

*These notes refer to the Deregulation Act 2015 (c.20)
which received Royal Assent on 26 March 2015*

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 23: Applications by owners etc for public path orders

128. The background to this section is that, under section 118ZA of the Highways Act 1980, owners, lessees and occupiers of land used for agriculture, forestry or the breeding or keeping of horses may apply to a local authority for an order (“a public path extinguishment order”) which extinguishes a public right of way over a footpath or bridleway crossing the land. Section 119ZA of that Act confers a comparable right to apply for an order to divert such a right of way (“a public path diversion order”).
129. Under the current law, applications for a public path extinguishment order or a public path diversion order cannot be made in relation to other land, even where there would be good reasons for making such an order. *Subsections (2) and (3)* of the section therefore amend, respectively, sections 118ZA(1) and 119ZA(1) of that Act to allow the Secretary of State to prescribe in regulations other kinds of land in England in respect of which such applications may be made.
130. A further difficulty with the current law relates to the procedure that the Secretary of State must follow in determining appeals against a refusal by an authority to make an order on an application under section 118ZA or 119ZA. It is considered that the procedure is insufficiently flexible and disproportionately burdensome in relation to certain cases. For example, regardless of the merits of the appeal, the Secretary of State is required to prepare a draft of an order giving effect to the application (section 121E(1)). *Subsections (4) and (5)* therefore amend section 121E (which sets out the current procedure). The new subsection (1A)(a) gives the Secretary of State the power to determine not to make such an order without following the procedure currently set out in section 121E(1). The new subsection (1B) requires the Secretary of State to inform the applicant of a determination under the new subsection (1A)(a) and the reasons for it.