

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 21: Unrecorded rights of way: protection from extinguishment

120. The background to this section, as with section 20, is that section 53 of the Countryside and Rights of Way Act 2000 (“the 2000 Act”) provides for the extinguishment, immediately after 1 January 2026 (the “cut-off date”), of unrecorded rights of way created before 1949, subject to certain exceptions.
121. It is thought that, in the period immediately before the cut-off date, there will be a large volume of applications to surveying authorities for modifications to be made to the definitive map and statement to show rights of way that are currently unrecorded. This is because individuals and groups in the voluntary sector are likely to carry out research so that they can make applications to have unrecorded rights of way shown on a definitive map and statement (with the result that they will not be automatically extinguished after that date). There is concern that surveying authorities will also carry out research into unrecorded rights of way during this period in order to comply with the requirement that they keep under review definitive maps and statements. This could lead to surveying authorities unnecessarily duplicating the work of individuals and the voluntary sector.
122. The section therefore inserts a new section 56A in the 2000 Act. It enables the Secretary of State to make regulations enabling a surveying authority to designate, during a period of one year after the cut-off date, public rights of way extinguished immediately after that date under section 53 of that Act. The new section 56A also sets out what else may be included in the regulations. It is envisaged that the power to make regulations will be used to provide for designated rights to cease to be regarded as extinguished as from the time of designation. Where a right is designated, surveying authorities will be required to decide whether to modify the definitive map and statement to show the right of way. If a right of way is then shown on the map, it will remain unextinguished. If the authority decides not to show the right of way, it will normally be extinguished again.
123. The purpose of the new provision is to enable surveying authorities to wait until after the cut-off date to assess what research has been carried out by individuals and voluntary organisations. There will be a one-year period after that date within which they can act under the regulations to prevent rights of way being permanently extinguished. They will therefore be able to avoid duplicating any work done by individuals and voluntary organisations and focus, during the one-year period following the cut-off date, on areas where research has not been carried out by individuals and voluntary organisations.