

# Deregulation Act 2015

## CHAPTER 20

### 'USE OF LAND' CONTENTS ONLY

#### *Use of land*

- 20 Recorded rights of way: additional protection
- 21 Unrecorded rights of way: protection from extinguishment
- 22 Conversion of public rights of way to private rights of way
- 23 Applications by owners etc for public path orders
- 24 Extension of powers to authorise erection of gates at owner's request 25
- Applications for certain orders under Highways Act 1980: cost recovery 26
- Public rights of way: procedure

# Deregulation Act 2015

## 2015 CHAPTER 20

An Act to make provision for the reduction of burdens resulting from legislation for businesses or other organisations or for individuals; make provision for the repeal of legislation which no longer has practical use; make provision about the exercise of regulatory functions; and for connected purposes. [26th March 2015]

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Use of land*

#### **20 Recorded rights of way: additional protection**

In the Countryside and Rights of Way Act 2000, after section 55 (bridleway rights over ways shown as bridleways) insert—

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

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

#### **21 Unrecorded rights of way: protection from extinguishment**

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

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

- (1) The provision that may be made by regulations under section 56(2) by the Secretary of State includes—

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

## **22 Conversion of public rights of way to private rights of way**

- (1) In the Countryside and Rights of Way Act 2000, after section 56A (as inserted by section 21) insert—

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

- (1) This section applies where—
- (a) a public right of way over land in England would be extinguished under section 53 immediately after the cut-off date, and
  - (b) on the cut-off date, the exercise of the right of way—
    - (i) is reasonably necessary to enable a person with an interest in land to obtain access to it, or
    - (ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if the person had an interest in that part only.
- (2) The public right of way becomes, immediately after the cut-off date, a private right of way of the same description for the benefit of the land or (as the case may be) the part of the land.
- (3) For the purposes of subsection (1)(b), it is irrelevant whether the person is, on the cut-off date, in fact—
- (a) exercising the existing public right of way, or
  - (b) able to exercise it.
- (4) In this section, “cut-off date” has the meaning given in section 56.”
- (2) In consequence of the amendments made by sections 20 and 21 and this section, in section 56 of the 2000 Act, in subsection (1), for “sections 53 and 55” substitute “sections 53, 55, 55A, 56A and 56B”.

## **23 Applications by owners etc for public path orders**

- (1) The Highways Act 1980 is amended as follows.
- (2) In section 118ZA(1) (which makes provision for owners, lessees or occupiers of certain land to be able to apply for a public path extinguishment order), after “horses” insert “, or of any land in England of a prescribed description,”.
- (3) In section 119ZA(1) (which makes provision for owners, lessees or occupiers of certain land to be able to apply for a public path diversion order), after “horses” insert “, or of any land in England of a prescribed description,”.
- (4) In section 121E(1) (which specifies the duties of the Secretary of State on certain appeals relating to the extinguishment or diversion of public paths), after “section 121D(1)(a) above,” insert “in relation to an application made under section 118C or 119C above or an application made under section 118ZA or 119ZA above to a council in Wales,”.

- (5) After section 121E(1) insert –
- “(1A) Where an appeal to the Secretary of State is brought under section 121D(1)(a) above, in relation to an application made under section 118ZA or 119ZA above to a council in England, the Secretary of State shall either –
- (a) determine not to make an order on the application, or
  - (b) take the steps mentioned in subsection (1)(a) to (c).
- (1B) Where the Secretary of State determines under subsection (1A)(a) not to make an order, the Secretary of State shall inform the applicant of the decision and the reasons for it.”
- (6) In Schedule 6, in paragraph 2A(1)(b), after “section 121E(1)(c)” insert “or (1A)(a)”.

## **24 Extension of powers to authorise erection of gates at owner’s request**

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

- (a) in subsection (1), after “restricted byway” (in the first place it occurs) insert “or across a byway open to all traffic in England”;
- (b) in that subsection, for “or restricted byway” (in the second place it occurs) substitute “, restricted byway or byway open to all traffic”;
- (c) in subsection (2)(b), after “restricted byway” insert “or in the case of a byway open to all traffic”;
- (d) after subsection (5) insert –
  - “(6) In this section, “byway open to all traffic” has the same meaning as in Part 3 of the Wildlife and Countryside Act 1981 (see section 66(1) of that Act).”;
- (e) in the heading to the section, for “restricted byways” substitute “byways”.

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

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

## **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.

*General*

**112 Consequential amendments, repeals and revocations**

- (1) The Secretary of State may by order made by statutory instrument make such provision as the Secretary of State considers appropriate in consequence of this Act.
- (2) An order under subsection (1) –
  - (a) may include transitional, transitory or saving provision;
  - (b) may repeal, revoke or otherwise amend or modify any provision of primary or subordinate legislation (including legislation passed or made in the same Session as this Act).
- (3) A statutory instrument containing (whether alone or with other provision) an order under this section which repeals, revokes or otherwise amends or modifies any provision of primary legislation is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument containing an order under this section which does not repeal, revoke or otherwise amend or modify any provision of primary legislation is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section –
  - “primary legislation” means –
    - (a) an Act;
    - (b) an Act of the Scottish Parliament;
    - (c) a Measure or Act of the National Assembly for Wales;
    - (d) Northern Ireland legislation;
  - “subordinate legislation” means –
    - (a) subordinate legislation within the meaning of the Interpretation Act 1978;
    - (b) an instrument made under an Act of the Scottish Parliament;
    - (c) an instrument made under a Measure or Act of the National Assembly for Wales;
    - (d) an instrument made under Northern Ireland legislation.

**113 Financial provision**

There is to be paid out of money provided by Parliament any increase attributable to this Act in the sums payable under any other Act out of money so provided.

**114 Extent**

- (1) Except as provided by subsections (2) and (3), a repeal, revocation or other amendment or modification made by this Act has the same extent as the provision repealed, revoked or otherwise amended or modified.
- (2) Paragraphs 4, 31(b) and (c), 32(2), 32(3) so far as relating to paragraphs 9 and 68 of Schedule 13 to the Merchant Shipping Act 1995, 32(4) and (5) and 39 of Schedule 23 extend only to England and Wales and Northern Ireland.

- (3) Section 15, Parts 4 and 5 of Schedule 13 and paragraphs 5, 35, 36, 41, 42 and 45 of Schedule 23 extend only to England and Wales.
- (4) Sections 4, 5, 26(7) to (10), 33, 34, 41, 45, 64(1) and (2) and 75(6) to (9) extend only to England and Wales.
- (5) Section 75(10) to (13) extends only to Scotland.
- (6) Sections 77, 78, 85, 104, 105 and 108 to 113, this section and sections 115 and 116 extend to England and Wales, Scotland and Northern Ireland.
- (7) Her Majesty may by Order in Council provide for any of the provisions of section 78 to extend, with or without modifications, to any of the Channel Islands or the Isle of Man.

## **115 Commencement**

- (1) The following provisions come into force on the day on which this Act is passed—
  - (a) sections 30 to 32;
  - (b) section 42;
  - (c) sections 46 and 47;
  - (d) section 85;
  - (e) sections 109, 110(1), (2) and (4) to (8) and 111;
  - (f) sections 112 to 114, this section and section 116.
- (2) The following provisions also come into force on the day on which this Act is passed but only so far as is necessary for enabling the exercise on or after that day of any power to make provision by an order or regulations made by statutory instrument—
  - (a) section 1;
  - (b) section 53;
  - (c) section 58 and Schedule 12;
  - (d) sections 62 and 63;
  - (e) Parts 1 and 4 of Schedule 1, Schedules 2, 4 and 8, Parts 2 and 6 of Schedule 10 and Schedule 21 (and the sections to which those Schedules relate).
- (3) The following provisions come into force at the end of the period of 2 months beginning with the day on which this Act is passed—
  - (a) section 13 and Schedule 4 (so far as not already in force by virtue of subsection (2));
  - (b) section 16;
  - (c) section 27 to 29;
  - (d) section 50 and Schedule 9;
  - (e) sections 54 to 57;
  - (f) sections 60 and 61;
  - (g) section 64 and Schedule 14;
  - (h) section 65 and Schedule 15;
  - (i) section 79;
  - (j) sections 83 and 84;
  - (k) section 97 to 102;
  - (l) section 103 and Schedule 22;
  - (m) sections 104 to 106;
  - (n) in Schedule 6, paragraph 5 and Parts 7 and 8;
  - (o) in Schedule 10, Parts 1, 4 and 5;

- (p) in Schedule 11, Part 2;
  - (q) in Schedule 13, Parts 1, 2 and 4;
  - (r) Schedule 23 other than paragraphs 35, 36 and 41 of that Schedule.
- (4) Part 3 of Schedule 1 and, as respects Wales, paragraphs 35, 36 and 41 of Schedule 23 come into force on such day as the Welsh Ministers may by order made by statutory instrument appoint.
  - (5) Where a provision of a Schedule comes into force in accordance with subsection (3)(n) to (r) or (4), the section to which that Schedule relates comes into force (so far as relating to that provision) at the same time.
  - (6) The following provisions come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint –
    - (a) sections 86 and 87;
    - (b) section 88 and Schedule 19;
    - (c) section 89 and Schedule 20.
  - (7) Except as provided by subsections (1) to (6), the provisions of this Act come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
  - (8) The Welsh Ministers may by order made by statutory instrument make such transitional, transitory or saving provision as they consider appropriate in connection with the coming into force of Part 3 of Schedule 1 or, as respects Wales, paragraphs 35, 36 and 41 of Schedule 23.
  - (9) The Secretary of State may by order made by statutory instrument make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act (other than transitional, transitory or saving provision that the Welsh Ministers have power to make under subsection (8)).
  - (10) The Lord Chancellor may by order made by statutory instrument make such transitional, transitory or saving provision as the Lord Chancellor considers appropriate in connection with the coming into force of sections 86 to 89 and Schedules 19 and 20.
  - (11) Any power to make an order under subsections (4) and (6) to (10) includes power to make different provision for different purposes.

**116 Short title** This Act may be cited as the Deregulation Act 2015.

## SCHEDULE 7

Section 26

### ASCERTAINMENT OF RIGHTS OF WAY

#### PART 1

#### WILDLIFE AND COUNTRYSIDE ACT 1981

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

and statement is reasonably alleged to subsist over land in the area to which the map relates, being such a right of way as is mentioned in sub-paragraph (i);”.

3 After that section insert –

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

- (1) The Secretary of State may by regulations provide for Schedules 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.”

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

- “(4A) Regulations may provide that subsection (1) does not apply, with respect to applications under section 53(5) made to an authority in England, or to any prescribed description of such applications, unless the authority serve notice under paragraph 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           After section 54A insert –

**“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.

**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.”

## PART 2

### NEW SCHEDULE 13A TO THE 1981 ACT

6 After Schedule 13 to the Wildlife and Countryside Act 1981 insert –

#### “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 sub-paragraph (2) if the authority are of the opinion that nothing in the grounds of appeal relates to an issue which, if the matter were submitted to the Secretary of State, would be relevant to the Secretary of State's decision on the appeal.
- (4) In deciding whether to exercise their power under sub-paragraph (3) not to submit the matter, the authority 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 sub-paragraph (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, sub-paragraph (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 sub-paragraph 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 sub-paragraph (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 sub-paragraph (6)(b) or (c).
- (8) The Secretary of State may, but need not, act as mentioned in sub-paragraph (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.”

PART 3

NEW SCHEDULE 14A TO THE 1981 ACT

- 7 After Schedule 14 to the Wildlife and Countryside Act 1981 insert the following Schedule –

“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 sub-paragraph (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; and
  - (c) 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, sub-paragraph (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 sub-paragraph 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 sub-paragraph (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 sub-paragraph (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 sub-paragraph (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 (2) 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 sub-paragraph (3)(b) or (c).
- (5) The Secretary of State may, but need not, act as mentioned in sub-paragraph (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 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 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 or her 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.”

PART 4

HIGHWAYS ACT 1980

- 8 (1) Schedule 6 to the Highways Act 1980 (procedure applicable to the making etc of certain orders under the Act relating to footpaths, bridleways and restricted byways) is amended as follows.
- (2) In paragraph 1 (publicity for orders)—
- (a) in sub-paragraph (3), in paragraph (a), for the words from “in at least one local newspaper” to the end of the paragraph substitute “(within the meaning of sub-paragraph (3ZA))”;
- (b) after sub-paragraph (3) insert—
- “(3ZA) In sub-paragraph (3)(a), “publication” means—
- (a) in relation to England, publication on a website maintained by the authority and on such other websites or through the use of such other digital communications media as the authority may consider appropriate;
- (b) in relation to Wales, publication in at least one local newspaper circulating in the area in which the land to which the order relates is situated.”

(3) In paragraph 2 (opposed and unopposed orders), after sub-paragraph (2) insert –

“(2ZA) If representations or objections have been duly made to an authority in England other than the Secretary of State (and not withdrawn), but the authority consider that none of the representations or objections are relevant, the authority may proceed under this Schedule as if no representations or objections had been duly made (and the provisions of this Schedule apply accordingly).

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

- (a) the one comprising the 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.”

(4) In that paragraph, after sub-paragraph (3) insert –

“(4) The Secretary of State may, but need not, act as mentioned in sub-paragraph (2)(a) or (b) or (3)(b) in relation to an order relating to England if, in his opinion, no 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 that paragraph, after sub-paragraph (4) (as inserted by sub-paragraph (4) of this paragraph) insert –

“(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 or her 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).”

(6) After paragraph 2 insert –

“2ZZA(1)Where at any time representations or objections duly made to an authority in England (and not withdrawn) relate to only parts of an order, the authority may elect that for the purposes of paragraph 2 and the following provisions of this Schedule, the order shall have effect as two separate orders –

- (a) the one comprising the parts to which the representations or objections relate; and
- (b) the other comprising the remaining parts.

(2) Where the authority is not the Secretary of State, an election for the purposes of sub-paragraph (1) shall be given by notice to the Secretary of State.

(3) Where an order made by an authority in England (other than the Secretary of State) is submitted to the Secretary of State, and any representations or objections duly made (and not withdrawn) relate to only parts of the order, the Secretary of State may, by notice given to the authority, elect that it shall have effect as two separate orders –

- (a) the one comprising the parts to which the representations or objections relate (“the opposed order”); and
- (b) the other comprising the remaining parts.

(4) Where notice is given under sub-paragraph (3), paragraph 2 and the following provisions of this Schedule apply as if only the opposed order had been submitted to the Secretary of State for confirmation.

(5) Any reference in sub-paragraph (1) or (3) to an order includes a reference to any part of an order which, by virtue of one or more previous elections under that sub-paragraph, has effect as a separate order.”

(7) In paragraph 4A (publication of orders) –

- (a) the existing text becomes sub-paragraph (1);
- (b) in that sub-paragraph, for the words from “in at least one local newspaper” to the end of the sub-paragraph substitute “(within the meaning of sub-paragraph (2))”;
- (c) after that sub-paragraph insert –

“(2) In sub-paragraph (1), “publication” means –

- (a) in relation to England, publication on a website maintained by the authority and on such other websites or through the use of such other digital communications media as the authority may consider appropriate;