

SCHEDULES

SCHEDULE 7

ASCERTAINMENT OF RIGHTS OF WAY

PART 1

WILDLIFE AND COUNTRYSIDE ACT 1981

- 1 The Wildlife and Countryside Act 1981 is amended as follows.
- 2 In section 53 (duty to keep definitive map and statement under continuous review) —
 - (a) in subsection (3)(c)(i), omit “or is reasonably alleged to subsist”;
 - (b) after subsection (3)(c)(i) insert—
 - “(ia) in the case of an authority in Wales, that a right of way which is not shown in the map and statement is reasonably alleged to subsist over land in the area to which the map relates, being such a right of way as is mentioned in sub-paragraph (i);”.
- 3 After that section insert—

“53ZA Modifications arising from administrative errors

- (1) The Secretary of State may by regulations provide for Schedules 13A and 14A to apply with prescribed modifications in relation to the making of orders under section 53(2) in cases where it appears to a surveying authority in England (whether or not on an application under section 53(5)) that—
 - (a) it is requisite to make a modification of a definitive map and statement in consequence of an event mentioned in section 53(3)(c);
 - (b) the need for the modification has arisen because of an administrative error; and
 - (c) both the error and the modification needed to correct it are obvious.
- (2) The Secretary of State may by regulations provide for Schedule 14A to apply with prescribed modifications in cases where an order under section 53(2) is made in accordance with regulations under subsection (1).
- (3) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) At any time when regulations under subsection (1) are in force, a surveying authority shall, in deciding whether paragraphs (a) to (c) of that subsection apply in a particular case (and, accordingly, whether the provision made by the regulations applies in relation to the making of an order under

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section 53(2) in that case), have regard to any guidance given by the Secretary of State.

(5) In this section, “prescribed” means prescribed by regulations.”

4 In section 53B (register of applications under section 53), after subsection (4) insert—

“(4A) Regulations may provide that subsection (1) does not apply, with respect to applications under section 53(5) made to an authority in England, or to any prescribed description of such applications, unless the authority serve notice under paragraph 2(4)(b) of Schedule 13A in relation to such an application.

(4B) The making of regulations under subsection (4A) does not prevent an authority including in the register any information that they would be required to include in it had the regulations not been made.”

5 After section 54A insert—

“54B Modifications of definitive map and statement by consent: England

(1) This section applies where it appears to a surveying authority in England (whether or not on an application under section 53(5)) that —

- (a) it might be requisite to make a modification to a definitive map and statement in consequence of the occurrence of one or more events falling within section 53(3)(b) or (c)(i) or (ii);
- (b) the basis for the authority’s view that it might be requisite is documentary evidence of the existence of a right of way before 1949; and
- (c) in a case where the authority form that view following an application, the authority have served notice under paragraph 2(4)(b) of Schedule 13A that they are considering the application.

(2) The authority shall ascertain whether every owner of the land to which the modification relates consents to the making of an order under section 53(2) or would so consent if the authority made one or more of the following orders (“special orders”)—

- (a) a diversion order;
- (b) an order altering the width of the path or way;
- (c) an order imposing a new limitation or condition affecting the right of way.

(3) A diversion order is an order which, for the purpose of diverting the line of the path or way or part of it—

- (a) creates any such new path or way (of the same kind) as appears to the authority appropriate; and
- (b) extinguishes any public right of way over so much of the path or way as appears to the authority to be appropriate.

(4) If every owner consents to the making of an order under section 53(2) (without the making of a special order), the authority—

- (a) may make the order under section 53(2); and
- (b) if they do so, shall include in the order a statement that it is made with the consent of every owner.

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- (5) If an owner would consent to the making of an order under section 53(2) only if one or more special orders are made, and the other owners (if any) do not object to the making of such an order or orders, the authority may make the special order or orders in question and, if they do so, shall—
- (a) make an order under section 53(2);
 - (b) include in that order a statement that it is made with the consent of every owner; and
 - (c) combine any special orders and the order under section 53(2) in a single document.
- (6) Before making a diversion order, the authority must—
- (a) be satisfied that the path or way will not be substantially less convenient to the public in consequence of the diversion; and
 - (b) have regard to any guidance given by the Secretary of State.
- (7) As soon as reasonably practicable after an authority are satisfied that they have power under subsection (4) or (5) to make an order under section 53(2), the authority must—
- (a) give notice to each owner that they are satisfied that they have that power; and
 - (b) include in the notice an explanation of the effect of subsection (9) of this section.
- (8) An order under section 53(2) which includes a statement that it is made with the consent of every owner is referred to in this Act as a modification consent order.
- (9) An authority must determine whether to make a modification consent order before the end of the period of 12 months beginning with—
- (a) in the case mentioned in subsection (1)(c), the day on which the authority served notice under paragraph 2(4)(b) of Schedule 13A in respect of the application;
 - (b) in any other case, the day on which notice is given under subsection (7).
- (10) The Secretary of State may by order provide that, in cases or circumstances specified in the order, subsection (9) applies as if for the period of 12 months mentioned in that subsection there were substituted a longer period specified in the order.
- (11) An order under subsection (10) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

54C Modifications of definitive map and statement by consent: supplemental

- (1) An authority may not make a diversion order under section 54B(5) so as to alter a point of termination of a path or way—
- (a) if that point is not on a highway; or
 - (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.

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- (2) An authority may not make such an order so as to alter the line of a path or way such that it falls on land owned by a person whose consent was not sought under section 54B(2), unless that other person consents to the alteration.
- (3) Where a modification consent order takes effect, any path or way, or any part of a path or way, which is shown in a definitive map and statement in consequence of the order or any special order combined with it under section 54B(5) is maintainable at the public expense (including so much of a path or way as has been created by the making of a special order altering the width of an existing path or way).
- (4) Where it appears to an authority—
 - (a) that if a modification consent order were to take effect, a path or way, or part of a path or way, would be maintainable at the public expense by virtue of subsection (3); and
 - (b) that work is required to be done to bring the path or way, or the part, into a fit condition for use by the public,the authority may not confirm the order under Schedule 14A until they are satisfied that the work has been carried out.”