

SCHEDULES

SCHEDULE 7

ASCERTAINMENT OF RIGHTS OF WAY

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representations or objections have been duly made to an authority in England other than the Secretary of State (and not withdrawn), but the authority consider that none of the representations or objections are relevant, the authority may proceed under this Schedule as if no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- (2ZB) If representations or objections have been duly made to such an authority (and not withdrawn), but the authority consider that at least one of the representations or objections is not relevant, the authority may elect that the order shall have effect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 parts to which the relevant representations or objections relate; and
 - (b) the other, comprising the remaining parts, which is to be treated as if no representations or objections had been duly made;
- and the provisions of this Schedule apply accordingly.

Status: This is the original version (as it was originally enacted).

(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 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 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) or to make it.”

(5) In that paragraph, after sub-paragraph (4) (as inserted by sub-paragraph (4) of this paragraph) insert—

“(5) In the case of an order relating to England, the Secretary of State may, instead of affording a person an opportunity of being heard as mentioned in sub-paragraph (2)(b), (2A)(b) or (3)(b), afford the person an opportunity of making representations (or further representations) to a person appointed by him or her for the purpose.

(6) Where the Secretary of State acts under sub-paragraph (5) by affording a person an opportunity of making representations (or further representations) instead of an opportunity of being heard as mentioned in sub-paragraph (2)(b) or (3)(b), the reference in sub-paragraph (2) or (as the case may be) (3)(c) to the report of the person appointed to hear representations or objections is to be read as a reference to the report of the person appointed under sub-paragraph (5).”

(6) 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.

Status: This is the original version (as it was originally enacted).

- (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.”
- (7) 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.”
- (8) 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”.