

Deregulation Bill 2014

Explanatory Notes to Clauses 21 to 27: background and territorial extent, application and commencement

117. By way of background to these measures, Part 3 of the Wildlife and Countryside Act 1981 ("the 1981 Act") requires local authorities in England and Wales to maintain and keep under review maps and statements showing public rights of way in their area. The local authorities concerned are referred to in that Act as "surveying authorities" and the maps and statements are referred to as "definitive maps and statements". Part 3 also sets out the procedures which apply where an authority wishes to make a change to the definitive map and statement for its area or where someone applies for such a change to be made.

118. A definitive map and statement is conclusive evidence of certain matters. For example, if a map shows a footpath, this is generally conclusive evidence that the public had a right of way on foot over the land on a particular date.

119. Some rights of way are not recorded on a definitive map and statement. The Countryside and Rights of Way Act 2000 (section 53) provides for unrecorded rights of way created before 1949 to be extinguished immediately after 1 January 2026 (known as the "cut-off date"), subject to certain exceptions.

120. The Highways Act 1980 also deals with public rights of way. For example, it allows applications to be made, in certain circumstances, to extinguish or divert a public right of way.

121. Clauses 21 to 27 (and Schedule 7) form part of the law of England and Wales. However, the amendments made by them make changes which affect public rights of way in England only. They will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 21 : Recorded rights of way: additional protection

122. The background to this, as explained in the introduction to clauses 21 to 27, 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.

123. 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.

124. The clause 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.

125. 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.

126. 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.

Clause 22 : Unrecorded rights of way: protection from extinguishment

127. The background to this clause, as with clause 21, 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.

128. It is thought that, in the period immediately before the cut-off date, there will be a large volume of applications to surveying authorities for modifications to be made to the definitive map and statement to show rights of way that are currently unrecorded. This is because individuals and groups in the voluntary sector are likely to carry out research so that they can make applications to have unrecorded rights

of way shown on a definitive map and statement (with the result that they will not be automatically extinguished after that date). There is concern that surveying authorities will also carry out research into unrecorded rights of way during this period in order to comply with the requirement that they keep under review definitive maps and statements. This could lead to surveying authorities unnecessarily duplicating the work of individuals and the voluntary sector.

129. The clause therefore inserts a new section 56A in the 2000 Act. It enables the Secretary of State to make regulations enabling a surveying authority to designate, during a period of one year after the cut-off date, public rights of way extinguished immediately after that date under section 53 of that Act. The new section 56A also sets out what else may be included in the regulations. It is envisaged that the power to make regulations will be used to provide for designated rights to cease to be regarded as extinguished as from the time of designation. Where a right is designated, surveying authorities will be required to decide whether to modify the definitive map and statement to show the right of way. If a right of way is then shown on the map, it will remain unextinguished. If the authority decides not to show the right of way, it will normally be extinguished again.

130. The purpose of the new provision is to enable surveying authorities to wait until after the cut-off date to assess what research has been carried out by individuals and voluntary organisations. There will be a one-year period after that date within which they can act under the regulations to prevent rights of way being permanently extinguished. They will therefore be able to avoid duplicating any work done by individuals and voluntary organisations and focus, during the one-year period following the cut-off date, on areas where research has not been carried out by individuals and voluntary organisations.

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

131. The background to this clause, as with clauses 21 and 22, 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.

132. There are situations where public rights of way are used by individuals to gain access to their own land. In such a case, the extinguishment of a right of way could cause real difficulties for the individuals concerned who may be prevented from obtaining access to their land.

133. The clause therefore inserts a new section 56B in the 2000 Act. It applies where a public right of way would be extinguished under section 53 of the 2000 Act immediately after the cut-off date. If the exercise of such a right of way is reasonably necessary to enable a person with an interest in land to obtain access to the land (or 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), it becomes a private right of way (so that the person may continue to access the land). It does not matter

whether the person is using the existing public right of way on the cut-off date, or is able to use it.

134. In the situation in which it applies, the new section 56B therefore protects the person with the interest in the land from the burden of the loss of access to it.

Clause 24 : Applications by owners etc for public path orders

135. The background to this clause 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").

136. 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 clause 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.

137. 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.

Clause 25 : Extension of powers to authorise erection of gates at owner's request

138. The background to this clause is that section 147 of the Highways Act 1980 authorises the erection of stiles, gates or other works on footpaths or bridleways crossing agricultural land for the purpose of preventing animals coming on to the land or escaping from it (referred to in the legislation as "the ingress or egress of animals"). However, there is no comparable provision for restricted byways or

byways open to all traffic ("byways"). The main effect of this is that it is not possible for authorities to authorise the erection of gates on byways under section 147. One practical consequence of this is that owners may oppose applications to modify definitive maps and statements to show a restricted byway or a byway open to all traffic, even though they would be willing to agree to the modification if, for example, a gate were erected. Dealing with contested applications is burdensome for all those involved, including the Secretary of State who will generally have to deal with them.

139. The clause therefore amends section 147 (by inserting a new subsection (1A)) to enable a competent authority in England to authorise the erection of gates for preventing the ingress or egress of animals on a byway. The authority must be satisfied that it is expedient that gates should be erected on the byway before authorising them. "Competent authority" is defined in the new subsection (1A)(a) and (b). This will generally be the highway authority.

140. This measure will make it easier for owners to obtain permission to erect gates on byways. It is thought that it will also have the effect of reducing the number of occasions on which applications for an order modifying a definitive map and statement to show a byway are opposed by landowners.

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

141. The background to this clause is that sections 118ZA and 119ZA of the Highways Act 1980 ("the 1980 Act") allow owners, lessees or occupiers of certain land to apply to local authorities for public path extinguishment orders or public path diversion orders. Certain amendments to those sections are made by clause 23 (so as to extend the kinds of land to which such applications may relate). The amendments made by this clause deal with the recovery of costs in respect of such applications.

142. Currently, the sections contain powers which allow the Secretary of State, in relation to England, or the Welsh Ministers, in relation to Wales, to prescribe charges payable on the making of such applications (and further charges where an order is made on the application). Under such regulations, the authority dealing with the application would be able to recover its costs but only up to the prescribed amount which would be set centrally and may not be at a level which would allow the authority to recover all of its costs.

143. The clause therefore amends sections 118ZA and 119ZA of the 1980 Act so as to limit the application of the charging provisions to Wales. The purpose of this is to allow the Secretary of State (in relation to England) to use the power under section 150 of the Local Government and Housing Act 1989 to authorise charges to be imposed in respect of applications under sections 118ZA and 119ZA. Under this power, it would be possible for the Secretary of State to authorise a charge the

amount of which would be at the authority's discretion, provided it does not exceed the actual cost incurred. This provides the means for removing the burden on authorities which can arise under the current law if the centrally prescribed limit does not enable it to recover all of its costs.

144. The clause also amends paragraph 2B of Part 1 of Schedule 6 to the 1980 Act. Currently, it is unclear whether the Secretary of State, who has a role in dealing with contested applications for public path orders, can recover the costs of determining such an application by appointing a person to consider and deal with written representations instead of holding an inquiry or an oral hearing. The amendment clarifies that the Secretary of State may recover the costs (under the same principles governing the recovery of the costs of holding an inquiry or conducting an oral hearing).

Clause 27: Public rights of way: procedure

145. This clause introduces Schedule 7, which makes changes to the procedure for ascertaining public rights of way in England. See the commentary on Schedule 7 below. In relation to the procedures set out in paragraph 5 of Part 1 and Parts 2 and 3 of Schedule 7, this clause also provides for the Secretary of State to make regulations prescribing the transitional arrangements that are to apply to applications for a definitive map modification order made before the new procedures come into force.

Schedule 7: Ascertainment of rights of way

Part 1: Wildlife and Countryside Act 1981

444. 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.

445. *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

446. *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:

- a) it is requisite to make a modification to a definitive map and statement in consequence of an event mentioned in section 53(3)(c);
- b) the need for the modification has arisen because of an administrative error; and
- c) both the error and the modification needed to correct it are obvious.

447. 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.

448. 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

449. *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).

450. 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

451. *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.

452. 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

453. 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.

454. 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).

455. 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.

456. 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)).

457. 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.

458. 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) any authority that makes a modification consent order is responsible, as from the date when the order takes effect, for maintaining any path or way shown on the definitive map as a consequence of the order;
- 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.

Part 2: New Schedule 13A to the Wildlife and Countryside Act 1981

459. Parts 2 and 3 of Schedule 7 introduce two new Schedules (in relation to England) to replace the existing Schedules 14 and 15 with amended versions incorporating a number of measures to reduce the administrative burden on local authorities and other parties involved in the identification and recording of public rights of way. These include:

- a) a preliminary assessment of applications to reduce the administrative burden of investigating and determining applications for a definitive map modification order that are spurious or poorly founded;
- b) a new right of appeal to the magistrates' court to replace an existing right of appeal to the Secretary of State, which is widely regarded as ineffective; and
- c) preventing a given case being submitted to the Secretary of State two or more times before being resolved.

460. The new Schedule 13A replaces the existing Schedule 14, which sets out the procedure for dealing with applications for definitive map modification orders under section 53(5) of that Act. The new Schedule 14A replaces the existing Schedule 15, which sets out the procedure for dealing with definitive map modification orders made under section 53(2) of that Act. Figure 2 illustrates the amended procedures under Schedules 13A and 14A.

The above is Figure 2

461. Whereas in England, Schedules 13A and 14A will replace the existing Schedules 14 and 15, in Wales Schedules 14 and 15 will continue to apply.

New Schedule 13A to the Wildlife & Countryside Act 1981

462. *Paragraph 6* of Schedule 7 introduces a new Schedule 13A to the 1981 Act.

Prescribed form of application

463. Paragraph 1 of Schedule 13A sets out the existing requirement for an application to be made in the prescribed form and be accompanied by a map drawn to the prescribed scale and copies of any documentary evidence which the applicant wishes to adduce in support of the application. But it has been amended to enable a surveying authority to inform a potential applicant for an order modifying the definitive map that they already have access to a particular piece of documentary evidence and do not require a copy of it to be submitted to them. This reduces the burden on applicants, who are mostly from the voluntary sector, of having to make unnecessary copies of documents for submission with an application.

464. A new sub-paragraph (2) obliges regulations under sub-paragraph (1) to require each application for an order modifying the definitive map to include an explanation as to why the applicant believes that the definitive map and statement should be modified. The requirement in the existing sub-paragraph (2) of Schedule 14, for an applicant to serve notice of the application on the landowner, no longer applies.

Preliminary assessment and notice of applications

465. Paragraph 2 of Schedule 13A makes provision for preliminary assessment and notice of applications. Sub-paragraph (1) provides that a surveying authority must, within 3 months of receiving an application, decide whether there is a reasonable basis for the applicant's belief that the definitive map should be modified in consequence of the occurrence of one or more events falling within section 53(3)(b) or (c) of the Act. Sub-paragraph (2) provides that, in so deciding, the authority must have regard to any guidance given by the Secretary of State. Under sub-paragraph (3) the authority must, if they decide there is no reasonable basis for the application, inform the applicant of their decision and their reasons for it.

466. Sub-paragraph (4) provides that, if they decide there is a reasonable basis, the authority must so inform the applicant and serve notice on every affected landowner and occupier, stating that an application has been made, which the authority are investigating further. (This replaces the requirement for the applicant to serve notice of the application on landowners and occupiers, currently in paragraph 1(2) of Schedule 14). There is provision, in sub-paragraph (5), for the authority to post notices on the land if they cannot reasonably ascertain who the owner or occupier is. The introduction of the new preliminary assessment procedure will reduce the

administrative burden on, and cost to, local authorities of investigating and determining applications (under paragraph 3 of Schedule 14 to the 1981 Act) that are spurious or poorly founded (and reduce the burden on affected landowners of resisting such ill-founded applications).

Failure by an authority to conduct a preliminary assessment

467. Paragraph 3 of Schedule 13A provides a right of application to the magistrates' court for anyone who has applied for an order modifying the definitive map, where a surveying authority have not carried out the preliminary assessment of an application within 3 months of receiving it. Under sub-paragraph (1), the applicant must give notice to the surveying authority of the intention to apply to the magistrates' court. The application to the court may then, under sub-paragraph (2), be made after 1 month has passed since the giving of notice to the authority, but not after more than 6 months have passed.

468. Under sub-paragraph (3) the magistrates' court may order the authority to take specified steps in relation to the application for an order modifying the definitive map within a reasonable period. There is provision, in sub-paragraph (5), for the authority or applicant to appeal to the Crown Court against the decision of the magistrates' court. Sub-paragraph (6) provides that any order of the magistrates' court will not take effect until 21 days after it has been made or, if there is an appeal, until the appeal is determined or withdrawn.

Determination of an application by the authority

469. Paragraph 4(1) of Schedule 13A provides for the determination by an authority of an application under section 53(5) for an order modifying the definitive map. A surveying authority must, as soon as reasonably practicable after serving notice under paragraph 2(4)(b) of Schedule 13A, investigate the matters stated in the application, consult relevant local authorities and decide whether to make an order. The authority must then, under sub-paragraph (4), give notice of their decision to the applicant and any landowners and occupiers that they notified as a result of the preliminary assessment and set out the reasons for their decision.

470. Sub-paragraph (2) disapplies paragraph 4(1) in cases where the new section 54B (modifications by consent) applies. However, sub-paragraph (3) provides that in such cases the authority must take the steps mentioned in sub-paragraph (1)(a) and (b) as soon as reasonably practicable after any of the following events:

- an owner does not consent to the making of an order under section 53(2);
- the authority decide for any other reason not to make a modification consent order;
- the period of 12 months expires without the authority deciding whether to make an order;

- the authority make such an order but decide not to confirm it.

Failure by an authority to determine an application

468. Under sub-paragraph (3) the magistrates' court may order the authority to take specified steps in relation to the application for an order modifying the definitive map within a reasonable period. There is provision, in sub-paragraph (5), for the authority or applicant to appeal to the Crown Court against the decision of the magistrates' court. Sub-paragraph (6) provides that any order of the magistrates' court will not take effect until 21 days after it has been made or, if there is an appeal, until the appeal is determined or withdrawn.

Determination of an application by the authority

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470. Sub-paragraph (2) disapplies paragraph 4(1) in cases where the new section 54B (modifications by consent) applies. However, sub-paragraph (3) provides that in such cases the authority must take the steps mentioned in sub-paragraph (1)(a) and (b) as soon as reasonably practicable after any of the following events:

- an owner does not consent to the making of an order under section 53(2);
- the authority decide for any other reason not to make a modification consent order;
- the period of 12 months expires without the authority deciding whether to make an order;
- the authority make such an order but decide not to confirm it.

Failure by an authority to determine an application

471. Paragraph 5 of Schedule 13A provides a right of application to the magistrates' court, for anyone who has applied for an order modifying the definitive map and any landowner or occupier of land to which the application relates, where a surveying authority have not decided an application within 12 months of receiving it. This does not apply to an application for an order modifying the definitive map where the authority informed the applicant under paragraph 2(3) (preliminary assessment and notice of applications) of their decision not to consider the application further.

472. The applicant (or landowner, or occupier) must first, under sub-paragraph (1), give notice to the surveying authority of the intention to apply to the magistrates' court. Under sub-paragraph (2), an application to the court may then be made after 1 month has passed after the giving of notice to the authority, but not after more than 12 months have passed. Under sub-paragraph (4) the magistrates' court may direct the authority to take specified steps in relation to the application for an order modifying the definitive map within a reasonable period. The authority may make one application to the court for an order extending that period by up to 12 months. Under sub-paragraph (7) the applicant or authority, or any relevant owner or occupier, may appeal to the Crown Court. Sub-paragraph (8) provides that any order of the magistrates' court will not take effect until 21 days after it has been made or the matter is decided in the Crown Court on appeal.

473. Paragraph 6 makes further provision about notices relating to an application to the magistrates' court under paragraph 5 to ensure, where possible, that any other parties that might be affected by the application are alerted to it. This new right of appeal to the magistrates' court will (following a transitional period) replace the existing right of appeal to the Secretary of State (in Schedule 14, paragraph 3(2)), which is widely regarded as ineffective. Appeals to the Secretary of State may result in a lengthy period of uncertainty for those with an interest in the outcome. The change will reduce the period of uncertainty. It is also designed to remove the burden on the Secretary of State, who may be required to become involved following an application under section 53(5) of the 1981 Act at several different junctures.

468. Under sub-paragraph (3) the magistrates' court may order the authority to take specified steps in relation to the application for an order modifying the definitive map within a reasonable period. There is provision, in sub-paragraph (5), for the authority or applicant to appeal to the Crown Court against the decision of the magistrates' court. Sub-paragraph (6) provides that any order of the magistrates' court will not take effect until 21 days after it has been made or, if there is an appeal, until the appeal is determined or withdrawn.

Determination of an application by the authority

469. Paragraph 4(1) of Schedule 13A provides for the determination by an authority of an application under section 53(5) for an order modifying the definitive map. A surveying authority must, as soon as reasonably practicable after serving notice under paragraph 2(4)(b) of Schedule 13A, investigate the matters stated in the application, consult relevant local authorities and decide whether to make an order. The authority must then, under sub-paragraph (4), give notice of their decision to the applicant and any landowners and occupiers that they notified as a result of the preliminary assessment and set out the reasons for their decision.

470. Sub-paragraph (2) disapplies paragraph 4(1) in cases where the new section 54B (modifications by consent) applies. However, sub-paragraph (3) provides that in such

cases the authority must take the steps mentioned in sub-paragraph (1)(a) and (b) as soon as reasonably practicable after any of the following events:

- an owner does not consent to the making of an order under section 53(2);
- the authority decide for any other reason not to make a modification consent order;
- the period of 12 months expires without the authority deciding whether to make an order;
- the authority make such an order but decide not to confirm it.

Failure by an authority to determine an application

471. Paragraph 5 of Schedule 13A provides a right of application to the magistrates' court, for anyone who has applied for an order modifying the definitive map and any landowner or occupier of land to which the application relates, where a surveying authority have not decided an application within 12 months of receiving it. This does not apply to an application for an order modifying the definitive map where the authority informed the applicant under paragraph 2(3) (preliminary assessment and notice of applications) of their decision not to consider the application further.

472. The applicant (or landowner, or occupier) must first, under sub-paragraph (1), give notice to the surveying authority of the intention to apply to the magistrates' court. Under sub-paragraph (2), an application to the court may then be made after 1 month has passed after the giving of notice to the authority, but not after more than 12 months have passed. Under sub-paragraph (4) the magistrates' court may direct the authority to take specified steps in relation to the application for an order modifying the definitive map within a reasonable period. The authority may make one application to the court for an order extending that period by up to 12 months. Under sub-paragraph (7) the applicant or authority, or any relevant owner or occupier, may appeal to the Crown Court. Sub-paragraph (8) provides that any order of the magistrates' court will not take effect until 21 days after it has been made or the matter is decided in the Crown Court on appeal.

473. Paragraph 6 makes further provision about notices relating to an application to the magistrates' court under paragraph 5 to ensure, where possible, that any other parties that might be affected by the application are alerted to it. This new right of appeal to the magistrates' court will (following a transitional period) replace the existing right of appeal to the Secretary of State (in Schedule 14, paragraph 3(2)), which is widely regarded as ineffective. Appeals to the Secretary of State may result in a lengthy period of uncertainty for those with an interest in the outcome. The change will reduce the period of uncertainty. It is also designed to remove the burden on the Secretary of State, who may be required to become involved following an application under section 53(5) of the 1981 Act at several different junctures.

Procedure where an authority decides not to make an order

474. Paragraph 7 of Schedule 13A provides that where a surveying authority decides (under paragraph 4) not to make an order following a definitive map modification order application, the applicant may, within 28 days after the authority serve notice of the decision, give notice of appeal and the grounds for that appeal to the authority. Regulations will prescribe the form of such notice. The authority is required to submit the matter to the Secretary of State for a decision and the Secretary of State is required to deal with it as an appeal against the authority's decision.

475. This new procedure replaces the existing right of appeal (in Schedule 14, paragraph 4(1)) to the Secretary of State. It provides for the Secretary of State to deal with both the appeal and any objections (that might arise from making an order on the strength of the application) at the same time. This is one of several measures to streamline the process of dealing with an application by preventing a single case being submitted to the Secretary of State two or more times before being resolved. The following provisions are consequential unless the notes state otherwise.

476. Provision is made in sub-paragraph (3) for the surveying authority to decide not to submit the appeal to the Secretary of State if they believe that nothing in the grounds of appeal would be relevant to the Secretary of State's decision on appeal. In doing so the authority would have to have regard to any guidance issued by the Secretary of State (sub-paragraph (4)) and must inform the applicant of the reasons for its decision (sub-paragraph (5)). This reduces the administrative burden by removing an absolute requirement to submit all disputed cases to the Secretary of State, regardless of merit. Where the appeal is submitted to the Secretary of State, the authority must give notice that the matter has been submitted to the Secretary of State (sub-paragraph (6)).

477. Regulations will prescribe the form of notice, which will set out the decision, and state that the matter has been submitted to the Secretary of State, where a copy of the decision may be inspected or obtained and the time and manner in which representations or objections about the decision may be made to the Secretary of State. Sub-paragraph (7) sets out the requirements for publicising the appeal; these essentially replicate the requirements for publicising an order modifying the definitive map as set out in the existing Schedule 15 with modifications to reflect the particular circumstances of the appeal.

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478. Paragraph 8(1) provides that the Secretary of State may decide the appeal through an inquiry, or by providing interested persons with an opportunity of being heard by a person appointed by the Secretary of State, or through written representations. Sub-paragraph (2) provides that the Secretary of State may choose not to decide the appeal through an inquiry, hearing or written representations if he believes that nothing in the grounds of appeal and nothing in any representation or objection duly made would be relevant to the decision on appeal.

479. Sub-paragraph (3) provides that on considering the grounds of appeal and any representations or objections, the Secretary of State may agree with the authority that an order should not be made, or direct the authority to make an order as directed, or make an order.

480. Sub-paragraphs (4) to (10) of paragraph 8 and paragraphs 9 to 11 replicate the existing provisions in paragraphs 3(3), 8(1) to 8(4), 10 and 10A of the existing Schedule 15. This makes the arrangements for holding hearings and inquiries and for

the appointment of inspectors the same as those for determining opposed orders, which are described in the notes for the new Schedule 14A below.

Equivalent provisions in the respective schedules

New Schedule 13A (England only) concerning applications and appeals	New Schedule 14A (England only) concerning orders and objections	Existing Schedule 15 (Wales only) concerning orders and objections
paragraph 8(4)-8(10)	paragraph 14	paragraph 8
paragraph 9	paragraph 15	paragraph 10
paragraph 10	paragraph 16	paragraph 10A
paragraph 11	paragraph 5(3)	paragraph 3(3)

Transfer of application for order modifying the definitive map

481. Paragraph 12 is a new measure that enables a person who has made an application for an order modifying the definitive map to transfer ownership of that application, at any time before the application is decided, to another named person, who would then be treated as the applicant. This measure reduces a burden on the voluntary sector by providing that where an applicant is unable to pursue an application the work they have already done will not have to be undertaken again from scratch.

Part 3: New Schedule 14A to the Wildlife and Countryside Act 1981

482. *Paragraph 7* of Schedule 7 introduces a new Schedule 14A to the 1981 Act.

Part 1 – orders made in accordance with paragraph 8 of Schedule 13A

483. Paragraph 1 provides that orders made further to action taken under paragraph 8(3) of Schedule 13A must be confirmed by the Secretary of State and take effect when confirmed by the Secretary of State.

Part 2 – other orders

484. Paragraph 2 states that Part 2 of Schedule 14A applies to orders other than those made in accordance with paragraph 8(3) of Schedule 13A.

Consultation

485. Paragraph 3 replicates paragraph 1 of Schedule 15 in requiring the authority to consult with every local authority whose area includes the land to which the order relates.

Coming into operation

486. Paragraph 4 replicates paragraph 2 of Schedule 15 in stipulating that orders do not take effect until confirmed by either the authority or Secretary of State, but specifies that for modification consent orders confirmation will be by the authority under paragraph 9 of this Schedule.

481. Paragraph 12 is a new measure that enables a person who has made an application for an order modifying the definitive map to transfer ownership of that application, at any time before the application is decided, to another named person, who would then be treated as the applicant. This measure reduces a burden on the voluntary sector by providing that where an applicant is unable to pursue an application the work they have already done will not have to be undertaken again from scratch.

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483. Paragraph 1 provides that orders made further to action taken under paragraph 8(3) of Schedule 13A must be confirmed by the Secretary of State and take effect when confirmed by the Secretary of State.

Part 2 – other orders

484. Paragraph 2 states that Part 2 of Schedule 14A applies to orders other than those made in accordance with paragraph 8(3) of Schedule 13A.

Consultation

485. Paragraph 3 replicates paragraph 1 of Schedule 15 in requiring the authority to consult with every local authority whose area includes the land to which the order relates.

Coming into operation

486. Paragraph 4 replicates paragraph 2 of Schedule 15 in stipulating that orders do not take effect until confirmed by either the authority or Secretary of State, but specifies that for modification consent orders confirmation will be by the authority under paragraph 9 of this Schedule.

Publicity for orders

487. Paragraph 5 replicates paragraph 3 of Schedule 15, which sets out the existing arrangements for publicising definitive map modification orders, but with the following modifications. Sub-paragraph (2) is amended so that the surveying authority are no longer required to give notice of an order modifying the definitive map by publication in at least one local newspaper circulating in the area. Instead,

they are required to give notice by publication on the authority's website and on such other websites or through the use of such other digital communications media as the authority may consider appropriate. This measure will significantly reduce the cost to the local authority of making an order.

488. In the case of a modification consent order, sub-paragraph (4) provides that the authority may itself (without a direction from the Secretary of State) decide that it is not necessary to comply with the requirement in sub-paragraph (2)(b)(i) to serve notice on every owner and occupier of any of the land affected. But they must nonetheless affix a notice addressed to "The owners and any occupiers" of the land to some conspicuous object(s) on the land.

Abandoned surveys or reviews

489. The existing paragraph 4 in Schedule 15, which deals with representations or objections made with respect to abandoned surveys or reviews, is omitted from Schedule 14A as it is now redundant.

Irrelevant representations or objections and severance of orders

490. Paragraph 6 is a new provision that empowers the surveying authority to decide not to submit the order to the Secretary of State if they believe that nothing in any representation or objection would be relevant to the Secretary of State's decision to confirm the order. The authority must have regard to any guidance given by the Secretary of State and where the authority decide to exercise that power, they must inform the applicant and any person who made a representation or objection of their decision and the reasons for it. This measure will reduce that number of instances where the Secretary of State has to review the authorities' decisions, which will reduce the administrative burden on both local authorities and the Secretary of State. (Paragraph 6 does not apply to modification consent orders.)

491. Paragraph 7 replicates the existing provision in paragraph 5 of Schedule 15 that enables an authority to sever an opposed order so that the Secretary of State need only consider the disputed element of the original order. Paragraph 8 extends this provision so that the authority is given discretion to sever an order where part of the order has attracted representations or objections that the authority considers are not relevant and not submit that part of the order, only submitting that part of the order that has attracted representations or objections that are relevant. In doing so the authority would have to have regard to any guidance issued by the Secretary of State and must inform the applicant and any person who made the representation or objection (and has not withdrawn it) of the reasons for its decision. This measure will reduce that number of instances where the Secretary of State has to review the authorities' decisions, which will reduce the administrative burden on both local authorities and the Secretary of State. (Paragraphs 7 and 8 do not apply to modification consent orders.)

Confirmation of orders

492. Paragraph 9 confirms that the authority may themselves confirm a modification consent order, with or without modifications and whether or not any representations or objections are made.

493. The provisions in paragraphs 6 to 8 and 10 to 16, which are concerned with submission of an order to the Secretary of State for confirmation, do not apply to a modification consent order.

494. Paragraph 10 replicates paragraph 6 of Schedule 15, which provides that if no representations or objections are outstanding, the authority may confirm the order without modification, or submit it to the Secretary of State for confirmation if the authority require modifications and that the Secretary of State may confirm the order with or without modifications.

495. Paragraphs 11, 12 and 13 replicate paragraph 7 of Schedule 15, which provides that opposed orders must be submitted to the Secretary of State for confirmation.

496. Paragraph 12 enables the Secretary of State to sever an order modifying the definitive map submitted to him where some but not all of the modifications in it have attracted representations or objections. The Secretary of State will determine that part of the order that attracted representations or objections; leaving the other part of the order for the authority to confirm as unopposed. This measure will reduce that number of instances where the Secretary of State has to review the authorities' decisions, which will reduce the administrative burden on both local authorities and the Secretary of State.

497. Paragraph 13 enables the Secretary of State, in deciding whether to confirm the order, to do so by receipt (through a person appointed) of written representations, as an alternative to holding an inquiry or hearing. This will provide a less costly option than an inquiry or hearing.

Restriction on power to confirm orders with modifications

498. Paragraph 14 replicates paragraph 8 of Schedule 15, which provides that, where the Secretary of State proposes to make significant specified modifications to an order, the modified order must be publicised and any objections or representations taken into account. The provisions in Schedule 15 are amended insofar as paragraph 14(3) enables the Secretary of State, in deciding whether to confirm the order, to do so by receipt (through a person appointed) of written representations as an alternative to holding an inquiry or hearing. This will provide a less costly option than an inquiry or hearing.

Appointment of inspectors etc

499. Paragraph 15 replicates paragraph 10 of Schedule 15 without substantive amendment. This paragraph essentially provides that a decision of the Secretary of State may be made by a person appointed by the Secretary of State, but that the Secretary of State may call in a decision in order to make it himself.

Hearings and local inquiries

500. Paragraph 16 replicates paragraph 10A of Schedule 15 without substantive amendment. This paragraph applies the provisions of subsections (2) to (5) of section 250 of the Local Government Act 1972 and section 322A of the Town and Country Planning Act 1990 (which are concerned with giving of evidence and defraying costs) to decisions made by the Secretary of State on definitive map modification orders.

Part 3: Orders: general

501. Paragraph 17 replicates paragraph 11 of Schedule 15, which sets out the requirements for giving notice of final decisions on orders. This entails describing the general effect of a confirmed order and the date on which it took effect and publicising the order in a similar way to that set out in paragraph 5 of this Schedule; this notice to be accompanied by a copy of the confirmed order. It also involves giving notice of a decision not to confirm an order.

502. Paragraph 18 replicates paragraph 12 of Schedule 15, which sets out the procedure for challenging orders through the High Court. It provides that if any person is aggrieved by an order which has taken effect and wishes to question its validity on the ground that it is not within the powers of sections 53, 54, 54B and 54C, or that any of the requirements of Schedule 13A or Schedule 14A have not been complied with, the person may within 42 days from the date of publication of the notice make an application to the High Court.

503. The High Court may quash the order (or any provision of the order) and, in an extension of the High Court's power (see sub-paragraph (4)), may also quash the decision (or any part of the decision) of the Secretary of State rather than the order (or any part of the order). This measure will reduce the number of cases where the order-making process has to start over again from scratch, which will reduce the administrative burden on both local authorities and the Secretary of State.

Part 4: Highways Act 1980

504. *Paragraph 8* of Schedule 7 makes the following amendments to Schedule 6 to the Highways Act 1980. That Schedule sets out the procedure that must be followed before certain "public path orders" are made under that Act, for example, an order extinguishing a public right of way.

505. Paragraphs 1 and 4A of Schedule 6 are amended so that the surveying authority are no longer required to give notice of the making of a public path order by publication in at least one local newspaper circulating in the area. Instead they are required to give notice by publication on the authority's website and on such other websites or through the use of such other digital communications media as the authority may consider appropriate. This measure will significantly reduce the cost to the local authority of making an order and the cost to the landowner where the cost is passed on to the landowner because the order is for the landowner's benefit.

506. The new measures in paragraph 2 enable:

a) the surveying authority to decide not to submit an order that has attracted one or more representations or objections to the Secretary of State for confirmation if they believe that nothing in the representation or objection would be relevant in determining whether or not to confirm the order (the authority would have to have regard to any guidance issued by the Secretary of State and must inform the person who made the representation or objection of the reasons for its decision); and

b) the Secretary of State to decide not to hold an inquiry or hearing if he believes that nothing in the grounds of the representation or objection would be relevant in determining whether or not to confirm the order.

507. In both cases the order may be confirmed by the surveying authorities as if it were an unopposed order. These measures will reduce that number of instances where the Secretary of State has to review the authorities' decisions, which will reduce the administrative burden on both local authorities and the Secretary of State.

508. A new measure in paragraph 2 gives the authority the power to sever a public path order where some but not all of the modifications in it have attracted representations or objections and submit only that part of the order that attracted representations or objections to the Secretary of State. A further measure gives the Secretary of State the power to sever a public path order submitted to him where some but not all of the modifications in it have attracted representations or objections. The Secretary of State will then determine that part of the order that attracted representations or objections; leaving the other part of the order for the authority to confirm as unopposed.

509. The authority may also sever an order where part of the order has attracted representations or objections that the authority considers are not relevant and not submit that part of the order, submitting only that part of the order that has attracted representations or objections that are relevant. In doing so the authority would have to have regard to any guidance issued by the Secretary of State and must inform the applicant and any person who made the representation or objection (and has not withdrawn it) of the reasons for its decision. These measures will reduce that number of instances where the Secretary of State has to review the authorities' decisions, which will reduce the administrative burden on both local authorities and the Secretary of State.

510. Paragraph 5 is amended so that where the validity of an order is questioned by application to the High Court then the Court may quash the decision of the Secretary of State rather than the order. This measure will reduce the number of cases where the order-making process has to start over again from scratch, which will reduce the administrative burden on both local authorities and the Secretary of State.

Part 5: Consequential amendments

511. *Paragraphs 9 to 11* of Schedule 7 make amendments providing for the new Schedules 13A and 14A to apply in England, while the existing Schedules 14 and 15 will continue to apply in Wales.