

Deregulation Bill

Schedule 7

ASCERTAINMENT OF RIGHTS OF WAY

PART 1

WILDLIFE AND COUNTRYSIDE ACT 1981

1 The Wildlife and Countryside Act 1981 is amended as follows.

2 In section 53 (duty to keep definitive map and statement under continuous review) —

(a) in subsection (3)(c)(i), omit “or is reasonably alleged to subsist”;

(b) after subsection (3)(c)(i) insert—

“(ia) in the case of an authority in Wales, that a right of way which is not shown in the map and statement is reasonably alleged to subsist over land in the area to which the map relates, being such a right of way as is mentioned in sub-paragraph (i);”.

3 After that section insert—

“53ZAModifications arising from administrative errors

(1) The Secretary of State may by regulations provide for Schedules 13A and 14A to apply with prescribed modifications in relation to the making of orders under section 53(2) in cases where it appears to a surveying authority in England (whether or not on an application under section 53(5)) that—

(a) it is requisite to make a modification of 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.

(2) The Secretary of State may by regulations provide for Schedule 14A to apply with prescribed modifications in cases where an order under section 53(2) is made in accordance with regulations under subsection (1).

(3) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) At any time when regulations under subsection (1) are in force, a surveying authority shall, in deciding whether paragraphs (a) to (c) of that subsection apply in a particular case (and, accordingly, whether the provision

made by the regulations applies in relation to the making of an order under section 53(2) in that case), have regard to any guidance given by the Secretary of State.

(5) In this section, “prescribed” means prescribed by regulations.”

4 In section 53B (register of applications under section 53), after subsection (4) insert—

“(4A) Regulations may provide that subsection (1) does not apply, with respect to applications under section 53(5) made to an authority in England, or to any prescribed description of such applications, unless the authority serve notice under paragraph 2(4)(b) of Schedule 13A in relation to such an application.

(4B) The making of regulations under subsection (4A) does not prevent an authority including in the register any information that they would be required to include in it had the regulations not been made.”

5 After section 54A insert—

“54B Modifications of definitive map and statement by consent: England

(1) This section applies where it appears to a surveying authority in England (whether or not on an application under section 53(5)) that —

- (a) it might be requisite to make a modification to a definitive map and statement in consequence of the occurrence of one or more events falling within section 53(3)(b) or (c)(i) or (ii);
- (b) the basis for the authority’s view that it might be requisite is authority have served notice under paragraph 2(4)(b) of Schedule 13A that they are considering the documentary evidence of the existence of a right of way before 1949; and
- (c) in a case where the authority for that view following an application, the application.

(2) The authority shall ascertain whether every owner of the land to which the modification relates consents to the making of an order under section 53(2) or would so consent if the authority made one or more of the following orders (“special orders”)—

- (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.

(3) A diversion order is an order which, for the purpose of diverting the line of the path or way or part of it—

- (a) creates any such new path or way (of the same kind) as appears to the authority appropriate; and

(b) extinguishes any public right of way over so much of the path or way as appears to the authority to be appropriate.

(4) If every owner consents to the making of an order under section 53(2) (without the making of a special order), the authority—

(a) may make the order under section 53(2); and

(b) if they do so, shall include in the order a statement that it is made with the consent of every owner.

(5) If an owner would consent to the making of an order under section 53(2) only if one or more special orders are made, and the other owners (if any) do not object to the making of such an order or orders, the authority may make the special order or orders in question and, if they do so, shall—

(a) make an order under section 53(2);

(b) include in that order a statement that it is made with the consent of every owner; and

(c) combine any special orders and the order under section 53(2) in a single document.

(6) Before making a diversion order, the authority must—

(a) be satisfied that the path or way will not be substantially less convenient to the public in consequence of the diversion; and

(b) have regard to any guidance given by the Secretary of State.

(7) As soon as reasonably practicable after an authority are satisfied that they have power under subsection (4) or (5) to make an order under section 53(2), the authority must—

(a) give notice to each owner that they are satisfied that they have that power; and

(b) include in the notice an explanation of the effect of subsection (9) of this section.

(8) An order under section 53(2) which includes a statement that it is made with the consent of every owner is referred to in this Act as a modification consent order.

(9) An authority must determine whether to make a modification consent order before the end of the period of 12 months beginning with—

(a) in the case mentioned in subsection (1)(c), the day on which the authority served notice under paragraph 2(4)(b) of Schedule 13A in respect of the application;

(b) in any other case, the day on which notice is given under subsection (7).

(10) The Secretary of State may by order provide that, in cases or circumstances specified in the order, subsection (9) applies as if for the period of 12 months mentioned in that subsection there were substituted a longer period specified in the order.

(11) An order under subsection (10) shall be made by statutory instrument which shall be subject to annulment

54C Modifications of definitive map and statement by consent: supplemental

(1) An authority may not make a diversion order under section 54B(5) so as to alter a point of termination of a path or way—

(a) if that point is not on a highway; or

(b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.

(2) An authority may not make such an order so as to alter the line of a path or way such that it falls on land owned by a person whose consent was not sought under section 54B(2), unless that other person consents to the alteration.

(3) An authority which make a modification consent order are responsible, as from the date when the order takes effect, for maintaining any path or way, or any part of a path or way, which is shown in a definitive map and statement in consequence of the making of the order or any special order combined with it under section 54B(5) (including so much of a path or way as has been created by the making of a special order altering the width of an existing path or way).

(4) Where it appears to the authority—

(a) that if a modification consent order were to take effect, they would be responsible under subsection (3) for the maintenance of a path or way, or part of a path or way, and

(b) that 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 1981 ACT

6 After Schedule 13 to the Wildlife and Countryside Act 1981 insert—

“SCHEDULE 13A

APPLICATIONS FOR CERTAIN ORDERS UNDER PART 3: ENGLAND

Form of applications

1 (1) An application must be made in the prescribed form and be accompanied by—

(a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and

(b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application, unless the authority have informed the applicant that the authority already have access to the evidence in question.

(2) Regulations under sub-paragraph (1) must provide for an application to include an explanation as to why the applicant believes that a definitive map and statement should be modified in consequence of the occurrence of one or more events falling within section 53(3)(b) or (c).

Preliminary assessment and notice of applications

2 (1) An authority must, before the end of the period of 3 months beginning with the day on which they receive an application, decide whether the application, and any documentary evidence which the applicant relies on in support of it, show that there is a reasonable basis for the applicant's belief that a definitive map and statement should be modified in consequence of the occurrence of one or more events falling within section 53(3)(b) or (c).

(2) In deciding whether there is such a basis, the authority must have regard to any guidance given by the Secretary of State.

(3) If they decide that there is no such basis, they must, before the end of that period of 3 months, inform the applicant of their decision and the reasons for it.

(4) If they decide that there is such a basis, they must, before the end of that period—

(a) inform the applicant; and

(b) serve a notice on every owner and occupier of any land to which the application relates stating that an application has been made and the authority are considering it.

(5) If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on the person by sub-paragraph (4) may be served by addressing it to the person by the description “owner” or “occupier” of the land (describing it) and by affixing it to some conspicuous object or objects on the land.

Failure by authority to conduct preliminary assessment

3 (1) If an authority have not assessed an application in accordance with paragraph 2 before the end of the period of 3 months beginning with the day on which they received the application, the applicant may give notice to the authority in the prescribed form of an intention to apply to a magistrates’ court for an order under this paragraph.

(2) The applicant may apply to a magistrates’ court for an order under this paragraph at any time—

(a) after the end of the period of 1 month beginning with the day on which notice was given; and

(b) before the end of the period of 6 months beginning with that day.

(3) On hearing an application under this paragraph, a magistrates’ court may order the authority to take specified steps for the purposes of discharging the authority’s duty under paragraph 2 and to do so within such reasonable period as may be specified.

(4) An order under sub-paragraph (3) may provide for paragraph 5 to apply in relation to the application made to the authority as if for the period of 12 months beginning with the day on which the authority received the application there were substituted a longer period.

(5) The authority or the applicant may appeal to the Crown Court against a decision of a magistrates’ court under this paragraph.

(6) An order under this paragraph does not take effect—

(a) until the end of the period of 21 days beginning with the day after the day on which the order was made, or

(b) if an appeal is brought in respect of the order within that period (whether by way of appeal to the Crown Court or by way of case stated for the opinion of the High Court), until the final determination or withdrawal of the appeal.

Determination by authority

4 (1) As soon as reasonably practicable after serving a notice under paragraph 2(4)(b), the authority must—

(a) investigate the matters stated in the application; and

(b) after consulting with very local authority whose area includes the land to which the application relates, decide whether to make or not to make the order to which the application relates.

(2) The duty in sub-paragraph (1) does not apply in a case to which section 54B (modifications by consent) applies (see section 54B(1)).

(3) But if, in such a case, an event mentioned below occurs, the authority must take the steps mentioned in sub-paragraph (1)(a) and (b) as soon as reasonably practicable after the occurrence of that event.

The events are—

(a) that the authority ascertain that an owner does not consent to the making of an order under section 53(2) (whether with or without the making of a special order mentioned in section 54B(2)(a) to (c));

(b) that the authority decide for any other reason not to make a modification consent order;

(c) that the period of 12 months beginning with the date on which notice was served under paragraph 2(4)(b) expires without the authority having determined whether to make such an order;

(d) that the authority make such an order but decide not to confirm it.

(4) As soon as practicable after determining an application, the authority must give notice of their decision by serving a copy of it on the applicant and any person on whom notice of the application was required to be served under paragraph 2(4)(b).

Failure by authority to determine application

5 (1) If an authority have not discharged their duty under paragraph 4 within the period of 12 months beginning with the day on which they received the application, the applicant or any owner or occupier of any land to which the application relates may give notice to the authority in the prescribed form of an intention to apply to a magistrates' court for an order under sub-paragraph (4).

(2) A person who has given notice under sub-paragraph (1) may apply to a magistrates' court for an order under sub-paragraph (4) at any time—

(a) after the end of the period of 1 month beginning with the day on which notice was given; and

(b) before the end of the period of 12 months beginning with that day.

(3) On the hearing of an application under sub-paragraph (2) the other persons by whom a notice under sub-paragraph (1) could have been given have a right to be heard.

(4) On hearing an application under sub-paragraph (2), a magistrates' court may order the authority to take specified steps for the purposes of discharging their duty under paragraph 4 and to do so within such reasonable period as may be specified.

(5) The authority may make one application to a magistrates' court for an order extending by up to 12 months the period specified in the order under sub-paragraph (4).

(6) On the hearing of an application under sub-paragraph (5) in relation to an order under sub-paragraph (4), the person who applied for that order and the other persons by whom a notice under sub-paragraph (1) could have been given have a right to be heard.

(7) A decision of a magistrates' court under this paragraph may be appealed to the Crown Court by—

(a) the authority;

(b) the applicant for an order under sub-paragraph (4);

(c) any other person by whom a notice under sub-paragraph (1) could have been given.

(8) An order under this paragraph does not take effect—

(a) until the end of the period of 21 days beginning with the day after the day on which the order was made; or

(b) if an appeal is brought in respect of the order within that period (whether by way of appeal to the Crown Court or by way of case stated for the opinion of the High Court), until the final determination or withdrawal of the appeal.

Failure by authority to determine application: further provision about notices

6 (1) An applicant for an order under sub-paragraph (4) of paragraph 5 must give notice to the court of the names and addresses of any other person by whom a notice under sub-paragraph (1) of that paragraph could have been given.

(2) If it is not reasonably practicable for an applicant to ascertain such a name and address, the applicant is to be taken to have complied with sub-paragraph (1) if the applicant gives notice to the court that that is the case.

(3) Notice of the hearing, of the right to be heard and of the right to appeal against a decision on an application under paragraph 5(2) must be given by the court to each person whose name and address is notified to the court under sub-paragraph (1).

(4) Notice of the hearing, of the right to be heard and of the right to appeal against a decision on an application under paragraph 5(5) must be given by the court to—

(a) the person who applied for the order under paragraph 5(4) to which the application relates; and

(b) each person whose name and address was notified to the court under sub-paragraph (1) by the person mentioned in paragraph (a).

(5) Where the court is given notice under sub-paragraph (2), notice of the hearing, of the right to be heard and of the right to appeal against a decision on an application under paragraph 5(2) or (5) must also be given by the court by affixing it to some conspicuous object or objects on the land to which the application relates.

Procedure where authority decide not to make order: general

7 (1) Where an authority decide under paragraph 4 not to make an order, the applicant may, at any time within 28 days after service of notice of the decision, give notice to the authority in the prescribed form of the applicant's wish to appeal against the decision to the Secretary of State and of the grounds on which the applicant wishes to do so.

(2) If the applicant gives such notice and does not withdraw it—

(a) the authority must submit the matter to the Secretary of State; and

(b) the Secretary of State must deal with the matter as an appeal against the decision of the authority.

(3) The authority may, but need not, act as mentioned in sub-paragraph (2) if the authority are of the opinion that nothing in the grounds of appeal relates to an issue which, if the matter were submitted to the Secretary of State, would be relevant to the Secretary of State's decision on the appeal.

(4) In deciding whether to exercise their power under sub-paragraph (3) not to submit the matter, the authority must have regard to any guidance given by the Secretary of State.

(5) Where the authority decide not to submit the matter, the authority must inform the applicant of their decision and the reasons for it.

(6) Where the matter is submitted to the Secretary of State, the authority must give notice in the prescribed form—

(a) setting out the authority's decision;

(b) stating that the matter has been submitted to the Secretary of State;

(c) naming a place in the area in which the land to which the decision relates is situated where a copy of the decision may be inspected free of charge, and copies of it may be obtained at a reasonable charge, at all reasonable hours; and

(d) specifying the time (not being less than 42 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the decision, which must include particulars of the grounds relied on, may be made to the Secretary of State.

(7) Subject to sub-paragraph (9), the notice to be given under sub-paragraph (6) must be given—

(a) by publication on a website maintained by the authority and on such other websites or through the use of such other digital communications media as the authority may consider appropriate;

(b) by serving a like notice on—

(i) every owner and occupier of any of the land to which the decision relates;

(ii) every local authority whose area includes any of that land;

(iii) every person on whom notice is required to be served in pursuance of sub-paragraph (8); and

(iv) such other persons as may be prescribed in relation to the area in which that land is situated or as the authority may consider appropriate; and

(c) by causing a copy of the notice to be displayed in a prominent position—

(i) at the ends of so much of any way as is affected by the decision;

(ii) at council offices in the locality of the land to which the decision relates; and

(iii) at such other places as the authority may consider appropriate.

(8) Any person may, on payment of such reasonable charge as the authority may consider appropriate, require an authority to give the person notice of all such decisions under paragraph 4 not to make an order as—

(a) are made by the authority during a period specified in the requirement;

(b) are of a description so specified; and

(c) relate to land comprised in an area so specified.

(9) The Secretary of State may, in any particular case, direct that it is not necessary to comply with sub-paragraph (7)(b)(i); but if such a direction is given in the case of any land, then in addition to publication the notice must be addressed to “The owners and any occupiers” of the land (describing it) and a copy or copies of the notice must be affixed to some conspicuous object or objects on the land.

(10) Sub-paragraph (7)(b) and (c) and, where applicable, sub-paragraph (9) must be complied with not less than 42 days before the expiration of the time specified in the notice.

(11) A notice required to be served by sub-paragraph (7)(b) on the owner or occupier of any land, or on a local authority, must be accompanied by a copy of so much of the decision as relates to that land or, as the case may be, the area of that authority; and a notice required to be served by that sub-paragraph on such other persons as may be prescribed or as the authority may consider appropriate must be accompanied by a copy of the decision.

(12) A notice required to be displayed by sub-paragraph (7)(c) at the ends of so much of any way as is affected by the decision must be accompanied by a plan showing the general effect of the decision so far as it relates to that way.

(13) At any time after the publication of a notice under this paragraph, and before the expiration of the period specified in the notice for the making of representations and objections, any person may require the authority to inform the person what documents (if any) were taken into account in making the decision and—

(a) as respects any such documents in the possession of the authority, to permit him to inspect them and take copies; and

(b) as respects any such documents not in their possession, to give him any information the authority have as to where the documents can be inspected; and the authority must comply with a requirement under this sub-paragraph within 14 days of the making of the requirement.

(14) Nothing in sub-paragraph (6)(d) or (13) is to be construed as limiting the grounds which may be relied on or the documentary or other evidence which may be adduced at any local inquiry or hearing held under paragraph 8(1)(a) or (c) or included in representations made under paragraph 8(1)(b).

8 (1) Where a matter is submitted to the Secretary of State under paragraph 7(2), the Secretary of State must either—

(a) cause a local inquiry to be held;

(b) afford the applicant, and any person by whom a representation or objection has been duly made and not withdrawn, an opportunity to make representations (or further representations) to a person appointed by the Secretary of State for that purpose; or

(c) afford the applicant, and any person by whom a representation or objection has been duly made and not withdrawn, an opportunity to be heard by a person appointed by the Secretary of State for that purpose.

(2) The Secretary of State may, but need not, act as mentioned in sub-paragraph (1) if, in the opinion of the Secretary of State, nothing in the grounds of appeal, and no representation or objection which has been duly made and not withdrawn, relates to an issue which would be relevant to the Secretary of State's decision on the appeal.

(3) On considering the grounds of appeal, any representations or objections duly made (and not withdrawn) and the report of any person appointed to hold an inquiry or appointed as mentioned in sub-paragraph (1)(b) or (c), the Secretary of State may—

(a) uphold the authority's decision;

(b) direct the authority to make an order in accordance with the direction;

(c) make an order.

(4) Sub-paragraph (5) applies if—

(a) the Secretary of State proposes to direct an authority to make an order or proposes to make an order; and (b) an order made in accordance with the proposed direction or (as the case may be) the order that the Secretary of State is proposing to make would differ in a material respect from the order sought by the applicant in the application.

(5) The Secretary of State must give such notice as appears to him or her to be requisite of the proposal, specifying the time (which must not be less than 28 days from the date of first publication of the notice) within which, and the manner in which, representations or objections with respect to the proposal, which must include particulars of the grounds relied on, may be made.

(6) If any representation or objection duly made under sub-paragraph (5) is not withdrawn, the Secretary of State must either—

(a) cause a local inquiry to be held;

(b) afford any person by whom a representation or objection has been duly made and not withdrawn, an opportunity to make representations (or further representations) to a person appointed by the Secretary of State for that purpose; or

(c) afford any person by whom a representation or objection has been duly made and not withdrawn, an opportunity to be heard by a person appointed by the Secretary of State for that purpose.

(7) The Secretary of State must consider the report of any person appointed to hold an inquiry or appointed as mentioned in sub-paragraph (6)(b) or (c).

(8) The Secretary of State may, but need not, act as mentioned in sub-paragraph (6) if, in his or her opinion, no representation or objection which has been duly made and not withdrawn relates to an issue which would be relevant to the Secretary of State's decision on the appeal.

(9) For the purposes of sub-paragraph (4)(b), an order made in accordance with the proposed direction, or (as the case may be) the order that the Secretary of State is proposing to make, would differ in a material respect from the order sought by the applicant in the application if—

(a) it would affect land not affected by the order sought by the applicant;

(b) it would not show any way shown in the order sought by the applicant;

(c) it would show any way not so shown; or

(d) it would show as a highway of a particular description a way which is shown in the order sought by the applicant as a highway of another description.

(10) Nothing in sub-paragraph (5) is to be construed as limiting the grounds which may be relied upon or the documentary or other evidence which may be adduced at any local inquiry or hearing held under sub-paragraph (6)(a) or (c) or included in representations made under sub-paragraph (6)(b).

Procedure where authority decide not to make an order: supplemental

9 (1) A decision of the Secretary of State under paragraph 8 must, except in such classes of case as may for the time being be prescribed or as may be specified in directions given by the Secretary of State, be made by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State; and a decision made by a person so appointed is to be treated as a decision of the Secretary of State.

(2) The Secretary of State may, if the Secretary of State thinks fit, direct that a decision which, by virtue of sub-paragraph (1) and apart from this sub-paragraph, falls to be made by a person appointed by the Secretary of State is instead to be made by the Secretary of State; and a direction under this sub-paragraph must state the reasons for which it is given and must be served on the person, if any, so appointed, the authority and any person by whom a representation or objection has been duly made and not withdrawn.

(3) Where the Secretary of State has appointed a person to make a decision under paragraph 8 the Secretary of State may, at any time before the making of the decision, appoint another person to make it instead of the person first appointed to make it.

(4) Where by virtue of sub-paragraph (2) or (3) a particular decision falls to be made by the Secretary of State or any other person instead of the person first appointed to make it, anything done by or in relation to the latter is to be treated as having been done by or in relation to the former.

(5) Regulations under this paragraph may provide for the giving of publicity to any directions given by the Secretary of State under this paragraph.

10 (1) Subject to sub-paragraph (2), subsections (2) to (5) of section 250 of the Local Government Act 1972 (giving of evidence at, and defraying of costs of, inquiries) apply in relation to any hearing or local inquiry held under paragraph 8 as they apply in relation to a local inquiry which a Minister causes to be held under subsection (1) of that section.

(2) In its application to a hearing or inquiry held under paragraph 8 by a person appointed under paragraph 9, subsection (5) of that section is to have effect as if the reference to the Minister causing the inquiry to be held were a reference to the person so appointed or the Secretary of State.

(3) Section 322A of the Town and Country Planning Act 1990 (orders as to costs where no hearing or inquiry takes place) applies in relation to a hearing or local inquiry under paragraph 8 as it applies in relation to a hearing or local inquiry for the purposes referred to in that section.

11 Any person may, on payment of such reasonable charge as the authority may consider appropriate, require an authority to give the person notice of all such orders as—

(a) are made by the authority in accordance with a direction under paragraph 8(3)(b) or by the Secretary of State under paragraph 8(3)(c) during a period specified in the requirement;

(b) are of a description so specified; and

(c) relate to land in an area so specified.

Transfer of applications

12 (1) Where an application is made to an authority, the applicant may at any time before the application is determined give notice in the prescribed form to the authority that another person named in the notice is to carry on the application.

(2) Where such a notice is given, the other person is (in relation to any time after it is given) to be treated as the applicant for the purposes of this Act.

Interpretation

13 (1) In this Schedule—

“application” means an application under section 53(5);
“local authority” means a non-metropolitan district council, a parish council or the parish meeting of a parish not having a separate parish council;
“prescribed” means prescribed by regulations made by the Secretary of State.

(2) Regulations under this Schedule are to be made by statutory instrument and are subject to annulment in pursuance of a resolution of either House of Parliament.”

PART 3

NEW SCHEDULE 14A TO THE 1981 ACT

7 After Schedule 14 to the Wildlife and Countryside Act 1981 insert the following Schedule—

“SCHEDULE 14A

PROCEDURE IN CONNECTION WITH CERTAIN ORDERS UNDER PART 3: ENGLAND

PART 1

ORDERS MADE IN ACCORDANCE WITH PARAGRAPH 8 OF SCHEDULE 13A

1 (1) Where an order is made by an authority in accordance with a direction given under paragraph 8(3)(b) of Schedule 13A, or by the Secretary of State under paragraph 8(3)(c) of that Schedule, the Secretary of State must confirm the order.

(2) The order takes effect when it is confirmed by the Secretary of State.

PART 2

OTHER ORDERS

Application of Part 2

2 Part 2 of this Schedule applies to orders other than those which are made in accordance with a direction given under paragraph 8(3)(b) of Schedule 13A or by the Secretary of State under paragraph 8(3)(c) of that Schedule.

Consultation

3 Before making an order, the authority must consult with every local authority whose area includes the land to which the order relates.

Coming into operation

4 (1) A modification consent order does not take effect until confirmed by the authority under paragraph 9.

(2) Any other order does not take effect until confirmed either by the authority or the Secretary of State under paragraph 10 or by the Secretary of State under paragraph 13.

Publicity for orders

5 (1) On making an order, the authority must give notice in the prescribed form—

(a) describing the general effect of the order and stating that it has been made and requires confirmation;

(b) naming a place in the area in which the land to which the order relates is situated where a copy of the order may be inspected free of charge, and copies may be obtained at a reasonable charge, at all reasonable hours; and

(c) specifying the time (not being less than 42 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the order, which must include particulars of the grounds relied on, may be made.

(2) Subject to sub-paragraph (4), the notice to be given under sub-paragraph (1) must be given—

(a) by publication on a website maintained by the authority and on such other websites or through the use of such other digital communications media as the authority may consider appropriate;

(b) by serving a like notice on—

(i) every owner and occupier of any of that land;

(ii) every local authority whose area includes any of that land;

(iii) every person on whom notice is required to be served in pursuance of sub-paragraph (3); and

(iv) such other persons as may be prescribed in relation to the area in which that land is situated or as the authority may consider appropriate; and

(c) by causing a copy of the notice to be displayed in a prominent position—

(i) at the ends of so much of any way as is affected by the order;

(ii) at council offices in the locality of the land to which the order relates; and

(iii) at such other places as the authority may consider appropriate.

(3) Any person may, on payment of such reasonable charge as the authority may consider appropriate, require an authority to give the person notice of all such orders as—

(a) are made by the authority during a period specified in the requirement;

(b) are of a description so specified;

(c) and relate to land comprised in an area so specified.

(4) In the case of a modification consent order, the authority may decide that it is not necessary to comply with sub-paragraph (2)(b)(i) and, in any other case, the Secretary of State may give a direction that it is not necessary to comply with it.

But, if such a decision is made or such a direction is given in the case of any land, then in addition to publication the notice must be addressed to “The owners and any occupiers” of the land (describing it) and a copy or copies of the notice must be affixed to some conspicuous object or objects on the land.

(5) Sub-paragraph (2)(b) and (c) and, where applicable, sub-paragraph (4) must be complied with not less than 42 days before the expiration of the time specified in the notice.

(6) A notice required to be served by sub-paragraph (2)(b) on the owner or occupier of any land, or on a local authority, must be accompanied by a copy of so much of the order as relates to that land or, as the case may be, the area of that authority; and a notice required to be served by that sub-paragraph on such other persons as may be prescribed or as the authority may consider appropriate must be accompanied by a copy of the order.

(7) A notice required to be displayed by sub-paragraph (2)(c) at the ends of so much of any way as is affected by the order must be accompanied by a plan showing the general effect of the order so far as it relates to that way.

(8) At any time after the publication of a notice under this paragraph, and before the expiration of the period specified in the notice for the making of representations and objections, any person may require the authority to inform the person what documents (if any) were taken into account in preparing the order; and

(a) as respects any such documents in the possession of the authority, to permit the person to inspect them and take copies; and

(b) as respects any such documents not in their possession, to give the person any information the authority have as to where the documents can be inspected;

and the authority must comply with a requirement under this sub-paragraph within 14 days of the making of the requirement.

(9) Nothing in sub-paragraph (1)(c) or (8) is to be construed as limiting the grounds which may be relied on or the documentary or other evidence which may be adduced at any local inquiry or hearing held under paragraph 13(1)(a) or (c) or 14(3)(a) or (c) or included in representations made under paragraph 13(1)(b) or 14(3)(b).

Irrelevant representations or objections

6 (1) If representations or objections have been duly made about an order to an authority (and not withdrawn) but the authority consider that none of them are relevant, the authority may proceed under this Schedule as if no representations or objections had been duly made (and the following provisions of this Schedule apply accordingly).

(2) For the purposes of this paragraph, a representation or objection is relevant if, were the order to be submitted to the Secretary of State under paragraph 11, it would be relevant in determining whether or not to confirm the order (either with or without modifications).

(3) In deciding whether to exercise their power under sub-paragraph (1), an authority must have regard to any guidance given by the Secretary of State.

(4) Where the authority decide to exercise that power, the authority must inform the applicant, and any person who made a representation or objection (and has not withdrawn it), of their decision and the reasons for it.

(5) Nothing in this paragraph applies to a modification consent order.

Severance of orders - representations etc relating to only some modifications

7 (1) Where at any time representations or objections duly made and not withdrawn relate to some but not all of the modifications made by an order, the authority may, by notice given to the Secretary of State, elect that, for the purposes of the following provisions of this Schedule, the order is to have effect as two separate orders—

(a) the one comprising the modifications to which the representations or objections relate; and

(b) the other comprising the remaining modifications.

(2) Any reference in sub-paragraph (1) to an order includes a reference to any part of an order which, by virtue of one or more previous elections under that sub-paragraph, has effect as a separate order.

(3) Nothing in this paragraph applies to a modification consent order.

Severance of orders - only some representations etc relevant

8 (1) If representations or objections have been duly made about an order to an authority (and not withdrawn) but the authority consider that not all of the representations or objections are relevant, the authority may elect that the order is to have effect as two separate orders—

(a) the one comprising the modifications to which the relevant representations or objections relate;

(b) the other, comprising the remaining modifications, which is to be treated as if no representations or objections had been duly made; and the following provisions of this Schedule apply accordingly.

(2) For the purposes of this paragraph, a representation or objection is relevant if, were the order to be submitted to the Secretary of State under paragraph 11, it would be relevant in determining whether or not to confirm the order (either with or without modifications).

(3) In deciding whether to exercise their power under sub-paragraph (1), an authority must have regard to any guidance given by the Secretary of State.

(4) Where the authority decide to exercise such a power, the authority must inform the applicant, and any person who made a representation or objection (and has not withdrawn it), of their decision and the reasons for it.

(5) Nothing in this paragraph applies to a modification consent order.

Confirmation - modification consent orders

9 (1) The authority may (whether or not any representations or objections are made) confirm a modification consent order—

(a) without modifications; or

(b) with modifications, if every owner of the land to which the order relates so consents.

(2) Nothing in paragraphs 10 to 16 applies to a modification consent order.

Confirmation - unopposed orders (other than modification consent orders)

10 (1) If no representations or objections are duly made, or if any so made are withdrawn, the authority may—

(a) confirm the order without modification; or

(b) if they require any modification to be made, submit the order to the Secretary of State for confirmation by him or her.

(2) Where an order is submitted to the Secretary of State under sub-paragraph (1), the Secretary of State may confirm the order with or without modifications.

Confirmation - opposed orders (other than modification consent orders)

11 If any representation or objection duly made to an order is not withdrawn the authority must submit the order to the Secretary of State for confirmation by him or her.

12 (1) Where an order is submitted by an authority to the Secretary of State and the representations or objections relate to some but not all of the modifications made by the order, the Secretary of State may, by notice given to the authority, elect that the order is to have effect as two separate orders—

(a) the one comprising the modifications to which the representations or objections relate (“the opposed order”); and

(b) the other comprising the remaining modifications.

(2) Where notice is given under sub-paragraph (1), paragraph 10 and the following provisions of this Schedule apply as if only the opposed order had been submitted to the Secretary of State for confirmation.

(3) Any reference in sub-paragraph (1) to an order includes a reference to any part of an order which, by virtue of one or more previous elections under that sub-paragraph, has effect as a separate order.

13 (1) Where an order is submitted to the Secretary of State under paragraph 11, the Secretary of State must, subject to sub-paragraph (2), either—

(a) cause a local inquiry to be held;

(b) afford any person by whom a representation or objection has been duly made and not withdrawn an opportunity to make representations (or further representations) to a person appointed by the Secretary of State for the purpose; or

(c) afford any person by whom a representation or objection has been duly made and not withdrawn an opportunity to be heard by a person appointed by the Secretary of State for the purpose.

(2) The Secretary of State may, but need not, act as mentioned in sub-paragraph (1) if, in the Secretary of State’s opinion, no representation or objection which has been duly made and not withdrawn relates to an issue which would be relevant in determining whether or not to confirm the order, either with or without modifications.

(3) On considering any representations or objections duly made and the report of any person appointed to hold an inquiry, or appointed as mentioned in sub-paragraph (1)(b) or (c), the Secretary of State may confirm the order with or without modifications.

Restriction on power to confirm orders with modifications

14 (1) The Secretary of State must not confirm an order with modifications so as—

- (a) to affect land not affected by the order;**
- (b) not to show any way shown in the order or to show any way not so shown; or**
- (c) to show as a highway of one description a way which is shown in the order as a highway of another description, except after complying with the requirements of this paragraph.**

(2) The Secretary of State must give such notice as appears to him or her to be requisite of his or her proposal so to modify the order, specifying the time (which must not be less than 28 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the proposal, which must include particulars of the grounds relied on, may be made.

(3) If any representation or objection duly made under sub-paragraph (1) is not withdrawn, the Secretary of State must either—

- (a) cause a local inquiry to be held;**
- (b) afford any person by whom a representation or objection has been duly made and not withdrawn, an opportunity to make representations (or further representations) to a person appointed by the Secretary of State for that purpose; or**
- (c) afford any person by whom a representation or objection has been duly made and not withdrawn, an opportunity to be heard by a person appointed by the Secretary of State for that purpose.**

(4) The Secretary of State must consider the report of any person appointed to hold an inquiry or appointed as mentioned in sub-paragraph (3)(b) or (c).

(5) The Secretary of State may, but need not, act as mentioned in sub-paragraph (3) if, in his or her opinion, no representation or objection which has been duly made and not withdrawn relates to an issue which would be relevant in determining whether or not to confirm the order in accordance with his or her proposal.

(6) Sub-paragraph (2) is not to be construed as limiting the grounds which may be relied on at any local inquiry or hearing held under sub-paragraph (3)(a) or (c) or included in representations made under sub-paragraph (3)(b).

Appointment of inspectors etc

15 (1) A decision of the Secretary of State under paragraph 10, 13 or 14 must, except in such classes of case as may for the time being be prescribed or as may be specified in directions given by the Secretary

of State, be made by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State; and a decision made by a person so appointed is to be treated as a decision of the Secretary of State.

(2) The Secretary of State may, if he or she thinks fit, direct that a decision which, by virtue of sub-paragraph (1) and apart from this sub-paragraph, falls to be made by a person appointed by the Secretary of State is instead to be made by the Secretary of State; and a direction under this sub-paragraph must state the reasons for which it is given and must be served on the person, if any, so appointed, the authority and any person by whom a representation or objection has been duly made and not withdrawn.

(3) Where the Secretary of State has appointed a person to make a decision under paragraph 10, 13 or 14 the Secretary of State may, at any time before the making of the decision, appoint another person to make it instead of the person first appointed to make it.

(4) Where by virtue of sub-paragraph (2) or (3) a particular decision falls to be made by the Secretary of State or any other person instead of the person first appointed to make it, anything done by or in relation to the latter is to be treated as having been done by or in relation to the former.

(5) Regulations under this paragraph may provide for the giving of publicity to any directions given by the Secretary of State under this paragraph.

Hearings and local inquiries

16 (1) Subject to sub-paragraph (2), subsections (2) to (5) of section 250 of the Local Government Act 1972 (giving of evidence at, and defraying of costs of, inquiries) are to apply in relation to any hearing or local inquiry held under paragraph 13 or 14 as they apply in relation to a local inquiry which a Minister causes to be held under subsection (1) of that section.

(2) In its application to a hearing or inquiry held under paragraph 13 or 14 by a person appointed under paragraph 15, subsection (5) of that section has effect as if the reference to the Minister causing the inquiry to be held were a reference to the person so appointed or the Secretary of State.

(3) Section 322A of the Town and Country Planning Act 1990 (orders as to costs where no hearing or inquiry takes place) applies in relation to a hearing or local inquiry under paragraph 13 or 14 as it applies in relation to a hearing or local inquiry for the purposes referred to in that section.

PART 3

ORDERS: GENERAL

Notice of final decisions on orders

17 (1) As soon as practicable after a decision to confirm an order is made or, in the case of a decision by the Secretary of State, as soon as practicable after receiving notice of the decision, the authority must give notice—

(a) describing the general effect of the order as confirmed and stating that it has been confirmed (with or without modification) and the date on which it took effect; and

(b) naming a place in the area in which the land to which the order relates is situated where a copy of the order as confirmed may be inspected free of charge, and copies may be obtained at a reasonable charge, at all reasonable hours.

(2) A notice under sub-paragraph (1) must be given—

(a) by publication in the manner required by paragraph 5(2)(a);

(b) by serving a like notice on any persons on whom notices were required to be served under paragraph 5(2)(b) or (4); and

(c) by causing like notices to be displayed in the like manner as the notices required to be displayed under paragraph 5(2)(c).

(3) A notice required to be served by sub-paragraph (2)(b) on the owner or occupier of any land, or on a local authority, must be accompanied by a copy of so much of the order as confirmed as relates to that land or, as the case may be, the area of that authority; and, in the case of an order which has been confirmed with modifications, a notice required to be served by that sub-paragraph on such other persons as may be prescribed or as the authority may consider appropriate must be accompanied by a copy of the order as confirmed.

(4) As soon as practicable after a decision not to confirm an order or, in the case of a decision by the Secretary of State, as soon as practicable after receiving notice of his or her decision, the authority must give notice of the decision by serving a copy of it on any persons on whom notices were required to be served under paragraph 5(2)(b) or (4).

Proceedings for questioning validity of orders

18 (1) If any person is aggrieved by an order which has taken effect and desires 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 this Schedule have not been complied with in relation to it, the person may within 42 days from the date of publication of the notice under paragraph 17 make an application to the High Court under this paragraph.

(2) On any such application the High Court may, if satisfied that the order is not within those powers or that the interests of the applicant have been substantially prejudiced by a failure to comply with those requirements, quash the order, or any provision of the order, either generally or in so far as it affects the interests of the applicant.

(3) Sub-paragraph (4) applies if the application relates to an order of an authority that has been submitted to, and confirmed by, the Secretary of State.

(4) The High Court may quash the decision of the Secretary of State confirming the order or any part of it (either generally or in so far as it affects the interests of the applicant), instead of quashing the order or any provision of it.

(5) Except as provided by this paragraph, the validity of an order is not to be questioned in any legal proceedings whatsoever.

Supplemental

19 (1) The Secretary of State may, subject to the provisions of this Schedule, by regulations make such provision as to the procedure on the making, submission and confirmation of orders as appears to him to be expedient.

(2) In the application of this Schedule to an order that is a modification consent order, any special orders made under section 54B(5) are to be treated as part of the order.

(3) In this Schedule—

“council offices” means offices or buildings acquired or provided by the authority or by a local authority;

“local authority” means a non-metropolitan district council, a parish council or the parish meeting of a parish not having a separate parish council;

“order” means an order to which the provisions of this Schedule apply;

“prescribed” means prescribed by regulations made by the Secretary of State.

(4) Regulations under this Schedule are to be made by statutory instrument and are to be subject to annulment in pursuance of a resolution of either House of Parliament.”

PART 4

HIGHWAYS ACT 1980

8 (1) Schedule 6 to the Highways Act 1980 (procedure applicable to the making etc. of certain orders under the Act relating to footpaths, bridleways and restricted byways) is amended as follows.

(2) In paragraph 1 (publicity for orders)—

(a) in sub-paragraph (3), in paragraph (a), for the words from “in at least one local newspaper” to the end of the paragraph substitute “(within the meaning of sub-paragraph (3ZA))”;

(b) after sub-paragraph (3) insert—

“(3ZA) In sub-paragraph (3)(a), “publication” means—

(a) in relation to England, publication on a website maintained by the authority and on such other websites or through the use of such other digital communications media as the authority may consider appropriate;

(b) in relation to Wales, publication in at least one local newspaper circulating in the area in which the land to which the order relates is situated.”

(3) In paragraph 2 (opposed and unopposed orders), after sub-paragraph (2) insert—

“(2ZA) If representations or objections have been duly made to an authority in England other than the Secretary of State (and not withdrawn), but the authority consider that none of the representations or objections are relevant, the authority may proceed under this Schedule as if no representations or objections had been duly made (and the provisions of this Schedule apply accordingly).

(2ZB) If representations or objections have been duly made to such an authority (and not withdrawn), but the authority consider that at least one of the representations or objections is not relevant, the authority may elect that the order shall have effect as two separate orders—

(a) the one comprising the modifications to which the relevant representations or objections relate; and

(b) the other, comprising the remaining modifications, which is to be treated as if no representations or objections had been duly made; and the provisions of this Schedule apply accordingly.

(2ZC) For the purposes of this paragraph, a representation or objection is relevant if, were the order to be submitted to the Secretary of State, it would be relevant in determining whether or not to confirm the order (either with or without modifications).

(2ZD) In deciding whether to exercise their power under subsection (2ZA) or (2ZB), an authority shall have regard to any guidance given by the Secretary of State.

(2ZE) Where the authority decide to exercise such a power, the authority shall inform the applicant, and any person who made a representation or objection (and has not withdrawn it), of their decision and the reasons for it.”

(4) In that paragraph, after sub-paragraph (3) insert—

“(4) The Secretary of State may, but not need not, act as mentioned in sub-paragraph (2)(a) or (b) or (3)(b) in relation to an order relating to England if, in his opinion, no objection or representation which has been duly made and not withdrawn relates to an issue which would be relevant in determining whether or not to confirm the order (either with or without modifications) or to make it.”

(5) After paragraph 2 insert—

“2ZZA(1) Where at any time representations or objections duly made to an authority in England (and not withdrawn) relate to only parts of an order, the authority may elect that for the purposes of paragraph 2 and the following provisions of this Schedule, the order shall have effect as two separate orders—

(a) the one comprising the parts to which the representations or objections relate; and

(b) the other comprising the remaining parts.

(2) Where the authority is not the Secretary of State, an election for the purposes of sub-paragraph (1) shall be given by notice to the Secretary of State.

(3) Where an order made by an authority in England (other than the Secretary of State) is submitted to the Secretary of State, and any representations or objections duly made (and not withdrawn) relate to only parts of the order, the Secretary of State may, by notice given to the authority, elect that it shall have effect as two separate orders—

(a) the one comprising the parts to which the representations or objections relate (“the opposed order”); and

(b) the other comprising the remaining parts.

(4) Where notice is given under sub-paragraph (3), paragraph 2 and the following provisions of this Schedule apply as if only the opposed order had been submitted to the Secretary of State for confirmation.

(5) Any reference in sub-paragraph (1) or (3) to an order includes a reference to any part of an order which, by virtue of one or more previous elections under that sub-paragraph, has effect as a separate order.”

(6) In paragraph 4A (publication of orders)—

(a) the existing text becomes sub-paragraph (1);

(b) in that sub-paragraph, for the words from “in at least one local newspaper” to the end of the sub-paragraph substitute “(within the meaning of sub-paragraph (2))”;

(c) after that sub-paragraph insert—

“(2) In sub-paragraph (1), “publication” means—

(a) in relation to England, publication on a website maintained by the authority and on such other websites or through the use of such other digital communications media as the authority may consider appropriate;

(b) in relation to Wales, publication in at least one local newspaper circulating in the area in which the land to which the order relates is situated.”

(7) In paragraph 5 (proceedings for questioning validity of orders) omit the “and” after paragraph (b) and insert—

“(ba) the Schedule has effect as if after paragraph 3 there were inserted—

“3A (1) Sub-paragraph (2) applies if the application relates to an order of an authority in England that has been submitted to, and confirmed by, the Secretary of State.

(2) The High Court may quash the decision of the Secretary of State confirming the order or any part of it (either generally or in so far as it affects the interests of the applicant), instead of quashing the order or any provision of it.”; and”.

PART 5

CONSEQUENTIAL AMENDMENTS

9 Part 3 of the Wildlife and Countryside Act 1981 is amended as follows.

10 In section 53 (duty to keep definitive map and statement under continuous review)—

(a) in subsection (5), for “the provisions of Schedule 14” substitute “the provisions of Schedule 13A (in relation to England) and Schedule 14 (in relation to Wales)”;

(b) in subsection (6), for “the provisions of Schedule 15” substitute “the provisions of Schedule 14A (in relation to England) and Schedule 15 (in relation to Wales)”.

11 (1) Schedule 14 (Applications for certain orders under Part 3) is amended as follows.

(2) In the heading, at the end, insert “: Wales”.

(3) In paragraph 5 (interpretation), in sub-paragraph (1), for the definition of “local authority” substitute—

“ “local authority” means a community council;”.

12 (1) Schedule 15 (Procedure in connection with certain orders under Part 3) is amended as follows.

(2) In the heading, at the end, insert “: Wales”.

(3) In paragraph 13 (interpretation), in sub-paragraph (2), for the definition of “local authority” substitute—

“ “local authority” means a community council;”.