

## SCHEDULES

### SCHEDULE 7

#### ASCERTAINMENT OF RIGHTS OF WAY

#### **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.

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### **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.

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- (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; and
  - (c) 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

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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;

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- (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—

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- (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 (2) is not withdrawn, the Secretary of State must either—

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- (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 or her 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;

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“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.”