

Deregulation Bill 2014: Clauses 21-27

Use of land

Clause 21 Recorded rights of way: additional protection

In the Countryside and Rights of Way Act 2000, after section 55 (bridleway rights over ways shown as bridleways) insert—

“55A Other protected rights: England

(1) A surveying authority in England may not, at any time after the cut-off date, make a modification to a definitive map and statement under section 53(2)(b) of the Wildlife and Countryside Act 1981 if—

(a) the modification might affect the exercise of a protected right of way, and

(b) the only basis for the authority considering that the modification is requisite is the discovery by the authority of evidence that the right of way did not exist before 1 January 1949.

(2) In subsection (1), “protected right of way” means any right of way over land shown in the definitive map and statement on the cut-off date as a footpath, bridleway, restricted byway or byway open to all traffic.

(3) In this section, “cut-off date” has the meaning given in section 56.”

22 Unrecorded rights of way: protection from extinguishment

In the Countryside and Rights of Way Act 2000, after section 56 (cut-off date for extinguishment of certain unrecorded rights of way) insert—

“56A Unrecorded rights of way: protection from extinguishments

(1) The provision that may be made by regulations under section 56(2) by the Secretary of State includes—

(a) provision enabling a surveying authority to designate, at any time during the period of one year beginning with the cut-off date, public rights of way in their area that were extinguished immediately after that date, subject to any conditions or exceptions specified in the regulations;

(b) provision for a designated right of way to cease to be regarded as extinguished as from the time of the designation;

(c) provision requiring a surveying authority to determine, within a period specified in the regulations, whether to make an order under section 53(2) of

the 1981 Act making modifications to a definitive map and statement to show a designated right of way;

(d) provision as to the procedure applicable in relation to such a determination, including provision for an application to be made to a magistrates' court where a surveying authority fails to make the determination within a period specified in the regulations;

(e) provision for a designated right of way to be extinguished if a surveying authority determines not to make an order under section 53(2) of the 1981 Act or if such an order is made but is not confirmed or is quashed, subject to any exceptions specified in the regulations;

(f) provision requiring a surveying authority to keep such information as may be specified in the regulations about designated rights of way in a separate part of the register maintained by them under section 53B of the 1981 Act.

(2) The provision that may be made by virtue of subsection (1)(d) includes provision applying Schedule 14A to the 1981 Act, subject to such modifications as may be specified in the regulations.

(3) Regulations under section 56(2) made by the Secretary of State may also provide—

(a) that an enactment specified in the regulations which would otherwise apply in relation to a designated right of way does not so apply, or so applies with modifications specified in the regulations, in relation to times during the designation period (see subsection (4) below);

(b) where an order under section 53(2) of the 1981 Act making modifications to a definitive map and statement to show a designated right of way takes effect, that the modifications are to be treated, for the purposes of section 55A, as having taken effect immediately before the cut-off date.

(4) In subsection (3)(a), "the designation period" means the period which—

(a) begins when the right of way is designated, and

(b) ends when—

- (i) an order under section 53(2) of the 1981 Act making modifications to a definitive map and statement to show the right of way takes effect, or
- (ii) if no such order is made, the right of way is extinguished in accordance with the regulations.

(5) In this section—

- "cut-off date" has the meaning given in section 56;
- "enactment" means a provision of an Act or of subordinate legislation (within the meaning of the Interpretation Act 1978)."

23 Conversion of public rights of way to private rights of way

(1) In the Countryside and Rights of Way Act 2000, after section 56A (as inserted by section 14) insert—

“56B Conversion of certain public rights of way to private rights of way

(1) This section applies where—

(a) a public right of way over land in England would be extinguished under section 53 immediately after the cut-off date, and

(b) on the cut-off date, the exercise of the right of way—

(i) is reasonably necessary to enable a person with an interest in land to obtain access to it, or

(ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if the person had an interest in that part only.

(2) The public right of way becomes, immediately after the cut-off date, a private right of way of the same description for the benefit of the land or (as the case may be) the part of the land.

(3) For the purposes of subsection (1)(b), it is irrelevant whether the person is, on the cut-off date, in fact—

(a) exercising the existing public right of way, or

(b) able to exercise it.

(4) In this section, “cut-off date” has the meaning given in section 56.”

24 Applications by owners etc for public path orders

(1) The Highways Act 1980 is amended as follows.

(2) In section 118ZA(1) (which makes provision for owners, lessees or occupiers of certain land to be able to apply for a public path extinguishment order), after “horses” insert “, or of any land in England of a prescribed description,”.

(3) In section 119ZA(1) (which makes provision for owners, lessees or occupiers of certain land to be able to apply for a public path diversion order), after “horses” insert “, or of any land in England of a prescribed description,”.

(4) In section 121E(1) (which specifies the duties of the Secretary of State on certain appeals relating to the extinguishment or diversion of public paths), after “section 121D(1)(a) above,” insert “in relation to an application made under section 118C or 119C above or an application made under section 118ZA or 119ZA above to a council in Wales,”.

(5) After section 121E(1) insert—

“(1A) Where an appeal to the Secretary of State is brought under section 121D(1)(a) above, in relation to an application made under section 118ZA or 119ZA above to a council in England, the Secretary of State shall either—

(a) determine not to make an order on the application, or

(b) take the steps mentioned in subsection (1)(a) to (c).

(1B) Where the Secretary of State determines under subsection (1A)(a) not to make an order, the Secretary of State shall inform the applicant of the decision and the reasons for it.”

(6) In Schedule 6, in paragraph 2A(1)(b), after “section 121E(1)(c)” insert “or (1A)(a)”.

25 Extension of powers to authorise erection of gates at owner’s request

(1) Section 147 of the Highways Act 1980 (which allows highway authorities etc to authorise the erection of stiles and gates etc on footpaths or bridleways crossing agricultural land) is amended as follows.

(2) In subsection (1), after “For the purposes of this section” insert “as it applies in relation to footpaths or bridleways,”.

(3) After subsection (1) insert—

“(1A) The following provisions of this section, so far as relating to the erection of gates, also apply where the owner, lessee or occupier of agricultural land in England, or of land in England which is being brought into use for agriculture, represents to a competent authority in England, as respects a restricted byway or byway open to all traffic that crosses the land, that for securing that the use, or any particular use, of the land for agriculture shall be efficiently carried on, it is expedient that gates for preventing the ingress or egress of animals should be erected on the byway.

For the purposes of this section the following are competent authorities—

(a) in the case of a restricted byway which is for the time being maintained by a non-metropolitan district council by virtue of section 42 above, that council and also the highway authority; and

(b) in the case of any other restricted byway or in the case of a byway open to all traffic, the highway authority.

(4) In subsection (3), for “footpath or bridleway” substitute “footpath, bridleway or byway”.

(5) After subsection (5) insert—

“(5A) In this section, “byway open to all traffic” has the same meaning as in Part 3 of the Wildlife and Countryside Act 1981 (see section 66(1) of that Act).”

(6) In consequence of the amendments made by this section to section 147, section 146 of the 1980 Act is amended as follows—

(a) in subsection (1), after “restricted byway” (in the first place it occurs) insert “or across a byway open to all traffic in England”;

(b) in that subsection, for “or restricted byway” (in the second place it occurs) substitute “, restricted byway or byway open to all traffic”;

(c) in subsection (2)(b), after “restricted byway” insert “or in the case of a byway open to all traffic”;

(d) after subsection (5) insert—

“(6) In this section, “byway open to all traffic” has the same meaning as in Part 3 of the Wildlife and Countryside Act 1981 (see section 66(1) of that Act).”;

(e) in the heading to the section, for “restricted byways” substitute “byways”.

26 Applications for certain orders under Highways Act 1980: cost recovery

(1) The Highways Act 1980 is amended as follows.

(2) In section 118ZA(3) (which deals with the making of regulations imposing charges in connection with applications by owners etc. for a public path extinguishment order), in paragraph (a), after “this section” insert “to a council in Wales”.

(3) In section 119ZA(5) (which deals with the making of regulations imposing charges in connection with applications by owners etc. for a public path diversion order), in paragraph (a), after “this section” insert “to a council in Wales”.

(4) In section 121A(1) (which confers power to make regulations about applications for public path extinguishment and diversion orders), in paragraph (f), for “prescribed charge” substitute “charge prescribed under the section”.

(5) In section 121E(8) (which makes provision about what may be included in regulations about appeals under section 121D(1)), in paragraph (j), for “prescribed charge” substitute “charge prescribed under section 118ZA(3) or 119ZA(5)”.

(6) In Part 1 of Schedule 6 (procedure for making and confirming certain orders relating to footpaths, bridleways and restricted byways), in paragraph 2B which makes supplemental provision about hearings held under paragraph 2 of the Schedule), after sub-paragraph (3) insert—

(4) For the purposes of sub-paragraph (1) as it applies in relation to section 250(4) of the Local Government Act 1972, the consideration by a person appointed as mentioned in sub-paragraph (2)(b), (2A)(b) or (3)(b) of paragraph 2 of any representations or objections about an order relating to land in England is to be treated as a hearing which the Secretary of State has caused to be held under that paragraph.”

27 Public rights of way: procedure

(1) Schedule 6 makes changes to the law about the ascertainment of public rights of way in England and the making and confirmation of orders relating to such rights.

(2) Part 1 of the Schedule amends Part 3 of the Wildlife and Countryside Act 1981 (“the 1981 Act”) so as to—

(a) alter the test that applies where a local authority is deciding whether to modify a definitive map and statement on the basis of evidence relating to the existence of a right of way not currently shown on the map;

(b) enable regulations to be made to simplify the procedure that applies where a modification of a definitive map and statement is needed because of an administrative error;

(c) enable regulations to be made so that applications made to a local authority seeking a modification of a definitive map and statement do not need to be included in the register of applications unless the authority have given notice that there is a reasonable basis for the applicant’s belief that the map should be modified;

(d) facilitate the making of modifications of a definitive map and statement by consent in cases based on documentary evidence of the existence of a right of way before 1949.

(3) Part 2 of the Schedule inserts a new Schedule 13A in Part 3 of the 1981 Act, which sets out an amended procedure that applies in relation to the making and determination of applications to a local authority in England for a modification of a definitive map and statement.

(4) Part 3 of the Schedule inserts a new Schedule 14A in Part 3 of the 1981 Act, which sets out an amended procedure that applies in relation to the making and confirmation of orders making modifications of a definitive map and statement.

(5) Part 4 of the Schedule amends Schedule 6 to the Highways Act 1980 so as to make changes to the procedure for the making and confirmation of public path creation orders and certain other orders relating to public paths in England.

(6) Part 5 of the Schedule makes amendments that are consequential on the other Parts.

(7) The Secretary of State may by regulations make provision for an amendment made by paragraph 5 of Part 1 or by Part 2 or 3 of Schedule 6 to apply, in relation to applications for an order under section 53(2) of the 1981 Act that are made before the amendment comes into force, with modifications specified in the regulations.

(8) Regulations under subsection (7) may make different provision for different purposes.

(9) Regulations under subsection (7) must be made by statutory instrument.

(10) A statutory instrument containing regulations under subsection (7) is subject to annulment in pursuance of a resolution of either House of Parliament.