

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 7: Ascertainment of rights of way

Part 1: Wildlife and Countryside Act 1981

604. *Part 1* of Schedule 7 makes various amendments to Part 3 of the Wildlife and Countryside Act 1981 (the “1981 Act”). Under this Part, it is the duty of local authorities (referred to in the Part as “surveying authorities”) to maintain and keep under review maps and statements (referred to in the legislation as “definitive maps and statements”) showing public rights of way. It also sets out the procedure which the authorities must follow before modifying definitive maps and statements, whether on their own initiative or on an application by an interested person.
605. *Paragraph 2* removes the words “or is reasonably alleged to subsist” from section 53(3)(c)(i) of the 1981 Act. Currently, the effect of section 53(2), read with section 53(3)(c)(i), is that a surveying authority is required to make such modifications to a definitive map and statement as appear to it to be requisite in consequence of the discovery by the authority of evidence which shows that a right of way which is not shown in the map and statement subsists, or is reasonably alleged to subsist, over land in the area to which the map relates. The effect of the removal of the words “or is reasonably alleged to subsist” is that a surveying authority in England is required to modify the definitive map by order under section 53(2) only where it is satisfied to the ordinary civil standard of proof that a right of way subsists. This measure therefore raises the threshold at which an authority must make an order. The burden on an authority of having to make orders in respect of applications which contain reasonable allegations but do not satisfy the ordinary civil standard of proof is removed.

Modifications arising from administrative errors

606. *Paragraph 3* inserts a new section 53ZA into the 1981 Act. The new section 53ZA confers power on the Secretary of State to provide for Schedules 13A and 14A to the Act to apply with prescribed modifications in relation to the making of orders under section 53(2) of the 1981 Act where a surveying authority is satisfied that the conditions set out in subsection (1)(a) to (c) are met. The conditions are that:
- it is requisite to make a modification to a definitive map and statement in consequence of an event mentioned in section 53(3)(c);
 - the need for the modification has arisen because of an administrative error; and
 - both the error and the modification needed to correct it are obvious.
607. Under the new subsection (4) an authority must, in deciding whether paragraphs (a) to (c) apply, have regard to any guidance given by the Secretary of State.
608. These new powers will enable the Secretary of State to put in place a simpler and shorter order-making procedure, based on Schedules 13A and 14A to the 1981 Act, where the

need for a modification to a map and statement arises because of an administrative error. This will remove the burden on an authority which must presently follow lengthy procedures designed for potentially contentious situations.

Amendment of the requirement to register applications in relation to the new preliminary assessment

609. *Paragraph 4* inserts new subsections (4A) and (4B) into section 53B of the 1981 Act. Under this new provision the Secretary of State may by regulations provide that the duty to keep a register of applications in subsection (1) does not apply, or does not apply to any prescribed description of such applications, unless the authority serves notice under paragraph 2(4)(b) of Schedule 13A to the Act (preliminary assessment and notice of applications: England).
610. This measure will enable the Secretary of State to provide that applications are not required to be registered unless they have passed the new preliminary assessment procedure and notice has been served on every owner and occupier of any land to which the application relates. The burden on an authority of having to register an application which does not satisfy the preliminary assessment test is therefore removed. An explanation of the new preliminary assessment procedure is given below in the commentary on paragraph 6 of this Schedule.

Modification of the definitive map and statement by consent

611. *Paragraph 5* inserts two new sections into the 1981 Act: sections 54B and 54C. The new section 54B sets out a new procedure by which an authority may by order modify the definitive map in consequence of:
- a) an application under section 53(5) of the Act; or
 - b) the discovery of evidence that a right of way exists; or
 - c) there having been a period of use by the public that raises a presumption of deemed dedication.
612. The new procedure is available where:
- a) the documentary evidence in support of the application is evidence that relates to the existence of a right of way before 1949; and
 - b) where there has been an application under section 53(5) of the 1981 Act, the authority have served notice under paragraph 2(4)(b) of Schedule 13A to the Act (preliminary assessment and notice of applications: England).

Figure 1 illustrates how the process would fit into the revised procedures for making a definitive map modification order.

The above is Figure 1

613. Under the new procedure, the authority is required to ascertain whether every owner of the land to which the application relates consents to the making of the order modifying the definitive map. The landowner (or landowners) may only be willing to consent to the order modifying the definitive map if, at the same time, certain changes are authorised to the alleged public right of way. Under the new subsection (2) an authority may therefore make one or more of the following further orders, known as “special orders”, in order to secure the landowner’s (or the landowners’) consent:
- 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.

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

614. The new subsection (4) provides that if the landowner (or every landowner if there is more than one) consents to the making of an order under section 53(2) (without the making of a special order) the authority may make the order. The order must include a statement that it is made with the consent of the landowner (or every landowner if there is more than one).
615. The new subsection (5) provides that if the landowner (or one or more of the landowners) would consent only if one or more special orders are made, the authority may make the special order (or orders) and the order under section 53(2). Under the new subsection (6) the authority must, before making any special order diverting a right of way, be satisfied that the path or way will not be substantially less convenient to the public in consequence of the diversion and have regard to any guidance given by the Secretary of State. The order must include a statement that it is made with the consent of the landowner (or every landowner if there is more than one). The authority must, under subsection (5)(c), combine any special orders and the order under section 53(2) into a single document.
616. The new subsection (9) provides that an authority must determine whether to make such an order before 12 months have elapsed since the authority first notified the landowner of their decision that the definitive map and statement should be modified. The Secretary of State may extend that 12 month period by order (see new subsection (10)).
617. This measure will reduce the burden on a landowner (or landowners) of the impact of a newly discovered public right of way that conflicts with the current land usage. It will have the secondary effect of reducing the number of applications that are opposed by landowners and result in submission of a case to the Secretary of State to determine. It will also reduce the administrative burden on surveying authorities and others involved in the process by providing, in certain cases, a single procedure under which a change to a public right of way can be authorised as well as the recording of the right of way on the definitive map.
618. The new section 54C makes new provision to supplement the new procedure. The new provision provides that:
- a) a modification consent order cannot alter the termination point of a right of way if that point is not on a highway;
 - b) a modification consent order cannot divert the right of way onto land owned by another landowner without the other landowner's consent;
 - c) where a modification consent order takes effect, any path or way shown on the definitive map and statement in consequence is maintainable at the public expense;
 - d) where 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.