

SCHEDULES

SCHEDULE 7

ASCERTAINMENT OF RIGHTS OF WAY

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.

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- (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 every 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.

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- (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 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—

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- (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.

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- (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.

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- (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—

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- (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

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- (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.”