

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 25: Applications for certain orders under Highways Act 1980: cost recovery

134. The background to this section is that sections 118ZA and 119ZA of the Highways Act 1980 (“the 1980 Act”) allow owners, lessees or occupiers of certain land to apply to local authorities for public path extinguishment orders or public path diversion orders. Certain amendments to those sections are made by section 23 (so as to extend the kinds of land to which such applications may relate). The amendments made by this section deal with the recovery of costs in respect of such applications.
135. Currently, the sections contain powers which allow the Secretary of State, in relation to England, or the Welsh Ministers, in relation to Wales, to prescribe charges payable on the making of such applications (and further charges where an order is made on the application). Under such regulations, the authority dealing with the application would be able to recover its costs but only up to the prescribed amount which would be set centrally and may not be at a level which would allow the authority to recover all of its costs.
136. The section therefore amends sections 118ZA and 119ZA of the 1980 Act so as to limit the application of the charging provisions to Wales. The purpose of this is to allow the Secretary of State (in relation to England) to use the power under section 150 of the Local Government and Housing Act 1989 to authorise charges to be imposed in respect of applications under sections 118ZA and 119ZA. Under this power, it would be possible for the Secretary of State to authorise a charge the amount of which would be at the authority’s discretion, provided it does not exceed the actual cost incurred. This provides the means for removing the burden on authorities which can arise under the current law if the centrally prescribed limit does not enable it to recover all of its costs.
137. The section also amends paragraph 2B of Part 1 of Schedule 6 to the 1980 Act. Currently, it is unclear whether the Secretary of State, who has a role in dealing with contested applications for public path orders, can recover the costs of determining such an application by appointing a person to consider and deal with written representations instead of holding an inquiry or an oral hearing. The amendment clarifies that the Secretary of State may recover the costs (under the same principles governing the recovery of the costs of holding an inquiry or conducting an oral hearing).