

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 7: Ascertainment of rights of way

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

619. **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.
620. The new Schedule 13A replaces for England 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 for England 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

621. 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

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

Prescribed form of application

623. 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.

624. 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 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

625. 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.
626. 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 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

627. 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.
628. 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

629. 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.

630. 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

631. 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.
632. 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.
633. [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

634. 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.
635. 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

*These notes refer to the Deregulation Act 2015 (c.20)
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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.

636. 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)).
637. 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 are similar to 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.
638. [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.
639. 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.
640. Sub-paragraphs (4) to (10) of paragraph 8 and paragraphs 9 to 11 are similar to 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.

SIMILAR PROVISIONS IN THE RESPECTIVE SCHEDULES

<i>New Schedule 13A(England only) concerning applications and appeals</i>	<i>New Schedule 14A(England only) concerning orders and objections</i>	<i>Existing Schedule 15(Wales only) concerning orders and objections</i>
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

641. [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.