

COUNTRYSIDE AND RIGHTS OF WAY ACT 2000

EXPLANATORY NOTES

INTRODUCTION

Part II: Public Rights of Way and Road Traffic

Summary

70. Part II of the Act contains provisions designed to reform and improve rights of way in England and Wales.
71. The Act introduces measures for the strategic review, planning and reporting of improvements to rights of way, and the promotion of increased access for people with mobility problems. A new category of right of way – restricted byway – having rights for walkers, cyclists, horse riders and horse drawn vehicles, replaces the current category of Roads Used as Public Paths.
72. Local authorities are required to have regard to nature conservation when performing some of their rights of way functions. Other environmental safeguards include extended powers to regulate traffic for conservation purposes and new powers to divert rights of way to protect Sites of Special Scientific Interest (SSSIs).
73. The Act provides for a cut-off date for the recording of certain rights of way on definitive maps and the extinguishment of those not so recorded by that date. There are provisions for excepting rights of way from extinguishment; for extending the cut-off date; and for making savings for cases where modification orders have been made but not confirmed before the cut-off date, where applications for such orders have been submitted before the cut-off date, and where such orders have been quashed because of a legal error.
74. The Act gives a new right to certain landowners and occupiers to apply to a local authority for an order to divert or extinguish a footpath or bridleway over their land, and to appeal against refusal. Any resulting order would proceed in accordance with existing legislation which provides for objections to be heard and for a public inquiry or hearing to be held. Proprietors of schools are given similar rights, and local authorities will be able to make orders closing or diverting rights of way for school security reasons and to assist in the prevention of crime in certain areas.
75. There is provision for occupiers of any land to temporarily divert a footpath or bridleway which passes over that land where works (to be prescribed in regulations made by the Secretary of State or the National Assembly for Wales) are likely to cause danger to users of the right of way.
76. Stronger measures will be available for dealing with obstructions. Magistrates convicting a person of wilfully obstructing a highway will be able to order the removal of the obstruction. Magistrates will also be able to impose daily fines where the obstruction continues after a person has been convicted of failing to comply with such an order. In addition, any person will be able to serve notice on a local highway authority

to secure the removal of certain obstructions, and if necessary to seek a magistrates' court order requiring the authority to comply with the notice.

77. Local authorities will be required to have regard to the needs of disabled people when authorising the erection of gates and other barriers across rights of way to control livestock. In addition, the Act gives authorities power to enter into agreements with owners, lessees or occupiers of land to improve or replace such existing barriers to make them safer or more convenient for disabled people.
78. Local highway authorities' existing powers to provide barriers in footpaths to safeguard the public are widened to allow authorities to erect posts and are extended to apply to bridleways which are maintainable at the public expense.
79. The unauthorised driving off-road of mechanically propelled vehicles becomes an offence and the existing offence of driving on a footpath or bridleway is extended to apply to restricted byways. For the purposes of the new offence there is provision to the effect that where a way is shown on a definitive map as a footpath, bridleway or restricted byway, it is presumed not to carry full vehicular rights unless the contrary is proved.
80. Part II also contains provisions relating to the grant of statutory easements for vehicular access over land (including common land) on which it is an offence to drive a vehicle.

Background

81. The Government's intention to legislate on rights of way was announced on 8 March 1999 in *The Government's Framework for Action: Access to the Countryside in England & Wales*. The Government's consultation paper on rights of way, *Improving Rights of Way in England and Wales*¹, was published in July 1999. The responses are summarised in a report: *Improving Rights of Way in England and Wales: Analysis of Responses*².

Commentary on sections

Sections 47 to 52: Definitive Maps and Statements and Restricted Byways

82. Currently, surveying authorities (normally the unitary authority, or the county council where there are two tiers of local government) are required to prepare and keep under review their definitive map and statement(s). These form the legal record of public rights of way in their area. The existing classes of public rights of way covered by these maps and statements are:
 - Footpaths: highways over which there is a public right of way on foot only.
 - Bridleways: highways over which pedestrians, horse riders and bicyclists (who must give way to people on foot or on horseback) have public rights of way. A bridleway may also carry a public right to drive animals.
 - Byways open to all traffic (BOATs): highways over which the public right of way is for vehicles and all other kinds of traffic, but which are used mainly for the purposes for which footpaths and bridleways are used.
 - Roads Used as Public Paths (RUPPs): an earlier classification used for various kinds of highway. Section 54 of the Wildlife and Countryside Act 1981 requires surveying authorities to review all RUPPs appearing on their definitive maps and reclassify them according to the rights which are found to exist. If vehicular rights

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2 Published by DETR March 2000 (Full Report): Price £12 product code 99WACD1034. Available from DETR Publication Sale Centre, Goldthorpe Industrial Estate, Goldthorpe, Rotherham, S63 9DL. Tel. 01709 891318, Fax. 01709 881673. A summary document is available free of charge from: DETR Free literature, PO Box 236, Wetherby LS23 7NB. Tel. 0870 1226236, Fax. 0870 1226237. Published on the internet at: <http://www.wildlife-countryside.detr.gov.uk/cl/index.htm>

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are shown to exist over a RUPP then it should be reclassified as a byway open to all traffic. If no vehicular rights are shown to exist, a RUPP should be reclassified as a bridleway, unless bridleway rights are shown not to exist, in which case it should be reclassified as a footpath.

83. [Sections 47](#) and [48](#) provide for a general redesignation of RUPPs, which are instead to be treated as shown in definitive maps and statements as restricted byways. All RUPPs will become restricted byways (defined in section 48) unless they already carry full vehicular rights of way and surveying authorities will be relieved of their current duty to reclassify RUPPs. Anyone with evidence of full vehicular rights over a particular way will still be entitled to apply for an order for its reclassification in the map and statement as a BOAT.
84. [Section 47](#) repeals section 54 of the Wildlife and Countryside Act 1981 and provides that every road used as a public path which is shown in a definitive map and statement is to be treated as shown as a restricted byway.
85. [Section 48](#) specifies that the public is to have restricted byway rights over ways shown in a definitive map and statement as RUPPs. It sets out what those rights are and stipulates that the existence of those rights is without prejudice to other rights, including public rights of way for mechanically propelled vehicles. It also requires that the relevant commencement orders made under section 103 preserve pre-commencement orders, and applications for orders, modifying the status of a RUPP so that they will be processed to a final determination.
86. [Section 49](#) provides for the RUPPs affected by provisions in section 48 to be highways maintainable at the public expense. Private liabilities to maintain RUPPs over which restricted byway rights are created and which do not carry full vehicular rights are extinguished. Section 49 also provides for those RUPPs reclassified under section 54 of the 1981 Act, and earlier legislation, to remain maintainable at the public expense. It also sets out that highway authorities are not to be obliged to provide metalled or similar surfaces on former RUPPs merely because they have been re-designated as restricted byways or BOATs.
87. [Section 50](#) ensures that the conditions or limitations to which a RUPP was dedicated, such as a right to erect a gate on it or plough its surface, shall continue to be exercisable. It also provides a vehicular right of access to certain owners of property adjoining or adjacent to former RUPPs.
88. [Section 51](#) introduces [Schedule 5](#), which contains amendments relating to definitive maps and statements and restricted byways. [Paragraph 1](#) makes consequential amendments to section 53 of the Wildlife and Countryside Act 1981. It also allows for evidence of full vehicular rights over a way shown as a restricted byway which has already been considered by a surveying authority to constitute the basis of an application to have such a way shown as a byway open to all traffic. [Paragraph 2](#) makes an amendment of a procedural nature relating to the circumstances in which the definitive map and statement can be modified when a legal event has occurred. The new section 53A inserted in the 1981 Act makes it possible for surveying authorities to include in those orders which are prescribed by regulation provision to modify the definitive map and statement. Regulation making powers are provided, for example, to set out how the relevant date is to be determined in the case of such orders and to regulate the procedure governing the new power.
89. [Paragraph 2](#) also inserts a new section 53B into the 1981 Act requiring surveying authorities to keep a register of applications made under section 53(5) of that Act. [Paragraph 3](#) provides for transitional arrangements for modifying the definitive map between enactment and the commencement of section 47 of the Countryside and Rights of Way Act 2000.

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90. *Paragraph 4* of Schedule 5 inserts a new section 54A into the Wildlife and Countryside Act 1981. The new section prevents any order being made after the cut-off date (1 January 2026) to record a BOAT on a definitive map except in the place of any other way already recorded in the definitive map. The new section also empowers the Secretary of State or the National Assembly for Wales to make regulations containing transitional provisions and for extending the cut-off date.
91. *Paragraph 5* amends section 55 of the Wildlife and Countryside Act 1981 to provide that certain roads used as public paths that had been reclassified under the provisions of the National Parks and Access to the Countryside Act 1949 become maintainable at the public expense.
92. *Paragraph 7* widens the power of the Secretary of State or the National Assembly for Wales to make regulations prescribing the scale of definitive maps to cover all maps made under Part III of the Wildlife and Countryside 1981. In addition, paragraph 7 amends section 57 of the 1981 Act to empower the Secretary of State or the National Assembly for Wales to make regulations requiring surveying authorities to keep, and make available to the public and other local authorities, documents relating to the status of rights of way.
93. *Paragraph 8* empowers surveying authorities to consolidate their definitive maps, incorporating any parts of maps inherited from other authorities following local government boundary changes. Maps may not be consolidated if any orders required to record changes made to an authority's rights of way are outstanding. Surveying authorities are required to keep, and make available to the public, copies of all maps which are superseded by a consolidated map.
94. *Paragraph 10* of Schedule 5 amends Schedule 14 to the Wildlife and Countryside Act 1981 to enable the Secretary of State or the National Assembly for Wales, when directing an authority to make an order on appeal, to set a deadline by which the order should be made.
95. *Paragraph 11* of Schedule 5 amends Schedule 15 to the Wildlife and Countryside Act 1981. It inserts a new paragraph 7(2A) into the Schedule to give the Secretary of State or the National Assembly for Wales discretion as to whether to hold an inquiry or hearing into a definitive map modification order if the only objection(s) relate to an issue which would not be relevant in determining whether or not to confirm an order. A new paragraph 10A applies to hearings into disputed orders certain provisions in section 250 of the Local Government Act 1972 relating to the summoning of witnesses and the award of costs which currently apply only to public inquiries under Schedule 15. It also enables the Inspector holding a hearing or inquiry to award costs and enables costs to be awarded when a hearing or inquiry does not take place.
96. *Schedule 5* also contains, in Part II, amendments relating to the provisions in sections 47 to 50 creating the new category of public right of way, "restricted byway", in place of ways presently recorded on definitive maps as RUPPs. The amendments mainly provide for legislation which applies to RUPPs to apply instead to restricted byways.
97. *Section 52* enables the Secretary of State to make regulations providing for any existing legislation applying to highways, or to highways of a particular kind (such as footpaths or bridleways) to apply, or to be excluded from applying, to restricted byways or ways shown in a definitive map and statement as restricted byways. This power could, for example, be used to enable new restricted byways to be created. There is also power to make consequential amendments. When making these regulations, the Secretary of State is required to consult the National Assembly for Wales before making provision which affects Wales and to obtain the Assembly's consent before expressly amending or revoking secondary legislation made by the Assembly. Section 52 also empowers the National Assembly for Wales to make regulations amending certain classes of legislation relating to Wales to take account of restricted byways. These classes are: any local or private Act passed before or in the same session as this Act and relating

only to Wales; and, any secondary legislation made before enactment of this Act which the Assembly has the power to amend or revoke as respects Wales. The Assembly may also submit to the Secretary of State proposals for amendments or repeals to be made by him using his own regulation-making powers.

Sections 53 to 56: Cut-off date for recording certain rights of way on definitive maps and extinguishment of those not so recorded

98. These sections prescribe a cut-off date (1 January 2026) for the recording on definitive maps of footpaths and bridleways created before 1949. The provisions also provide for the extinguishment of certain rights of way which have not been claimed by the deadline. The cut-off date may be extended by regulations made by the Secretary of State or the National Assembly for Wales.
99. *Section 53* provides that public rights of way over a footpath or bridleway which was created before 1 January 1949, is still a footpath or bridleway on the cut-off date and is not shown on a definitive map on the cut-off date, are to be extinguished immediately after the cut-off date. The section also provides that any unrecorded higher rights of way created before 1 January 1949 over a highway shown on a definitive map on the cut-off date as a footpath, bridleway or restricted byway and which is eligible for recording on a definitive map, will be extinguished immediately after the cut-off date.
100. *Section 54* sets out exceptions to section 53. In respect of pre-1949 footpaths and bridleways which are not shown on a definitive map on the cut-off date, the following are not to be extinguished:
- as much of a footpath or bridleway as, after 1 January 1949, has been diverted, widened, extended or stopped up as respects only its width, provided it connects with another highway directly or indirectly. If it connects indirectly then as much of the rest of the path as is necessary to connect with the other highway is also saved.
 - a bridleway which became a footpath after 1949 following the stopping up of bridleway rights, or a footpath which became a bridleway after 1949 by the creation of bridleway rights over it, provided in either case the way connects with another highway as above.
 - as much of a footpath or bridleway as passes over a bridge or through a tunnel and connects with a highway as above.
 - a footpath or bridleway any part of which is in inner London.
 - a footpath or bridleway which runs at the side of a carriageway or between two carriageways.
 - a footpath or bridleway of any other description specified in regulations made by the Secretary of State or the National Assembly for Wales.
 - a particular footpath or bridleway specified in regulations.
101. In respect of unrecorded higher rights over ways shown on a definitive map on the cut-off date as footpaths, bridleways or restricted byways the following are not to be extinguished:
- higher rights of way (eg bridleway rights over what is shown as a footpath) created after 1 January 1949.
 - rights of way over a highway any part of which is in inner London.
 - rights of way specified or of such description as may be specified in regulations made by the Secretary of State or the National Assembly for Wales.
102. *Section 55* provides that where a highway which was immediately before 1949 a footpath or bridleway and is a footpath on the cut-off date, but is wrongly recorded

on a definitive map as a bridleway on commencement of the provisions and remains so recorded at the cut-off date, bridleway rights are created over it. It will not be possible after the cut off date to apply for the bridleway to be downgraded to a footpath but section 56 provides for the making of savings, for example, for applications for modifications made before the cut-off date.

103. *Section 56* provides that the cut-off date for the purposes of extinguishing rights of way is to be 1 January 2026. The section empowers the Secretary of State or the National Assembly for Wales to make regulations substituting as the cut-off date a date later than 1 January 2026. Different dates may be specified for different areas but, in relation to areas in which rights of way have been recorded on definitive maps since the National Parks and Access to the Countryside Act 1949 took effect, the date may not be postponed beyond 1 January 2031. There is no upper limit on the period for extending the deadline in relation to other areas. These are the Isles of Scilly; the areas of former county boroughs for which definitive maps were not required until the Wildlife and Countryside Act 1981 took effect; and built-up areas which county councils were able to exclude from the requirements of the 1949 Act by resolution. Where a highway crosses the boundary between two areas with different cut-off dates, then the later date applies to that highway.
104. Regulations made under section 56 may also make transitional provisions and savings, in particular for cases where (a) definitive map modification orders have been made but not confirmed before the cut-off date; (b) applications for definitive map orders have been submitted before the cut-off date; or (c) orders have been quashed because of a legal error.

Section 57 and Schedule 6: Creation, stopping up and diversion of highways

105. *Section 57* introduces *Schedule 6*. The Schedule contains a number of amendments to the Highways Act 1980 relating to the creation, stopping up and diversion of footpaths, bridleways and certain other highways. The main changes produced by the Schedule include:
- the conferring on owners and occupiers of land used for agriculture, forestry or the breeding or keeping of horses of a right to apply to a local authority for the making of a public path extinguishment order or a public path diversion order,
 - a new power for local authorities to make orders stopping up or diverting footpaths, bridleways (and certain other highways) for the purpose of preventing crime,
 - a similar power for local authorities to stop up or divert footpaths, bridleways (and certain other highways) in cases where they cross school premises for the purpose of protecting pupils and staff at the school, and a right for the proprietor of a school to apply for such an order.
 - a new power for local authorities to make orders stopping up or diverting footpaths, bridleways (and certain other highways) for the purpose of protecting SSSIs, and
 - a new power for the occupier of any land crossed by a footpath or bridleway to divert it temporarily for up to fourteen days a year in a case where dangerous works are being carried out.
106. *Paragraphs 1, 6 and 9(5)* of Schedule 6 relate to orders made under sections 26, 118, and 119 of the Highways Act 1980 creating, extinguishing or diverting footpaths and bridleways. They require:
- (a) the Secretary of State or the National Assembly for Wales, when deciding to confirm or make such an order; and
 - (b) a local authority, when deciding whether to confirm such an order,

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to have regard to any material provision of a rights of way improvement plan for the area which includes land over which a footpath or bridleway would be created or extinguished.

107. *Paragraph 2* of Schedule 6 substitutes a new section 29 in the Highways Act 1980. Under the existing section 29, councils are required to have due regard to the needs of agriculture and forestry in the exercise of certain functions in respect of the creation, stopping up and diversion of footpaths and bridleways. New section 29 preserves that requirement but the definition of “agriculture” is extended to encompass the breeding or keeping of horses and an additional duty to have due regard to the desirability of conserving flora, fauna and geological and physiographical features is introduced.
108. *Paragraph 3* relates to section 31 of the Highways Act 1980. Under section 31 highways may be created through deemed dedication on the basis that public use, as of right, of a way for 20 years and without interruption creates a presumption that the owner dedicated the way as a highway. Section 31(6) provides a method for an owner of land to negate, in advance, the presumption of dedication which arises after 20 years’ use. A landowner may deposit, with the relevant local authority, a map and statement showing all the ways which he admits are dedicated as highways on his land and thereafter lodge a declaration within six years of that date that no additional ways have been dedicated over his land. He may deposit further declarations every six years or fewer years thereafter. The effect of the deposit is, in the absence of evidence to the contrary, to negate for the period between declarations being lodged the presumption to dedicate new highways which may arise from long user under section 31. Paragraph 3 of Schedule 6 extends the period for making declarations from six years to ten years.
109. *Paragraph 4* of Schedule 6 provides for a register of deposited maps and statements and lodged declarations to be kept by local authorities and made available for public inspection free of charge.
110. *Paragraph 5* of Schedule 6 amends the Highways Act 1980 to ensure that highways created in consequence of special diversion orders and SSSI diversion orders become maintainable at the public expense.
111. *Paragraphs 7, 9(4) and 10* of Schedule 6 amend the Highways Act 1980 to allow an owner, lessee, or occupier of agricultural and other types of land to apply to a council for the making of an order under section 118 or 119 of the 1980 Act closing or diverting a footpath or bridleway which crosses their land. Land managers currently wishing to secure the diversion or extinguishment of a footpath or bridleway across their land may request a council to make orders under section 118 or 119. If the authority declines, the Secretary of State may be requested to use his reserve powers, but in practice these powers are rarely used.
112. *New sections 118ZA(2) and (3) and 119ZA(4) and (5)* allow for regulations to be made prescribing the form in which an application should be made and what charges may be payable. *Subsection (6) of section 118ZA* enables a council to require an applicant to enter into an agreement to make a contribution towards any compensation that may become payable as a result of a closure of a footpath or bridleway. This parallels current provisions in section 119 of the 1980 Act. *Sections 118ZA(8) and 119ZA(9)* require a council to give the applicant notice of its decision in writing and set out its reasons. There is provision (*in sections 118ZA(7) and 119ZA (8) respectively*) to enable an applicant to request the Secretary of State or the National Assembly for Wales to direct a council to decide an application if the council has not done so within four months of receiving it. Sections 118 and 119 (which confer power to make the orders concerned) are not substantively altered and so the criteria for the making and confirmation of the orders remain unchanged.
113. *Paragraphs 8 and 12* of the Schedule insert new sections 118B, 118C, 119B, 119C, 119D and 119E into the Highways Act 1980.

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114. *New sections 118B, 118C, 119B and 119C* empower local highway authorities to make special extinguishment and special diversion orders for closing or diverting footpaths, bridleways, restricted byways and byways open to all traffic. In areas which have been designated by the Secretary of State or the National Assembly for Wales by order, the new powers may be exercised for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community. An extinguishment or diversion order may only be made for this purpose if premises near a right of way are affected by high levels of crime and the existence of the highway is facilitating the persistent commission of offences. The special diversion and extinguishment order powers are also available to protect staff and pupils where rights of way cross school grounds. The local highway authority is required to consult the police authority for the area before making a special extinguishment order or special diversion order for either purpose. These powers are not confined to areas designated by the Secretary of State or the National Assembly for Wales.
115. *Subsection (7)* of section 119B prevents a diversion from creating a cul-de-sac. *Subsection (8)* provides for the extinguishment of the existing way, under a special diversion order, to be delayed until the local highway authority certifies that any necessary work to the new way has been carried out. *Subsection (9)* allows conditions to be attached to a right of way created by a diversion. *Subsection (14)* applies the provisions of section 27 of the Highways Act 1980, which relate to the making up of new rights of way, to a diversion made under section 119B.
116. *Sections 118B(9) and 119B(12)* provide for the form of orders to be prescribed by regulations. *Sections 118B(10) and 119B(13)* apply the provisions of Schedule 6 to the Highways Act 1980 which sets out the procedure to be followed for making and confirming closure and diversion orders.
117. The confirming authority (that is, the local highway authority in the case of unopposed orders, otherwise the Secretary of State or the National Assembly for Wales) must be satisfied as to certain matters, in particular whether a diversion or extinguishment order would be expedient, and including, for proposed extinguishments, the availability of an alternative route or the practicability of diverting the existing way instead. In addition, the confirming authority is to consider whether an order in respect of a designated area is consistent with any statutory crime and disorder strategy for that area. In the case of an order relating to a school, the authority is to consider what other security measures have been or could be taken and whether it is likely that the coming into operation of the order would result in a substantial improvement in the security of the school in question. Account is also to be taken of the effect which closure would have on any land served by the right of way in question.
118. *New sections 118C and 119C* give a right to school proprietors to apply to a local highway authority for orders to divert or close footpaths, bridleways, restricted byways and byways open to all traffic where these cross school grounds. (The term “proprietor”, in relation to a school, has the same meaning as in the Education Act 1996: see paragraph 15(b) of the Schedule.)
119. *New sections 119D and 119E* empower highway authorities, following an application from English Nature (EN) or the Countryside Council for Wales (CCW), to make SSSI diversion orders diverting footpaths, bridleways, restricted byways and byways open to all traffic for the protection of sites of special scientific interest (SSSIs) designated under the Wildlife and Countryside Act 1981 if public use of the highway is causing or is likely to cause significant damage to the SSSI in question. EN or CCW must give fourteen days’ advance notice of their application to any owner, occupier or lessee of land where the existing right of way or the diverted right of way is or would be sited. The Secretary of State and the National Assembly for Wales are given powers to make regulations prescribing the form of applications and other requirements for notice. Before making an SSSI diversion order, the highway authority must consider whether the damage could be prevented by the making of a traffic regulation order and whether

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such an order would cause less inconvenience to the public than a diversion. Diversion orders under these new sections may not be confirmed until the confirming authority has considered the effects of the diversion on public enjoyment of the right of way and the effects on the land affected by the diversion. *Subsection (6)* of 119D provides for the extinguishment of the existing way to be delayed until the local highway authority certifies that any necessary work to the new way has been carried out. The Secretary of State is given powers to make regulations prescribing the form of applications and requirements for notice.

120. *Paragraphs 9(1) and 11* of the Schedule amend the Highways Act 1980 so that where a diversion order is made under section 119 or section 119A of that Act, the coming into force of that part of the order which extinguishes a section of a public right of way can be delayed until the local highway authority certifies that any necessary work on the new way has been carried out.
121. *Paragraph 13* of Schedule 6 amends section 120 of the 1980 Act inserting references to special extinguishment orders, special diversion orders and SSSI diversion orders. It empowers the Secretary of State or the National Assembly for Wales to make such orders and to require applicants for orders to enter into agreements with the relevant highway authority relating to compensation and expenses.
122. *Paragraph 14* of Schedule 6 makes consequential amendments to section 121 of the 1980 Act. It also makes a further amendment enabling the “appropriate Minister” to appoint any person to determine whether a statutory undertaker has unreasonably withheld consent to the extinguishment of a right of way over land where their apparatus is located or which is used by statutory undertakers for their undertaking.
123. *Paragraph 15 of Schedule 6* inserts new sections 121A, 121B, 121C, 121D and 121E into the Highways Act 1980. These new sections relate to applications under the new sections 118ZA, 118C, 119ZA and 119C. *Section 121A* enables regulations to be made, for example requiring the applicant to certify certain matters and to give notice of their application. It creates offences relating to false or misleading certificates. *Section 121B* relates to councils keeping a register of the applications made under the new sections 118ZA, 118C, 119ZA and 119C. It specifies that such registers must be available for inspection by the public free of charge at all reasonable hours, and allows for regulations to be made about the form and content of registers and when information may be removed from them. *Section 121C* allows councils to refuse to determine applications when appeals regarding similar applications have been refused or where the Secretary of State or the National Assembly for Wales has otherwise refused to confirm a similar order. *Section 121D* sets out the types of decisions which applicants may appeal to the Secretary of State or the Assembly against and the circumstances where rights of appeal do not apply. *Section 121E* sets out the powers and duties of the Secretary of State and the Assembly in relation to appeals against local authorities’ decisions on applications under the foregoing provisions. It ensures that diversion orders made on appeal do not come into effect where any consents required have not been obtained for works to make up the new way or to provide any necessary facilities. It also gives the Secretary of State and the Assembly powers to make regulations governing appeals procedures, compensation and charges. The provisions of Schedule 6 to the 1980 Act relating to objections, hearings and public inquiries apply in these appeal cases.
124. *Paragraph 16* of Schedule 6 inserts two new sections, 135A and 135B, into the Highways Act 1980.
125. *New section 135A* enables the occupier of any land to temporarily divert a footpath or bridleway which passes over that land where works, which are to be prescribed in regulations made by the Secretary of State or the National Assembly for Wales, are likely to cause danger to users of the right of way. *Subsection (1)* prevents a temporary diversion from affecting the line of a footpath or bridleway on another’s land, so that an occupier of other land does not become landlocked by a diversion. *Subsection (2)* limits the period during which an occupier may divert a right of way under this new

section to no more than 14 days in any one calendar year per footpath or bridleway located on that person's land. *Subsection (3)* requires the occupier to ensure that the diversion is reasonably convenient for the exercise of the right of way and that the line of the diversion is indicated on the ground to not less than the path's or way's minimum width. These widths are to be ascertained in accordance with Schedule 12A of the 1980 Act. *Subsection (4)* prevents a person from being able to divert a right of way on to land occupied by another person without that person's consent. It also prevents the diversion of a footpath on to a highway other than a footpath or bridleway and the diversion of a bridleway on to highway other than a bridleway. *Subsections (5) and (6)* require the occupier to give the local highway authority at least 14 days notice of a diversion; to publish a notice of the diversion in a local newspaper at least 7 days before it takes effect; and to display such notices at such times and in such places as may be prescribed in regulations. If the footpath or bridleway passes over or is contiguous with land to which the public have access under Part I of the Bill, the occupier is required to give 14 days notice to the Countryside Agency or the Countryside Council for Wales, as the case may be. *Subsection (7)* provides that notices under subsection (5) are to be in such form, and contain such information, as may be prescribed in regulations made by the Secretary of State or the National Assembly for Wales. *Subsection (8)* creates offences of making a false statement in a notice; of displaying a notice on or near a footpath or bridleway falsely purporting that the diversion is authorised under section 135A; or of diverting a right of way without complying with the requirements in subsection (3).

126. *New section 135B* requires a person diverting a footpath or bridleway to make good, before the diversion ceases to be authorised, any damage caused by the prescribed works to the right of way and also requires that person to remove any obstruction which may have been caused by the works. *Subsection (2)* creates an offence of failing to comply with these requirements. *Subsection (3)* empowers the highway authority to make good any damage or remove any obstruction, if the person concerned fails to do so. This subsection also entitles the highway authority to recover, from that person, the reasonable expenses they may have incurred in carrying out the works. *Subsection (4)* applies paragraphs 7 and 8 of Schedule 12A to the Highways Act 1980. These provide powers for a person duly authorised by the highway authority to enter on to land for the purpose of carrying out any works under subsection (3) and contain provisions in respect of service of a notice on the occupier. *Subsection (5)* provides that a person's liability for doing anything to a footpath or bridleway other than for the purpose authorised by the new section 135A shall not be affected. It also prohibits a person diverting a right of way under section 135A from interfering with the apparatus or works of any statutory undertakers. *Subsection (6)* places a duty on the highway authority for the footpath or bridleway to enforce the provisions of the two new sections. This is without prejudice to the authority's general duty under section 130 of the Highways Act 1980 to prevent, as far as possible, a highway from being obstructed.
127. *Paragraphs 17 to 21* of Schedule 6 make amendments to the Highways Act 1980 which are consequential on the new provisions about special extinguishment orders, special diversion orders and SSSI diversion orders.
128. *Paragraph 22* amends section 344 of the Highways Act 1980 so as to prevent new sections 135A and 135B from taking effect in the Isles of Scilly except by order made by the Secretary of State after consultation with the Council of the Isles.
129. *Paragraph 23* of Schedule 6 makes related amendments to Schedule 6 to the Highways Act 1980. *New paragraph 2A* of that Schedule requires the Secretary of State or the National Assembly for Wales to arrange a public inquiry or hearing if requested to do so by an authority or appellant before making or confirming an order on an appeal. *New paragraph 2ZA* of that Schedule requires a council which has made an order following an application under new section 118ZA or 119ZA to give the applicant written notice of their decision to confirm the order (if unopposed) or submit it to the Secretary of State or the Assembly for confirmation (if opposed). If the council has not made a decision

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within 2 months of the end of the period for representations on the order, the Secretary of State or the Assembly may, on request from the applicant, direct them to do so.

130. *Paragraph 24* of Schedule 6 adds *new Schedule 12ZA* to the Highways Act 1980, which sets out the procedures relating to the determination of disputes under section 121 on the issue of whether a statutory undertaker has unreasonably withheld its consent to an order.
131. *Paragraphs 25 and 26* make consequential amendments to legislation relating to the functions of the Broads Authority and National Park authorities.

Sections 58 and 59: Effect of Part I of the Bill on powers to create, stop up or divert highways

132. *Section 58* gives the Countryside Agency and the Countryside Council for Wales powers to apply to the Secretary of State or National Assembly for Wales to make public path creation orders to provide access to access land (such as “inaccessible islands” to which there is no other practicable means of access). The countryside bodies must have regard to any rights of way improvement plan prepared by the local highway authority before applying for an order. The Secretary of State or National Assembly for Wales will consider such applications in deciding whether to exercise their powers under section 26 of the Highways Act 1980 (and, by virtue of subsection (2) of that section, must consult with local authorities before making an order).
133. *Section 59* prevents an authority, when exercising powers to stop up or divert highways, from regarding the existence of the new right of access to open countryside as, for example, reducing the need for the highway, the need for an alternative highway or the need to reserve a public right of way.

Sections 60 to 62: Rights of way improvement plans

134. *Section 60* requires every local highway authority (except inner London boroughs and the Common Council of the City of London) to prepare and publish a rights of way improvement plan within 5 years of the commencement of the section. It sets out what the plan should cover and what matters the authority should consider. It also provides for reviews of such plans at 10 yearly intervals. *Subsection (5)* defines rights of way for the purposes of section 60 as including cycle tracks other than those at the side of, or in, a made up carriageway. *Subsection (6)* provides for the transitional period until the reclassification of RUPPs comes into effect. It provides that the definition of local rights of way includes RUPPs until they are re-designated as restricted byways under section 47.
135. *Section 61* sets out who should be consulted by the local highway authority in preparing the plans, the process of publishing and consulting on a plan, how the plan should be made available to the public, and that the authority should have regard to guidance produced for the purpose. Finally, it enables local highway authorities to make plans in conjunction with district councils or National Park authorities in their area.
136. *Section 62* relates to the application of sections 60 and 61 to Inner London. The section allows inner London boroughs and the City of London to adopt the provisions. If they choose to adopt these provisions, *subsection (2)(b)* provides for the due date of the first review to be changed accordingly.

Sections 63 to 65: Interferences with Highways and the Provision of Stiles

137. *Section 63* inserts four new sections into the Highways Act 1980 relating to the obstruction of rights of way. *New section 130A* enables any person to serve notice on a local highway authority requesting it to secure the removal of certain types of obstruction from a footpath, bridleway, restricted byway, or highway recorded as a restricted byway or byway open to all traffic on a definitive map, and for which it is

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the highway authority. The request may lead to an order requiring the removal of the obstruction being imposed by a magistrates' court (section 130B below).

138. *Subsection (3)* of 130A applies the new provisions to obstructions which are structures, things deposited on the highway which are a nuisance, and overhanging vegetation. It also gives a power to prescribe by regulation other types of obstruction to which the provisions should apply.
139. *Subsection (4)* of 130A excludes certain types of obstructions from the provisions. These include those types of obstructions for which an order under section 56 of the Highways Act 1980 can be obtained (in effect those obstructions that consist of disrepair) and those obstructions that are buildings.
140. *Subsection (5)* of 130A requires a complainant, when serving a notice of the obstruction on the highway authority, to include the name and address of the person responsible for the obstruction if they know who this is. *Subsection (6)* of 130A requires a highway authority on which a notice has been served to respond stating what action it intends to take over the obstruction. It also contains provisions requiring the highway authority to inform all persons who may be responsible for the obstruction that it has received a complaint and to inform the complainant of the names and addresses of such persons.
141. *New section 130B* allows the person who served the notice on the highway authority to seek a magistrates' court order if they are not satisfied that the obstruction has been removed. *Subsection (4)* of 130B empowers a magistrates' court to make an order requiring the highway authority to take action to secure removal of the obstruction. *Subsection (5)* provides a defence for the authority if the authority: (a) shows that the status of the way as a highway is seriously disputed or that it falls outside the categories listed in section 130A(2), or (b) shows that there is no duty to remove the obstruction under section 130(3) of the Highways Act 1980, or (c) shows that it has any necessary arrangements in hand to secure the removal of the obstruction within a reasonable time.
142. *Section 130B(6)* requires a highway authority against whom a magistrates' order has been made to display notice of the order, and the right to appeal against it, on the highway concerned.
143. *New section 130C* makes provisions relating to a complainant's right to seek an order from the magistrates' court. These include an obligation on the complainant, when applying to the court for an order, to supply the court with the details of the persons who have been identified as possibly being responsible for the obstruction. This is so that the court may notify them of the hearing. The complainant must give the highway authority 5 days notice of their intention to apply to the court, but may not serve such notice until at least 2 months after serving the original notice under new section 130A. An application for an order must be made within six months of serving that original notice.
144. *New section 130D* requires a court, when determining whether to award costs against an applicant where an application is dismissed, and where the highway authority has relied upon any of the defences in subsection (5) of new section 130B, to have particular regard to whether and the extent to which the highway authority had disclosed their defence.
145. *Section 63* also amends section 317 of the Highways Act 1980 to give a right of appeal to the Crown Court to any person who is responsible for the obstruction or was such a person when the application was heard by the court and was, or claimed to be, heard on the application.
146. *Section 64* inserts *new section 137ZA* into the Highways Act 1980. The new section empowers a magistrates' court on conviction of a person for the offence under section 137 of that Act (wilful obstruction of a highway) to order that person to remove the obstruction. This may be additional to, or instead of, a fine. Under *new section 137ZA(3)*, failure to comply with an order (without reasonable excuse) is an offence punishable by a fine not exceeding level 5 on the standard scale (currently

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£5000). Further fines, not exceeding 1/20th of level 5, may be imposed for each day the offence continues after conviction.

147. *Section 137ZA(4)* empowers a highway authority, when a person has been convicted of failing to comply with an order under section 137ZA, to recover from that person the costs of removing the obstruction if the authority decides to use its powers to remove it.
148. A person who has been ordered to remove an obstruction may not be prosecuted again under section 137 of the Highways Act 1980 in respect of that obstruction during the period set by the court under section 137ZA for removing it or during any period set under section 311(1) of the Highways Act 1980 for complying with directions of the court.
149. *Section 65* amends section 154 of the Highways Act 1980 so as to enable local authorities to require owners and occupiers of land whose trees, shrubs or hedges overhang highways to the inconvenience or danger of horse riders, to remove the offending vegetation or cut it back to a suitable height for horse riders.

Sections 66 to 72: Miscellaneous, including road traffic, vehicular access across common land and stiles.

150. *Section 66* amends the provisions in the Road Traffic Regulation Act 1984 (“the 1984 Act”) governing the circumstances in which traffic authorities may make traffic regulation orders.
151. Section 22 of the 1984 Act gives traffic authorities a power to regulate traffic for the purpose of conserving or enhancing the natural beauty of the area, or of affording better opportunities for the public to enjoy the amenities of the area. The power is restricted to roads in England and Wales which are both outside Greater London and in or near certain designated areas, for example National Parks and Areas of Outstanding Natural Beauty. Section 66 ensures that the power will apply similarly in respect of areas designated as Sites of Special Scientific Interest, and brings Greater London within the scope of the provision.
152. *Section 66* also inserts a *new section 22A* into the 1984 Act. The new section enables traffic authorities to make orders to control vehicular traffic on unclassified roads and byways throughout England and Wales for the purposes of conserving or enhancing the natural beauty of the area. It is made explicit that “conservation of natural beauty” in the context of both section 22 and the new section 22A, includes the conservation of flora, fauna and physical features of the landscape.
153. *Section 67* introduces *Schedule 7. Paragraph 5* of Schedule 7 substitutes a new section 34 in the Road Traffic Act 1988. Section 34 currently prohibits the driving of motor vehicles, without lawful authority, elsewhere than on roads. The offence in section 34 is extended to cover mechanically propelled vehicles which currently may not fall within the definition of “motor vehicle”, to which the current offence relates, because they may not be intended or adapted for use on roads. The offence does not apply to invalid carriages, mechanically propelled vehicles controlled by pedestrians used for cutting grass and electrically assisted pedal cycles.
154. Under *section 34(1)(b)* it is an offence to drive a mechanically propelled vehicle on a footpath or bridleway. This offence is extended to the new category of right of way, restricted byways. The recording of a way on a definitive map as a footpath, bridleway, or restricted byway does not mean that higher rights might not exist over the way in question. *Subsection (2)* of the new section 34 provides that where a way is shown on a definitive map as a footpath, bridleway, or restricted byway, then it is presumed to carry only the rights attaching to ways of that kind unless the contrary is proved (but this is subject to section 34A).
155. *Paragraph 6 of Schedule 7* inserts a new section 34A into the Road Traffic Act 1988. By making the presumption in section 34(2) rebuttable only in certain circumstances,

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this new section means that, except where those circumstances apply or the defences in section 34 are made out, the offence under section 34(1)(b) is committed where the way being driven on is shown in a definitive map as a footpath, bridleway or restricted byway. The circumstances set out in section 34A are where the defendant proves to the satisfaction of the court that he was a person with an interest in any land or was a lawful visitor to any land and that the driving was reasonably necessary for him to obtain access to that land; or that it was reasonably necessary for him to drive the vehicle for the purposes of any business, trade or profession. The Secretary of State may make regulations prescribing other circumstances where the presumption under section 34(2) can be rebutted.

156. *Section 68* provides that where a person has used an access to property across land on which it is an offence to drive, regulations may provide for the creation of a statutory easement, providing certain qualifying criteria are met. The regulations would deal with issues such as the criteria to be met in order to apply; the compensation to be paid by the property owner; how the application for the easement must be made; the conditions to which the easement will be subject; dispute resolution procedures and how the easement will be recorded by the Land Registry.
157. *Section 69* amends section 147 of the Highways Act 1980 so that local authorities, when authorising the erection of new stiles, gates or other works on footpaths or bridleways, must have regard to the needs of people with mobility problems. It provides for the Secretary of State and the National Assembly for Wales to issue guidance on how the powers to authorise works are to be exercised. It also inserts new section 147ZA into the 1980 Act.
158. *New section 147ZA* enables local authorities and certain other councils to enter into agreements with owners, lessees or occupiers of land to replace or alter existing gates and other stockproof structures on footpaths and bridleways to make them safer or more convenient for people with mobility problems.
159. *Subsection (1)* allows for agreements to provide for the owner, lessee, or occupier to carry out the work with the authority paying part or all of the costs, or for the authority to do the work with the owner etc contributing to or meeting the costs.
160. *Subsection (5)* provides that where an agreement has been entered into it replaces, and thereby extinguishes, the previous authorisations on a date to be specified in the agreement or failing that 12 months from the date of the agreement.
161. *Subsection (9)* requires the relevant authority, when exercising their powers under new section 147ZA, to have regard to guidance issued by the Secretary of State or the National Assembly for Wales.
162. *Section 70* amends section 66(3) of the Highways Act 1980 which enables highway authorities to provide and maintain barriers, rails and fences in footpaths to safeguard the public. The amendment to section 66(3) allows authorities to provide posts as well, and extends section 66(3) to apply to bridleways that are maintainable at the public expense. Section 70 also amends section 134 of the 1980 Act, to enable any person to bring a prosecution for the offence under section 134(4) of failing to restore a ploughed footpath or bridleway.
163. In addition, section 70 amends section 300 of the Highways Act 1980 and section 21(2)(b) of the Road Traffic Act 1988. Sections 300 and 21(2)(b) provide protection to highway authorities when exercising certain highways functions against prohibitions relating to the use of mechanically propelled vehicles on footpaths, bridleways and cycle tracks. Section 70 clarifies that this protection extends to the functions of preventing or removing obstructions from highways and the prevention or abatement of other interferences.
164. *Section 71* empowers the Secretary of State and the National Assembly for Wales to make regulations requiring local highway authorities to publish reports on the

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performance of their functions relating to rights of way. An example might be a report on the implementation of its rights of way improvement plans. The regulations may prescribe what the reports should cover and how they should be published.

165. [Section 72](#) defines various terms used in Part II of the Act.