(b) above or Schedule 6 to this Act,
  - (d) requiring the production by the council to whom the application was made of any certificates required by regulations under section 121A(1)(a) above,
  - (e) requiring the applicant to give notice of the appeal to such persons as may be prescribed,
  - (f) requiring the applicant to certify that any requirement of regulations under this section has been complied with or to provide evidence that any such requirement has been complied with,
  - (g) as to the publicising of any appeal,
  - (h) as to the form, content and service of such notices and certificates,
  - (i) modifying the provisions of Schedule 6 to this Act in their application to the procedure on appeals under section 121D(1) above, and
  - (j) as to the remission or refunding in prescribed circumstances of any charge prescribed under section 118ZA(3) or 119ZA(5).
- (9) The Secretary of State may by regulations provide that section 28 above, as applied by section 121(2) above, is to have effect in cases where a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order is made under section 120(3) above on an appeal under section 121D(1)(a) above, as if the reference to such one of the authorities referred to as may be nominated by the Secretary of State were a reference to such one of those authorities as may be specified in, or determined in accordance with, the regulations.
- (10) Subsections (2) to (4) of section 121A above shall apply in relation to any certificate purporting to comply with a requirement imposed by virtue of this section as they apply to a certificate purporting to comply with a requirement imposed by virtue of subsection (1) of that section.
- (11) For the purposes of this section—
- (a) a draft public path extinguishment order or special extinguishment order gives effect to an application under section 118ZA or 118C above only if the land over which the public right of way is to be extinguished by the order is that shown for the purposes of subsection (2) of section 118ZA above (or that subsection as applied by section 118C(2) above) on the map accompanying the application, and



- (b) a draft public path diversion order or draft special diversion order gives effect to an application made to a council under section 119ZA or 119C above only if—
  - (i) the land over which the public right of way is to be extinguished by the order, and
  - (ii) the new site to which the path or way is to be diverted,
 are those shown for the purposes of subsection (4) of section 119ZA above (or that subsection as applied by section 119C(4) above) on the map accompanying the application.

(12) In this section "prescribed" means prescribed by regulations made by the Secretary of State.

Sources: CRWA 2000 Sch 6 para 15, DA 2015 ss 23(4)&(5) and 25(5).

### **123. Saving and interpretation**

- (1) The provisions of any enactment contained in the foregoing provisions of this Part of this Act do not prejudice any power conferred by any other enactment (whether contained in this Part of this Act or not) to stop up or divert a highway, and do not otherwise affect the operation of any enactment not contained in this Part of this Act relating to the extinguishment, suspension, diversion or variation of public rights of way.
- (2) Unless the context otherwise requires, expressions in the foregoing provisions of this Part of this Act, other than expressions to which meanings are assigned by sections 328 and 329 below, have the same meanings respectively as in the Town and Country Planning Act 1990.

### **135A. Temporary diversion for dangerous works**

- (1) Where works of a prescribed description are likely to cause danger to users of a footpath or bridleway which passes over any land, the occupier of the land may, subject to the provisions of this section, temporarily divert—
  - (a) so much of the footpath or bridleway as passes over that land, and
  - (b) so far as is requisite for effecting that diversion, so much of the footpath or bridleway as passes over other land occupied by him.
- (2) A person may not under this section divert any part of a footpath or bridleway if—
  - (a) the period or periods for which that part has been diverted under this section, and
  - (b) the period or periods for which any other part of the same footpath or bridleway passing over land occupied by him has been diverted under this section,
 amount in aggregate to more than fourteen days in any one calendar year.
- (3) Where a person diverts a footpath or bridleway under this section—
  - (a) he shall do so in a manner which is reasonably convenient for the exercise of the public right of way, and
  - (b) where the diversion is by means of a temporary footpath or bridleway, he shall so indicate the line of the temporary footpath or bridleway on the ground to not less than the minimum width that it is apparent to members of the public wishing to use it.
- (4) This section does not authorise a person—
  - (a) to divert a footpath or bridleway on to land not occupied by him without the consent of the occupier of that land and of any other person whose consent is needed to obtain access to it,
  - (b) to divert a footpath onto a highway other than a footpath or bridleway, or (c) to divert a bridleway onto a highway other than a bridleway.
- (5) The person by whom a footpath or bridleway is diverted under this section shall—
  - (a) at least fourteen days before the commencement of the diversion, give notice of the diversion in accordance with subsection (6) below,
  - (b) at least seven days before the commencement of the diversion, publish notice of the diversion in a local newspaper circulating in the area in which the footpath or bridleway is situated, and
  - (c) display such notices as may be prescribed at such places, in such manner and at such times before or during the diversion as may be prescribed.
- (6) Notice under subsection (5)(a) above shall be given—
  - (a) to the highway authority for the footpath or bridleway,
  - (b) if the footpath or bridleway is on or contiguous with access land in England, to Natural England, and

- (c) if the footpath or bridleway is on or contiguous with access land in Wales, to the Natural Resources Body for Wales.
- (7) A notice under subsection (5)(a), (b) or (c) above shall be in such form and contain such information as may be prescribed.
- (8) If a person—
  - (a) in a notice which purports to comply with the requirements of subsection (5)(a) or (b) above, makes a statement which he knows to be false in a material particular,
  - (b) by a notice displayed on or near a footpath or bridleway, falsely purports to be authorised under this section to divert the footpath or bridleway, or
  - (c) in diverting a footpath or bridleway under this section, fails to comply with subsection (3) above, he shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.
- (9) In this section—
  - “access land” has the same meaning as in Part I of the Countryside and Rights of Way Act 2000;
  - “minimum width” in relation to a temporary footpath or bridleway, means the minimum width, within the meaning of Schedule 12A to this Act, of the footpath or bridleway diverted;
  - “prescribed” means prescribed by regulations made by the Secretary of State.

Source: CRWA 2000 Sch 6 para 16 as amended by NERCA 2006 Sch 11 para 67 and SI 2013 No 755 Natural Resources Body for Wales (Functions) Order 2013 Sch 2 para 411(3).

### **135B. Temporary diversion for dangerous works: supplementary.**

- (1) The person by whom a footpath or bridleway is diverted under section 135A above shall, before the diversion ceases to be authorised by that section, make good any damage to the footpath or bridleway resulting from the works mentioned in subsection (1) of that section, and remove from the footpath or bridleway any obstruction resulting from those works.
- (2) Any person who fails to comply with the duty imposed on him by subsection (1) above is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.
- (3) The highway authority may make good any damage, or remove any obstruction, in respect of which any person has failed to comply with that duty and recover from that person the amount of any expenses reasonably incurred by them in or in connection with doing so.
- (4) Paragraph 3(1) of Schedule 12A to this Act does not apply in relation to any disturbance of the surface of a footpath or bridleway which subsection (1) above requires any person to make good; but paragraphs 7 and 8 of that Schedule apply for the purposes of subsection (3) above as if—
  - (a) references to the authority were references to the highway authority,
  - (b) references to the work were references to work carried out under subsection (3) above in relation to a footpath or bridleway, and
  - (c) references to the relevant land were references to the land over which the footpath or bridleway passes.
- (5) The diversion of a footpath or bridleway under section 135A above does not—
  - (a) affect the liability of any person for anything done in relation to the path or way otherwise than for the purposes of or in consequence of the works mentioned in subsection (1) of that section, or
  - (b) authorise any interference with the apparatus or works of any statutory undertakers.
- (6) Without prejudice to section 130 (protection of public rights of way) above, it is the duty of the highway authority to enforce the provisions of section 135A and this section.

Source: CRWA 2000 Sch 6 para 16.

### **143. Power to remove structures from highways**

- (1) Where a structure has been erected or set up on a highway otherwise than under a provision of this Act or some other enactment, a competent authority may by notice require the person having control or possession of the structure to remove it within such time as may be specified in the notice. For the purposes of this section the following are competent authorities-
  - (a) in the case of a highway which is for the time being maintained by a non-metropolitan district council by virtue of section 42 or 50 above, that council and also the highway authority, and



- (b) in the case of any other highway, the highway authority.
- (2) If a structure in respect of which a notice is served under this section is not removed within the time specified in the notice, the competent authority serving the notice may, subject to subsection (3) below, remove the structure and recover the expenses reasonably incurred by them in so doing from the person having control or possession of the structure.
- (3) The authority shall not exercise their power under subsection (2) above until the expiration of one month from the date of service of the notice.
- (4) In this section 'structure' includes any machine, pump, post or other object of such a nature as to be capable of causing obstruction, and a structure may be treated for the purposes of this section as having been erected or set up notwithstanding that it is on wheels.

#### **145. Powers as to gates across highways**

- (1) Where there is a gate of less than the minimum width across so much of a highway as consists of a carriageway, or across a highway that is a bridleway, the highway authority for the highway may by notice to the owner of the gate require him to enlarge the gate to that width or remove it.  
In this subsection 'the minimum width' means, in relation to a gate across so much of a highway as consists of a carriageway, 10 feet and, in relation to a gate across a bridleway, 5 feet, measured in either case between the posts of the gate.
- (2) If a person on whom a notice under subsection (1) above is served fails to comply, within 21 days from the date of service of the notice on him, with a requirement of the notice, he is guilty of an offence and liable to a fine not exceeding 50p for each day during which the failure continues.

#### **146. Duty to maintain stiles, etc on footpaths, bridleways and byways**

- (1) Any stile, gate or other similar structure across a footpath, bridleway or restricted byway **or across a byway open to all traffic in England** shall be maintained by the owner of the land in a safe condition, and to the standard of repair required to prevent unreasonable interference with the rights of the persons using the footpath, bridleway, restricted byway **or byway open to all traffic**.
- (2) If it appears to the appropriate authority that the duty imposed by subsection (1) above is not being complied with, they may, after giving to the owner and occupier not less than 14 days' notice of their intention, take all necessary steps for repairing and making good the stile, gate or other works.  
For the purposes of this section the appropriate authority is-
- (a) in the case of a footpath, bridleway or restricted byway which is for the time being maintained by a non-metropolitan district council by virtue of section 42 or 50 above, that council, and
- (b) in the case of any other footpath, bridleway or restricted byway **or in the case of a byway open to all traffic**, the highway authority.
- (3) The appropriate authority may recover from the owner of the land the amount of any expenses reasonably incurred by the authority in and in connection with the exercise of their powers under subsection (2) above, or such part of those expenses as the authority think fit.
- (4) The appropriate authority shall contribute not less than a quarter of any expenses shown to their satisfaction to have been reasonably incurred in compliance with subsection (1) above, and may make further contributions of such amount in each case as, having regard to all the circumstances, they consider reasonable.
- (5) Subsection (1) above does not apply to any structure-
- (a) if any conditions for the maintenance of the structure are for the time being in force under section 147 below, or
- (b) if and so long as, under an agreement in writing with any other person, there is a liability to maintain the structure on the part of the appropriate authority or, where the appropriate authority are a non-metropolitan district council, on the part of either the appropriate authority or the highway authority.
- (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).**

Source: DA 2015 s 24(6).

**147. Power to authorise erection of stiles, etc on footpath or bridleway**

- (1) The following provisions of this section apply where the owner, lessee or occupier of agricultural land, or of land which is being brought into use for agriculture, represents to a competent authority, as respects a footpath or bridleway 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 stiles, gates or other works for preventing the ingress or egress of animals should be erected on the path or way.  
For the purposes of this section **as it applies in relation to footpaths or bridleways**, the following are competent authorities—
- (a) in the case of a footpath or bridleway which is for the time being maintained by a non-metropolitan district council by virtue of section 42 or 50 above, that council and also the highway authority, and
  - (b) in the case of any other footpath or bridleway, the highway authority.
- (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.**
- (2) Where such a representation is made the authority to whom it is made may, subject to such conditions as they may impose for maintenance and for enabling the right of way to be exercised without undue inconvenience to the public, authorise the erection of the stiles, gates or other works.
- (3) Where an authorisation in respect of a footpath, bridleway **or byway** is granted under this section the public right of way is to be deemed to be subject to a condition that the stiles, gates or works may be erected and maintained in accordance with the authorisation and so long as the conditions attached to it are complied with.
- (4) For the purposes of section 143 above, any stile, gate or works erected in pursuance of an authorisation under this section is to be deemed to be erected under this section only if the provisions of the authorisation and any conditions attached to it are complied with.
- (5) In this section references to agricultural land and to land being brought into use for agriculture include references to land used or, as the case may be, land being brought into use, for forestry or for the breeding or keeping of horses..
- (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) Nothing in this section prejudices any limitation or condition having effect apart from this section.

Source: DA 2015 s 24(1)-(5).

**Schedule 6: Provisions as to making, confirmation, validity and date of operation of certain orders relating to footpaths, bridleways and restricted byways**

Part I: Procedure for making and confirming certain orders relating to footpaths, bridleways and restricted byways

1. (1) Before a public path creation order, a public path extinguishment order, a rail crossing extinguishment order, a special extinguishment order, a public path diversion order, a rail crossing diversion order, a special diversion order or an SSSI diversion order is submitted to the Secretary of State for confirmation or confirmed as an unopposed order, the authority by whom the order was made shall give notice in the prescribed form-
- (a) stating the general effect of the order and that it has been made and is about to be submitted for confirmation or to be confirmed as an unopposed order,

- (b) naming a place in the area in which the land to which the order relates is situated where a copy of the order and of the map referred to therein may be inspected free of charge and copies thereof may be obtained at a reasonable charge at all reasonable hours, and
  - (c) specifying the time (which shall be not less than 28 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 order may be made.
- (2) Before the Secretary of State makes a public path creation order, a public path extinguishment order, a rail crossing extinguishment order, a special extinguishment order, a public path diversion order, a rail crossing diversion order, a special diversion order or an SSSI diversion order, he shall prepare a draft of the order and shall give notice-
- (a) stating that he proposes to make the order and the general effect of it,
  - (b) naming a place in the area in which the land to which the draft order relates is situated where a copy of the draft order and of the map referred to in it may be inspected free of charge and copies thereof may be obtained at a reasonable charge at all reasonable hours, and
  - (c) specifying the time (which shall be not less than 28 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 draft order may be made.
- (3) The notices to be given under sub-paragraph (1) or (2) above shall be given-
- (a) by publication (**within the meaning of sub-paragraph (3ZA)**);
  - (b) by serving a like notice on-
    - (i) every owner, occupier and lessee (except tenants for a month or any period less than a month and statutory tenants within the meaning of the Rent (Agriculture) Act 1976 or the Rent Act 1977 and licensees under an assured agricultural occupancy within the meaning of Part I of the Housing Act 1988) of any of that land;
    - (ii) every council, the council of every parish or community and the parish meeting of every parish not having a separate parish council, being a council, parish or community whose area includes any of that land;
    - (iii) every person on whom notice is required to be served in pursuance of sub-paragraph (3A) or (3B) below; and
    - (iv) such other persons as may be prescribed in relation to the area in which that land is situated or as the authority or, as the case may be, the Secretary of State may consider appropriate; and
  - (c) by causing a copy of the notice to be displayed in a prominent position-
    - (i) at the ends of so much of any footpath, bridleway or restricted byway as is created, stopped up or diverted by the order;
    - (ii) at council offices in the locality of the land to which the order relates; and
    - (iii) at such other places as the authority or, as the case may be, the Secretary of State may consider appropriate.

**(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.**
- (3A) Any person may, on payment of such reasonable charges as the authority may consider appropriate, require an authority to give him notice of all such public path creation orders, public path extinguishment orders, rail crossing extinguishment orders, special extinguishment orders, public path diversion orders, rail crossing diversion orders, special diversion orders and SSSI diversion orders as are made by the authority during a specified period, are of a specified description and relate to land comprised in a specified area; and in this sub-paragraph 'specified' means specified in the requirement.**

- (3B) Any person may, on payment of such reasonable charge as the Secretary of State may consider appropriate, require the Secretary of State to give him notice of all such draft public path creation orders, draft public path extinguishment orders, draft rail crossing extinguishment orders, draft special extinguishment orders, draft public path diversion orders, draft rail crossing diversion orders, draft special diversion orders and draft SSSI diversion orders as are prepared by the Secretary of State during a specified period, are of a specified description and relate to land comprised in a specified area; and in this sub-paragraph 'specified' means specified in the requirement.
- (3C) The Secretary of State may, in any particular case, direct that it shall not be necessary to comply with sub-paragraph (3)(b)(i) above; but if he so directs in the case of any land, then in addition to publication the notice shall be addressed to 'The owners and any occupiers' of the land (describing it) and a copy or copies of the notice shall be affixed to some conspicuous object or objects on the land.
- (4) Where under this paragraph a notice is required to be served on an owner of land and the land belongs to an ecclesiastical benefice, a like notice shall be served on the Church Commissioners.
- (4A) Sub-paragraphs (3)(b) and (c) and, where applicable, sub-paragraphs (3C) and (4) above shall be complied with not less than 28 days before the expiration of the time specified in the notice.
- (4B) A notice required to be served by sub-paragraph (3)(b)(i), (ii) or (iv) above shall be accompanied by a copy of the order.
- (4C) A notice required to be displayed by sub-paragraph (3)(c)(i) above at the ends of so much of any way as is affected by the order shall be accompanied by a plan showing the general effect of the order so far as it relates to that way.
- (4D) In sub-paragraph (3)(c)(ii) above 'council offices' means offices or buildings acquired or provided by a council or by the council of a parish or community or the parish meeting of a parish not having a separate parish council.
2. (1) If no representations or objections are duly made, or if any so made are withdrawn, then-
- (a) subject to sub-paragraph (2A) the Secretary of State may, if he thinks fit, confirm or make the order, as the case may be, with or without modifications;
  - (b) the authority by whom the order was made (where not the Secretary of State) may, instead of submitting the order to the Secretary of State, themselves confirm the order (but without any modification).
- (2) If any representation or objection duly made is not withdrawn, the Secretary of State shall, before confirming or making the order, as the case may be, if the objection is made by a local authority, cause a local inquiry to be held, and in any other case either-
- (a) cause a local inquiry to be held, or
  - (b) afford to any person by whom any representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by him for the purpose,
- and, after considering the report of the person appointed to hold the inquiry or to hear representations or objections, may, subject as provided below, confirm or make the order, as the case may be, with or without modifications.
- In the case of a public path creation order, a public path diversion order, a special diversion order or an SSSI diversion order if objection is made by statutory undertakers on the ground that the order provides for the creation of a public right of way over land covered by works used for the purposes of their undertaking or the curtilage of such land, and the objection is not withdrawn, the order is subject to special parliamentary procedure.
- (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 parts to which the relevant representations or objections relate; and
  - (b) the other, comprising the remaining parts, which is to be treated as if no representations or objections had been duly made;
- 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.
- (2ZE) 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.
- (2A) Before making or confirming an order on an appeal under section 121D(1) of this Act, the Secretary of State shall—
- (a) if requested by the authority who made an order to which the appeal relates to cause a local inquiry to be held, cause such an inquiry to be held, and
  - (b) if a request to be heard with respect to the question to be determined is made by the appellant, either afford to the appellant an opportunity of being heard by a person appointed by the Secretary of State for the purpose or cause a local inquiry to be held,
- whether or not he would be required to do so apart from this subparagraph.
- (3) Notwithstanding anything in the foregoing provisions of this paragraph, the Secretary of State shall not confirm or make an order so as to affect land not affected by the order as submitted to him or the draft order prepared by him, as the case may be, except after—
- (a) giving such notice as appears to him requisite of his proposal so to modify the order, specifying the time (which shall be not less than 28 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 proposal may be made,
  - (b) holding a local inquiry or affording to any person by whom any representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by him for the purpose, and
  - (c) considering the report of the person appointed to hold the inquiry or to hear representations or objections, as the case may be,
- and, in the case of a public path creation order, a public path diversion order or a special diversion order, if objection is made by statutory undertakers on the ground that the order as modified would provide for the creation of a public right of way over land covered by works used for the purposes of their undertaking or the curtilage of such land and the objection is not withdrawn, the order is subject to special parliamentary procedure.
- (4) The Secretary of State may, but need not, act as mentioned in subparagraph (2)(a) or (b) or (3)(b) in relation to an order relating to England if, in his opinion, no representation or objection 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) In the case of an order relating to England, the Secretary of State may, instead of affording a person an opportunity of being heard as mentioned in sub-paragraph (2)(b), (2A)(b) or (3)(b), afford the person an opportunity of making representations (or further representations) to a person appointed by him for the purpose.
- (6) Where the Secretary of State acts under sub-paragraph (5) by affording a person an opportunity of making representations (or further representations) instead of an opportunity of being heard as mentioned in sub-paragraph (2)(b) or (3)(b), the reference in sub-paragraph (2) or (as the case may be) (3)(c) to the report of the person appointed to hear representations or objections is to be read as a reference to the report of the person appointed under sub-paragraph (5).
- 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.

2ZA.(1) Where a public path extinguishment order, a special extinguishment order, a public path diversion order or a special diversion order is made by an authority other than the Secretary of State on an application under section 118ZA, 118C, 119ZA or 119C of this Act, that authority shall, as soon as reasonably practicable after the expiry of the time for representations, determine—

- (a) whether, in the case of an unopposed order, to confirm it under paragraph 2(1)(b) above, or
  - (b) whether to submit the order to the Secretary of State.
- (2) The authority making a determination required by sub-paragraph (1) above shall, as soon as practicable after making it, give to the applicant notice in writing of their determination and the reasons for it and give a copy of the notice to such other persons as may be prescribed.
- (3) Where—
- (a) an authority other than the Secretary of State have made a public path extinguishment order, a special extinguishment order, a public path diversion order or a special diversion order on an application under section 118ZA, 118C, 119ZA or 119C of this Act, and
  - (b) at the end of the period of two months beginning with the expiry of the time for representations, that authority have not determined—
    - (i) whether, in the case of an unopposed order, to confirm it under paragraph 2(1)(b) above, or
    - (ii) whether to submit the order to the Secretary of State,

the Secretary of State may, at the request of the person on whose application the order was made, by direction require the authority to determine that question before the end of such period as may be specified in the direction.

- (4) In this paragraph “the time for representations” means the time specified by the authority in accordance with paragraph 1(1)(c) above.

2ZB. Where, in relation to any public path extinguishment order, special extinguishment order, public path diversion order or special diversion order which was made by an authority other than the Secretary of State on an application under section 118ZA, 118C, 119ZA or 119C of this Act, no representations or objections are duly made or any representations or objections so made are withdrawn, that authority may not submit the order to the Secretary of State for confirmation with any modification of the map contained in the order.

2A.(1) The following decisions—

- (a) a decision of the Secretary of State under paragraph 2 above as respects an order made by an authority other than the Secretary of State including any related decision under section 120(5) of this Act,
- (b) a decision of the Secretary of State under section 121E(1)(c) of this Act, including any related decision under section 120(5) of this Act,

shall, except in the case of a rail crossing extinguishment order, the case of a rail crossing diversion order and such classes of case as may for the time being be prescribed or as may be specified in directions given by the Secretary of State, be made by a person appointed by the Secretary of State instead of by the Secretary of State; and a decision made by a person so appointed shall be treated as a decision of the Secretary of State.



- (2) The Secretary of State may, if he thinks fit, direct that a decision which, by virtue of sub-paragraph (1) above, and apart from this sub-paragraph, falls to be made by a person appointed by the Secretary of State shall instead be made by the Secretary of State, and a direction under this sub-paragraph shall state the reasons for which it is given and shall be served on the person, if any, so appointed, the authority and any person by whom a representation or objection has been duly made and not withdrawn.
- (3) Where the Secretary of State has appointed a person to make a decision under paragraph 2 above the Secretary of State may, at any time before the making of the decision, appoint another person to make it instead of the first person appointed to make it.
- (4) Where by virtue of sub-paragraph (2) or (3) above a particular decision falls to be made by the Secretary of State or any other person instead of the person first appointed to make it, anything done by or in relation to the latter shall be treated as having been done by or in relation to the former.
- (5) Provision may be made by regulations of the Secretary of State for the giving of publicity to any directions given by the Secretary of State under this paragraph.
- 2B.(1) Subject to sub-paragraph (2), subsections (2) to (5) of section 250 of the Local Government Act 1972 (giving of evidence at, and defraying of costs of, inquiries) apply to a hearing which the Secretary of State causes to be held under paragraph 2 above as they apply (by virtue of section 302(1) of this Act) to a local inquiry which he causes to be held under this Act.
- (2) In its application to a hearing or local inquiry held under paragraph 2 above by a person appointed under paragraph 2A(1) above, subsection (5) of section 250 of that Act shall have effect as if the reference to the Minister causing the inquiry to be held were a reference to the person so appointed or the Secretary of State.
- (3) Section 322A of the Town and Country Planning Act 1990 (orders as to costs where no hearing or inquiry takes place) applies in relation to a hearing or inquiry under paragraph 2 above as it applies in relation to a hearing or local inquiry for the purposes referred to in that section.
- (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), (3)(b) or (5) 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.
3. (1) The Secretary of State may, subject to the provisions of this Part of this Schedule, by regulations make such provisions as to the procedure on the making, submission and confirmation of orders to which this Schedule applies as appears to him to be expedient.
- (2) Provision may be made by regulations of the Secretary of State for enabling proceedings preliminary to the confirmation of a public path extinguishment order, a rail crossing extinguishment order or a special extinguishment order to be taken concurrently with proceedings preliminary to the confirmation of a public path creation order, a public path diversion order, a rail crossing diversion order, a special diversion order or an SSSI diversion order.
- (3) In this Part of this Schedule-
- (a) 'local authority' means
- (i) a billing or a precepting authority as defined in section 69 of the Local Government Finance Act 1992;
- (ia) a combined fire authority as defined in section 144 of the Local Government Finance Act 1988;
- (ii) a levying authority within the meaning of section 74 of that Act; and
- (iii) a body as regards which section 75 of that Act applies
- and includes any drainage authority and any joint board or joint committee if all the constituent authorities are such local authorities as aforesaid;
- (b) 'prescribed' means prescribed by regulations made by the Secretary of State;
- and for the purposes of this Schedule the Civil Aviation Authority, a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (to the extent that the person is carrying out activities authorised by the licence) and a universal service provider in connection with the provision of a universal postal service are to be deemed to be statutory undertakers and their undertakings statutory undertakings.
- (3ZA) For the purposes of sub-paragraph (3) above the undertaking of a person who holds a licence under Chapter I of Part I of the Transport Act 2000 shall not be considered to be a statutory undertaking except to the extent that it is the person's undertaking as licence holder.

- (3A) For the purposes of sub-paragraph (3) above the undertaking of a universal service provider shall be taken to be his undertaking so far as it relates to the provision of a universal postal service.

Part II: Validity and date of operation of certain orders relating to footpaths, bridleways and restricted byways

4. (1) As soon as may be after an order to which this Schedule applies has been confirmed or made by the Secretary of State or confirmed as an unopposed order, the authority by whom the order was made or, in the case of an order made by the Secretary of State, the Secretary of State, shall publish, in the manner required in relation to the class of order in question by paragraph 1(3) above, a notice in the prescribed form describing the general effect of the order, stating that it has been confirmed or made, and naming a place where a copy of it as confirmed or made may be inspected free of charge and copies thereof may be obtained at a reasonable charge at all reasonable hours, and-

- (a) serve a like notice on any person on whom notices were required to be served under paragraph 1(3)(b), (3C) or (4) above; and
- (b) cause like notices to be displayed in the like manner as the notices caused to be displayed under paragraph 1(3)(c) above;

but no such notice or copy need be served on a person unless he has sent to the authority or the Secretary of State (according as the notice or copy would require to be served by an authority or by the Secretary of State) a request in that behalf specifying an address for service.

- (2) A notice required to be served by sub-paragraph (1)(a) above, on-

- (a) a person on whom notice was required to be served by paragraph 1(3)(b)(i) or (ii) above, or
  - (b) in the case of an order which has been confirmed or made with modifications, a person on whom notice was required to be served by paragraph 1(3)(b)(iv) above,
- shall be accompanied by a copy of the order as confirmed or made.

- (3) As soon as may be after a decision not to confirm an order to which this Schedule applies, the authority by whom the order was made shall give notice of the decision by serving a copy of it on any person on whom notices were required to be served under paragraphs 1(3)(b), (3C) or (4) above **other than any person on whom notice of the decision is required to be served under paragraph 2ZA(2) above.**

- 4A.(1) As soon as may be after an order to which this Schedule applies has come into operation otherwise than-

- (a) on the date on which it was confirmed or made by the Secretary of State or confirmed as an unopposed order; or
- (b) at the expiration of a specified period beginning with that date,

the authority by whom the order was made or, in the case of an order made by the Secretary of State, the Secretary of State shall give notice of its coming into operation by publication (**within the meaning of sub-paragraph (2)**).

- (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.

5. Schedule 2 to this Act (except paragraph 1 thereof) applies in relation to an order to which this Schedule applies as it applies in relation to a scheme or order to which that Schedule applies, but with the following modifications-

- (a) for references to a scheme or order to which that Schedule applies substitute references to an order to which this Schedule applies;
- (b) for the references in paragraphs 2, 4 and 5 thereof to the date on which the notice required by paragraph 1 thereof is first published substitute references to the date on which the notice required by paragraph 4 above is first published;

- (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"**



(c) paragraph 4 of that Schedule has effect as if the words 'or on such later date, if any, as may be specified in the scheme or order' were omitted.

6. In this Part of this Schedule 'prescribed' means prescribed by regulations made by the Secretary of State.

Sources: CRWA 2000 Sch 6 para 23, DA 2015 ss 23(6) and 25(6) and Sch 7 para 8.

## WILDLIFE AND COUNTRYSIDE ACT 1981 (c. 69)

### 53. Duty to keep definitive map and statement under continuous review

- (1) In this Part 'definitive map and statement', in relation to any area, means, subject to section 57(3) and 57A(1),-
  - (a) the latest revised map and statement prepared in definitive form for that area under section 33 of the 1949 Act; or
  - (b) where no such map and statement have been so prepared, the original definitive map and statement prepared for that area under section 32 of that Act; or
  - (c) where no such map and statement have been so prepared, the map and statement prepared for that area under section 55(3).
- (2) As regards every definitive map and statement, the surveying authority shall-
  - (a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and
  - (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.
- (3) The events referred to in subsection (2) are as follows-
  - (a) the coming into operation of any enactment or instrument, or any other event, whereby-
    - (i) a highway shown or required to be shown in the map and statement has been authorised to be stopped up, diverted, widened or extended;
    - (ii) a highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description; or
    - (iii) a new right of way has been created over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path or a restricted byway;
  - (b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway;
  - (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-
    - (i) that a right of way which is not shown in the map and statement subsists (...) in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;
    - (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)
    - (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or
    - (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.
- (4) The modifications which may be made by an order under subsection (2) shall include the addition to the statement of particulars as to-
  - (a) the position and width of any public path, restricted byway or byway open to all traffic which is or is to be shown on the map; and
  - (b) any limitations or conditions affecting the public right of way thereover.
- (4A) Subsection (4B) applies to evidence which, when considered with all other relevant evidence available to the surveying authority, shows as respects a way shown in a definitive map and statement as a restricted byway that the public have, and had immediately before the commencement of section 47 of the Countryside and Rights of Way Act 2000, a right of way for vehicular and all other kinds of traffic over that way.

- (4B) For the purposes of subsection (3)(c)(ii), such evidence is evidence which, when so considered, shows that the way concerned ought, subject to section 54A, to be shown in the definitive map and statement as a byway open to all traffic.
- (5) Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of **Schedule 13A (in relation to England) and Schedule 14 (in relation to Wales)** shall have effect as to the making and determination of applications under this subsection.
- (5A) Evidence to which subsection (4B) applies on the commencement of section 47 of the Countryside and Rights of Way Act 2000 shall for the purposes of subsection (5) and any application made under it be treated as not having been discovered by the surveying authority before the commencement of that section.
- (6) Orders under subsection (2) which make only such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (a) of subsection (3) shall take effect on their being made; and the provisions of **Schedule 14A (in relation to England) and Schedule 15 (in relation to Wales)** shall have effect as to the making, validity and date of coming into operation of other orders under subsection (2).

Source: DA 2015 Sch 7 paras 2 and 10

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

- (1) The Secretary of State may by regulations provide for Schedules 13A and 14A 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 14A 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.

Source: DA 2015 Sch 7 para 3.

### **53A. Power to include modifications in other orders.**

- (1) This section applies to any order—
  - (a) which is of a description prescribed by regulations made by the Secretary of State,
  - (b) whose coming into operation would, as regards any definitive map and statement, be an event within section 53(3)(a),
  - (c) which is made by the surveying authority, and
  - (d) which does not affect land outside the authority’s area.
- (2) The authority may include in the order such provision as it would be required to make under section 53(2)(b) in consequence of the coming into operation of the other provisions of the order.
- (3) An authority which has included any provision in an order by virtue of subsection (2)—
  - (a) may at any time before the order comes into operation, and
  - (b) shall, if the order becomes subject to special parliamentary procedure, withdraw the order and substitute for it an order otherwise identical but omitting any provision so included.

- (4) Anything done for the purposes of any enactment in relation to an order withdrawn under subsection (3) shall be treated for those purposes as done in relation to the substituted order.
- (5) No requirement for the confirmation of an order applies to provisions included in the order by virtue of subsection (2), but any power to modify an order includes power to make consequential modifications to any provision so included.
- (6) Provisions included in an order by virtue of subsection (2) shall take effect on the date specified under section 56(3A) as the relevant date.
- (7) Where any enactment provides for questioning the validity of an order on any grounds, the validity of any provision included by virtue of subsection (2) may be questioned in the same way on the grounds—
  - (a) that it is not within the powers of this Part, or
  - (b) that any requirement of this Part or of regulations made under it has not been complied with.
- (8) Subject to subsections (5) to (7), the Secretary of State may by regulations provide that any procedural requirement as to the making or coming into operation of an order to which this section applies shall not apply, or shall apply with modifications prescribed by the regulations, to so much of the order as contains provision included by virtue of subsection (2).
- (9) 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.

### **53B. Register of applications under section 53.**

- (1) Every surveying authority shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect to applications under section 53(5).
- (2) The register shall contain such information as may be prescribed with respect to the manner in which such applications have been dealt with.
- (3) Regulations may make provision for the register to be kept in two or more parts, each part containing such information relating to applications under section 53(5) as may be prescribed.
- (4) Regulations may make provision—
  - (a) for a specified part of the register to contain copies of applications and of the maps submitted with them, and
  - (b) for the entry relating to any application, and everything relating to it, to be removed from any part of the register when—
    - (i) the application (including any appeal to the Secretary of State) has been finally disposed of, and
    - (ii) if an order is made, a decision has been made to confirm or not to confirm the order, (without prejudice to the inclusion of any different entry relating to it in another part of the register).
- (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 2(4)(b) of Schedule 13A 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) Every register kept under this section shall be available for inspection free of charge at all reasonable hours.
- (6) In this section—
 

'prescribed' means prescribed by regulations;

'regulations' means regulations made by the Secretary of State by statutory instrument;

and a statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Source: DA 2015 Sch 7 para 4.

### **54A. BOATs not to be added to definitive maps.**

- (1) No order under this Part shall, after the cut-off date, modify a definitive map and statement so as to show as a byway open to all traffic any way not shown in the map and statement as a highway of any description.

- (2) In this section “the cut-off date” means, subject to regulations under subsection (3), 1st January 2026.
- (3) The Secretary of State may make regulations—
- (a) substituting as the cut-off date a date later than the date specified in subsection (2) or for the time being substituted under this paragraph;
  - (b) containing such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the operation of subsection (1), including in particular its operation in relation to—
    - (i) an order under section 53(2) for which on the cut-off date an application is pending,
    - (ii) an order under this Part which on that date has been made but not confirmed,
    - (iii) an order under section 55 made after that date, or
    - (iv) an order under this Part relating to any way as respects which such an order, or any provision of such an order, has after that date been to any extent quashed.
- (4) Regulations under subsection (3)(a)—
- (a) may specify different dates for different areas; but
  - (b) may not specify a date later than 1st January 2031, except as respects an area within subsection (5).
- (5) An area is within this subsection if it is in—
- (a) the Isles of Scilly, or
  - (b) an area which, at any time before the repeal by section 73 of this Act of sections 27 to 34 of the 1949 Act—
    - (i) was excluded from the operation of those sections by virtue of any provision of the 1949 Act, or
    - (ii) would have been so excluded but for a resolution having effect under section 35(2) of that Act.
- (6) Where by virtue of regulations under subsection (3) there are different cut-off dates for areas into which different parts of any way extend, the cut-off date in relation to that way is the later or latest of those dates.
- (7) Where it appears to the Secretary of State that any provision of this Part can by virtue of subsection (1) have no further application he may by order make such amendments or repeals in this Part as appear to him to be, in consequence, necessary or expedient.
- (8) An order or 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.

Source: CRWA 2000 Sch 5 para 4.

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

- (1) This section applies where it appears to a surveying authority in England (whether or not on an application under section 53(5)) that—
- (a) it might be requisite to make a modification to a definitive map and statement in consequence of the occurrence of one or more events falling within section 53(3)(b) or (c)(i) or (ii);
  - (b) the basis for the authority’s view that it might be requisite is documentary evidence of the existence of a right of way before 1949; and
  - (c) in a case where the authority form that view following an application, the authority have served notice under paragraph 2(4)(b) of Schedule 13A that they are considering the application.
- (2) The authority shall ascertain whether every owner of the land to which the modification 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) As soon as reasonably practicable after an authority are satisfied that they have power under subsection (4) or (5) to make an order under section 53(2), the authority must—
  - (a) give notice to each owner that they are satisfied that they have that power; and
  - (b) include in the notice an explanation of the effect of subsection (9) of this section.
- (8) 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.
- (9) An authority must determine whether to make a modification consent order before the end of the period of 12 months beginning with—
  - (a) in the case mentioned in subsection (1)(c), the day on which the authority served notice under paragraph 2(4)(b) of Schedule 13A in respect of the application;
  - (b) in any other case, the day on which notice is given under subsection (7).
- (10) The Secretary of State may by order provide that, in cases or circumstances specified in the order, subsection (9) applies as if for the period of 12 months mentioned in that subsection there were substituted a longer period specified in the order.
- (11) An order under subsection (10) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Source: DA 2015 Sch 7 para 5

#### **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 whose consent was not sought under section 54B(2), unless that other person consents to the alteration.
- (3) Where a modification consent order takes effect, 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 order or any special order combined with it under section 54B(5) is maintainable at the public expense (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 an authority—
  - (a) that if a modification consent order were to take effect, a path or way, or part of a path or way, would be maintainable at the public expense by virtue of subsection (3); 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 14A until they are satisfied that the work has been carried out.

Source: DA 2015 Sch 7 para 5.

## **55. No further surveys or reviews under the 1949 Act**

- (1) No survey under sections 27 to 32 of the 1949 Act, or review under section 33 of that Act, shall be begun after the commencement date; and where on that date a surveying authority have not completed such a survey or review begun earlier, the Secretary of State may, after consultation with the authority, direct the authority-
  - (a) to complete the survey or review; or
  - (b) to abandon the survey or review to such extent as may be specified in the direction.
- (2) Where such a survey or review so begun is abandoned, the Secretary of State shall give such notice of the abandonment as appears to him requisite.
- (3) Where, in relation to any area, no such survey has been so begun or such a survey so begun is abandoned, the surveying authority shall prepare for that area a map and statement such that, when they have been modified in accordance with the provisions of this Part, they will serve as the definitive map and statement for that area.
- (4) Where such a survey so begun is abandoned after a draft map and statement have been prepared and the period for making representations or objections has expired, the authority shall by order modify the map and statement prepared under subsection (3) so as-
  - (a) to give effect to any determination or decision of the authority under section 29(3) or (4) of the 1949 Act in respect of which either there is no right of appeal or no notice of appeal has been duly served;
  - (b) to give effect to any decision of the Secretary of State under section 29(6) of that Act; and
  - (c) to show any particulars shown in the draft map and statement with respect to which no representation or objection has been duly made, or in relation to which all such representations or objections has been withdrawn.
- (5) Where such a review so begun is abandoned after a draft map and statement have been prepared and the period for making representations or objections has expired, the authority shall by order modify the map and statement under review so as-
  - (a) to give effect to any decision of the Secretary of State under paragraph 4(4) of Part II of Schedule 3 to the 1968 Act; and
  - (b) to show any particulars shown in the draft map and statement but not in the map and statement under review, and to omit any particulars shown in the map and statement under review but not in the draft map and statement, being (in either case) particulars with respect to which no representation or objection has been duly made, or in relation to which all such representations or objections have been withdrawn.
- (6) Orders under subsection (4) or (5) shall take effect on their being made.
- (7) Every way which-
  - (a) in pursuance of an order under subsection (5) is shown in a definitive map and statement as a byway open to all traffic, a bridleway or a footpath, and
  - (b) before the making of the order, was shown in the map and statement under review as a road used as a public path,shall be a highway maintainable at the public expense.
- (8) Subsection (7) does not oblige a highway authority to provide, on a way shown in a definitive map and statement as a byway open to all traffic, a metalled carriage-way or a carriage-way which is by any other means provided with a surface suitable for the passage of vehicles.

## **56. Effect of definitive map and statement**

- (1) A definitive map and statement shall be conclusive evidence as to the particulars contained therein to the following extent, namely-

- (a) where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover a right of way on foot, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than that right;
  - (b) where the map shows a bridleway, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than those rights;
  - (c) where the map shows a byway open to all traffic, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way for vehicular and all other kinds of traffic;
  - (d) where the map shows a restricted byway, the map shall, subject to subsection (2A), be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse together with a right of way for vehicles other than mechanically propelled vehicles, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than those rights; and
  - (e) where by virtue of the foregoing paragraphs the map is conclusive evidence, as at any date, as to a highway shown thereon, any particulars contained in the statement as to the position or width thereof shall be conclusive evidence as to the position or width thereof at that date, and any particulars so contained as to limitations or conditions affecting the public right of way shall be conclusive evidence that at the said date the said right was subject to those limitations or conditions, but without prejudice to any question whether the right was subject to any other limitations or conditions at that date.
- (1A) In subsection (1)(d) 'mechanically propelled vehicle' does not include an electrically assisted pedal cycle of a class prescribed for the purposes of section 189(1)(c) of the Road Traffic Act 1988.
- (2) For the purposes of this section 'the relevant date'-
- (a) in relation to any way which is shown on the map otherwise than in pursuance of an order under the foregoing provisions of this Part or an order to which section 53A applies which includes provision made by virtue of subsection (2) of that section, means, subject to subsection (2A), the date specified in the statement as the relevant date for the purposes of the map;
  - (b) in relation to any way which is shown on the map in pursuance of such an order, means the date which, in accordance with subsection (3) or (3A), is specified in the order as the relevant date for the purposes of the order.
- (2A) In the case of a map prepared before the date of the coming into force of section 47 of the Countryside and Rights of Way Act 2000, -
- (a) subsection (1)(d) and (e) have effect subject to the operation of any enactment or instrument, and to any other event, whereby a way shown on the map as a restricted byway has, on or before that date-
    - (i) been authorised to be stopped up, diverted or widened, or
    - (ii) become a public path, and
  - (b) subsection (2)(a) has effect in relation to any way so shown with the substitution of that date for the date mentioned there.
- (3) Every order under the foregoing provisions of this Part shall specify, as the relevant date for the purposes of the order, such date, not being earlier than six months before the making of the order, as the authority may determine.
- (3A) Every order to which section 53A applies which includes provision made by virtue of subsection (2) of that section shall specify, as the relevant date for the purposes of the order, such date as the authority may in accordance with regulations made by the Secretary of State determine.
- (4) A document purporting to be certified on behalf of the surveying authority to be a copy of or of any part of a definitive map or statement as modified in accordance with the provisions of this Part shall be receivable in evidence and shall be deemed, unless the contrary is shown, to be such a copy.
- (4A) 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.



**57. Supplementary provisions as to definitive maps and statements**

- (1) An order under the foregoing provisions of this Part shall be in such form as may be prescribed by regulations made by the Secretary of State, and shall contain a map showing the modifications to which the order relates.
- (2) Regulations made by the Secretary of State may prescribe the scale on which maps are to be prepared under subsection (1) or any other provision of this Part, and the method of showing in definitive maps and statements anything which is required to be so shown.
- (3) Where, in the case of a definitive map and statement for any area which have been modified in accordance with the foregoing provisions of this Part, and for the purposes of section 57A(1), it appears to the surveying authority expedient to do so, they may prepare a copy of that map and statement as so modified; and where they do so, the map and statement so prepared, and not the map and statement so modified, shall be regarded for the purposes of the foregoing provisions of this Part as the definitive map and statement for that area.
- (3A) Where as respects any definitive map and statement the requirements of section 53(2), and of section 55 so far as it applies, have been complied with, the map and statement are to be regarded for the purposes of subsection (3) as having been modified in accordance with the foregoing provisions of this Part whether or not, as respects the map and statement, the requirements of section 54 have been complied with.
- (4) The statement prepared under subsection (3) shall specify, as the relevant date for the purposes of the map, such date, not being earlier than six months before the preparation of the map and statement, as the authority may determine.
- (5) As regards every definitive map and statement, the surveying authority shall keep-
  - (a) a copy of the map and statement; and
  - (b) copies of all orders under this Part modifying the map and statement,
 available for inspection free of charge at all reasonable hours at one or more places in each district comprised in the area to which the map and statement relate and, so far as appears practicable to the surveying authority, a place in each parish so comprised; and the authority shall be deemed to comply with the requirement to keep such copies available for inspection in a district or parish if they keep available for inspection there a copy of so much of the map and statement and copies of so many of the orders as relate to the district or parish.
- (5A) Subsection (5) shall apply in relation to Wales as if 'in each district comprised' were omitted.
- (6) Notwithstanding anything in subsection (5), an authority shall not be required to keep available for inspection more than one copy of-
  - (a) any definitive map and statement; or
  - (b) each order under this Part modifying the map and statement,
 if, as respects the area to which that map and statement relate, a subsequent map and statement have been prepared under subsection (3); and the said single copies may be kept in such place in the area of the authority as they may determine.
- (6A) In subsection (1), the reference to an order under the foregoing provisions of this Part includes a reference to so much of an order to which section 53A applies as contains provision made by virtue of subsection (2) of that section; and subsections (5) and (6) apply to-
  - (a) orders to which section 53A applies modifying the map and statement, and
  - (b) such documents relating to them as may be prescribed by regulations made by the Secretary of State,
 as those subsections apply to orders under this Part modifying the map and statement.
- (6B) Regulations under paragraph (b) of subsection (6A) may require any document to be prepared by a surveying authority for the purposes of that paragraph, and any such document shall be in such form as may be prescribed by the regulations.
- (6C) Regulations made by the Secretary of State may require any surveying authority-
  - (a) to keep such other documents as may be prescribed by the regulations available for inspection at such times and places and in such manner as may be so prescribed, or
  - (b) to provide to any other surveying authority any document so prescribed which that authority is, by regulations under paragraph (a), required to keep available for inspection.

- (7) Every surveying authority shall take such steps as they consider expedient for bringing to the attention of the public the provisions of this Part including, in particular, section 53(5) and subsection (5).
- (8) 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.

### **57A. Consolidation of definitive maps and statements.**

- (1) Where-
  - (a) different definitive maps and statements relate to different parts of a surveying authority's area,
  - (b) as respects so much of each definitive map and statement as relates to that area the requirements of section 53(2), and of section 55 so far as it applies, have been complied with, and
  - (c) there is no part of that area to which no definitive map and statement relate,
 the authority may, if it appears to them expedient to do so, prepare a map and statement comprising copies of so much of each definitive map and statement as relates to the authority's area; and where they do so the map and statement so prepared and not, so far as copied, the earlier maps and statements shall be regarded for the purposes of sections 53 to 56 and 57(2) and (3) as the definitive map and statement for the area to which they relate.
- (2) The power conferred by subsection (1) is not exercisable by a surveying authority if the definitive map and statement relating to any part of the authority's area is a map and statement in respect of which a review under section 33 of the 1949 Act was begun before the commencement date but has been neither abandoned in pursuance of a direction under section 55(1) nor completed.
- (3) References in subsection (1) to a definitive map and statement are, in the case of a map and statement modified in accordance with any of the foregoing provisions of this Part, references to the map and statement as modified.
- (4) The statement prepared under subsection (1) shall specify, as the relevant date for the purposes of the map, such date, not being earlier than six months before the preparation of the map and statement, as the authority may determine.
- (5) Every surveying authority shall take such steps as they consider expedient for bringing to the attention of the public the preparation by them of any map and statement under subsection (1).

### **58. Application of ss 52 to 57 to inner London**

- (1) Subject to subsection (2), the foregoing provisions of this Part shall not apply to any area to which this subsection applies; and this subsection applies to any area which, immediately before 1st April 1965, formed part of the administrative county of London.
- (2) A London borough council may by resolution adopt the said foregoing provisions as respects any part of their area specified in the resolution, being a part to which subsection (1) applies, and those provisions shall thereupon apply accordingly.
- (3) Where by virtue of a resolution under subsection (2), the said foregoing provisions apply to any area, those provisions shall have effect in relation thereto as if for references to the commencement date there were substituted references to the date on which the resolution comes into operation.

### **66. Interpretation of Part III (sections 53 to 66)**

- (1) In this Part-
  - 'bridleway' means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway;
  - 'byway open to all traffic' means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used;
  - 'definitive map and statement' has the meaning given by section 53(1);
  - 'footpath' means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road;
  - 'horse' includes a pony, ass and mule, and 'horseback' shall be construed accordingly;
  - 'public path' means a highway being either a footpath or a bridleway;

'restricted byway' has the same meaning as in Part II of the Countryside and Rights of Way Act 2000; 'right of way to which this Part applies' means a right of way such that the land over which the right subsists is a public path or a byway open to all traffic;

'surveying authority', in relation to any area, means the county council, county borough council, metropolitan district or London borough council whose area includes that area.

- (2) A highway at the side of a river, canal or other inland navigation shall not be excluded from any definition contained in subsection (1) by reason only that the public have a right to use the highway for purposes of navigation, if the highway would fall within that definition if the public had no such right thereover.
- (3) The provisions of section 30(1) of the 1968 Act (riding of pedal cycles on bridleways) shall not affect the definition of bridleway in subsection (1) and any rights exercisable by virtue of those provisions shall be disregarded for the purposes of this Part.

## 70A. Service of notices

- (1) Subject to subsection (2), section 329 of the Town and Country Planning Act 1990 (...) (which provide for the service of notices and other documents) shall apply to notices and other documents required or authorised to be served or given under this Act.
- (2) Subsections (2) and (3) of the said section 329 shall not apply to a notice required to be served under paragraph 2 of Schedule 14.
- (3) This section shall not affect the operation of (...) paragraph 3(4) of Schedule 15.

## 71. General Interpretation

In this Act:

'the 1949 Act' means the National Parks and Access to the Countryside Act 1949;

'the 1968 Act' means the Countryside Act 1968;

'the commencement date', in relation to any provision of this Act and any area, means the date of the coming into force of that provision in that area;

'modifications' includes additions, alterations and omissions, and cognate expressions shall be construed accordingly.

## SCHEDULE 13A

### APPLICATIONS FOR CERTAIN ORDERS UNDER PART 3: ENGLAND

#### *Form of applications*

- 1 (1) An application must be made in the prescribed form and be accompanied by—
  - (a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and
  - (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application, unless the authority have informed the applicant that the authority already have access to the evidence in question.
- (2) Regulations under sub-paragraph (1) must provide for an application 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).

#### *Preliminary assessment and notice of applications*

- 2 (1) An authority must, 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 must have regard to any guidance given by the Secretary of State.
- (3) If they decide that there is no such basis, they must, before the end of that period of 3 months, inform the applicant of their decision and the reasons for it.
- (4) If they decide that there is such a basis, they must, 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.

*Failure by authority to conduct preliminary assessment*

- 3 (1) If an authority have not assessed an application in accordance with paragraph 2 before the end of 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 2 and to do so within such reasonable period as may be specified.
  - (4) An order under sub-paragraph (3) may provide for paragraph 5 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 does 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*

- 4 (1) As soon as reasonably practicable after serving a notice under paragraph 2(4)(b), the authority must—
- (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) The duty in sub-paragraph (1) does not apply in a case to which section 54B (modifications by consent) applies (see section 54B(1)).
- (3) But if, in such a case, an event mentioned below occurs, the authority must take the steps mentioned in sub-paragraph (1)(a) and (b) as soon as reasonably practicable after the occurrence of that event. The events are—
- (a) that 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) that the authority decide for any other reason not to make a modification consent order;
  - (c) that the period of 12 months beginning with the date on which notice was served under paragraph 2(4)(b) expires without the authority having determined whether to make such an order;
  - (d) that the authority make such an order but decide not to confirm it.
- (4) As soon as practicable after determining an application, the authority must 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 2(4)(b).

*Failure by authority to determine application*

- 5 (1) If an authority have not discharged their duty under paragraph 4 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 (4).

- (2) A person who has given notice under sub-paragraph (1) may apply to a magistrates' court for an order under sub-paragraph (4) 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.
- (3) On the hearing of an application under sub-paragraph (2) the other persons by whom a notice under sub-paragraph (1) could have been given have a right to be heard.
- (4) On hearing an application under sub-paragraph (2), a magistrates' court may order the authority to take specified steps for the purposes of discharging their duty under paragraph 4 and to do so within such reasonable period as may be specified.
- (5) 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 (4).
- (6) On the hearing of an application under sub-paragraph (5) in relation to an order under sub-paragraph (4), 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.
- (7) 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 (4);
  - (c) any other person by whom a notice under sub-paragraph (1) could have been given.
- (8) An order under this paragraph does 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 authority to determine application: further provision about notices*

- 6 (1) An applicant for an order under sub-paragraph (4) of paragraph 5 must 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 is to 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 5(2) must 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 5(5) must be given by the court to—
  - (a) the person who applied for the order under paragraph 5(4) 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 5(2) or (5) must also be given by the court by affixing it to some conspicuous object or objects on the land to which the application relates.

*Procedure where authority decide not to make order: general*

- 7 (1) Where an authority decide under paragraph 4 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 must submit the matter to the Secretary of State; and
  - (b) the Secretary of State must deal with the matter as an appeal against the decision of the authority.
- (3) The authority may, but need not, act as mentioned in subparagraph (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 must have regard to any guidance given by the Secretary of State.
- (5) Where the authority decide not to submit the matter, the authority must inform the applicant of their decision and the reasons for it.
- (6) Where the matter is submitted to the Secretary of State, the authority must give notice in the prescribed form—
  - (a) setting out the authority's 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) Subject to sub-paragraph (9), the notice to be given under subparagraph (6) must be given—
  - (a) by 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) by serving a like notice on—
    - (i) every owner and occupier of any of the land to which the decision relates;
    - (ii) every local authority whose area includes any of that land;
    - (iii) every person on whom notice is required to be served in pursuance of sub-paragraph (8); and
    - (iv) such other persons as may be prescribed in relation to the area in which that land is situated or as the authority may consider appropriate; and
  - (c) by causing a copy of the notice to be displayed in a prominent position—
    - (i) at the ends of so much of any way as is affected by the decision;
    - (ii) at council offices in the locality of the land to which the decision relates; and
    - (iii) at such other places as the authority may consider appropriate.
- (8) 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 decisions under paragraph 4 not to make an order as—
  - (a) are made by the authority during a period specified in the requirement;
  - (b) are of a description so specified; and
  - (c) relate to land comprised in an area so specified.
- (9) The Secretary of State may, in any particular case, direct that it is not necessary to comply with sub-paragraph (7)(b)(i); but if such a direction is given in the case of any land, then in addition to publication the notice must be addressed to "The owners and any occupiers" of the land (describing it) and a copy or copies of the notice must be affixed to some conspicuous object or objects on the land.
- (10) Sub-paragraph (7)(b) and (c) and, where applicable, subparagraph (9) must be complied with not less than 42 days before the expiration of the time specified in the notice.
- (11) A notice required to be served by sub-paragraph (7)(b) on the owner or occupier of any land, or on a local authority, must be accompanied by a copy of so much of the decision as relates to that land or, as the case may be, the area of that authority; and a notice required to be served by that sub-paragraph on such other persons as may be prescribed or as the authority may consider appropriate must be accompanied by a copy of the decision.
- (12) A notice required to be displayed by sub-paragraph (7)(c) at the ends of so much of any way as is affected by the decision must be accompanied by a plan showing the general effect of the decision so far as it relates to that way.
- (13) At any time after the publication of a notice under this paragraph, and before the expiration of the period specified in the notice for the making of representations and objections, any person may require the authority to inform the person what documents (if any) were taken into account in making the decision and—

- (a) as respects any such documents in the possession of the authority, to permit him to inspect them and take copies; and
  - (b) as respects any such documents not in their possession, to give him any information the authority have as to where the documents can be inspected;
- and the authority must comply with a requirement under this subparagraph within 14 days of the making of the requirement.
- (14) Nothing in sub-paragraph (6)(d) or (13) is to 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 8(1)(a) or (c) or included in representations made under paragraph 8(1)(b).
- 8 (1) Where a matter is submitted to the Secretary of State under paragraph 7(2), the Secretary of State must either—
- (a) cause a local inquiry to be held;
  - (b) afford the applicant, and any person by whom a representation or objection has been duly made and not withdrawn, an opportunity to make representations (or further representations) to a person appointed by the Secretary of State for that purpose; or
  - (c) afford the applicant, and any person by whom a representation or objection has been duly made and not withdrawn, an opportunity to be heard by a person appointed by the Secretary of State for that purpose.
- (2) The Secretary of State may, but need not, act as mentioned in subparagraph (1) 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 appointed as mentioned in sub-paragraph (1)(b) or (c), 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 of State is proposing to make would differ in a material respect from the order sought by the applicant in the application.
- (5) The Secretary of State must give such notice as appears to him or her to be requisite of the proposal, specifying the time (which must 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.
- (6) If any representation or objection duly made under sub-paragraph (5) is not withdrawn, the Secretary of State must either—
- (a) cause a local inquiry to be held;
  - (b) afford any person by whom a representation or objection has been duly made and not withdrawn, an opportunity to make representations (or further representations) to a person appointed by the Secretary of State for that purpose; or
  - (c) afford any person by whom a representation or objection has been duly made and not withdrawn, an opportunity to be heard by a person appointed by the Secretary of State for that purpose.
- (7) The Secretary of State must consider the report of any person appointed to hold an inquiry or appointed as mentioned in subparagraph (6)(b) or (c).
- (8) The Secretary of State may, but need not, act as mentioned in subparagraph (6) if, in his or her 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.
- (9) 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 the application if—



- (a) it would affect land not affected by the order sought by the applicant;
  - (b) it would not show any way shown in the order sought by the applicant;
  - (c) it would show any 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.
- (10) Nothing in sub-paragraph (5) is to 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 (6)(a) or (c) or included in representations made under sub-paragraph (6)(b).

*Procedure where authority decide not to make an order: supplemental*

- 9 (1) A decision of the Secretary of State under paragraph 8 must, except in such classes of case as may for the time being be prescribed or as may be specified in directions given by the Secretary of State, be made by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State; and a decision made by a person so appointed is to be treated as a decision of the Secretary of State.
- (2) The Secretary of State may, if the Secretary of State thinks fit, direct that a decision which, by virtue of sub-paragraph (1) and apart from this sub-paragraph, falls to be made by a person appointed by the Secretary of State is instead to be made by the Secretary of State; and a direction under this sub-paragraph must state the reasons for which it is given and must be served on the person, if any, so appointed, the authority and any person by whom a representation or objection has been duly made and not withdrawn.
- (3) Where the Secretary of State has appointed a person to make a decision under paragraph 8 the Secretary of State may, at any time before the making of the decision, appoint another person to make it instead of the person first appointed to make it.
- (4) Where by virtue of sub-paragraph (2) or (3) a particular decision falls to be made by the Secretary of State or any other person instead of the person first appointed to make it, anything done by or in relation to the latter is to be treated as having been done by or in relation to the former.
- (5) Regulations under this paragraph may provide for the giving of publicity to any directions given by the Secretary of State under this paragraph.
- 10 (1) Subject to sub-paragraph (2), subsections (2) to (5) of section 250 of the Local Government Act 1972 (giving of evidence at, and defraying of costs of, inquiries) apply in relation to any hearing or local inquiry held under paragraph 8 as they apply in relation to a local inquiry which a Minister causes to be held under subsection (1) of that section.
- (2) In its application to a hearing or inquiry held under paragraph 8 by a person appointed under paragraph 9, subsection (5) of that section is to have effect as if the reference to the Minister causing the inquiry to be held were a reference to the person so appointed or the Secretary of State.
- (3) Section 322A of the Town and Country Planning Act 1990 (orders as to costs where no hearing or inquiry takes place) applies in relation to a hearing or local inquiry under paragraph 8 as it applies in relation to a hearing or local inquiry for the purposes referred to in that section.
- 11 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—
- (a) are made by the authority in accordance with a direction under paragraph 8(3)(b) or by the Secretary of State under paragraph 8(3)(c) during a period specified in the requirement;
  - (b) are of a description so specified; and
  - (c) relate to land in an area so specified.

*Transfer of applications*

- 12 (1) Where an application is made to an authority, 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.

*Interpretation*

- 13 (1) In this Schedule—  
 “application” means an application under section 53(5);

“local authority” means a non-metropolitan district council, a parish council or the parish meeting of a parish not having a separate parish council;

“prescribed” means prescribed by regulations made by the Secretary of State.

- (2) Regulations under this Schedule are to be made by statutory instrument and are subject to annulment in pursuance of a resolution of either House of Parliament.

Source: DA 2015 Sch 7 para 6.

## **Schedule 14: Applications for certain orders under Part III : Wales**

### *Form of applications*

1. An application shall be made in the prescribed form and shall be accompanied by:
  - (a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and
  - (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.

### *Notice of applications*

2. (1) Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates.
  - (2) 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 him by sub-paragraph (1) may be served by addressing it to him by the description 'owner' or 'occupier' of the land (describing it) and by affixing it to some conspicuous object or objects on the land.
  - (3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.
  - (4) Every notice or certificate under this paragraph shall be in the prescribed form.

### *Determination by authority*

3. (1) As soon as reasonably practicable after receiving a certificate under paragraph 2(3), 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) If the authority have not determined the application within twelve months of their receiving a certificate under paragraph 2(3), then, on the applicant making representations to the Secretary of State, the Secretary of State may, after consulting with the authority, direct the authority to determine the application before the expiration of such period as may be specified in the direction.
- (3) 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 2(1).

### *Appeal against a decision not to make an order*

4. (1) Where the authority decide not to make an order, the applicant may, at any time within 28 days after service on him of notice of the decision, serve notice of appeal against that decision on the Secretary of State and the authority.
  - (2) If on considering the appeal the Secretary of State considers that an order should be made, he shall give to the authority such directions as appear to him necessary for the purpose (which may include a direction as to the time within which an order is to be made).

### *Interpretation*

5. (1) In this Schedule-
  - 'application' means an application under section 53(5);
  - 'local authority' (...) means a community council;
  - 'prescribed' means prescribed by regulations made by the Secretary of State.
- (2) Regulations under this Schedule shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Source: DA 2015 Sch 7 para 11.

**SCHEDULE 14A - PROCEDURE IN CONNECTION WITH CERTAIN ORDERS  
UNDER PART 3: ENGLAND**

**PART 1 : ORDERS MADE IN ACCORDANCE WITH PARAGRAPH 8 OF  
SCHEDULE 13A**

- 1 (1) Where an order is made by an authority in accordance with a direction given under paragraph 8(3)(b) of Schedule 13A, or by the Secretary of State under paragraph 8(3)(c) of that Schedule, the Secretary of State must confirm the order.
- (2) The order takes effect when it is confirmed by the Secretary of State.

**PART 2 : OTHER ORDERS**

*Application of Part 2*

- 2 Part 2 of this Schedule applies to orders other than those which are made in accordance with a direction given under paragraph 8(3)(b) of Schedule 13A or by the Secretary of State under paragraph 8(3)(c) of that Schedule.

*Consultation*

- 3 Before making an order, the authority must consult with every local authority whose area includes the land to which the order relates.

*Coming into operation*

- 4 (1) A modification consent order does not take effect until confirmed by the authority under paragraph 9.
- (2) Any other order does not take effect until confirmed either by the authority or the Secretary of State under paragraph 10 or by the Secretary of State under paragraph 13.

*Publicity for orders*

- 5 (1) On making an order, the authority must give notice in the prescribed form—
- (a) describing the general effect of the order and stating that it has been made and requires confirmation;
  - (b) naming a place in the area in which the land to which the order relates is situated where a copy of the order may be inspected free of charge, and copies may be obtained at a reasonable charge, at all reasonable hours; and
  - (c) 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 order, which must include particulars of the grounds relied on, may be made.
- (2) Subject to sub-paragraph (4), the notice to be given under subparagraph (1) must be given—
- (a) by 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) by serving a like notice on—
    - (i) every owner and occupier of any of that land;
    - (ii) every local authority whose area includes any of that land;
    - (iii) every person on whom notice is required to be served in pursuance of sub-paragraph (3); and
    - (iv) such other persons as may be prescribed in relation to the area in which that land is situated or as the authority may consider appropriate; and
  - (c) by causing a copy of the notice to be displayed in a prominent position—
    - (i) at the ends of so much of any way as is affected by the order;
    - (ii) at council offices in the locality of the land to which the order relates; and
    - (iii) at such other places as the authority may consider appropriate.
- (3) 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—
- (a) are made by the authority during a period specified in the requirement;
  - (b) are of a description so specified;
  - (c) and relate to land comprised in an area so specified.
- (4) In the case of a modification consent order, the authority may decide that it is not necessary to comply with sub-paragraph (2)(b)(i) and, in any other case, the Secretary of State may give a direction that it is not necessary to comply with it.

But, if such a decision is made or such a direction is given in the case of any land, then in addition to publication the notice must be addressed to “The owners and any occupiers” of the land (describing it) and a copy or copies of the notice must be affixed to some conspicuous object or objects on the land.

- (5) Sub-paragraph (2)(b) and (c) and, where applicable, subparagraph (4) must be complied with not less than 42 days before the expiration of the time specified in the notice.
- (6) A notice required to be served by sub-paragraph (2)(b) on the owner or occupier of any land, or on a local authority, must be accompanied by a copy of so much of the order as relates to that land or, as the case may be, the area of that authority; and a notice required to be served by that sub-paragraph on such other persons as may be prescribed or as the authority may consider appropriate must be accompanied by a copy of the order.
- (7) A notice required to be displayed by sub-paragraph (2)(c) at the ends of so much of any way as is affected by the order must be accompanied by a plan showing the general effect of the order so far as it relates to that way.
- (8) At any time after the publication of a notice under this paragraph, and before the expiration of the period specified in the notice for the making of representations and objections, any person may require the authority to inform the person what documents (if any) were taken into account in preparing the order; and
  - (a) as respects any such documents in the possession of the authority, to permit the person to inspect them and take copies; and
  - (b) as respects any such documents not in their possession, to give the person any information the authority have as to where the documents can be inspected;
 and the authority must comply with a requirement under this subparagraph within 14 days of the making of the requirement.
- (9) Nothing in sub-paragraph (1)(c) or (8) is to 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 13(1)(a) or (c) or 14(3)(a) or (c) or included in representations made under paragraph 13(1)(b) or 14(3)(b).

#### *Irrelevant representations or objections*

- 6 (1) If representations or objections have been duly made about an order to an authority (and not withdrawn) but the authority consider 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 following provisions of this Schedule apply accordingly).
- (2) 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 11, it would be relevant in determining whether or not to confirm the order (either with or without modifications).
- (3) In deciding whether to exercise their power under sub-paragraph (1), an authority must have regard to any guidance given by the Secretary of State.
- (4) Where the authority decide to exercise that power, the authority must 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) Nothing in this paragraph applies to a modification consent order.

#### *Severance of orders - representations etc relating to only some modifications*

- 7 (1) Where at any time representations or objections duly made and not withdrawn relate to some but not all of the modifications made by an order, the authority may, by notice given to the Secretary of State, elect that, for the purposes of the following provisions of this Schedule, the order is to have effect as two separate orders—
  - (a) the one comprising the modifications to which the representations or objections relate; and
  - (b) the other comprising the remaining modifications.
- (2) Any reference in sub-paragraph (1) 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.
- (3) Nothing in this paragraph applies to a modification consent order.

*Severance of orders - only some representations etc relevant*

- 8 (1) If representations or objections have been duly made about an order to an authority (and not withdrawn) but the authority consider that not all of the representations or objections are relevant, the authority may elect that the order is to have effect as two separate orders—
- (a) the one comprising the modifications to which the relevant representations or objections relate;
  - (b) the other, comprising the remaining modifications, which is to be treated as if no representations or objections had been duly made;
- and the following provisions of this Schedule apply accordingly.
- (2) 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 11, it would be relevant in determining whether or not to confirm the order (either with or without modifications).
- (3) In deciding whether to exercise their power under sub-paragraph (1), an authority must have regard to any guidance given by the Secretary of State.
- (4) Where the authority decide to exercise such a power, the authority must 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) Nothing in this paragraph applies to a modification consent order.

*Confirmation - modification consent orders*

- 9 (1) The authority may (whether or not any representations or objections are made) confirm a modification consent order—
- (a) without modifications; or
  - (b) with modifications, if every owner of the land to which the order relates so consents.
- (2) Nothing in paragraphs 10 to 16 applies to a modification consent order.

*Confirmation - unopposed orders (other than modification consent orders)*

- 10 (1) If no representations or objections are duly made, or if any so made are withdrawn, the authority may—
- (a) confirm the order without modification; or
  - (b) if they require any modification to be made, submit the order to the Secretary of State for confirmation by him or her.
- (2) Where an order is submitted to the Secretary of State under subparagraph (1), the Secretary of State may confirm the order with or without modifications.

*Confirmation - opposed orders (other than modification consent orders)*

- 11 If any representation or objection duly made to an order is not withdrawn the authority must submit the order to the Secretary of State for confirmation by him or her.
- 12 (1) Where an order is submitted by an authority to the Secretary of State 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 is to 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.
- (2) Where notice is given under sub-paragraph (1), paragraph 10 and the following provisions of this Schedule apply as if only the opposed order had been submitted to the Secretary of State for confirmation.
- (3) Any reference in sub-paragraph (1) 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.
- 13 (1) Where an order is submitted to the Secretary of State under paragraph 11, the Secretary of State must, subject to subparagraph (2), either—
- (a) cause a local inquiry to be held;
  - (b) afford any person by whom a representation or objection has been duly made and not withdrawn an opportunity to make representations (or further representations) to a person appointed by the Secretary of State for the purpose; or
  - (c) afford any person by whom a representation or objection has been duly made and not withdrawn an opportunity to be 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 subparagraph (1) if, in the Secretary of State's opinion, no representation or objection 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.
- (3) On considering any representations or objections duly made and the report of any person appointed to hold an inquiry, or appointed as mentioned in sub-paragraph (1)(b) or (c), the Secretary of State may confirm the order with or without modifications.

*Restriction on power to confirm orders with modifications*

14 (1) The Secretary of State must not confirm an order with modifications so as—

- (a) to affect land not affected by the order;
- (b) not to show any way shown in the order or to show any way not so shown; or
- (c) to show as a highway of one description a way which is shown in the order as a highway of another description,

except after complying with the requirements of this paragraph.

- (2) The Secretary of State must give such notice as appears to him or her to be requisite of his or her proposal so to modify the order, specifying the time (which must not be less than 28 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 proposal, which must include particulars of the grounds relied on, may be made.
- (3) If any representation or objection duly made under sub-paragraph (1) is not withdrawn, the Secretary of State must either—
  - (a) cause a local inquiry to be held;
  - (b) afford any person by whom a representation or objection has been duly made and not withdrawn, an opportunity to make representations (or further representations) to a person appointed by the Secretary of State for that purpose; or
  - (c) afford any person by whom a representation or objection has been duly made and not withdrawn, an opportunity to be heard by a person appointed by the Secretary of State for that purpose.
- (4) The Secretary of State must consider the report of any person appointed to hold an inquiry or appointed as mentioned in subparagraph (3)(b) or (c).
- (5) The Secretary of State may, but need not, act as mentioned in subparagraph (3) if, in his or her opinion, no representation or objection 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 in accordance with his or her proposal.
- (6) Sub-paragraph (2) is not to be construed as limiting the grounds which may be relied on at any local inquiry or hearing held under sub-paragraph (3)(a) or (c) or included in representations made under sub-paragraph (3)(b).

*Appointment of inspectors etc*

15 (1) A decision of the Secretary of State under paragraph 10, 13 or 14 must, except in such classes of case as may for the time being be prescribed or as may be specified in directions given by the Secretary of State, be made by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State; and a decision made by a person so appointed is to be treated as a decision of the Secretary of State.

- (2) The Secretary of State may, if he or she thinks fit, direct that a decision which, by virtue of sub-paragraph (1) and apart from this sub-paragraph, falls to be made by a person appointed by the Secretary of State is instead to be made by the Secretary of State; and a direction under this sub-paragraph must state the reasons for which it is given and must be served on the person, if any, so appointed, the authority and any person by whom a representation or objection has been duly made and not withdrawn.
- (3) Where the Secretary of State has appointed a person to make a decision under paragraph 10, 13 or 14 the Secretary of State may, at any time before the making of the decision, appoint another person to make it instead of the person first appointed to make it.
- (4) Where by virtue of sub-paragraph (2) or (3) a particular decision falls to be made by the Secretary of State or any other person instead of the person first appointed to make it, anything done by or in relation to the latter is to be treated as having been done by or in relation to the former.



- (5) Regulations under this paragraph may provide for the giving of publicity to any directions given by the Secretary of State under this paragraph.

#### *Hearings and local inquiries*

- 16 (1) Subject to sub-paragraph (2), subsections (2) to (5) of section 250 of the Local Government Act 1972 (giving of evidence at, and defraying of costs of, inquiries) are to apply in relation to any hearing or local inquiry held under paragraph 13 or 14 as they apply in relation to a local inquiry which a Minister causes to be held under subsection (1) of that section.
- (2) In its application to a hearing or inquiry held under paragraph 13 or 14 by a person appointed under paragraph 15, subsection (5) of that section has effect as if the reference to the Minister causing the inquiry to be held were a reference to the person so appointed or the Secretary of State.
- (3) Section 322A of the Town and Country Planning Act 1990 (orders as to costs where no hearing or inquiry takes place) applies in relation to a hearing or local inquiry under paragraph 13 or 14 as it applies in relation to a hearing or local inquiry for the purposes referred to in that section.

### **PART 3 : ORDERS: GENERAL**

#### *Notice of final decisions on orders*

- 17 (1) As soon as practicable after a decision to confirm an order is made or, in the case of a decision by the Secretary of State, as soon as practicable after receiving notice of the decision, the authority must give notice—
- (a) describing the general effect of the order as confirmed and stating that it has been confirmed (with or without modification) and the date on which it took effect; and
  - (b) naming a place in the area in which the land to which the order relates is situated where a copy of the order as confirmed may be inspected free of charge, and copies may be obtained at a reasonable charge, at all reasonable hours.
- (2) A notice under sub-paragraph (1) must be given—
- (a) by publication in the manner required by paragraph 5(2)(a);
  - (b) by serving a like notice on any persons on whom notices were required to be served under paragraph 5(2)(b) or (4); and
  - (c) by causing like notices to be displayed in the like manner as the notices required to be displayed under paragraph 5(2)(c).
- (3) A notice required to be served by sub-paragraph (2)(b) on the owner or occupier of any land, or on a local authority, must be accompanied by a copy of so much of the order as confirmed as relates to that land or, as the case may be, the area of that authority; and, in the case of an order which has been confirmed with modifications, a notice required to be served by that subparagraph on such other persons as may be prescribed or as the authority may consider appropriate must be accompanied by a copy of the order as confirmed.
- (4) As soon as practicable after a decision not to confirm an order or, in the case of a decision by the Secretary of State, as soon as practicable after receiving notice of his or her decision, the authority must give notice of the decision by serving a copy of it on any persons on whom notices were required to be served under paragraph 5(2)(b) or (4).

#### *Proceedings for questioning validity of orders*

- 18 (1) If any person is aggrieved by an order which has taken effect and desires to question its validity on the ground that it is not within the powers of sections 53, 54, 54B and 54C or that any of the requirements of Schedule 13A or this Schedule have not been complied with in relation to it, the person may within 42 days from the date of publication of the notice under paragraph 17 make an application to the High Court under this paragraph.
- (2) On any such application the High Court may, if satisfied that the order is not within those powers or that the interests of the applicant have been substantially prejudiced by a failure to comply with those requirements, quash the order, or any provision of the order, either generally or in so far as it affects the interests of the applicant.
- (3) Sub-paragraph (4) applies if the application relates to an order of an authority that has been submitted to, and confirmed by, the Secretary of State.
- (4) 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.



- (5) Except as provided by this paragraph, the validity of an order is not to be questioned in any legal proceedings whatsoever.

*Supplemental*

- 19 (1) The Secretary of State may, subject to the provisions of this Schedule, by regulations make such provision as to the procedure on the making, submission and confirmation of orders as appears to him to be expedient.
- (2) In the application of this Schedule to an order that is a modification consent order, any special orders made under section 54B(5) are to be treated as part of the order.
- (3) In this Schedule—  
“council offices” means offices or buildings acquired or provided by the authority or by a local authority;  
“local authority” means a non-metropolitan district council, a parish council or the parish meeting of a parish not having a separate parish council;  
“order” means an order to which the provisions of this Schedule apply;  
“prescribed” means prescribed by regulations made by the Secretary of State.
- (4) Regulations under this Schedule are to be made by statutory instrument and are to be subject to annulment in pursuance of a resolution of either House of Parliament.

Source: DA 2015 Sch 7 para 7.

**Schedule 15: Procedure in connection with certain orders under Part III : Wales**

*Consultation*

1. Before making an order, the authority shall consult with every local authority whose area includes the land to which the order relates.

*Coming into operation*

2. An order shall not take effect until confirmed either by the authority or the Secretary of State under paragraph 6 or by the Secretary of State under paragraph 7.

*Publicity for orders*

3. (1) On making an order, the authority shall give notice in the prescribed form—  
(a) describing the general effect of the order and stating that it has been made and requires confirmation;  
(b) naming a place in the area in which the land to which the order relates is situated where a copy of the order may be inspected free of charge, and copies thereof may be obtained at a reasonable charge, at all reasonable hours; and  
(c) 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 order, which must include particulars of the grounds relied on, may be made.
- (2) Subject to sub-paragraph (4), the notice to be given under sub-paragraph (1) shall be given—  
(a) by publication in at least one local newspaper circulating in the area in which the land to which the order relates is situated;  
(b) by serving a like notice on—  
(i) every owner and occupier of any of that land;  
(ii) every local authority whose area includes any of that land;  
(iii) every person on whom notice is required to be served in pursuance of sub-paragraph (3); and  
(iv) such other persons as may be prescribed in relation to the area in which that land is situated or as the authority may consider appropriate; and  
(c) by causing a copy of the notice to be displayed in a prominent position—  
(i) at the ends of so much of any way as is affected by the order;  
(ii) at council offices in the locality of the land to which the order relates; and  
(iii) at such other places as the authority may consider appropriate.
- (3) 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 orders as are made by the authority during a specified period, are of a specified description and relate to land comprised in a specified area; and in this sub-paragraph 'specified' means specified in the requirement.

- (4) The Secretary of State may, in any particular case, direct that it shall not be necessary to comply with sub-paragraph (2)(b)(i); but if he so directs in the case of any land, then in addition to publication the notice shall be addressed to 'The owners and any occupiers' of the land (describing it) and a copy or copies of the notice shall be affixed to some conspicuous object or objects on the land.
- (5) Sub-paragraph (2)(b) and (c) and, where applicable, sub-paragraph (4) shall be complied with not less than 42 days before the expiration of the time specified in the notice.
- (6) A notice required to be served by sub-paragraph 2(b) on the owner or occupier of any land, or on a local authority, shall be accompanied by a copy of so much of the order as relates to that land or, as the case may be, the area of that authority; and a notice required to be served by that sub-paragraph on such other persons as may be prescribed or as the authority may consider appropriate shall be accompanied by a copy of the order.
- (7) A notice required to be displayed by sub-paragraph (2)(c) at the ends of so much of any way as is affected by the order shall be accompanied by a plan showing the general effect of the order so far as it relates to that way.
- (8) At any time after the publication of a notice under this paragraph and before the expiration of the period specified in the notice for the making of representations and objections, any person may require the authority to inform him what documents (if any) were taken into account in preparing the order and-
  - (a) as respects any such documents in the possession of the authority, to permit him to inspect them and take copies; and
  - (b) as respects any such documents not in their possession, to give him any information the authority have as to where the documents can be inspected;
 and on any requirement being made under this sub-paragraph the authority shall comply therewith within 14 days of the making of the requirement.
- (9) Nothing in sub-paragraph (1)(c) or (8) 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 7 or 8.

*Representations or objections made with respect to abandoned surveys or reviews*

4. (1) This paragraph applies where a survey begun under sections 27 to 32 of the 1949 Act, or a review begun under section 33 of that Act, is abandoned after a draft map and statement have been prepared.
- (2) If an order modifies the definitive map and statement so as-
  - (a) to show any particulars shown in the draft map and statement but not in the definitive map and statement; or
  - (b) to omit any particulars shown in the definitive map and statement but not in the draft map and statement,
 any representation or objection duly made with respect to the showing in or omission from the draft map and statement of those particulars shall be treated for the purposes of paragraphs 6 and 7 as a representation or objection duly made with respect to the corresponding modifications made by the order.

*Severance of orders*

5. (1) Where at any time representations or objections duly made and not withdrawn relate to some but not all of the modifications made by an order, the authority may, by notice given to the Secretary of State, elect that, for the purposes of the following provisions of this Schedule, the order shall have effect as two separate orders-
  - (a) the one comprising the modifications to which the objections or representations relate; and
  - (b) the other comprising the remaining modifications.
- (2) Any reference in sub-paragraph (1) to an order includes a reference to any part of an order which, by virtue or one or more previous elections under that sub-paragraph, has effect as a separate order.

*Unopposed orders*

6. (1) If no representations or objections are duly made, or if any so made are withdrawn, the authority may:
  - (a) confirm the order without modification; or
  - (b) if they require any modification to be made, submit the order to the Secretary of State for confirmation by him.

- (2) Where an order is submitted to the Secretary of State under sub-paragraph (1), the Secretary of State may confirm the order with or without modifications.

*Opposed orders*

7. (1) If any representation or objection duly made is not withdrawn the authority shall submit the order to the Secretary of State for confirmation by him.
- (2) Where an order is submitted to the Secretary of State under sub-paragraph (1), the Secretary of State shall, subject to sub-paragraph (2A), either-
- (a) cause a local inquiry to be held; or
- (b) afford 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.
- (2A) The Secretary of State may, but need not, act as mentioned in sub-paragraph (2)(a) or (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 in determining whether or not to confirm the order, either with or without modifications.
- (3) On considering any representations or objections duly made and the report of any person appointed to hold an inquiry or hear representations or objections, the Secretary of State may confirm the order with or without modifications.

*Restriction on power to confirm orders with modifications*

8. (1) The Secretary of State shall not confirm an order with modifications so as-
- (a) to affect land not affected by the order;
- (b) not to show any way shown in the order or to show any way not so shown; or
- (c) to show as a highway of one description a way which is shown in the order as a highway of another description,
- except after complying with the requirements of sub-paragraph (2).
- (2) The said requirements are that the Secretary of State shall-
- (a) give such notice as appears to him requisite of his proposal so to modify the order, specifying the time (which shall be not less than 28 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 proposal, which must include particulars of the grounds relied on, may be made;
- (b) if any representation or objection duly made is not withdrawn (but subject to sub-paragraph (3)), hold a local inquiry 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 the purpose; and
- (c) consider the report of any person appointed to hold an inquiry or to hear representations or objections.
- (3) The Secretary of State may, but need not, act as mentioned in sub-paragraph (2)(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 in determining whether or not to confirm the order in accordance with his proposal.
- (4) Sub-paragraph (2)(a) shall not be construed as limiting the grounds which may be relied on at any local inquiry or hearing held under this paragraph.

*Appointment of inspectors etc.*

- 10.(1) A decision of the Secretary of State under paragraph 6, 7 or 8 shall, except in such classes of case as may for the time being be prescribed or as may be specified in directions given by the Secretary of State, be made by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State; and a decision made by a person so appointed shall be treated as a decision of the Secretary of State.
- (2) The Secretary of State may, if he thinks fit, direct that a decision which, by virtue of sub-paragraph (1) and apart from this sub-paragraph, falls to be made by a person appointed by the Secretary of State shall instead be made by the Secretary of State; and a direction under this sub-paragraph shall state the reasons for which it is given and shall be served on the person, if any, so appointed, the authority and any person by whom a representation or objection has been duly made and not withdrawn.
- (3) Where the Secretary of State has appointed a person to make a decision under paragraph 6, 7 or 8, the Secretary of State may, at any time before the making of the decision, appoint another person to make it instead of the person first appointed to make it.

- (4) Where by virtue of sub-paragraph (2) or (3) a particular decision falls to be made by the Secretary of State or any other person instead of the person first appointed to make it, anything done by or in relation to the latter shall be treated as having been done by or in relation to the former.
- (5) Regulations under this paragraph may provide for the giving of publicity to any directions given by the Secretary of State under this paragraph.

#### *Hearings and local inquiries*

- 10A.(1) Subject to sub-paragraph (2), subsections (2) to (5) of section 250 of the Local Government Act 1972 (giving of evidence at, and defraying of costs of, inquiries) shall apply in relation to any hearing or local inquiry held under paragraph 7 or 8 as they apply in relation to a local inquiry which a Minister causes to be held under subsection (1) of that section.
- (2) In its application to a hearing or inquiry held under paragraph 7 or 8 by a person appointed under paragraph 10(1), subsection (5) of that section shall have effect as if the reference to the Minister causing the inquiry to be held were a reference to the person so appointed or the Secretary of State.
- (3) Section 322A of the Town and Country Planning Act 1990 (orders as to costs where no hearing or inquiry takes place) shall apply in relation to a hearing or local inquiry under paragraph 7 or 8 as it applies in relation to a hearing or local inquiry for the purposes referred to in that section.

#### *Notice of final decisions on orders*

- 11.(1) As soon as practicable after a decision to confirm an order is made or, in the case of a decision by the Secretary of State, as soon as practicable after receiving notice of his decision, the authority shall give notice-
  - (a) describing the general effect of the order as confirmed and stating that it has been confirmed (with or without modification) and the date on which it took effect; and
  - (b) naming a place in the area in which the land to which the order relates is situated where a copy of the order as confirmed may be inspected free of charge, and copies thereof may be obtained at a reasonable charge, at all reasonable hours.
- (2) A notice under sub-paragraph (1) shall be given-
  - (a) by publication in the manner required by paragraph 3(2)(a);
  - (b) by serving a like notice on all persons on whom notices were required to be served under paragraph 3(2)(b) or (4); and
  - (c) by causing like notices to be displayed in the like manner as the notices required to be displayed under paragraph 3(2)(c).
- (3) A notice required to be served by sub-paragraph (2)(b) on the owner or occupier of any land, or on a local authority, shall be accompanied by a copy of so much of the order as confirmed as relates to that land or, as the case may be, the area of that authority; and, in the case of an order which has been confirmed with modifications, a notice required to be served by that sub-paragraph on such other persons as may be prescribed or as the authority may consider appropriate shall be accompanied by a copy of the order as confirmed.
- (4) As soon as practicable after a decision not to confirm an order or, in the case of a decision by the Secretary of State, as soon as practicable after receiving notice of his decision, the authority shall give notice of the decision by serving a copy of it on any persons on whom notices were required to be served under paragraph 3(2)(b) or (4).

#### *Proceedings for questioning validity of orders*

- 12.(1) If any person is aggrieved by an order which has taken effect and desires to question its validity on the ground that it is not within the powers of section 53 or 54 or that any of the requirements of this Schedule have not been complied with in relation to it, he may within 42 days from the date of publication of the notice under paragraph 11 make an application to the High Court under this paragraph whom notices were required to be served under paragraph 3(2)(b) or (4).
- (2) On any such application the High Court may, if satisfied that the order is not within those powers or that the interests of the applicant have been substantially prejudiced by a failure to comply with those requirements, quash the order, or any provision of the order, either generally or in so far as it affects the interests of the applicant.
- (3) Except as provided by this paragraph, the validity of any order shall not be questioned in any legal proceedings whatsoever.

*Supplemental*

- 13.(1) The Secretary of State may, subject to the provisions of this Schedule, by regulations make such provision as to the procedure on the making, submission and confirmation of orders as appears to him to be expedient.
- (2) In this Schedule-
- 'council offices' means offices or buildings acquired or provided by the authority or a local authority;
  - 'local authority' (...) means a community council;
  - 'order' means an order to which the provisions of this Schedule apply;
  - 'prescribed' means prescribed by regulations made by the Secretary of State.
- (3) Regulations under this Schedule shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Source: DA 2015 Sch 7 para 12.

## COUNTRYSIDE AND RIGHTS OF WAY ACT 2000 (c. 37)

### 53. Extinguishment of unrecorded rights of way.

- (1) Subsection (2) applies to a highway if:
  - (a) it was on 1st January 1949 a footpath or a bridleway, is on the cut-off date (in either case) a footpath or a bridleway, and between those dates has not been a highway of any other description,
  - (b) it is not on the cut-off date shown in a definitive map and statement as a highway of any description, and
  - (c) it is not on the cut-off date an excepted highway, as defined by section 54(1).
- (2) All public rights of way over a highway to which this subsection applies shall be extinguished immediately after the cut-off date.
- (3) Where a public right of way created before 1949-
  - (a) falls within subsection (4) on the cut-off date, and
  - (b) is not on that date an excepted right of way, as defined by section 54(5),that right of way shall be extinguished immediately after the cut-off date.
- (4) A public right of way falls within this subsection if it is-
  - (a) a public right of way on horseback, leading a horse or for vehicles over a bridleway, restricted byway or byway open to all traffic which is shown in a definitive map and statement as a footpath;
  - (b) a right for the public to drive animals of any description along a bridleway, restricted byway or byway open to all traffic which is shown in a definitive map and statement as a footpath;
  - (c) a public right of way for vehicles over a restricted byway or byway open to all traffic which is shown in a definitive map and statement as a bridleway; or
  - (d) a public right of way for mechanically propelled vehicles over a byway open to all traffic which is shown in a definitive map and statement as a restricted byway.
- (5) Where by virtue of subsection (3) a highway ceases to be a bridleway, the right of way created over it by section 30 of the Countryside Act 1968 (riding of pedal cycles on bridleways) is also extinguished.
- (6) In determining -
  - (a) for the purposes of subsection (1) whether any part of a highway was on 1st January 1949 a footpath or bridleway, or
  - (b) for the purposes of subsection (3) whether a public right of way over any part of a highway was created before 1st January 1949,any diversion, widening or extension of the highway on or after that date (and not later than the cut-off date) is to be treated as having occurred before 1st January 1949.
- (7) Where a way shown on the cut-off date in a definitive map and statement has at any time been diverted, widened or extended, it is to be treated for the purposes of subsections (1) to (5) as shown as so diverted, widened or extended, whether or not it is so shown.
- (8) In this section-

"cut-off date" has the meaning given in section 56, and

"mechanically propelled vehicle" does not include a vehicle falling within paragraph (c) of section 189(1) of the Road Traffic Act 1988.

Source: CRWA provision not yet commenced

### 54. Excepted highways and rights of way.

- (1) A footpath or bridleway is an excepted highway for the purposes of section 53(1) if-
  - (a) it is a footpath or bridleway which satisfies either of the conditions in subsections (2) and (3),
  - (b) it is, or is part of, a footpath or bridleway any part of which is in an area which, immediately before 1st April 1965, formed part of the administrative county of London,
  - (c) it is a footpath or bridleway-
    - (i) at the side of (whether or not contiguous with) a carriageway constituting or comprised in another highway, or
    - (ii) between two carriageways comprised in the same highway (whether or not the footpath or bridleway is contiguous with either carriageway),

- (d) it is a footpath or bridleway of such other description as may be specified in regulations made (as respects England) by the Secretary of State or (as respects Wales) by the National Assembly for Wales, or
- (e) it is a footpath or bridleway so specified.
- (2) A footpath or bridleway ("the relevant highway") satisfies the first condition if-
  - (a) it became a footpath or bridleway on or after 1st January 1949 by the diversion, widening or extension of a footpath or, as the case may be, of a bridleway by virtue of an event within section 53(3)(a) of the 1981 Act,
  - (b) it became a footpath on or after 1st January 1949 by the stopping up of a bridleway,
  - (c) it was on 1st January 1949 a footpath and is on the cut-off date a bridleway,
  - (d) it is so much of a footpath or bridleway as on or after 1st January 1949 has been stopped up as respects part only of its width, or
  - (e) it is so much of a footpath or bridleway as passes over a bridge or through a tunnel, and it communicates with a retained highway, either directly or by means of one or more footpaths or bridleways each of which forms part of the same highway as the relevant highway and each of which either falls within any of paragraphs (a) to (e) or satisfies the condition in subsection (3).
- (3) A footpath or bridleway satisfies the second condition if-
  - (a) it extends from a footpath or bridleway ("the relevant highway") which-
    - (i) falls within any of paragraphs (a) to (e) of subsection (2), or
    - (ii) is an excepted highway by virtue of subsection (1)(c), to, but not beyond, a retained highway, and
  - (b) it forms part of the same highway as the relevant highway.
- (4) A retained highway for the purposes of subsections (2) and (3) is any highway over which, otherwise than by virtue of subsection (1)(a), section 53(2) does not extinguish rights of way.
- (5) A public right of way is an excepted right of way for the purposes of section 53(3) if-
  - (a) it subsists over land over which there subsists on the cut-off date any public right of way created on or after 1st January 1949 otherwise than by virtue of section 30 of the Countryside Act 1968 (riding of pedal cycles on bridleways),
  - (b) it subsists over the whole or part of a way any part of which is in an area which, immediately before 1st April 1965, formed part of the administrative county of London,
  - (c) it is a public right of way of such other description as may be specified in regulations made (as respects England) by the Secretary of State or (as respects Wales) by the National Assembly for Wales, or
  - (d) it subsists over land so specified.
- (6) Regulations under subsection (1)(d) or (e) or (5)(c) or (d) shall be made by statutory instrument, and a statutory instrument containing such regulations made by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Source: CRWA provision not yet commenced

## **55. Bridleway rights over ways shown as bridleways.**

- (1) Subject to subsections (2) and (3), the public shall, as from the day after the cut-off date, have a right of way on horseback or leading a horse over any way which-
  - (a) was immediately before 1st January 1949 either a footpath or a bridleway, and
  - (b) is, throughout the period beginning with the commencement of this section and ending with the cut-off date, a footpath which is shown in a definitive map and statement as a bridleway.
- (2) Subsection (1) has effect subject to the operation of any enactment or instrument (whether coming into operation before or after the cut-off date), and to the effect of any event otherwise within section 53(3)(a) of the 1981 Act, whereby a highway is authorised to be stopped up, diverted, widened or extended; and subsection (1) applies accordingly to any way as so diverted, widened or extended.
- (3) Subsection (1) does not apply in relation to any way which is, or is part of, a footpath any part of which is in an area which, immediately before 1st April 1965, formed part of the administrative county of London.



- (4) Any right of way over a way by virtue of subsection (1) is subject to any condition or limitation to which the public right of way on foot over that way was subject on the cut-off date.
- (5) Where-
- (a) by virtue of regulations under section 56(2) an order under Part III of the 1981 Act takes effect after the cut-off date in relation to any footpath which, at the cut-off date was shown in a definitive map and statement as a bridleway,
  - (b) the regulations do not prevent subsection (1) from having effect after the cut-off date in relation to that footpath, and
  - (c) if the order had taken effect before that date, that footpath would not have fallen within subsection (1),
- all rights over that way which exist only by virtue of subsection (1) shall be extinguished when the order takes effect.
- (6) In this section "cut-off date" has the meaning given in section 56.

Source: CRWA provision not yet commenced

### **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, "cut-off date" has the meaning given in section 56.

Source: DA 2015 s 20

### **56. Cut-off date for extinguishment etc.**

- (1) The cut-off date for the purposes of sections 53, 55, 55A, 56A and 56B is, subject to regulations under subsection (2), 1st January 2026.
- (2) The Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales) may make regulations-
- (a) substituting as the cut-off date for the purposes of those sections a date later than the date specified in subsection (1) or for the time being substituted under this paragraph;
  - (b) containing such transitional provisions or savings as appear to the Secretary of State or the National Assembly for Wales (as the case may be) to be necessary or expedient in connection with the operation of those sections, including in particular their operation in relation to any way as respects which-
    - (i) on the cut-off date an application for an order under section 53(2) of the 1981 Act is pending,
    - (ii) on that date an order under Part III of that Act has been made but not confirmed, or
    - (iii) after that date such an order or any provision of such an order is to any extent quashed.
- (3) Regulations under subsection (2)(a)-
- (a) may specify different dates for different areas; but
  - (b) may not specify a date later than 1st January 2031, except as respects an area within subsection (4).
- (4) An area is within this subsection if it is in-
- (a) the Isles of Scilly, or
  - (b) an area which, at any time before the repeal by section 73 of the 1981 Act of sections 27 to 34 of the National Parks and Access to the Countryside Act 1949-
    - (i) was excluded from the operation of those sections by virtue of any provision of the 1949 Act, or
    - (ii) would have been so excluded but for a resolution having effect under section 35(2) of that Act.

- (5) Where by virtue of regulations under subsection (2) there are different cut-off dates for areas into which different parts of any highway extend, the cut-off date in relation to that highway is the later or latest of those dates.
- (6) Regulations under this section shall be made by statutory instrument, and a statutory instrument containing such regulations made by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Sources: CRWA provision not yet commenced and DA 2015 s 22(2).

### **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 14A 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 otherwise apply in relation to a designated right of way does not so apply, or so applies 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—

“cut-off date” has the meaning given in section 56;

“enactment” means a provision of an Act or of subordinate legislation (within the meaning of the Interpretation Act 1978).

Source: DA 2015 s 21.

### **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.

Source: DA 2015 s 22(1).

# NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006 (c. 16)

## **66. Restriction on creation of new public rights of way**

- (1) No public right of way for mechanically propelled vehicles is created after commencement unless it is-
  - (a) created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for such vehicles, or
  - (b) created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.
- (2) For the purposes of the creation after commencement of any other public right of way, use (whenever occurring) of a way by mechanically propelled vehicles is to be disregarded.

## **67. Ending of certain existing unrecorded public rights of way**

- (1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement-
  - (a) was not shown in a definitive map and statement, or
  - (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted bywayBut this is subject to subsections (2) to (8).
- (2) Subsection (1) does not apply to an existing public right of way if-
  - (a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,
  - (b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense),
  - (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,
  - (d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or
  - (e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.
- (3) Subsection (1) does not apply to an existing public right of way over a way if-
  - (a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,
  - (b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or
  - (c) before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles-
    - (i) was reasonably necessary to enable that person to obtain access to the land, or
    - (ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.
- (4) 'The relevant date' means-
  - (a) in relation to England, 20th January 2005;
  - (b) in relation to Wales, 19th May 2005.
- (5) Where, immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies-
  - (a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or
  - (b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only,the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.

- (6) For the purposes of subsection (3), an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act.
- (7) For the purposes of subsections (3)(c)(i) and (5)(a), it is irrelevant whether the person was, immediately before commencement, in fact-
  - (a) exercising the existing public right of way, or
  - (b) able to exercise it.
- (8) Nothing in this section applies in relation to an area in London to which Part 3 of the Wildlife and Countryside Act 1981 (c. 69) does not apply.
- (9) Any provision made by virtue of section 48(9) of the Countryside and Rights of Way Act 2000 (c.37) has effect subject to this section.

## **71. Interpretation**

- (1) In sections 66 and 67-
  - 'interest', in relation to land, includes any estate in land and any right over land (whether exercisable by virtue of the ownership of an estate or interest in the land or by virtue of a licence or agreement) and, in particular, includes rights of common and sporting rights,
  - 'mechanically propelled vehicle' does not include a vehicle falling within section 189(1)(c) of the Road Traffic Act 1988 (electrically assisted pedal cycle), and
  - expressions defined for the purposes of Part 3 of the Wildlife and Countryside Act 1981 (c. 69) by section 66(1) of that Act have the same meaning as in that Part.
- (2) In each of sections 66 and 67 'commencement' means the commencement of that section; and in section 67 'existing' means in existence immediately before commencement.

# DEREGULATION ACT 2015

## 26. Public rights of way: procedure

- (1) Schedule 7 makes changes to the law about the ascertainment of public rights of way in England and the making and confirmation of orders relating to such rights.
- (2) Part 1 of the Schedule amends Part 3 of the Wildlife and Countryside Act 1981 (“the 1981 Act”) so as to—
  - (a) alter the test that applies where a local authority is deciding whether to modify a definitive map and statement on the basis of evidence relating to the existence of a right of way not currently shown on the map;
  - (b) enable regulations to be made to simplify the procedure that applies where a modification of a definitive map and statement is needed because of an administrative error;
  - (c) enable regulations to be made so that applications made to a local authority seeking a modification of a definitive map and statement do not need to be included in the register of applications unless the authority have given notice that there is a reasonable basis for the applicant’s belief that the map should be modified;
  - (d) facilitate the making of modifications of a definitive map and statement by consent in cases based on documentary evidence of the existence of a right of way before 1949.
- (3) Part 2 of the Schedule inserts a new Schedule 13A in Part 3 of the 1981 Act, which sets out an amended procedure that applies in relation to the making and determination of applications to a local authority in England for a modification of a definitive map and statement.
- (4) Part 3 of the Schedule inserts a new Schedule 14A in Part 3 of the 1981 Act, which sets out an amended procedure that applies in relation to the making and confirmation of orders making modifications of a definitive map and statement.
- (5) Part 4 of the Schedule amends Schedule 6 to the Highways Act 1980 so as to make changes to the procedure for the making and confirmation of public path creation orders and certain other orders relating to public paths in England.
- (6) Part 5 of the Schedule makes amendments that are consequential on the other Parts.
- (7) The Secretary of State may by regulations make provision for an amendment made by paragraph 5 of Part 1 or by Part 2 or 3 of Schedule 7 to apply, in relation to applications for an order under section 53(2) of the 1981 Act that are made before the amendment comes into force, with modifications specified in the regulations.
- (8) Regulations under subsection (7) may make different provision for different purposes.
- (9) Regulations under subsection (7) must be made by statutory instrument.
- (10) A statutory instrument containing regulations under subsection (7) is subject to annulment in pursuance of a resolution of either House of Parliament.

**Note:** the amendments made by Schedule 7 have been included in the amended Acts. This section is included here because of the provisions of subsections (7) to (10).