Deregulation Act 2015

Summary of clauses relating to Public Rights of Way

The Deregulation Bill was presented to Parliament on 23 January 2014. The bill received Royal Assent on 26 March 2015 and has thus become the Deregulation Act 2015.

The Government’s current expectation is that the rights of way provisions within the Act, together with other changes forming part of the Defra “rights of way reform package”, will be implemented in April 2016 (Lord de Mauley, Lords Hansard, 28 October 2014). This will include secondary legislation (orders and regulations) and guidance relating to the 2026 cut-off and the right to apply for public path orders contained within the Countryside and Rights of Way Act 2000.

However, as this will be after the general election in May 2015, decisions as to how and when the provisions will be implemented will be made by the new government, if indeed they are implemented at all.

Secondary legislation would set a start date for the operation of the provisions and would also define the types of ways that will be exempt from the cut-off provisions.

Changes to procedures for definitive map modification orders

Requirement to provide copies of documents may be waived
Schedule 13A sets out existing requirement for application for modification of definitive map and statement to be in prescribed form, accompanied by a map drawn to the prescribed scale and copies of any supporting documentary evidence (including user evidence forms). It is amended however to enable the authority to inform the applicant that they already have access to a particular document and do not require a copy to be submitted.
(Sch.7, part 2, para.6)

Application to include reasons for modification
Regulations will provide that applicants must explain why they believe the map should be modified.
(Sch.7, part 2, para.6)

Preliminary assessment procedure and notification to landowners
The authority will be required to carry out a preliminary assessment of applications within 3 months of receipt. If satisfied that there is a ‘reasonable basis for the applicant’s belief’ the authority will be required to serve notice of the application on the landowner.
(Sch.7, part 2, para.6)

Amendment of the requirement to register applications unless they meet a new preliminary assessment
Amendment of section 53B (register of applications under section 53). The Secretary of State may, by making regulations, provide that the duty of surveying authorities to
register applications for modification of the definitive map and statement need not apply unless the application passes a new preliminary assessment.  
(Sch.7, part 1, para.4)

**Failure by authority to conduct preliminary assessment**  
The applicant will have a right to apply to a magistrates’ court if the authority has not conducted the preliminary assessment in time. A magistrates’ court may order the authority to take specified steps. The authority or the applicant may also appeal to the Crown Court against a decision of a magistrates’ court under this paragraph.  
(Sch.7, part 2, para.6)

**Removal of ‘reasonably alleged’ test**  
Currently, under section 53(3)(c)(i) of the 1981 Act, a surveying authority is required to modify the definitive map and statement to add a right of way to the definitive map and statement if the evidence shows that it subsists or is ‘reasonably alleged to subsist’. Paragraph 2 would remove the reasonably alleged test (in relation to England) thereby raising the threshold for making such an order. The authority would be required to modify the map and statement only where it is satisfied on the balance of probabilities that a right of way subsists, the ordinary civil standard of proof.  
(Sch.7, part 1, para.2)

**Determination by authority**  
The authority will have a duty to determine the application as soon as reasonably practicable after serving notice on the landowner. The duty to determine the application will not apply if the authority decides to make and confirm a modification consent order.  
(Sch.7, part 2, para.6)

**Failure by authority to determine application**  
If the authority has not determined the application within twelve months of receipt, the applicant or any owner or occupier of the land to which the application relates may apply to a magistrates’ court. A magistrates’ court may order the authority to take specified steps. The authority may request extension of twelve months. As above, there is a right of appeal to Crown Court against the magistrates’ decision. Currently, appeals against non-determination are referred to the Secretary of State.  
(Sch.7, part 2, para.6)

**Modification consent orders**  
Inserts a new section 54B to the 1981 Act, which will provide for a new Modification Consent Order process where a landowner(s) consents to a modification. This section would apply where the authority considers that it might be requisite to modify the definitive map and statement to add a right of way, either upon the discovery of evidence that it subsists or there having been a period of use by the public that raises the presumption of dedication, and where the basis of the authority’s view is documentary evidence that the right of way existed before 1949.

It will also enable the authority to make special orders as part of the modification consent order, to divert the claimed route, alter its width or add limitations or conditions, to secure the landowner’s consent. The authority would need to be satisfied that the path will not be substantially less convenient to the public as a consequence of those changes. The authority would have twelve months to determine whether to make a
modification order. If not all landowners consent, or the authority determines not to make the modification consent order with modifications, the usual modification order procedure would apply.  
(Sch.7, part 1, para.5)

The authority would be able to confirm a modification consent order, with or without modifications and whether or not any representations or objections are received.  
(Sch.7, part 3)

Correction of ‘obvious administrative errors’
Would enable the Secretary of State to make regulations to provide a simpler and shorter order-making procedure for modifications to the definitive map and statement arising from obvious administrative errors.  
(Sch.7, part 1, para.3)

Revision of appeal procedures
The Bill makes a change to the Appeal procedure where the authority decides not to make an order in respect of an application, to avoid cases being submitted to the Secretary of State more than once (once on appeal and again if the authority is directed to make an order which is subsequently opposed). It would enable the Secretary of State to deal with both the appeal and any objections (that might arise from making an order) at the same time.

It would be the responsibility of the authority to submit the matter to the Secretary of State after the applicant has given notice of appeal, which must be made within 28 days after service of notice of the decision. The authority would not have to submit the appeal however if they did not consider the grounds of appeal to be relevant. In doing so the authority would have to have regard to any guidance issued by the Secretary of State.

Where the matter is submitted to the Secretary of State the authority would have to give notice in a prescribed form, setting out the decision, where documents will be made available for inspection and how representations or objections with respect to the decision may be made to the Secretary of State, essentially replicating the requirements for publicising a modification order. The Secretary of State would then consider the grounds for appeal in a single procedure, through an Inquiry, Written Representations or Hearing if required. The Secretary of State may decide not to if he believes that nothing in the grounds of the appeal and nothing in any representation or objection would be relevant to the decision on appeal.

The Secretary of State may agree that an order should not be made; direct the authority to make an order; or make an order. The procedure essentially replicates the existing procedures in Schedule 15 for determining opposed orders.  
(Sch.7, part 1, para.3)

Severance of orders
Authorities have an existing power under Schedule 15 to sever an opposed order so that the Secretary of State need only consider the disputed part. This provision is extended so that the authority will have discretion to sever an order where part of it has attracted objections or representations that the authority considers are not relevant, only
submitting that part which has attracted relevant representations or objections to the Secretary of State.
(Sch.7, part 3)

**Changes to publicity for DMMOs**
This would end the requirement to publicise order in a local newspaper, to be replaced with a requirement to publicise on the authority’s website.
(Sch.7, part 3)

**Dealing with irrelevant objections**
Authorities would have a new power to decide not to submit an order if representation or objections were deemed irrelevant and to confirm the order, subject to guidance.
(Sch.7, part 3)

**Transfer of ownership of applications**
An applicant would be able to transfer ownership of an application to another person, prior to determination of the application.
(Sch.7, part 3)

**Confirmation of orders- unopposed**
With regards to modification orders, as at present, the authority would be able to confirm the order as made if no representations or objections are outstanding, or submit it to the Secretary of State for confirmation if the authority requires modifications to the order.
(Sch.7, part 3)

**Confirmation of orders- opposed (severance and irrelevant objections)**
The existing procedure for confirmation of opposed orders is modified so as to enable the Secretary of State to sever an order submitted to him/her where some but not all of the modifications in it have attracted representations or objections. The Secretary of State may also discount irrelevant representations or objections.
(Sch.7, part 3)

**Proceedings for questioning validity of orders**
Where the validity of an order is questioned by application to the High Court the court may quash the decision of the Secretary of State rather than the order so that the order-making process does not need to start again from scratch.
(Sch.7, part 3)

**Implementation of the 2026 Cut-off Provisions**
Cut-off provisions as introduced in the 2000 Countryside and Rights of Way (CROW) Act form part of the Defra “rights of way reform package”, subject to certain exceptions. Secondary legislation (orders and regulations) will clarify which ways are exempt from the cut-off provisions.

**Recorded rights of way: additional protection from downgrading or deletion**
Amendment of the Countryside and Rights of Way Act 2000 by the insertion of a new section 55A.
Any public rights of way already shown on the Definitive Map and Statement will be protected from downgrading or deletion if the only basis for making such a modification is evidence that the right of way did not exist before 1 January 1949.
(Claude 20, inserting new section 55A to 2000 CROW Act)

Unrecorded rights of way: protection from extinguishment
Certain unrecorded public rights of way may be designated by surveying authorities as exceptions to the extinguishment during a period of one year from the cut-off date.

Regulations made by the Secretary of State will set the timescale for determining whether these designated rights of way should be shown on the map or extinguished, including a right to appeal to Magistrates Court if the authority fails to determine in time.
(Claude 21, inserting new section 56A to 2000 CROW Act)

Preserve rights over ways that are shown on the list of streets as publicly maintainable (secondary legislation)

Preserve rights of way where there is evidence that they were in regular, continuous use at the time of the cut-off date (secondary legislation)

Preserve rights over routes that are subject to applications, until the case is substantively determined (secondary legislation)

Conversion of public rights to private rights of way
The protection of private rights of way along a route that would be extinguished as a public right of way after the cut-off date.
(Claude 22, inserting new section 56B to 2000 CROW Act)

Public Path Orders
The right to apply for Public Path Orders
An extension of the right to apply and appeal for public path orders (not yet in force) to other types of land, to be specified in regulations. It is also intended to amend the procedure that the Secretary of State must follow in relation to appeals, by giving the Secretary of State the power to determine not to make an order.
(Claude 23)

Applications for certain orders under Highways Act 1980: cost recovery
Currently these sections (not yet in force) allow the Secretary of State or Welsh Ministers to prescribe charges payable on the making of applications under the ‘right to apply’ provisions. This clause amends these sections so as to limit the charging provisions to Wales and to allow the Secretary of State (in relation to England) to make regulations to enable local authorities to recover all their costs, rather than to a prescribed limit set centrally. It would also enable the Secretary of State to recover their costs for cases determined by the exchanges of written representations.
(Claude 25)

Amendments to Procedure
This replicates a number of the amendments to the modification order procedure in relation to the making and confirmation of public path (i.e. diversion or extinguishment) orders.

Publicity for orders

Irrelevant objections or representations

Severance of orders

Proceedings for questioning validity of orders
(Sch.7, part 4)

Other Measures
Extension of powers to authorise erection of gates at owner’s request
Amendment of section 147 of the Highways Act 1980 to enable highway authorities to authorise the erection of gates on restricted byways and byways open to all traffic to prevent the ingress or egress of animals.
(Clause 24)

Andrew Houldey
Asset Data Officer (PROW Definitive Map)
21st April 2015