

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 20: Recorded rights of way: additional protection

115. The background to this, as explained in the introduction to sections 20 to 26, 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.
116. Rights of way created before 1949 but recorded on a definitive map and statement on the cut-off date will not be extinguished. Under the current law, it would, however, be possible for someone to apply to a surveying authority to have the definitive map and statement modified so as not to show the right of way. For example, an application might be made on the basis that there was no public right of way on foot over land shown on the map as a footpath. If the application succeeded and the map was modified so as not to show the footpath, this could affect the ability of members of the public to use the path (because they would no longer be able to rely on the map as evidence of the existence of a right of way on foot). In practice, applications to modify a map and statement so as not to show a right of way are usually made on the basis that there was no right of way over the land in question. The investigation of applications based on evidence about the position before 1949 can be very difficult for authorities.
117. The section changes the position by inserting a new section 55A in the 2000 Act. It provides that an authority may not, after the cut-off date, make a modification to a definitive map and statement if the modification might affect the exercise of a protected right of way and the only basis for the authority considering that the modification is appropriate is evidence that the right did not exist before 1 January 1949.
118. Subsection (2) of the new section 55A defines protected right of way. For example, a right of way on foot and a right of way on horseback or leading a horse over land shown on the definitive map and statement as a bridleway are protected rights of way.
119. This measure will protect the status of certain public rights of way by preventing modifications of the definitive map and statement after the cut-off date, even where evidence emerges that the right of way had been wrongly recorded. It will therefore reduce the burden on local authorities that arises from having to consider in detail applications for modifications which require an investigation of historical evidence.