

Countryside and Rights of Way Act 2000

2000 CHAPTER 37

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An Act to make new provision for public access to the countryside; to amend the law relating to public rights of way; to enable traffic regulation orders to be made for the purpose of conserving an area's natural beauty; to make provision with respect to the driving of mechanically propelled vehicles elsewhere than on roads; to amend the law relating to nature conservation and the protection of wildlife; to make further provision with respect to areas of outstanding natural beauty; and for connected purposes.

[30th November 2000]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Extent

Preamble: England, Wales

PART I

ACCESS TO THE COUNTRYSIDE

CHAPTER I

RIGHT OF ACCESS

General

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [Other Application](#) | [England](#)



Wales

1.— Principal definitions for Part I.

(1) In this Part “access land” means any land which—

- (a) is shown as open country on a map in conclusive form issued by the appropriate countryside body for the purposes of this Part,
- (b) is shown on such a map as registered common land,
- (c) is registered common land in any area outside Inner London for which no such map relating to registered common land has been issued,
- (d) is situated more than 600 metres above sea level in any area for which no such map relating to open country has been issued, [...] ¹
- [(da) is coastal margin, or] ¹
- (e) is dedicated for the purposes of this Part under section 16,

but does not (in any of those cases) include excepted land or land which is treated by section 15(1) as being accessible to the public apart from this Act.

(2) In this Part—

“access authority” —

- (a) in relation to land in a National Park, means the National Park authority, and
- (b) in relation to any other land, means the local highway authority in whose area the land is situated;

“the appropriate countryside body” means—

- (a) in relation to England, [Natural England] ² , and
- (b) in relation to Wales, [the Natural Resources Body for Wales] ³ ;

[“coastal margin” means land which is of a description specified by an order under section 3A;] ⁴

“excepted land” means land which is for the time being of any of the descriptions specified in Part I of Schedule 1, those descriptions having effect subject to Part II of that Schedule;

“mountain” includes, subject to the following definition, any land situated more than 600 metres above sea level;

“mountain, moor, heath or down” does not include land which appears to the appropriate countryside body to consist of improved or semi-improved grassland;

“open country” means land which—

- (a) appears to the appropriate countryside body to consist wholly or predominantly of mountain, moor, heath or down, and
- (b) is not registered common land [or coastal margin] ⁵ .

(3) In this Part “registered common land” means—

- (a) land which is registered as common land under the Commons Registration Act 1965 (in this section referred to as “the 1965 Act”) and whose registration under that Act has become final, or

(b) subject to subsection (4), land which fell within paragraph (a) on the day on which this Act is passed or at any time after that day but has subsequently ceased to be registered as common land under the 1965 Act on the register of common land in which it was included being amended by reason of the land having ceased to be common land within the meaning of that Act.

(4) Subsection (3)(b) does not apply where—

(a) the amendment of the register of common land was made in pursuance of an application made before the day on which this Act is passed, or

(b) the land ceased to be common land by reason of the exercise of—

(i) any power of compulsory purchase, of appropriation or of sale which is conferred by an enactment,

(ii) any power so conferred under which land may be made common land within the meaning of the 1965 Act in substitution for other land.

Notes

¹ Added by Marine and Coastal Access Act 2009 c. 23 Pt 9 s.303(2)(a) (January 12, 2010)

² Words substituted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.154 (October 1, 2006)

³ Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.401 (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

⁴ Definition inserted by Marine and Coastal Access Act 2009 c. 23 Pt 9 s.303(2)(b) (January 12, 2010)

⁵ Words inserted by Marine and Coastal Access Act 2009 c. 23 Pt 9 s.303(2)(c) (January 12, 2010)

Other Application

In relation to pilot areas in England:

[1.— Principal definitions for Part I.

(1) In this Part “access land” means any land which—

(a) is shown as open country on a map in conclusive form issued by the appropriate countryside body for the purposes of this Part,

(b) is shown on such a map as registered common land,

(c) is registered common land in any area outside Inner London for which no such map relating to registered common land has been issued,

(d) is situated more than 600 metres above sea level in any area for which no such map relating to open country has been issued,

(da) is coastal margin, or

(e) is dedicated for the purposes of this Part under section 16,

but does not (in any of those cases) include excepted land or land which is treated by section 15(1) as being accessible to the public apart from this Act.

(2) In this Part—

“access authority” —

(a) in relation to land in a National Park, means the National Park authority, and

(b) in relation to any other land, means the local highway authority in whose area the land is situated;

“the appropriate countryside body” means—

(a) in relation to England, Natural England, and

(b) in relation to Wales, [the Natural Resources Body for Wales]² ;

“coastal margin” means land which is of a description specified by an order under section 3A;

“excepted land” means land which is for the time being of any of the descriptions specified in Part I of Schedule 1, those descriptions having effect subject to Part II of that Schedule;

“mountain” includes, subject to the following definition, any land situated more than 600 metres above sea level;

“mountain, moor, heath or down” does not include land which appears to the appropriate countryside body to consist of improved or semi-improved grassland;

“open country” means land which—

(a) appears to the appropriate countryside body to consist wholly or predominantly of mountain, moor, heath or down, and

(b) is not registered common land or coastal margin or land dedicated as coastal margin for the purposes of this Part under section 16.

(3) In this Part “registered common land” means—

(a) land which is registered as common land in a register of common land kept under Part 1 of the Commons Act 2006.

(b) [...]

(4) [...]

] ¹

Notes

¹ Amended by Commons Act 2006 c. 26 Sch.5 para.7 (October 31, 2011 as SI 2011/2460)

² Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.401 (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

England

[1.— Principal definitions for Part I.

(1) In this Part “access land” means any land which—

(a) is shown as open country on a map in conclusive form issued by the appropriate countryside body for the purposes of this Part,

(b) is shown on such a map as registered common land,

(c) is registered common land in any area outside Inner London for which no such map relating to registered common land has been issued,

(d) is situated more than 600 metres above sea level in any area for which no such map relating to open country has been issued,

(da) is coastal margin, or

(e) is dedicated for the purposes of this Part under section 16,

but does not (in any of those cases) include excepted land or land which is treated by section 15(1) as being accessible to the public apart from this Act.

(2) In this Part—

“access authority” —

- (a) in relation to land in a National Park, means the National Park authority, and
- (b) in relation to any other land, means the local highway authority in whose area the land is situated;

“the appropriate countryside body” means—

- (a) in relation to England, Natural England, and
- (b) in relation to Wales, [the Natural Resources Body for Wales]² ;

“coastal margin” means land which is of a description specified by an order under section 3A;

“excepted land” means land which is for the time being of any of the descriptions specified in Part I of Schedule 1, those descriptions having effect subject to Part II of that Schedule;

“mountain” includes, subject to the following definition, any land situated more than 600 metres above sea level;

“mountain, moor, heath or down” does not include land which appears to the appropriate countryside body to consist of improved or semi-improved grassland;

“open country” means land which—

- (a) appears to the appropriate countryside body to consist wholly or predominantly of mountain, moor, heath or down, and
- (b) is not registered common land or coastal margin or land dedicated as coastal margin for the purposes of this Part under section 16.

(3) In this Part “registered common land” means—

- (a) land which is registered as common land under the Commons Registration Act 1965 (in this section referred to as “the 1965 Act”) and whose registration under that Act has become final, or
- (b) subject to subsection (4), land which fell within paragraph (a) on the day on which this Act is passed or at any time after that day but has subsequently ceased to be registered as common land under the 1965 Act on the register of common land in which it was included being amended by reason of the land having ceased to be common land within the meaning of that Act [,]³

[but does not include land which is coastal margin or land which is dedicated as coastal margin for the purposes of this Part under section 16.]³

(4) Subsection (3)(b) does not apply where—

- (a) the amendment of the register of common land was made in pursuance of an application made before the day on which this Act is passed, or
- (b) the land ceased to be common land by reason of the exercise of—
 - (i) any power of compulsory purchase, of appropriation or of sale which is conferred by an enactment,
 - (ii) any power so conferred under which land may be made common land within the meaning of the 1965 Act in substitution for other land.

] ¹

Notes

- ¹ Words inserted by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(4) para.24(1)(a) (April 6, 2010)
- ² Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.401 (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)
- ³ Words added by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(4) para.24(2) (April 6, 2010: insertion applies until such time as 2006 c.26 Sch.5 para.7(2) comes into force)

Amendments Pending

Pt I c. I s. 1(3): amended by Commons Act 2006 c. 26 Sch. 5 para. 7(2) (Not yet in force)

Pt I c. I s. 1(3): words repealed by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch. 1(4) para. 24(2) (Not yet in force)

Pt I c. I s. 1(3)(a): words inserted by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch. 1(4) para. 24(1)(b) (Not yet in force: insertion came into force on April 6, 2010 but cannot take effect until the commencement of 2006 c.26 Sch.5 para.7(2))

Pt I c. I s. 1(4): repealed by Commons Act 2006 c. 26 Sch. 5 para. 7(3) (Not yet in force)

Pt I c. I s. 1(3)(b): repealed by Commons Act 2006 c. 26, Sch. 6(1) para. 1 (date to be appointed)

Pt I c. I s. 1(4): repealed by Commons Act 2006 c. 26, Sch. 6(1) para. 1 (date to be appointed)


Pt I c. I s. 1(3): words inserted by Marine and Coastal Access Act 2009 c. 23, Pt 9 s. 303(2)(d) (date to be appointed: insertion came into force on January 12, 2010 but cannot take effect until the commencement of 2006 c.26 Sch.5 para.7(2))

Commencement

Pt I c. I s. 1(1)-(4)(b)(ii): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. I s. 1(1)-(4)(b)(ii): England, Wales

 Partially In Force

2.— Rights of public in relation to access land.

(1) Any person is entitled by virtue of this subsection to enter and remain on any access land for the purposes of open-air recreation, if and so long as—

- (a) he does so without breaking or damaging any wall, fence, hedge, stile or gate, and
- (b) he observes the general restrictions in Schedule 2 and any other restrictions imposed in relation to the land under Chapter II.

(2) Subsection (1) has effect subject to subsections (3) and (4) and to the provisions of Chapter II.

(3) Subsection (1) does not entitle a person to enter or be on any land, or do anything on any land, in contravention of any [relevant statutory prohibition]¹.

[(3A) In subsection (3) “relevant statutory prohibition” means—

- (a) in the case of land which is coastal margin, a prohibition contained in or having effect under any enactment, and

(b) in any other case, a prohibition contained in or having effect under any enactment other than an enactment contained in a local or private Act.

]²

(4) If a person becomes a trespasser on any access land by failing to comply with—

- (a) subsection (1)(a),
- (b) the general restrictions in Schedule 2, or
- (c) any other restrictions imposed in relation to the land under Chapter II,

he may not, within 72 hours after leaving that land, exercise his right under subsection (1) to enter that land again or to enter other land in the same ownership.

(5) In this section “owner”, in relation to any land which is subject to a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 or a tenancy to which the Agricultural Holdings Act 1986 applies, means the tenant under that tenancy, and “ownership” shall be construed accordingly.

Notes

¹ Words substituted by Marine and Coastal Access Act 2009 c. 23 Pt 9 s.303(3)(a) (January 12, 2010)


² Added by Marine and Coastal Access Act 2009 c. 23 Pt 9 s.303(3)(b) (January 12, 2010)

Commencement

Pt I c. I s. 2(1)-(5): September 19, 2004 in relation to England for purposes specified in SI 2004/2173 art.2(1)(a); September 19, 2004 or the end of six months beginning on the day on which the land is dedicated for purposes of 2000 c.37 Part I s.16, whichever is later in relation to England for purposes specified in SI 2004/2173 art.2(2); December 14, 2004 in relation to England for purposes specified in SI 2004/3088 art.2(1); December 14, 2004 or the end of six months beginning with the day on which the land is dedicated for purposes of 2000 c.37 Part I s.16, whichever is later in relation to England for purposes specified in SI 2004/3088 art.2(2); May 28, 2005 in relation to Wales; May 28, 2005 in relation to England for purposes specified in SI 2005/827 art.2(1); May 28, 2005 or the end of six months beginning with the day on which the land is dedicated for purposes of 2000 c.37 Part I s.16, whichever is later, in relation to England for purposes specified in SI 2005/827 art.2(2); August 28, 2005 in relation to England for purposes specified in SI 2005/1901 art.2(1); August 28, 2005 or the end of six months beginning on the day on which the land is dedicated for purposes of 2000 c.37 Part I s.16, whichever is later in relation to England for purposes specified in SI 2005/1901 art.2(2); October 31, 2005 in relation to England for purposes specified in SI 2005/2752 art.2(1)(a); October 31, 2005 or the end of six months beginning on the day on which the land is dedicated for purposes of 2000 c.37 Part I s.16, whichever is later in relation to England for purposes specified in SI 2005/2752 art.2(2); not yet in force otherwise (SI 2004/2173 art. 2(1)(a), art. 2(2); SI 2004/3088 art. 2(1), art. 2(2); SI 2005/423 art. 2(a); SI 2005/827 art. 1, art. 2; SI 2005/1901 art. 2(1), art. 2(2); SI 2005/2752 art. 2(1)(a), art. 2(2))

Extent

Pt I c. I s. 2-(5): England, Wales

 Law In Force

3.— Power to extend to coastal land [: Wales]¹ .

(1) The [Welsh Ministers]² may by order amend the definition of “open country” in section 1(2) so as to include [as respects Wales]³ a reference to coastal land or to coastal land of any description.

(2) An order under this section may—

- (a) make consequential amendments of other provisions of this Part, and
- (b) modify the provisions of this Part in their application to land which is open country merely because it is coastal land.

(3) In this section “coastal land” means—

- (a) the foreshore, and
- (b) land adjacent to the foreshore (including in particular any cliff, bank, barrier, dune, beach or flat which is adjacent to the foreshore).

Notes


- ¹ Word inserted by Marine and Coastal Access Act 2009 c. 23 Pt 9 s.303(4)(a) (January 12, 2010)
- ² Words substituted by Marine and Coastal Access Act 2009 c. 23 Pt 9 s.303(4)(b) (January 12, 2010)
- ³ Words inserted by Marine and Coastal Access Act 2009 c. 23 Pt 9 s.303(4)(c) (January 12, 2010)

Commencement

Pt I c. I s. 3(1)-(3)(b): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. I s. 3(1)-(3)(b): England, Wales

 Law In Force

[3A Power to extend to coastal land etc: England

(1) The Secretary of State may by order specify the descriptions of land in England which are coastal margin for the purposes of this Part.

(2) An order under subsection (1) may, in particular—

- (a) describe land by reference to it being—
 - (i) land over which the line taken by the English coastal route passes,
 - (ii) land which is adjacent to and within a specified distance of that line, or
 - (iii) land which is adjacent to land within sub-paragraph (ii),

if the land described under paragraphs (i) to (iii), taken as a whole, is coastal land;

- (b) in relation to cases where a proposal of the kind mentioned in section 55B of the 1949 Act (power to determine the route in accordance with provision made in the report) is contained in relevant approved proposals, describe land by reference to the line taken by the English coastal route as it has effect from time to time in accordance with that proposal;
- (c) in relation to cases where a proposal of the kind mentioned in section 55C of that Act (alternative routes) is contained in relevant approved proposals, describe land by reference to it being—

- (i) land over which the line taken by an official alternative route which is for the time being in operation passes, or
 - (ii) land which is adjacent to and within a specified distance of that line,
- whether or not it is coastal land;

(d) in relation to cases where a proposal of the kind mentioned in section 55D(2)(a) or (b) of that Act (proposal that boundary should coincide with a physical feature) is contained in relevant approved proposals, provide that the boundary of an area of coastal margin is

- to coincide with a physical feature as provided for in that proposal (and for this purpose it is immaterial if the effect is to include other land as coastal margin or to exclude part of an area of coastal land);
- (e) in relation to cases where a direction under subsection (3) of section 55I of that Act (temporary diversions) specifies a route which (or any part of which) passes over land within subsection (4)(d) of that section, describe land by reference to it being—
- (i) land over which the line taken by that route (so far as it passes over land within subsection (4)(d) of that section) passes, or
 - (ii) land which is adjacent to and within a specified distance of that line (so far as it so passes),
- whether or not it is coastal land.
- (3) For the purposes of subsection (2) it is immaterial whether the English coastal route is in existence at the time the order is made.
- (4) An order under subsection (1) may modify the provisions of this Part in their application to land which is coastal margin.
- (5) Provision made by virtue of subsection (4) may, in particular—
- (a) confer functions on the Secretary of State or Natural England;
 - (b) if providing for any description of land which is coastal margin to be excluded from any description of excepted land—
 - (i) describe that land as mentioned in subsection (2)(a)(i) to (iii), (b) or (c), or
 - (ii) in relation to cases where a proposal of the kind mentioned in section 55D(2)(c) of the 1949 Act (proposal that boundary should coincide with a physical feature) is contained in relevant approved proposals, provide that the boundary of that land (or any part of it) is to coincide with a physical feature as provided for in that proposal.
- (6) Where, as a result of proposals becoming approved proposals relating to a long-distance route, land becomes coastal margin by virtue of an order under subsection (1)—
- (a) section 2(1) does not apply in relation to the land by reason of it being coastal margin until the end of the access preparation period in relation to the land,
 - (b) any direction given under Chapter 2 in relation to the land may be expressed to take effect immediately after the end of that period, and
 - (c) until the end of that period, the land is not to be regarded as coastal margin—
 - (i) for the purpose of determining whether it is open country or registered common land, or
 - (ii) for the purposes of section 1(6AA) of the Occupiers' Liability Act 1984 (duty of occupier of coastal margin to persons other than the occupier's visitors).
- (7) Where, as a result of proposals becoming approved proposals relating to a long-distance route, land becomes coastal margin by virtue of an order under subsection (1), any exclusion or restriction under Chapter 2 of access to the land by virtue of section 2(1) ceases to have effect at the end of the access preparation period.
- (8) Subsection (7) does not apply to any exclusion or restriction resulting from a direction under Chapter 2 which takes effect after the end of the access preparation period.
- (9) Subsections (6) and (7) do not apply to land if, at the time it becomes coastal margin by virtue of an order under subsection (1), it is already dedicated as coastal margin under section 16.
- (10) In this section—

“the 1949 Act” means the National Parks and Access to the Countryside Act 1949;

“access preparation period”, in relation to any land, means the period which—

(a) begins when the land becomes coastal margin, and

(b) ends with the day appointed by the Secretary of State by order under this subsection in relation to that land;

“approved proposals relating to a long-distance route” is to be construed in accordance with sections 52(3) and 55(4) of the 1949 Act;

“coastal land” has the same meaning as in section 3;

“the English coastal route” means the route secured (or to be secured) pursuant to the coastal access duty (within the meaning of section 296 of the Marine and Coastal Access Act 2009);

“modify” includes amend, add to or repeal;

“official alternative route” has the meaning given by section 55J of the 1949 Act;

“relevant approved proposals” means approved proposals relating to a long-distance route which is or forms part of the English coastal route;

“specified” means specified in an order under subsection (1);

and references to the exclusion or restriction under Chapter 2 of access to any land by virtue of section 2(1) are to be interpreted in accordance with section 21(2) and (3).

]¹


Notes

¹ Added by Marine and Coastal Access Act 2009 c. 23 Pt 9 s.303(5) (January 12, 2010)

Extent

Pt I c. I s. 3A(1)-(10) definition of "specified": England, Wales

Maps

 Law In Force

4— Duty to prepare maps.

(1) It shall be the duty of [Natural England]¹ to prepare, in respect of England outside Inner London, maps which together show—

(a) all registered common land, and

(b) all open country.

(2) It shall be the duty of [the Natural Resources Body for Wales]² to prepare, in respect of Wales, maps which together show—

(a) all registered common land, and

(b) all open country.

(3) Subsections (1) and (2) have effect subject to the following provisions of this section and to the provisions of sections 5 to 9.

(4) A map prepared under this section must distinguish between open country and registered common land, but need not distinguish between different categories of open country.

- (5) In preparing a map under this section, the appropriate countryside body—
- (a) may determine not to show as open country areas of open country which are so small that the body consider that their inclusion would serve no useful purpose, and
 - (b) may determine that any boundary of an area of open country is to be treated as coinciding with a particular physical feature (whether the effect is to include other land as open country or to exclude part of an area of open country).

Notes


- ¹ Words substituted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.155 (October 1, 2006)
- ² Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.402 (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Pt I c. I s. 4(1)-(5)(b): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. I s. 4(1)-(5)(b): England, Wales

 Law In Force

5. Publication of draft maps.

The appropriate countryside body shall—

- (a) issue in draft form any map prepared by them under section 4,
- (b) consider any representations received by them within the prescribed period with respect to the showing of, or the failure to show, any area of land on the map as registered common land or as open country,
- (c) confirm the map with or without modifications,
- (d) if the map has been confirmed without modifications, issue it in provisional form, and
- (e) if the map has been confirmed with modifications, prepare a map incorporating the modifications, and issue that map in provisional form.

Commencement

Pt I c. I s. 5(a)-(e): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. I s. 5(a)-(e): England, Wales

 Law In Force

6.— Appeal against map after confirmation.

- (1) Any person having an interest in any land may appeal—
- (a) in the case of land in England, to the Secretary of State, or

(b) in the case of land in Wales, to the National Assembly for Wales, against the showing of that land on a map in provisional form as registered common land or as open country.

(2) An appeal relating to the showing of any land as registered common land may be brought only on the ground that the land is not registered common land.

(3) An appeal relating to the showing of any land as open country may be brought only on the ground that—

(a) the land does not consist wholly or predominantly of mountain, moor, heath or down, and

(b) to the extent that the appropriate countryside body have exercised their discretion under section 4(5)(b) to treat land which is not open country as forming part of an area of open country, the body ought not to have done so.

(4) On an appeal under this section, the Secretary of State or the National Assembly for Wales may—

(a) approve the whole or part of the map which is the subject of the appeal, with or without modifications, or


(b) require the appropriate countryside body to prepare under section 4 a new map relating to all or part of the area covered by the map which is the subject of the appeal.

Commencement

Pt I c. I s. 6(1)-(4)(b): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. I s. 6(1)-(4)(b): England, Wales

 Law In Force

7.— Appeal procedure.

(1) Before determining an appeal under section 6, the Secretary of State or the National Assembly for Wales may, if he or it thinks fit—

(a) cause the appeal to take, or continue in, the form of a hearing, or

(b) cause a local inquiry to be held;

and the appeal authority shall act as mentioned in paragraph (a) or (b) if a request is made by either party to the appeal to be heard with respect to the appeal.

(2) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (local inquiries: evidence and costs) apply to a hearing or local inquiry held under this section as they apply to a local inquiry held under that section, but as if—

(a) references in that section to the person appointed to hold the inquiry were references to the Secretary of State or the National Assembly for Wales, and

(b) references in that section to the Minister causing an inquiry to be held were references to the Secretary of State or the Assembly.

(3) Where—

- (a) for the purposes of an appeal under section 6, the Secretary of State or the National Assembly for Wales is required by subsection (1)—
 - (i) to cause the appeal to take, or continue in, the form of a hearing, or
 - (ii) to cause a local inquiry to be held, and
- (b) the inquiry or hearing does not take place, and
- (c) if it had taken place, the Secretary of State or the Assembly or a person appointed by the Secretary of State or the Assembly would have had power to make an order under section 250(5) of the Local Government Act 1972 requiring any party to pay the costs of the other party,

the power to make such an order may be exercised, in relation to costs incurred for the purposes of the inquiry or hearing, as if it had taken place.


(4) This section has effect subject to section 8.

Commencement

Pt I c. I s. 7(1)-(4): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. I s. 7(1)-(4): England, Wales

 Law In Force

8.— Power of Secretary of State or Assembly to delegate functions relating to appeals.

- (1) The Secretary of State or the National Assembly for Wales may—
 - (a) appoint any person to exercise on his or its behalf, with or without payment, the function of determining—
 - (i) an appeal under section 6, or
 - (ii) any matter involved in such an appeal, or
 - (b) refer any matter involved in such an appeal to such person as the Secretary of State or the Assembly may appoint for the purpose, with or without payment.
- (2) Schedule 3 has effect with respect to appointments under subsection (1)(a).

Commencement

Pt I c. I s. 8(1)-(2): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. I s. 8(1)-(2): England, Wales

 Law In Force

9.— Maps in conclusive form.

- (1) Where—

- (a) the time within which any appeal under section 6 may be brought in relation to a map in provisional form has expired and no appeal has been brought, or
- (b) every appeal brought under that section in relation to a map has—
 - (i) been determined by the map or part of it being approved without modifications, or
 - (ii) been withdrawn,

the appropriate countryside body shall issue the map (or the part or parts of it that have been approved without modifications) as a map in conclusive form.

(2) Where—

- (a) every appeal brought under section 6 in relation to a map in provisional form has been determined or withdrawn, and
 - (b) on one or more appeals, the map or any part of it has been approved with modifications,
- the appropriate countryside body shall prepare a map which covers the area covered by the map in provisional form (or the part or parts of the map in provisional form that have been approved with or without modifications) and incorporates the modifications, and shall issue it as a map in conclusive form.

(3) Where either of the conditions in subsection (1)(a) and (b) is satisfied in relation to any part of a map in provisional form, the Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales) may direct the relevant countryside body to issue that part of the map as a map in conclusive form.

(4) Where on an appeal under section 6 part of a map in provisional form has been approved with modifications but the condition in subsection (2)(a) is not yet satisfied, the Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales) may direct the relevant countryside body to issue a map which covers the area covered by that part of the map in provisional form and incorporates the modifications, and to issue it as a map in conclusive form.

(5) Where a map in conclusive form has been issued in compliance with a direction under subsection (3) or (4), subsections (1) and (2) shall have effect as if any reference to the map in provisional form were a reference to the part not affected by the direction.

(6) A document purporting to be certified on behalf of the appropriate countryside body to be a copy of or of any part of a map in conclusive form issued by that body for the purposes of this Part shall be receivable in evidence and shall be deemed, unless the contrary is shown, to be such a copy.

Commencement

Pt I c. I s. 9(1)-(6): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. I s. 9(1)-(6): England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[Wales](#) | [England](#)

✓ Law In Force

Wales

10.— Review of maps.

(1) Where the appropriate countryside body have issued a map in conclusive form in respect of any area, it shall be the duty of the body from time to time, on a review under this section, to consider—

- (a) whether any land shown on that map as open country or registered common land is open country or registered common land at the time of the review, and
- (b) whether any land in that area which is not so shown ought to be so shown.

(2) A review under this section must be undertaken—

[(a) in the case of the first review —

(i) where the map is of an area in England, not more than fifteen years after the issue of the map in conclusive form, and

(ii) where the map is of an area in Wales,

not more than ten years after the issue of the map in conclusive form, and

] ¹

[(b) in the case of subsequent reviews —

(i) where the map is of an area in England, not more than twenty years after the previous review, and

(ii) where the map is of an area in Wales,

not more than ten years after the previous review.

] ²

(3) Regulations may amend paragraphs (a) and (b) of subsection (2) by substituting for the period for the time being specified in either of those paragraphs such other period as may be specified in the regulations.

Notes

¹ Added by Countryside and Rights of Way Act 2000 (Review of Maps) (England) Regulations 2013/514 reg.2(2) (April 6, 2013)

² Added by Countryside and Rights of Way Act 2000 (Review of Maps) (England) Regulations 2013/514 reg.2(3) (April 6, 2013)

England

[10.— Review of maps.

(1) Where the appropriate countryside body have issued a map in conclusive form in respect of any area, it shall be the duty of the body from time to time, on a review under this section, to consider—

- (a) whether any land shown on that map as open country or registered common land is open country or registered common land at the time of the review, and
- (b) whether any land in that area which is not so shown ought to be so shown.

(2) A review under this section must be undertaken—

(a) in the case of the first review —

- (i) where the map is of an area in England, not more than twenty years after the issue of the map in conclusive form, and
- (ii) where the map is of an area in Wales,

not more than ten years after the issue of the map in conclusive form, and

(b) in the case of subsequent reviews —

- (i) where the map is of an area in England, not more than twenty years after the previous review, and
- (ii) where the map is of an area in Wales,

not more than ten years after the previous review.

(3) Regulations may amend paragraphs (a) and (b) of subsection (2) by substituting for the period for the time being specified in either of those paragraphs such other period as may be specified in the regulations.

] ¹

Notes


- ¹ Word substituted by Countryside and Rights of Way Act 2000 (Review of Maps) (England) Regulations 2019/1069 reg.2 (August 1, 2019)

Commencement

Pt I c. I s. 10(1)-(3): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. I s. 10(1)-(3): England, Wales

 Law In Force

11.— Regulations relating to maps.

(1) Regulations may make provision supplementing the provisions of sections 4 to 10.

(2) Regulations under this section may in particular make provision with respect to—

- (a) the scale on which maps are to be prepared,
- (b) the manner and form in which they are to be prepared and issued,
- (c) consultation with access authorities, local access forums and other persons on maps in draft form,
- (d) the steps to be taken for informing the public of the issue of maps in draft form, provisional form or conclusive form,
- (e) the manner in which maps in draft form, provisional form or conclusive form are to be published or to be made available for inspection,
- (f) the period within which and the manner in which representations on a map in draft form may be made to the appropriate countryside body,

- (g) the confirmation of a map under section 5(c),
- (h) the period within which and manner in which appeals under section 6 are to be brought,
- (i) the advertising of such an appeal,
- (j) the manner in which such appeals are to be considered,
- (k) the procedure to be followed on a review under section 10, including the issue of maps in draft form, provisional form and conclusive form on a review, and
- (l) the correction by the appropriate countryside body of minor errors or omissions in maps.

(3) Regulations made by virtue of subsection (2)(b) or (e) may authorise or require a map to be prepared, issued, published or made available for inspection in electronic form, but must require any map in electronic form to be capable of being reproduced in printed form.

(4) Regulations made by virtue of subsection (2)(k) may provide for any of the provisions of this Chapter relating to appeals to apply (with or without modifications) in relation to an appeal against a map issued in provisional form on a review.


Commencement

Pt I c. I s. 11(1)-(4): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. I s. 11(1)-(4): England, Wales

Rights and liabilities of owners and occupiers

 Law In Force

12.— Effect of right of access on rights and liabilities of owners.

(1) The operation of section 2(1) in relation to any access land does not increase the liability, under any enactment not contained in this Act or under any rule of law, of a person interested in the access land or any adjoining land in respect of the state of the land or of things done or omitted to be done on the land.

(2) Any restriction arising under a covenant or otherwise as to the use of any access land shall have effect subject to the provisions of this Part, and any liability of a person interested in any access land in respect of such a restriction is limited accordingly.

(3) For the purposes of any enactment or rule of law as to the circumstances in which the dedication of a highway or the grant of an easement may be presumed, or may be established by prescription, the use by the public or by any person of a way across land in the exercise of the right conferred by section 2(1) is to be disregarded.

(4) The use of any land by the inhabitants of any locality for the purposes of open-air recreation in the exercise of the right conferred by section 2(1) is to be disregarded in determining whether the land has become a town or village green.

Commencement

Pt I c. I s. 12(1)-(4): September 19, 2004 in relation to England; May 28, 2005 otherwise (SI 2004/2173 art. 2(1)(b); SI 2005/423 art. 2(b))

Extent

Pt I c. I s. 12-(4): England, Wales

✓ Law In Force

13.— Occupiers' liability.

(1) In section 1 of the Occupiers' Liability Act 1957 (liability in tort: preliminary), for subsection (4) there is substituted—

“(4) A person entering any premises in exercise of rights conferred by virtue of—
(a) section 2(1) of the Countryside and Rights of Way Act 2000, or
(b) an access agreement or order under the National Parks and Access to the Countryside Act 1949,
is not, for the purposes of this Act, a visitor of the occupier of the premises.”

(2) In section 1 of the Occupiers' Liability Act 1984 (duty of occupier to persons other than his visitors), after subsection (6) there is inserted—

“(6A) At any time when the right conferred by section 2(1) of the Countryside and Rights of Way Act 2000 is exercisable in relation to land which is access land for the purposes of Part I of that Act, an occupier of the land owes (subject to subsection (6C) below) no duty by virtue of this section to any person in respect of—

- (a) a risk resulting from the existence of any natural feature of the landscape, or any river, stream, ditch or pond whether or not a natural feature, or
- (b) a risk of that person suffering injury when passing over, under or through any wall, fence or gate, except by proper use of the gate or of a stile.

(6B) For the purposes of subsection (6A) above, any plant, shrub or tree, of whatever origin, is to be regarded as a natural feature of the landscape.

(6C) Subsection (6A) does not prevent an occupier from owing a duty by virtue of this section in respect of any risk where the danger concerned is due to anything done by the occupier—

- (a) with the intention of creating that risk, or
- (b) being reckless as to whether that risk is created.”

(3) After section 1 of that Act there is inserted—

“1A. Special considerations relating to access land.

In determining whether any, and if so what, duty is owed by virtue of section 1 by an occupier of land at any time when the right conferred by section 2(1) of the Countryside

and Rights of Way Act 2000 is exercisable in relation to the land, regard is to be had, in particular, to—

- (a) the fact that the existence of that right ought not to place an undue burden (whether financial or otherwise) on the occupier,
- (b) the importance of maintaining the character of the countryside, including features of historic, traditional or archaeological interest, and
- (c) any relevant guidance given under section 20 of that Act.”

Commencement

Pt I c. I s. 13(1)-(3): September 19, 2004 in relation to England; May 28, 2005 otherwise (SI 2004/2173 art. 2(1)(c); SI 2005/423 art. 2(c))

Extent

Pt I c. I s. 13-(3): England, Wales

✔ Law In Force

14.— Offence of displaying on access land notices deterring public use.

(1) If any person places or maintains—

- (a) on or near any access land, or
- (b) on or near a way leading to any access land,

a notice containing any false or misleading information likely to deter the public from exercising the right conferred by section 2(1), he is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(2) The court before whom a person is convicted of an offence under subsection (1) may, in addition to or in substitution for the imposition of a fine, order him to remove the notice in respect of which he is convicted within such period, not being less than four days, as may be specified in the order.

(3) A person who fails to comply with an order under subsection (2) is guilty of a further offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Commencement

Pt I c. I s. 14(1)-(3): September 19, 2004 in relation to England; May 28, 2005 otherwise (SI 2004/2173 art. 2(1)(d); SI 2005/423 art. 2(d))

Extent

Pt I c. I s. 14-(3): England, Wales

Access under other enactments or by dedication

 Law In Force With Amendments Pending

15.— Rights of access under other enactments.

(1) For the purposes of section 1(1), land is to be treated as being accessible to the public apart from this Act at any time if, but only if, at that time—

- (a) section 193 of the Law of Property Act 1925 (rights of the public over commons and waste lands) applies to it,
- (b) by virtue of a local or private Act or a scheme made under Part I of the Commons Act 1899 (as read with subsection (2)), members of the public have a right of access to it at all times for the purposes of open-air recreation (however described),
- (c) an access agreement or access order under Part V of the National Parks and Access to the Countryside Act 1949 is in force with respect to it, or
- (d) the public have access to it under subsection (1) of section 19 of the Ancient Monuments and Archaeological Areas Act 1979 (public access to monuments under public control) or would have access to it under that subsection but for any provision of subsections (2) to (9) of that section.

(2) Where a local or private Act or a scheme made under Part I of the Commons Act 1899 confers on the inhabitants of a particular district or neighbourhood (however described) a right of access to any land for the purposes of open-air recreation (however described), the right of access exercisable by those inhabitants in relation to that land is by virtue of this subsection exercisable by members of the public generally.

Proposed Draft Amendments


Pt I c. I s. 15(1)(e): added by Historic Environment (Wales) Bill [as introduced] (GB/04/2022) Sch. 13 para. 178 (Stage 1: Committee considerations of general principles, November 14, 2022) (date to be appointed)

Commencement

Pt I c. I s. 15(1)-(2): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. I s. 15(1)-(2): England, Wales

 Law In Force

16.— Dedication of land as access land.

(1) Subject to the provisions of this section, a person who, in respect of any land, holds—

- (a) the fee simple absolute in possession, or
- (b) a legal term of years absolute of which not less than 90 years remain unexpired,

may, by taking such steps as may be prescribed, dedicate the land for the purposes of this Part, whether or not it would be access land apart from this section.

(2) Where any person other than the person making the dedication holds—

- (a) any leasehold interest in any of the land to be dedicated, or
- (b) such other interest in any of that land as may be prescribed,

the dedication must be made jointly with that other person, in such manner as may be prescribed, or with his consent, given in such manner as may be prescribed.

[(2A) Where a person makes a dedication under this section in respect of land within subsection (2B), that dedication may also dedicate the land as coastal margin.

(2B) The land within this subsection is—

- (a) land which is coastal margin, and
- (b) any other land in England which is adjacent to land which is coastal margin.

(2C) Where land is dedicated as coastal margin—

- (a) in the case of land within subsection (2B)(b), it is to be treated as coastal margin for the purposes of any provision made by or by virtue of this Part (other than section 1), and
- (b) if—

- (i) disregarding this paragraph, it would be excepted land, and
- (ii) it is not land which is accessible to the public by virtue of any enactment or rule of law (other than this Act),

it is to be treated for the purposes of any provision made by or by virtue of this Part as if it were not excepted land.

] ¹

(3) In relation to a dedication under this section by virtue of subsection (1)(b), the reference in subsection (2)(a) to a leasehold interest does not include a reference to a leasehold interest superior to that of the person making the dedication.

(4) A dedication made under this section by virtue of subsection (1)(b) shall have effect only for the remainder of the term held by the person making the dedication.

(5) Schedule 2 to the Forestry Act 1967 (power for tenant for life and others to enter into forestry dedication covenants) applies to dedications under this section as it applies to forestry dedication covenants.

(6) Regulations may—

- (a) prescribe the form of any instrument to be used for the purposes of this section,
- (b) enable a dedication under this section to include provision removing or relaxing any of the general restrictions in Schedule 2 in relation to any of the land to which the dedication relates,
- (c) enable a dedication previously made under this section to be amended by the persons by whom a dedication could be made, so as to remove or relax any of those restrictions in relation to any of the land to which the dedication relates, [...]²

[(ca) in the case of land within subsection (2B), enable a dedication previously made under this section in respect of the land (otherwise than by virtue of subsection (2A)) to be amended, by the persons by whom a dedication could be made, so as to provide that the land is dedicated as coastal margin for the purposes of subsection (2C),

(cb) provide for any exclusion or restriction under Chapter 2 of access by virtue of section 2(1) which has effect in relation to land which is within subsection (2B)(b) immediately before it is dedicated as coastal margin to cease to have effect at the time the dedication takes effect, and] ²

(d) require any dedication under this section, or any amendment of such a dedication by virtue of paragraph (c), to be notified to the appropriate countryside body and to the access authority.

[(6A) In subsection (6)(cb) the reference to the exclusion or restriction under Chapter 2 of access to any land by virtue of section 2(1) is to be interpreted in accordance with section 21(2) and (3).]³

(7) A dedication under this section is irrevocable and, subject to subsection (4), binds successive owners and occupiers of, and other persons interested in, the land to which it relates, but nothing in this section prevents any land from becoming excepted land.

(8) A dedication under this section is a local land charge.

Notes

¹ Added by Marine and Coastal Access Act 2009 c. 23 Pt 9 s.303(6)(a) (January 12, 2010)

² Added by Marine and Coastal Access Act 2009 c. 23 Pt 9 s.303(6)(b) (January 12, 2010)

³ Added by Marine and Coastal Access Act 2009 c. 23 Pt 9 s.303(6)(c) (January 12, 2010)


Commencement

Pt I c. I s. 16(1)-(8): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. I s. 16(1)-(8): England, Wales

Miscellaneous provisions relating to right of access

 Law In Force

17.— Byelaws.

- (1) An access authority may, as respects access land in their area, make byelaws—
 - (a) for the preservation of order,
 - (b) for the prevention of damage to the land or anything on or in it, and
 - (c) for securing that persons exercising the right conferred by section 2(1) so behave themselves as to avoid undue interference with the enjoyment of the land by other persons.
- (2) Byelaws under this section may relate to all the access land in the area of the access authority or only to particular land.
- (3) Before making byelaws under this section, the access authority shall consult—
 - (a) the appropriate countryside body, and
 - (b) any local access forum established for an area to which the byelaws relate.
- (4) Byelaws under this section shall not interfere—
 - (a) with the exercise of any public right of way,
 - (b) with any authority having under any enactment functions relating to the land to which the byelaws apply, or
 - [(c) with the provision of an electronic communications code network or the exercise of any right conferred by or in accordance with the electronic communications code on the operator of any such network.]¹

(5) Sections 236 to 238 of the Local Government Act 1972 (which relate to the procedure for making byelaws, authorise byelaws to impose fines not exceeding level 2 on the standard scale, and provide for the proof of byelaws in legal proceedings) apply to all byelaws under this section [made by an access authority in England]² whether or not the authority making them is a local authority within the meaning of that Act.

[(5A) Sections 7, 8, 10 and 19 of the Local Government Byelaws (Wales) Act 2012 apply to all byelaws under this section made by an access authority in Wales.]³

(6) The confirming authority in relation to byelaws made under this section is—

- (a) as respects England, the Secretary of State, and
- (b) as respects Wales, the National Assembly for Wales.

(7) Byelaws under this section relating to any land—

- (a) may not be made unless the land is access land or the access authority are satisfied that it is likely to become access land, and
- (b) may not be confirmed unless the land is access land.

(8) Any access authority having power under this section to make byelaws also have power to enforce byelaws made by them; and any county council or district or parish council may enforce byelaws made under this section by another authority as respects land in the area of the council.

Notes

¹ Substituted by Communications Act 2003 c. 21 Sch.17 para.165(2) (July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2))

² Words inserted by Local Government Byelaws (Wales) Act 2012 anaw. 2 Sch.2 para.18(2) (March 31, 2015 subject to transitional provisions and savings specified in SI 2015/1025 art.3)


³ Added by Local Government Byelaws (Wales) Act 2012 anaw. 2 Sch.2 para.18(3) (March 31, 2015 subject to transitional provisions and savings specified in SI 2015/1025 art.3)

Commencement

Pt I c. I s. 17(1)-(8): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. I s. 17(1)-(8): England, Wales

 Law In Force

18.— Wardens.

(1) An access authority or a district council may appoint such number of persons as may appear to the authority making the appointment to be necessary or expedient, to act as wardens as respects access land in their area.

(2) As respects access land in an area for which there is a local access forum, an access authority shall, before they first exercise the power under subsection (1) and thereafter from time to time, consult the local access forum about the exercise of that power.

(3) Wardens may be appointed under subsection (1) for the following purposes—

- (a) to secure compliance with byelaws under section 17 and with the general restrictions in Schedule 2 and any other restrictions imposed under Chapter II,
- (b) to enforce any exclusion imposed under Chapter II,
- (c) in relation to the right conferred by section 2(1), to advise and assist the public and persons interested in access land,
- (d) to perform such other duties (if any) in relation to access land as the authority appointing them may determine.

(4) For the purpose of exercising any function conferred on him by or under this section, a warden appointed under subsection (1) may enter upon any access land.

(5) A warden appointed under subsection (1) shall, if so required, produce evidence of his authority before entering any access land in the exercise of the power conferred by subsection (4), and shall also produce evidence of his authority while he remains on the access land, if so required by any person.


(6) Except as provided by subsection (4), this section does not authorise a warden appointed under subsection (1), on land in which any person other than the authority who appointed him has an interest, to do anything which apart from this section would be actionable at that person's suit by virtue of that interest.

Commencement

Pt I c. I s. 18(1)-(6): June 21, 2004 in relation to Wales; September 19, 2004 in relation to England (SI 2004/1489 art. 2(a); SI 2004/2173 art. 2(1)(e))

Extent

Pt I c. I s. 18-(6): England, Wales

 Law In Force

19.— Notices indicating boundaries, etc.

- (1) An access authority may erect and maintain—
- (a) notices indicating the boundaries of access land and excepted land, and
 - (b) notices informing the public of—
 - (i) the effect of the general restrictions in Schedule 2,
 - (ii) the exclusion or restriction under Chapter II of access by virtue of section 2(1) to any land, and
 - (iii) any other matters relating to access land or to access by virtue of section 2(1) which the access authority consider appropriate.
- (2) In subsection (1)(b)(ii), the reference to the exclusion or restriction of access by virtue of section 2(1) is to be interpreted in accordance with section 21(2) and (3).
- (3) Before erecting a notice on any land under subsection (1) the access authority shall, if reasonably practicable, consult the owner or occupier of the land.
- (4) An access authority may also, as respects any access land in their area, defray or contribute towards, or undertake to defray or contribute towards, expenditure incurred or to be incurred in

relation to the land by any person in displaying such notices as are mentioned in subsection (1)(a) and (b).

[(5) In the case of access land that is coastal margin, the powers conferred on an access authority by this section are also exercisable by Natural England.]¹

Notes


¹ Added by Marine and Coastal Access Act 2009 c. 23 Sch.20 para.7 (November 12, 2009)

Commencement

Pt I c. I s. 19(1)-(4): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. I s. 19(1)-(5): England, Wales

 Law In Force

20.— Codes of conduct and other information.

(1) In relation to England, it shall be the duty of [Natural England]¹ to issue, and from time to time revise, a code of conduct for the guidance of persons exercising the right conferred by section 2(1) and of persons interested in access land, and to take such other steps as appear to them expedient for securing—

(a) that the public are informed of the situation and extent of, and means of access to, access land, [...]²

(b) that the public and persons interested in access land are informed of their respective rights and obligations—

(i) under this Part, and

(ii) with regard to public rights of way on, and nature conservation in relation to, access land [, and]²

[(c) that, in relation to access land which is coastal margin, the public are informed that the right conferred by section 2(1) does not affect any other right of access that may exist in relation to that land.]²

[(1A) The duty imposed by subsection (1) to issue and revise a code of conduct may be discharged, in relation to access land which is coastal margin, by (or in part by) issuing and revising a separate code relating to such access land only.]³

(2) In relation to Wales, it shall be the duty of [the Natural Resources Body for Wales]⁴ to issue, and from time to time revise, a code of conduct for the guidance of persons exercising the right conferred by section 2(1) and of persons interested in access land, and to take such other steps as appear to them expedient for securing the results mentioned in paragraphs (a) and (b) of subsection (1).

(3) A code of conduct issued by [Natural England]⁵ or [the Natural Resources Body for Wales]⁴ may include provisions in pursuance of subsection (1) or (2) and in pursuance of section 86(1) of the National Parks and Access to the Countryside Act 1949.

(4) The powers conferred by subsections (1) and (2) include power to contribute towards expenses incurred by other persons.

Notes

- ¹ Words substituted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.156(2) (October 1, 2006)
- ² Added by Marine and Coastal Access Act 2009 c. 23 Pt 9 s.303(7)(a) (January 12, 2010)
- ³ Added by Marine and Coastal Access Act 2009 c. 23 Pt 9 s.303(7)(b) (January 12, 2010)
- ⁴ Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.402 (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)
- ⁵ Words substituted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.156(3) (October 1, 2006)

Commencement

Pt I c. I s. 20(1)-(4): June 21, 2004 in relation to Wales; September 19, 2004 in relation to England (SI 2004/1489 art. 2(b); SI 2004/2173 art. 2(1)(f))


Extent

Pt I c. I s. 20-(4): England, Wales

CHAPTER II

EXCLUSION OR RESTRICTION OF ACCESS

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[Wales](#) | [England](#)

 Law In Force

Wales

21.— Interpretation of Chapter II.

(1) References in this Chapter to the exclusion or restriction of access to any land by virtue of section 2(1) are to be interpreted in accordance with subsections (2) and (3).

(2) A person excludes access by virtue of subsection (1) of section 2 to any land where he excludes the application of that subsection in relation to that land.

(3) A person restricts access by virtue of subsection (1) of section 2 to any land where he provides that the right conferred by that subsection—

- (a) is exercisable only along specified routes or ways,
- (b) is exercisable only after entering the land at a specified place or places,

- (c) is exercisable only by persons who do not take dogs on the land, or
- (d) is exercisable only by persons who satisfy any other specified conditions.

(4) In this Chapter, except section 23(1), “owner”, in relation to land which is subject to a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 or a tenancy to which the Agricultural Holdings Act 1986 applies, means the tenant under that tenancy.

(5) Subject to subsection (6), in this Chapter “the relevant authority” —

- (a) in relation to any land in a National Park, means the National Park authority, and
- (b) in relation to any other land, means the appropriate countryside body.

(6) Where—

- (a) it appears to the Forestry Commissioners that any land [in England]¹ which is dedicated for the purposes of this Part under section 16 consists wholly or predominantly of woodland, and
- (b) the Forestry Commissioners give to the body who are apart from this subsection the relevant authority for the purposes of this Chapter in relation to the land a notice stating that the Forestry Commissioners are to be the relevant authority for those purposes as from a date specified in the notice,

the Forestry Commissioners shall as from that date become the relevant authority in relation to that land for those purposes, but subject to subsection (7).

[(6A) Where—

- (a) it appears to the Natural Resources Body for Wales that any land in a National Park in Wales which is dedicated for the purposes of this Part under section 16 consists wholly or predominantly of woodland, and
- (b) the Natural Resources Body for Wales give to the relevant National Park Authority who are apart from this subsection the relevant authority for the purposes of this Chapter in relation to the land a notice stating that the Natural Resources Body for Wales are to be the relevant authority for those purposes as from a date specified in the notice,

the Natural Resources Body for Wales shall as from that date become the relevant authority in relation to that land for those purposes, but subject to subsection (7A).

] ²

(7) Where it appears to the Forestry Commissioners that any land [in England]³ in relation to which they are by virtue of subsection (6) the relevant authority for the purposes of this Chapter has ceased to consist wholly or predominantly of woodland, the Forestry Commissioners may, by giving notice to the body who would apart from subsection (6) be the relevant authority, revoke the notice under subsection (6) as from a date specified in the notice under this subsection.

[(7A) Where it appears to the Natural Resources Body for Wales that any land in relation to which they are by virtue of subsection (6A) the relevant authority for the purposes of this Chapter has ceased to consist wholly or predominantly of woodland, the Natural Resources Body for Wales may, by giving notice to the National Park Authority who would apart from subsection (6A) be the relevant authority, revoke the notice under subsection (6A) as from a date specified in the notice under this subsection.] ⁴

Notes

¹ Words inserted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.403(2) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

- ² Added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.403(3) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)
- ³ Words inserted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.403(4) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)
- ⁴ Added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.403(5) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

England

[21.— Interpretation of Chapter II.

(1) References in this Chapter to the exclusion or restriction of access to any land by virtue of section 2(1) are to be interpreted in accordance with subsections (2) and (3).

(2) A person excludes access by virtue of subsection (1) of section 2 to any land where he excludes the application of that subsection in relation to that land.

(3) A person restricts access by virtue of subsection (1) of section 2 to any land where he provides that the right conferred by that subsection—

- (a) is exercisable only along specified routes or ways,
- (b) is exercisable only after entering the land at a specified place or places,
- (c) is exercisable only by persons who do not take dogs on the land, or
- (d) is exercisable only by persons who satisfy any other specified conditions.

(4) In this Chapter, except section 23(1), “owner”, in relation to land which is subject to a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 or a tenancy to which the Agricultural Holdings Act 1986 applies, means the tenant under that tenancy.

(5) Subject to subsection (6), in this Chapter “the relevant authority” —

- (za) in relation to any land which is coastal margin, means Natural England,
- (a) in relation to any land (other than coastal margin) in a National Park, means the National Park authority, and
- (b) in relation to any other land, means the appropriate countryside body.

(6) Where—

- (a) it appears to the Forestry Commissioners that any land [in England]² which is dedicated for the purposes of this Part under section 16 (other than land which is coastal margin) consists wholly or predominantly of woodland, and
- (b) the Forestry Commissioners give to the body who are apart from this subsection the relevant authority for the purposes of this Chapter in relation to the land a notice stating that the Forestry Commissioners are to be the relevant authority for those purposes as from a date specified in the notice,

the Forestry Commissioners shall as from that date become the relevant authority in relation to that land for those purposes, but subject to subsection (7).

[(6A) Where—

- (a) it appears to the Natural Resources Body for Wales that any land in a National Park in Wales which is dedicated for the purposes of this Part under section 16 consists wholly or predominantly of woodland, and

(b) the Natural Resources Body for Wales give to the relevant National Park Authority who are apart from this subsection the relevant authority for the purposes of this Chapter in relation to the land a notice stating that the Natural Resources Body for Wales are to be the relevant authority for those purposes as from a date specified in the notice, the Natural Resources Body for Wales shall as from that date become the relevant authority in relation to that land for those purposes, but subject to subsection (7A).

]³

(7) Where it appears to the Forestry Commissioners that any land [in England]⁴ in relation to which they are by virtue of subsection (6) the relevant authority for the purposes of this Chapter has ceased to consist wholly or predominantly of woodland, the Forestry Commissioners may, by giving notice to the body who would apart from subsection (6) be the relevant authority, revoke the notice under subsection (6) as from a date specified in the notice under this subsection.

[(7A) Where it appears to the Natural Resources Body for Wales that any land in relation to which they are by virtue of subsection (6A) the relevant authority for the purposes of this Chapter has ceased to consist wholly or predominantly of woodland, the Natural Resources Body for Wales may, by giving notice to the National Park Authority who would apart from subsection (6A) be the relevant authority, revoke the notice under subsection (6A) as from a date specified in the notice under this subsection.]⁵

(8) Where there is access to an area of coastal margin by virtue of section 2(1), Natural England may—

- (a) if the land is in a National Park, authorise the National Park authority, or
- (b) if the land consists wholly or predominantly of woodland, authorise the Forestry Commissioners,

to exercise in relation to the land such of Natural England's functions under this Chapter as Natural England may specify.

(9) An authorisation given for the purposes of subsection (8) may be—

- (a) for a period specified in the authorisation, or
- (b) for an indefinite period,

and may be revoked at any time by Natural England.

]¹

Notes

¹ Amended by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(3) para.15 (April 6, 2010)

² Words inserted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.403(2) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

³ Added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.403(3) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

⁴ Words inserted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.403(4) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

⁵ Added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.403(5) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)


Commencement

Pt I c. II s. 21(1)-(7): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. II s. 21(1)-(7A): England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#) Law In Force

Wales

22.— Exclusion or restriction at discretion of owner and others.

- (1) Subject to subsections (2) and (6), an entitled person may, by giving notice to the relevant authority in accordance with regulations under section 32(1)(a), exclude or restrict access by virtue of section 2(1) to any land on one or more days specified in the notice.
- (2) The number of days on which any entitled person excludes or restricts under this section access by virtue of section 2(1) to any land must not in any calendar year exceed the relevant maximum.
- (3) In this section “entitled person”, in relation to any land, means—
- (a) the owner of the land, and
 - (b) any other person having an interest in the land and falling within a prescribed description.
- (4) Subject to subsection (5), in this section “the relevant maximum” means twenty-eight.
- (5) If regulations are made under subsection (3)(b), the regulations must provide that, in cases where there are two or more entitled persons having different interests in the land, the relevant maximum in relation to each of them is to be determined in accordance with the regulations, but so that the number of days on which access by virtue of section 2(1) to any land may be excluded or restricted under this section in any calendar year does not exceed twenty-eight.
- (6) An entitled person may not under this section exclude or restrict access by virtue of section 2(1) to any land on—
- (a) Christmas Day or Good Friday, or
 - (b) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.
- (7) An entitled person may not under this section exclude or restrict access by virtue of section 2(1) to any land—
- (a) on more than four days in any calendar year which are either Saturday or Sunday,
 - (b) on any Saturday in the period beginning with 1st June and ending with 11th August in any year,
 - (c) on any Sunday in the period beginning with 1st June and ending with 30th September in any year.

(8) Regulations may provide that any exclusion or restriction under subsection (1) of access by virtue of section 2(1) to any land must relate to an area of land the boundaries of which are determined in accordance with the regulations.

England

[22.— Exclusion or restriction at discretion of owner and others.

(1) Subject to subsections (2) and (6), an entitled person may, by giving notice to the relevant authority in accordance with regulations under section 32(1)(a), exclude or restrict access by virtue of section 2(1) to any land on one or more days specified in the notice.

(2) The number of days on which any entitled person excludes or restricts under this section access by virtue of section 2(1) to any land must not in any calendar year exceed the relevant maximum.

(3) In this section “entitled person”, in relation to any land, means—

- (a) the owner of the land, and
- (b) any other person having an interest in the land and falling within a prescribed description.

(4) Subject to subsection (5), in this section “the relevant maximum” means twenty-eight.

(5) If regulations are made under subsection (3)(b), the regulations must provide that, in cases where there are two or more entitled persons having different interests in the land, the relevant maximum in relation to each of them is to be determined in accordance with the regulations, but so that the number of days on which access by virtue of section 2(1) to any land may be excluded or restricted under this section in any calendar year does not exceed twenty-eight.

(6) An entitled person may not under this section exclude or restrict access by virtue of section 2(1) to any land on—

- (a) Christmas Day or Good Friday, or
- (b) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

(7) An entitled person may not under this section exclude or restrict access by virtue of section 2(1) to any land—

- (a) on more than four days in any calendar year which are either Saturday or Sunday,
- (b) on any Saturday in the period beginning with 1st June and ending with 11th August in any year,
- (c) on any Sunday in the period beginning with 1st June and ending with 30th September in any year.

(8) Regulations may provide that any exclusion or restriction under subsection (1) of access by virtue of section 2(1) to any land must relate to an area of land the boundaries of which are determined in accordance with the regulations.

(9) Nothing in this section applies in relation to land which is coastal margin.

]¹

Notes

¹ Added by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(3) para.16 (April 6, 2010)

Commencement

Pt I c. II s. 22(1)-(8): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. II s. 22(1)-(8): England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)

✓ Law In Force

Wales

23.— Restrictions on dogs at discretion of owner.

(1) The owner of any land consisting of moor managed for the breeding and shooting of grouse may, so far as appears to him to be necessary in connection with the management of the land for that purpose, by taking such steps as may be prescribed, provide that, during a specified period, the right conferred by section 2(1) is exercisable only by persons who do not take dogs on the land.

(2) The owner of any land may, so far as appears to him to be necessary in connection with lambing, by taking such steps as may be prescribed, provide that during a specified period the right conferred by section 2(1) is exercisable only by persons who do not take dogs into any field or enclosure on the land in which there are sheep.

(3) In subsection (2) “field or enclosure” means a field or enclosure of not more than 15 hectares.

(4) As respects any land—

- (a) any period specified under subsection (1) may not be more than five years,
- (b) not more than one period may be specified under subsection (2) in any calendar year, and that period may not be more than six weeks.

(5) A restriction imposed under subsection (1) or (2) does not prevent a blind person from taking with him a trained guide dog, or a deaf person from taking with him a trained hearing dog.

England

[23.— Restrictions on dogs at discretion of owner.

(1) The owner of any land consisting of moor managed for the breeding and shooting of grouse may, so far as appears to him to be necessary in connection with the management of the land for that purpose, by taking such steps as may be prescribed, provide that, during a specified period, the right conferred by section 2(1) is exercisable only by persons who do not take dogs on the land.

(2) The owner of any land may, so far as appears to him to be necessary in connection with lambing, by taking such steps as may be prescribed, provide that during a specified period the right conferred by section 2(1) is exercisable only by persons who do not take dogs into any field or enclosure on the land in which there are sheep.

(3) In subsection (2) “field or enclosure” means a field or enclosure of not more than 15 hectares.

(4) As respects any land—

- (a) any period specified under subsection (1) may not be more than five years,
- (b) not more than one period may be specified under subsection (2) in any calendar year, and that period may not be more than six weeks.

(5) A restriction imposed under subsection (1) or (2) does not prevent a blind person from taking with him a trained guide dog, or a deaf person from taking with him a trained hearing dog.

(6) Nothing in this section applies in relation to land which is coastal margin.

]¹

Notes

¹ Added by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(3) para.17 (April 6, 2010)

Commencement


Pt I c. II s. 23(1)-(5): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. II s. 23(1)-(5): England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)

 Law In Force

Wales

24.— Land management.

(1) The relevant authority may by direction, on an application made by a person interested in any land, exclude or restrict access to that land by virtue of section 2(1) during a specified period, if the authority are satisfied that the exclusion or restriction under this section of access by virtue of section 2(1) to the extent provided by the direction is necessary for the purposes of the management of the land by the applicant.

(2) The reference in subsection (1) to a specified period includes a reference to—

- (a) a specified period in every calendar year, or
- (b) a period which is to be—
 - (i) determined by the applicant in accordance with the direction, and

(ii) notified by him to the relevant authority in accordance with regulations under section 32(1)(d).

(3) In determining whether to any extent the exclusion or restriction under this section of access by virtue of section 2(1) during any period is necessary for the purposes of land management, the relevant authority shall have regard to—

- (a) the existence of the right conferred by section 22,
- (b) the extent to which the applicant has exercised or proposes to exercise that right, and
- (c) the purposes for which he has exercised or proposes to exercise it.

(4) Where an application under this section relates to land which is not access land at the time when the application is made, the relevant authority shall not give a direction under this section unless they are satisfied that it is likely that the land will be access land during all or part of the period to which the application relates.

England

[24.— Land management.

(1) The relevant authority may make a land management direction in relation to any land (“the designated land”).

(1A) The relevant authority may exercise their powers under subsection (1)—

- (a) in any case, on the application of any person interested in the designated land, and
- (b) if the designated land is coastal margin, without any such application having been made.

(1B) A land management direction is a direction which—

- (a) where the designated land is coastal margin—
 - (i) excludes or restricts access to the designated land during a specified period, or
 - (ii) authorises a specified person to exclude or restrict in the manner specified in the direction access to the designated land, or to such part or parts of that land as the specified person may determine in accordance with the direction, during a specified period, and
- (b) in any other case, excludes or restricts access to the designated land during a specified period.

(1C) The relevant authority may not make a land management direction unless—

- (a) in the case of a direction within subsection (1B)(a), they are satisfied that the exclusion or restriction under this section of access to the designated land to the extent provided for in or by the direction is necessary for the purposes of the management of the designated land or any adjoining land;
- (b) in the case of a direction within subsection (1B)(b), they are satisfied that the exclusion or restriction under this section of access to the designated land to the extent provided by the direction is necessary for the purposes of the management of the land by the applicant.

(1D) Before making a land management direction under subsection (1B)(a) in a case where an application has not been made under subsection (1A)(a), the relevant authority must take reasonable steps to consult any person who—

- (a) holds an estate in fee simple absolute in possession in the designated land (or any part of it),
- (b) holds a term of years absolute in that land (or any part of it), or
- (c) is in lawful occupation of that land (or any part of it).

(1E) Subsection (1D) does not apply if the direction is made in accordance with section 55F(2) of the National Parks and Access to the Countryside Act 1949² (directions set out in report approving proposals for English coastal route).

(1F) The reference in subsection (1B)(a) to a specified period includes a reference to—

- (a) a specified period in every calendar year;
- (b) a period which is to be determined by the relevant authority in accordance with the direction;
- (c) a period which is to be determined by a specified person in accordance with the direction and, where the direction so requires, notified to the relevant authority by the specified person in accordance with the direction;
- (d) an indefinite period.

(2) The reference in subsection (1B)(b) to a specified period includes a reference to—

- (a) a specified period in every calendar year, or
- (b) a period which is to be—
 - (i) determined by the applicant in accordance with the direction, and
 - (ii) notified by him to the relevant authority in accordance with regulations under section 32(1)(d).

(3) In determining whether to any extent the exclusion or restriction under this section of access by virtue of section 2(1) during any period is necessary for the purposes of land management, the relevant authority shall have regard to—

- (a) the existence of the right conferred by section 22,
- (b) the extent to which the applicant has exercised or proposes to exercise that right, and
- (c) the purposes for which he has exercised or proposes to exercise it.

(4) Where an application under this section relates to land which is not access land at the time when the application is made, the relevant authority shall not give a direction under this section unless they are satisfied that it is likely that the land will be access land during all or part of the period to which the application relates.

(5) Subsections (3) and (4) do not apply in relation to land management directions under subsection (1B)(a).

(6) In this section references to access to land are to access by virtue of section 2(1).

] ¹

Notes

¹ Amended by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(3) para.18 (April 6, 2010)

² 1949 c.97. Section 55F was inserted by section 302 of the 2009 Act.


Commencement

Pt I c. II s. 24(1)-(4): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. II s. 24(1)-(4): England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#) Law In Force

Wales

25.— Avoidance of risk of fire or of danger to the public.

- (1) The relevant authority may by direction exclude or restrict access by virtue of section 2(1) in relation to any land during a specified period if the authority are satisfied—
- (a) that, by reason of any exceptional conditions of weather or any exceptional change in the condition of the land, the exclusion or restriction under this section of access to the land by virtue of section 2(1) to the extent provided by the direction is necessary for the purpose of fire prevention, or
 - (b) that, by reason of anything done, or proposed to be done, on the land or on adjacent land, the exclusion or restriction under this section of access to the land by virtue of section 2(1) to the extent provided by the direction is necessary for the purpose of avoiding danger to the public.
- (2) The reference in subsection (1) to a specified period includes a reference to—
- (a) a specified period in every calendar year, and
 - (b) a period which is to be—
 - (i) determined by a specified person in accordance with the direction, and
 - (ii) notified by him to the relevant authority in accordance with regulations under section 32(1)(d).
- (3) The relevant authority may exercise their powers under subsection (1) on the application of any person interested in the land, or without any such application having been made.
- (4) In determining on an application made by a person interested in the land whether the condition in subsection (1)(a) or (b) is satisfied, the relevant authority shall have regard to—
- (a) the existence of the right conferred by section 22,
 - (b) the extent to which the applicant has exercised or proposes to exercise that right, and
 - (c) the purposes for which he has exercised or proposes to exercise it.
- (5) Where an application under this section relates to land which is not access land at the time when the application is made, the relevant authority shall not give a direction under this section unless they are satisfied that it is likely that the land will be access land during all or part of the period to which the application relates.

England

[25.— Avoidance of risk of fire or of danger to the public.

(1) The relevant authority may by direction exclude or restrict access by virtue of section 2(1) in relation to any land during a specified period if the authority are satisfied—

- (a) that, by reason of any exceptional conditions of weather or any exceptional change in the condition of the land, the exclusion or restriction under this section of access to the land by virtue of section 2(1) to the extent provided by the direction is necessary for the purpose of fire prevention, or
- (b) that, by reason of anything done, or proposed to be done, on the land or on adjacent land, the exclusion or restriction under this section of access to the land by virtue of section 2(1) to the extent provided by the direction is necessary for the purpose of avoiding danger to the public.

(1A) Subsection (1)(a) does not apply in relation to land which is coastal margin if it is—

- (a) land over which the line of an approved section of the English coastal route, an official alternative route or a temporary route passes, or
- (b) land which is adjacent to and within 2 metres either side of such a line.

(2) The reference in subsection (1) to a specified period includes a reference to—

- (a) a specified period in every calendar year, and
- (b) a period which is to be—
 - (i) determined by a specified person in accordance with the direction, and
 - (ii) notified by him to the relevant authority in accordance with regulations under section 32(1)(d); and
- (c) in the case of a direction relating to land which is coastal margin, a period which is to be determined by a specified person in accordance with the direction and, where the direction so requires, notified to the relevant authority by the specified person in accordance with the direction.

(3) The relevant authority may exercise their powers under subsection (1) on the application of any person interested in the land, or without any such application having been made.

(4) In determining on an application made by a person interested in the land whether the condition in subsection (1)(a) or (b) is satisfied, the relevant authority shall have regard to—

- (a) the existence of the right conferred by section 22,
- (b) the extent to which the applicant has exercised or proposes to exercise that right, and
- (c) the purposes for which he has exercised or proposes to exercise it.

(5) Where an application under this section relates to land which is not access land at the time when the application is made, the relevant authority shall not give a direction under this section unless they are satisfied that it is likely that the land will be access land during all or part of the period to which the application relates.

(6) Nothing in subsection (4) or (5) applies in relation to land which is coastal margin.

(7) In this section—

“approved section of the English coastal route” means a route (other than an official alternative route) in relevant approved proposals (within the meaning of section 3A);
 “official alternative route” has the meaning given by section 55J of the National Parks and Access to the Countryside Act 1949²;
 “temporary route” means a route for the time being having effect by virtue of a direction under section 55I of that Act³

] ¹

Notes

- ¹ Amended by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(3) para.19 (April 6, 2010)
- ² 1949 c. 97. Section 55J was inserted by section 302 of the 2009 Act.
- ³ Section 55I was inserted by section 302 of the 2009 Act.


Commencement

Pt I c. II s. 25(1)-(5): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. II s. 25(1)-(5): England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to: [Wales](#) | [England](#)

 Partially In Force

Wales

[NOTE: not yet in force otherwise.]

England

[25A.— Salt marshes and flats

- (1) The relevant authority may by direction exclude or restrict access to any land which is coastal margin consisting of salt marsh or flat if the authority are satisfied that the exclusion or restriction under this section of access to the land to the extent provided by the direction is necessary because the land, or any part of the land, is unsuitable for public access.
- (2) A direction under subsection (1) may be expressed to have effect—
 - (a) during a period specified in the direction,
 - (b) during a specified period in every calendar year,

- (c) during a period which is to be determined by the relevant authority in accordance with the direction,
- (d) during a period which is to be determined by a specified person in accordance with the direction and, where the direction so requires, notified to the relevant authority by the specified person in accordance with the direction, or
- (e) indefinitely.

(3) In this section a reference to “access” to land means access by virtue of section 2(1).

]¹

Notes

¹ Added by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(3) para.20 (April 6, 2010)

Extent

Pt I c. II s. 25A(1)-(3): England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)



Law In Force With Amendments Pending

Wales

26.— Nature conservation and heritage preservation.

(1) The relevant authority may by direction exclude or restrict access by virtue of section 2(1) to any land during any period if they are satisfied that the exclusion or restriction of access by virtue of section 2(1) to the extent provided by the direction is necessary for either of the purposes specified in subsection (3).

(2) A direction under subsection (1) may be expressed to have effect—

- (a) during a period specified in the direction,
- (b) during a specified period in every calendar year, or
- (c) during a period which is to be—
 - (i) determined by a specified person in accordance with the direction, and
 - (ii) notified by him to the relevant authority in accordance with regulations under section 32(1)(d), or
- (d) indefinitely.

(3) The purposes referred to in subsection (1) are—

- (a) the purpose of conserving flora, fauna or geological or physiographical features of the land in question;
- (b) the purpose of preserving—

- (i) any scheduled monument as defined by section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979, or
- (ii) any other structure, work, site, garden or area which is of historic, architectural, traditional, artistic or archaeological interest.

(4) In considering whether to give a direction under this section, the relevant authority shall have regard to any advice given to them by the relevant advisory body.

(5) Subsection (4) does not apply where the direction is given by [the Natural Resources Body for Wales]¹ for the purpose specified in subsection (3)(a) or revokes a direction given by them for that purpose.

(6) In this section “the relevant advisory body” —

- (a) in relation to a direction which is to be given for the purpose specified in subsection (3)(a) or which revokes a direction given for that purpose, means—
 - (i) in the case of land in England [in respect of which Natural England is not the relevant authority, Natural England]² , and
 - (ii) in the case of land in Wales in respect of which [the Natural Resources Body for Wales]¹ are not the relevant authority, [the Natural Resources Body for Wales]¹ , and
- (b) in relation to a direction which is to be given for the purpose specified in subsection (3)(b) or which revokes a direction given for that purpose, means—
 - (i) in the case of land in England, the Historic Buildings and Monuments Commission for England, and
 - (ii) in the case of land in Wales, the National Assembly for Wales.

Notes

¹ Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.404 (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

² Words substituted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.157 (October 1, 2006)

England

[26.— Nature conservation and heritage preservation.

(1) The relevant authority may by direction exclude or restrict access by virtue of section 2(1) to any land during any period if they are satisfied that the exclusion or restriction of access by virtue of section 2(1) to the extent provided by the direction is necessary for either of the purposes specified in subsection (3).

(2) A direction under subsection (1) may be expressed to have effect—

- (a) during a period specified in the direction,
- (b) during a specified period in every calendar year, or
- (c) during a period which is to be—
 - (i) determined by a specified person in accordance with the direction, and

- (ii) notified by him to the relevant authority in accordance with regulations under section 32(1)(d),
 - (ca) in the case of land which is coastal margin, during a period which is to be determined by a specified person in accordance with the direction and, where the direction so requires, notified to the relevant authority by the specified person in accordance with the direction, or
 - (d) indefinitely.
- (3) The purposes referred to in subsection (1) are—
- (a) the purpose of conserving flora, fauna or geological or physiographical features of the land in question;
 - (b) the purpose of preserving—
 - (i) any scheduled monument as defined by section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979, or
 - (ii) any other structure, work, site, garden or area which is of historic, architectural, traditional, artistic or archaeological interest.
- (4) In considering whether to give a direction under this section, the relevant authority shall have regard to any advice given to them by the relevant advisory body.
- (4A) Subsection (4) does not apply if the direction is made in accordance with section 55F(2) of the National Parks and Access to the Countryside Act 1949 (directions set out in report approving proposals for English coastal route).
- (5) Subsection (4) does not apply where the direction is given by [the Natural Resources Body for Wales]² for the purpose specified in subsection (3)(a) or revokes a direction given by them for that purpose.
- (6) In this section “the relevant advisory body” —
- (a) in relation to a direction which is to be given for the purpose specified in subsection (3)(a) or which revokes a direction given for that purpose, means—
 - (i) in the case of land in England in respect of which Natural England is not the relevant authority, Natural England, and
 - (ii) in the case of land in Wales in respect of which [the Natural Resources Body for Wales]² are not the relevant authority, [the Natural Resources Body for Wales]², and
 - (b) in relation to a direction which is to be given for the purpose specified in subsection (3)(b) or which revokes a direction given for that purpose, means—
 - (i) in the case of land in England, the Historic Buildings and Monuments Commission for England, and
 - (ii) in the case of land in Wales, the National Assembly for Wales.

] ¹

Notes

¹ Amended by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(3) para.21 (April 6, 2010)

² Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.404 (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Proposed Draft Amendments

Pt I c. II s. 26(3)(b)(i): words inserted by Historic Environment (Wales) Bill [as introduced] (GB/04/2022) Sch. 13 para. 179 (Stage 1: Committee considerations of general principles, November 14, 2022) (date to be appointed)

Commencement

Pt I c. II s. 26(1)-(6)(b)(ii): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. II s. 26(1)-(6)(b)(ii): England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[Wales](#) | [England](#)

✓ Law In Force

Wales

27.— Directions by relevant authority: general.

(1) Before giving a direction under section 24, 25 or 26 in relation to land in an area for which there is a local access forum so as to exclude or restrict access to the land—

- (a) indefinitely, or
- (b) during a period which exceeds, or may exceed, six months,

the relevant authority shall consult the local access forum.

(2) Any direction under section 24, 25 or 26 may be revoked or varied by a subsequent direction under that provision.

(3) Where a direction given under section 24, 25 or 26 in relation to any land by the relevant authority excludes or restricts access to the land—

- (a) indefinitely,
- (b) for part of every year or of each of six or more consecutive calendar years, or
- (c) for a specified period of more than five years,

the authority shall review the direction not later than the fifth anniversary of the relevant date.

(4) In subsection (3) “the relevant date”, in relation to a direction, means —

- (a) the day on which the direction was given, or
- (b) where it has already been reviewed, the day on which it was last reviewed.

(5) Before revoking or varying a direction under section 24 or 25 which was given on the application of a person interested in the land to which the direction relates (“the original applicant”), the relevant authority shall—

- (a) where the original applicant still holds the interest in the land which he held when he applied for the direction and it is reasonably practicable to consult him, consult the original applicant, and

(b) where the original applicant does not hold that interest, consult any person who holds that interest and with whom consultation is reasonably practicable.

(6) Before revoking or varying a direction under section 26, the relevant authority shall consult the relevant advisory body as defined by section 26(6), unless the direction falls within section 26(5).

England

[27.— Directions by relevant authority: general.

(1) Before giving a direction under section 24, 25, 25A or 26 in relation to land in an area for which there is a local access forum so as to exclude or restrict access to the land—

(a) indefinitely, or

(b) during a period which exceeds, or may exceed, six months,
the relevant authority shall consult the local access forum.

(2) Any direction under section 24, 25, 25A or 26 may be revoked or varied by a subsequent direction under that provision.

(3) Where a direction given under section 24, 25, 25A or 26 in relation to any land by the relevant authority excludes or restricts access to the land—

(a) indefinitely,

(b) for part of every year or of each of six or more consecutive calendar years, or

(c) for a specified period of more than five years,

the authority shall review the direction not later than the fifth anniversary of the relevant date.

(4) In subsection (3) “the relevant date”, in relation to a direction, means —

(a) the day on which the direction was given, or

(b) where it has already been reviewed, the day on which it was last reviewed.

(5) Before revoking or varying a direction under section 24 or 25 which was given on the application of a person interested in the land to which the direction relates (“the original applicant”), the relevant authority shall—

(a) where the original applicant still holds the interest in the land which he held when he applied for the direction and it is reasonably practicable to consult him, consult the original applicant, and

(b) where the original applicant does not hold that interest, consult any person who holds that interest and with whom consultation is reasonably practicable.

(6) Before revoking or varying a direction under section 26, the relevant authority shall consult the relevant advisory body as defined by section 26(6), unless the direction falls within section 26(5).

(7) Subsection (1) does not apply if the direction is made in accordance with section 55F(2) of the National Parks and Access to the Countryside Act 1949² (directions set out in report approving proposals for English coastal route).

(8) Nothing in subsection (5) or (6) has effect in relation to a direction ceasing to have effect by virtue of section 3A(7) (pre-existing directions ceasing to have effect at end of access preparation period for coastal margin).

] ¹

Notes


- ¹ Amended by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(3) para.22 (April 6, 2010)
- ² 1949 c. 97. Section 55F was inserted by section 302 of the 2009 Act.

Commencement

Pt I c. II s. 27(1)-(6): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. II s. 27(1)-(6): England, Wales

 Law In Force

28.— Defence or national security.

(1) The Secretary of State may by direction exclude or restrict access by virtue of section 2(1) to any land during any period if he is satisfied that the exclusion or restriction of such access to the extent provided by the direction is necessary for the purposes of defence or national security.

(2) A direction under subsection (1) may be expressed to have effect—

- (a) during a period specified in the direction,
- (b) during a specified period in every calendar year,
- (c) during a period which is to be—
 - (i) determined in accordance with the direction by a person authorised by the Secretary of State, and
 - (ii) notified by that person to the relevant authority in accordance with regulations under section 32(1)(c), or
- (d) indefinitely.

(3) Any direction given by the Secretary of State under this section may be revoked or varied by a subsequent direction.

(4) Where a direction given under this section in relation to any land excludes or restricts access to the land—

- (a) indefinitely,
- (b) for part of every year or of each of six or more consecutive calendar years, or
- (c) for a specified period of more than five years,

the Secretary of State shall review the direction not later than the fifth anniversary of the relevant date.

(5) In subsection (4) “the relevant date”, in relation to a direction, means—

- (a) the day on which the direction was given, or
- (b) where it has previously been reviewed, the day on which it was last reviewed.

(6) If in any calendar year the Secretary of State reviews a defence direction, he shall—

- (a) prepare a report on all reviews of defence directions which he has undertaken during that year, and
- (b) lay a copy of the report before each House of Parliament.

(7) In subsection (6) “defence direction” means a direction given under this section for the purposes of defence.

Commencement

Pt I c. II s. 28(1)-(7): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. II s. 28(1)-(7): England, Wales

✓ Law In Force

29.— Reference by relevant advisory body.

(1) Subsections (2) and (3) apply where—

- (a) the relevant advisory body has given advice under section 26(4) or on being consulted under section 27(6), but
- (b) in any respect, the relevant authority decide not to act in accordance with that advice.

(2) The relevant advisory body may refer the decision—

- (a) in the case of land in England, to the [Secretary of State]¹, or
- (b) in the case of land in Wales, to the National Assembly for Wales.

(3) On a reference under this section the [Secretary of State]² or the National Assembly for Wales may, if he or it thinks fit—

- (a) cancel any direction given by the relevant authority, or
- (b) require the relevant authority to give such direction under section 26 as the [Secretary of State]² or, as the case may be, the Assembly, think fit.

(4) Sections 7 and 8 (and Schedule 3) have effect in relation to a reference under this section as they have effect in relation to an appeal under section 6[...]³.

(5) In this section—

(a)-(b) [...]⁴

“the relevant advisory body” has the same meaning as in section 26, except that it does not include the National Assembly for Wales.

Notes

¹ Words substituted by Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002/794 Sch.1 para.43(2) (March 27, 2002)

² Words substituted by Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002/794 Sch.1 para.43(3) (March 27, 2002)

³ Words repealed by Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002/794 Sch.2 para.1 (March 27, 2002)

⁴ Definition repealed by Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002/794 Sch.2 para.1 (March 27, 2002)

Commencement

Pt I c. II s. 29(1)-(5) definition of "the relevant advisory body": January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. II s. 29(1)-(5) definition of "the relevant advisory body": England, Wales

✔ Law In Force

30.— Appeal by person interested in land.

(1) Subsections (2) and (3) apply where—

(a) a person interested in any land (in this section referred to as “the applicant”)—

(i) has applied for a direction under section 24 or 25, or

(ii) has made representations on being consulted under section 27(5), but

(b) in any respect, the relevant authority decide not to act in accordance with the application or the representations.

(2) The relevant authority shall inform the applicant of their reasons for not acting in accordance with the application or representations.

(3) The applicant may appeal against the decision—

(a) in the case of land in England, to the [Secretary of State]¹, or

(b) in the case of land in Wales, to the National Assembly for Wales.

(4) On appeal under this section the [Secretary of State]² or the National Assembly for Wales may, if he or it thinks fit—

(a) cancel any direction given by the relevant authority, or

(b) require the relevant authority to give such direction under section 24 or 25 as the [Secretary of State]² or, as the case may be, the Assembly, think fit.

(5) Sections 7 and 8 (and Schedule 3) have effect in relation to an appeal under this section as they have effect in relation to an appeal under section 6[...]³.

(6) [...] ⁴

Notes

¹ Words substituted by Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002/794 Sch.1 para.44(2) (March 27, 2002)

² Words substituted by Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002/794 Sch.1 para.44(3) (March 27, 2002)

³ Words repealed by Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002/794 Sch.2 para.1 (March 27, 2002)

⁴ Repealed by Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002/794 Sch.2 para.1 (March 27, 2002)

Commencement

Pt I c. II s. 30(1)-(6): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. II s. 30(1)-(6): England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)

✓ Law In Force

Wales

31.— Exclusion or restriction of access in case of emergency.

(1) Regulations may make provision enabling the relevant authority, where the authority are satisfied that an emergency has arisen which makes the exclusion or restriction of access by virtue of section 2(1) necessary for any of the purposes specified in section 24(1), 25(1) or 26(3), by direction to exclude or restrict such access in respect of any land for a period not exceeding three months.

(2) Regulations under this section may provide for any of the preceding provisions of this Chapter to apply in relation to a direction given under the regulations with such modifications as may be prescribed.

England

[31.— Exclusion or restriction of access in case of emergency.

(1) Regulations may make provision enabling the relevant authority—

- (a) where the authority are satisfied that an emergency has arisen which makes the exclusion or restriction of access by virtue of section 2(1) necessary for any of the purposes specified in section 24(1C)(b), 25(1) or 26(3), by direction to exclude or restrict such access, in respect of any land, for a period not exceeding three months, or
- (b) where the authority are satisfied that an emergency has arisen which makes the exclusion or restriction of access by virtue of section 2(1) necessary for any of the purposes specified in section 24(1C)(a), by direction to exclude or restrict such access, in respect of any land which is coastal margin, for a period not exceeding three months.

(1A) Nothing in subsection (1) authorises regulations to make provision which enables the relevant authority to exclude or restrict access, for the purposes specified in subsection (1)(a) of section 25, in respect of any land which is coastal margin and is within subsection (1A)(a) or (b) of that section.

(2) Regulations under this section may provide for any of the preceding provisions of this Chapter to apply in relation to a direction given under the regulations with such modifications as may be prescribed.

] ¹

Notes

¹ Amended by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(3) para.23 (April 6, 2010)

Commencement

Pt I c. II s. 31(1)-(2): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. II s. 31(1)-(2): England, Wales

✓ Law In Force

32.— Regulations relating to exclusion or restriction of access.

(1) Regulations may make provision—

- (a) as to the giving of notice under section 22(1),
- (b) as to the steps to be taken under section 23(1) and (2),
- (c) as to the procedure on any application to the relevant authority under section 24 or 25, including the period within which any such application must be made,
- (d) as to the giving of notice for the purposes of section 24(2)(b)(ii), 25(2)(b)(ii), 26(2)(c)(ii) or 28(2)(c)(ii),
- (e) prescribing the form of any notice or application referred to in paragraphs (a) to (d),
- (f) restricting the cases in which a person who is interested in any land only as the holder of rights of common may make an application under section 24 or 25 in respect of the land,
- (g) as to requirements to be met by relevant authorities or the Secretary of State in relation to consultation (whether or not required by the preceding provisions of this Chapter),
- (h) as to the giving of directions by relevant authorities or the Secretary of State,
- (i) as to notification by relevant authorities or the Secretary of State of decisions under this Chapter,
- (j) as to steps to be taken by persons interested in land, by relevant authorities, by the bodies specified in section 26(6) or by the Secretary of State for informing the public about the exclusion or restriction under this Chapter of access by virtue of section 2(1), including the display of notices on or near the land to which the exclusion or restriction relates,
- (k) as to the carrying out of reviews by relevant authorities under section 27(3) or by the Secretary of State under section 28(4),
- (l) as to the period within which and manner in which appeals under section 30 are to be brought,
- (m) as to the advertising of such an appeal, and
- (n) as to the manner in which such appeals are to be considered.

(2) Regulations made under subsection (1)(k) may provide for any of the provisions of this Chapter relating to appeals to apply (with or without modifications) on a review under section 27.

Commencement

Pt I c. II s. 32(1)-(2): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. II s. 32(1)-(2): England, Wales

✔ Law In Force

33.— Guidance by countryside bodies to National Park authorities.

- (1) Subject to subsection (3), [Natural England]¹ may issue guidance—
- (a) to National Park authorities in England with respect to the discharge by National Park authorities of their functions under this Chapter, and
 - (b) to the Forestry Commissioners with respect to the discharge by the Forestry Commissioners of any functions conferred on them by virtue of section 21(6) in relation to land in England.
- (2) Subject to subsection (3), [the Natural Resources Body for Wales]² may issue guidance—
- (a) to National Park authorities in Wales with respect to the discharge by National Park authorities of their functions under this Chapter [.]³
 - (b) [...]³
- (3) [Natural England]¹ or [the Natural Resources Body for Wales]² may not issue any guidance under this section unless the guidance has been approved—
- (a) in the case of [Natural England]¹ , by the Secretary of State, and
 - (b) in the case of [the Natural Resources Body for Wales]² , by the National Assembly for Wales.
- (4) Where [Natural England]⁴ or [the Natural Resources Body for Wales]² issue any guidance under this section, they shall arrange for the guidance to be published in such manner as they consider appropriate.
- (5) A National Park authority or the Forestry Commissioners shall have regard to any guidance issued to them under this section.

Notes

- ¹ Words substituted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.158(a) (October 1, 2006)
- ² Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.405(2) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)
- ³ Repealed by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.405(3) (April 1, 2013: repeal has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)
- ⁴ Words substituted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.158(b) (October 1, 2006)

Commencement

Pt I c. II s. 33(1)-(5): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. II s. 33(1)-(5): England, Wales

CHAPTER III

MEANS OF ACCESS

✓ Law In Force

34. Interpretation of Chapter III.

In this Chapter—

“access land” does not include any land in relation to which the application of section 2(1) has been excluded under any provision of Chapter II either indefinitely or for a specified period of which at least six months remain unexpired;

“means of access”, in relation to land, means—

- (a) any opening in a wall, fence or hedge bounding the land (or part of the land), with or without a gate, stile or other works for regulating passage through the opening,
- (b) any stairs or steps for enabling persons to enter on the land (or part of the land), or
- (c) any bridge, stepping stone or other works for crossing a watercourse, ditch or bog on the land or adjoining the boundary of the land.

Commencement

Pt I c. III s. 34 definition of "access land"- definition of "means of access" (c): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. III s. 34 definition of "access land"- definition of "means of access" (c): England, Wales

✓ Law In Force

35.— Agreements with respect to means of access.

(1) Where, in respect of any access land, it appears to the access authority that—

- (a) the opening-up, improvement or repair of any means of access to the land,
- (b) the construction of any new means of access to the land,
- (c) the maintenance of any means of access to the land, or
- (d) the imposition of restrictions—
 - (i) on the destruction, removal, alteration or stopping-up of any means of access to the land, or
 - (ii) on the doing of any thing whereby the use of any such means of access to the land by the public would be impeded,

is necessary for giving the public reasonable access to that land in exercise of the right conferred by section 2(1), the access authority may enter into an agreement with the owner or occupier of the land as to the carrying out of the works or the imposition of the restrictions.

(2) An agreement under this section may provide—

- (a) for the carrying out of works by the owner or occupier or by the access authority, and
- (b) for the making of payments by the access authority—
 - (i) as a contribution towards, or for the purpose of defraying, costs incurred by the owner or occupier in carrying out any works for which the agreement provides, or
 - (ii) in consideration of the imposition of any restriction.

Commencement

Pt I c. III s. 35(1)-(2)(b)(ii): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. III s. 35(1)-(2)(b)(ii): England, Wales

✔ Law In Force

36.— Failure to comply with agreement.

(1) If the owner or occupier of any access land fails to carry out within the required time any works which he is required by an agreement under section 35 to carry out, the access authority, after giving not less than twenty-one days' notice of their intention to do so, may take all necessary steps for carrying out those works.

(2) In subsection (1) “the required time” means the time specified in, or determined in accordance with, the agreement as that within which the works must be carried out or, if there is no such time, means a reasonable time.

(3) If the owner or occupier of any access land fails to observe any restriction which he is required by an agreement under section 35 to observe, the access authority may give him a notice requiring him within a specified period of not less than twenty-one days to carry out such works as may be specified in the notice, for the purpose of remedying the failure to observe the restriction.

(4) A notice under subsection (3) must contain particulars of the right of appeal conferred by section 38.

(5) If the person to whom a notice under subsection (3) is given fails to comply with the notice, the access authority may take all necessary steps for carrying out any works specified in the notice.

(6) Where the access authority carry out any works by virtue of subsection (1), the authority may recover the amount of any expenses reasonably incurred by them in carrying out the works, reduced by their contribution under the agreement, from the person by whom under the agreement the cost (apart from the authority's contribution) of carrying out the works would fall to be borne.

(7) Where the access authority carry out any works by virtue of subsection (5), the authority may recover the amount of any expenses reasonably incurred by them in carrying out the works from the person to whom the notice under subsection (3) was given.

Commencement

Pt I c. III s. 36(1)-(7): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. III s. 36(1)-(7): England, Wales

✓ Law In Force

37.— Provision of access by access authority in absence of agreement.

(1) Where, in respect of any access land—

(a) it appears to the access authority that—

(i) the opening-up, improvement or repair of any means of access to the land,

(ii) the construction of any new means of access to the land, or

(iii) the maintenance of any means of access to the land,

is necessary for giving the public reasonable access to that land, or to other access land, in pursuance of the right conferred by section 2(1), and

(b) the access authority are satisfied that they are unable to conclude on reasonable terms an agreement under section 35 with the owner or occupier of the land for the carrying out of the works,

the access authority may, subject to subsection (3), give the owner or occupier a notice stating that, after the end of a specified period of not less than twenty-one days, the authority intend to take all necessary steps for carrying out the works specified in the notice for the opening-up, improvement, repair, construction or maintenance of the means of access.

(2) A notice under subsection (1) must contain particulars of the right of appeal conferred by section 38.

(3) Where a notice under subsection (1) is given to any person as the owner or occupier of any land, the access authority shall give a copy of the notice to every other owner or occupier of the land.

(4) An access authority exercising the power conferred by subsection (1) in relation to the provision of a means of access shall have regard to the requirements of efficient management of the land in deciding where the means of access is to be provided.

(5) If, at the end of the period specified in a notice under subsection (1), any of the works specified in the notice have not been carried out, the access authority may take all necessary steps for carrying out those works.

Commencement

Pt I c. III s. 37(1)-(5): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. III s. 37(1)-(5): England, Wales

✓ Law In Force

38.— Appeals relating to notices.

(1) Where a notice under section 36(3) or 37(1) has been given to a person in respect of any land, he or any other owner or occupier of the land may appeal against the notice—

(a) in the case of land in England, to the Secretary of State, and

(b) in the case of land in Wales, to the National Assembly for Wales.

(2) An appeal against a notice under section 36(3) may be brought on any of the following grounds—

- (a) that the notice requires the carrying out of any works which are not necessary for remedying a breach of the agreement,
 - (b) that any of the works have already been carried out, and
 - (c) that the period specified in the notice as that before the end of which the works must be carried out is too short.
- (3) An appeal against a notice under section 37(1) may be brought on any of the following grounds—
- (a) that the notice requires the carrying out of any works which are not necessary for giving the public reasonable access to the access land in question,
 - (b) in the case of works to provide a means of access, that the means of access should be provided elsewhere, or that a different means of access should be provided, and
 - (c) that any of the works have already been carried out.
- (4) On an appeal under this section, the Secretary of State or the National Assembly for Wales may—
- (a) confirm the notice with or without modifications, or
 - (b) cancel the notice.
- (5) Sections 7 and 8 (and Schedule 3) have effect in relation to an appeal under this section as they have effect in relation to an appeal under section 6.
- (6) Regulations may make provision as to—
- (a) the period within which and manner in which appeals under this section are to be brought,
 - (b) the advertising of such an appeal, and
 - (c) the manner in which such appeals are to be considered.
- (7) Where an appeal has been brought under this section against a notice under section 36(3) or 37(1), the access authority may not exercise their powers under section 36(5) or section 37(5) (as the case may be) pending the determination or withdrawal of the appeal.

Commencement

Pt I c. III s. 38(1)-(7): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. III s. 38(1)-(7): England, Wales

 Law In Force

39.— Order to remove obstruction.

- (1) Where at any time two or more access notices relating to a means of access have been given to any person within the preceding thirty-six months, a magistrates' court may, on the application of the access authority, order that person—
- (a) within such time as may be specified in the order, to take such steps as may be so specified to remove any obstruction of that means of access, and
 - (b) not to obstruct that means of access at any time when the right conferred by section 2(1) is exercisable.

- (2) If a person (“the person in default”) fails to comply with an order under this section—
- (a) he is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and
 - (b) the access authority may remove any obstruction of the means of access and recover from the person in default the costs reasonably incurred by them in doing so.
- (3) In this section “access notice” means a notice under section 36(3) or 37(1) in respect of which the period specified in the notice has expired, other than a notice in respect of which an appeal is pending or which has been cancelled on appeal.


Commencement

Pt I c. III s. 39(1)-(3): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. III s. 39(1)-(3): England, Wales

CHAPTER IV**GENERAL**

 Law In Force

40.— Powers of entry for purposes of Part I.

- (1) A person who is authorised by the appropriate countryside body to do so may enter any land—
- (a) for the purpose of surveying it in connection with the preparation of any map under this Part or the review of any map issued under this Part,
 - (b) for the purpose of determining whether any power conferred on the appropriate countryside body by Chapter II should be exercised in relation to the land,
 - (c) for the purpose of ascertaining whether members of the public are being permitted to exercise the right conferred by section 2(1),
 - (d) in connection with an appeal under any provision of this Part, or
 - (e) for the purpose of determining whether to apply to the Secretary of State or the National Assembly for Wales under section 58.
- (2) A person who is authorised by a local highway authority to do so may enter any land—
- (a) for the purpose of determining whether the local highway authority should enter into an agreement under section 35, give a notice under section 36(1) or (3) or section 37(1) or carry out works under section 36(1) or (5), section 37(5) or section 39(2)(b),
 - (b) for the purpose of ascertaining whether an offence under section 14 or 39 has been or is being committed, or
 - (c) for the purposes of erecting or maintaining notices under section 19(1).
- (3) A person who is authorised by a National Park authority to do so may enter any land—
- (a) for the purpose of enabling the authority to determine whether to exercise any power under Chapter II of this Act in relation to the land,

- (b) for the purpose of determining whether members of the public are being permitted to exercise the right conferred by section 2(1),
 - (c) in connection with an appeal under any provision of this Part,
 - (d) for the purpose of determining whether the authority should enter into an agreement under section 35, give a notice under section 36(1) or (3) or section 37(1) or carry out works under section 36(1) or (5), section 37(5) or section 39(2)(b),
 - (e) for the purpose of ascertaining whether an offence under section 14 or 39 has been or is being committed, or
 - (f) for the purposes of erecting or maintaining notices under section 19(1).
- (4) A person who is authorised by the Forestry Commissioners to do so may enter any land—
- (a) for the purpose of determining whether any power conferred on the Forestry Commissioners by Chapter II should be exercised in relation to the land, or
 - (b) in connection with an appeal under any provision of this Part.
- (5) A person acting in the exercise of a power conferred by this section may—
- (a) use a vehicle to enter the land;
 - (b) take a constable with him if he reasonably believes he is likely to be obstructed;
 - (c) take with him equipment and materials needed for the purpose for which he is exercising the power of entry;
 - (d) take samples of the land and of anything on it.
- (6) If in the exercise of a power conferred by this section a person enters land which is unoccupied or from which the occupier is temporarily absent, he must on his departure leave it as effectively secured against unauthorised entry as he found it.
- (7) A person authorised under this section to enter upon any land—
- (a) shall, if so required, produce evidence of his authority before entering, and
 - (b) shall produce such evidence if required to do so at any time while he remains on the land.
- (8) A person shall not under this section demand admission as of right to any occupied land, other than access land, unless—
- (a) at least twenty-four hours' notice of the intended entry has been given to the occupier, or
 - (b) it is not reasonably practicable to give such notice, or
 - (c) the entry is for the purpose specified in subsection (2)(b) and (3)(e).
- (9) The rights conferred by this section are not exercisable in relation to a dwelling.
- (10) A person who intentionally obstructs a person acting in the exercise of his powers under this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Commencement

Pt I c. IV s. 40(1)-(10): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. IV s. 40(1)-(10): England, Wales

✓ Law In Force

41.— Compensation relating to powers under s. 40.

(1) It is the duty of a body by which an authorisation may be given under section 40 to compensate any person who has sustained damage as a result of—

- (a) the exercise of a power conferred by that section by a person authorised by that body to do so, or
- (b) the failure of a person so authorised to perform the duty imposed on him by subsection (6) of that section,

except where the damage is attributable to the fault of the person who sustained it.

(2) Any dispute as to a person's entitlement to compensation under this section or as to its amount shall be referred to an arbitrator to be appointed, in default of agreement—

- (a) as respects entry on land in England, by the Secretary of State, and
- (b) as respects entry on land in Wales, by the National Assembly for Wales.

Commencement

Pt I c. IV s. 41(1)-(2)(b): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. IV s. 41(1)-(2)(b): England, Wales

✓ Law In Force

42.— References to public places in existing enactments.

(1) This section applies to any enactment which—

- (a) is contained in an Act passed before or in the same Session as this Act, and
- (b) relates to things done, or omitted to be done, in public places or places to which the public have access.

(2) Regulations may provide that, in determining for the purposes of any specified enactment to which this section applies whether a place is a public place or a place to which the public have access, the right conferred by section 2(1), or access by virtue of that right, is to be disregarded, either generally or in prescribed cases.

Commencement

Pt I c. IV s. 42(1)-(2): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. IV s. 42(1)-(2): England, Wales

✓ Law In Force

43.— Crown application of Part I.

(1) This Part binds the Crown.

(2) No contravention by the Crown of any provision of this Part shall make the Crown criminally liable; but the High Court may declare unlawful any act or omission of the Crown which constitutes such a contravention.


(3) The provisions of this Part apply to persons in the public service of the Crown as they apply to other persons.

Commencement

Pt I c. IV s. 43(1)-(3): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. IV s. 43(1)-(3): England, Wales

 Law In Force

44.— Orders and regulations under Part I.

(1) Any power to make an order or regulations which is conferred by this Part on the Secretary of State or the National Assembly for Wales is exercisable by statutory instrument.

(2) Any power to make an order or regulations which is conferred by this Part on the Secretary of State or the National Assembly for Wales includes power—

(a) to make different provision for different cases, and

(b) to make such incidental, supplementary, consequential or transitional provision as the person making the order or regulations considers necessary or expedient.

(3) No order under [section 3 or 3A(1)]¹ or regulations under paragraph 3 of Schedule 2 shall be made by the Secretary of State unless a draft has been laid before, and approved by a resolution of, each House of Parliament.

(4) Any statutory instrument containing regulations made by the Secretary of State under any other provision of this Part shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Notes

¹ Words inserted by Marine and Coastal Access Act 2009 c. 23 Pt 9 s.303(8) (January 12, 2010)

Commencement

Pt I c. IV s. 44(1)-(4): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. IV s. 44(1)-(4): England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[England and Wales](#) | [Other Application](#)



England and Wales

45.— Interpretation of Part I.

(1) In this Part, unless a contrary intention appears—

“access authority” has the meaning given by section 1(2);

“access land” has the meaning given by section 1(1);

“the appropriate countryside body” has the meaning given by section 1(2);

[“coastal margin” has the meaning given by section 1(2);]¹

“excepted land” has the meaning given by section 1(2);

“Inner London” means the area comprising the inner London boroughs, the City of London, the Inner Temple and the Middle Temple;

“interest”, in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an estate or interest in land or by virtue of a licence or agreement, and in particular includes rights of common and sporting rights, and references to a person interested in land shall be construed accordingly;

“livestock” means cattle, sheep, goats, swine, horses or poultry, and for the purposes of this definition “cattle” means bulls, cows, oxen, heifers or calves, “horses” include asses and mules, and “poultry” means domestic fowls, turkeys, geese or ducks;

“local highway authority” has the same meaning as in the Highways Act 1980;

“local or private Act” includes an Act confirming a provisional order;

“mountain” has the meaning given by section 1(2);

“open country” has the meaning given by section 1(2);

“owner”, in relation to any land, means, subject to subsection (2), any person, other than a mortgagee not in possession, who, whether in his own right or as trustee for another person, is entitled to receive the rack rent of the land, or, where the land is not let at a rack rent, would be so entitled if it were so let;

“prescribed” means prescribed by regulations;

“registered common land” has the meaning given by section 1(3);

“regulations” means regulations made by the Secretary of State (as respects England) or by the National Assembly for Wales (as respects Wales);

“rights of common” has the same meaning as in the Commons Registration Act 1965 [.]² [...]²

(2) In relation to any land which is subject to a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 or a tenancy to which the Agricultural Holdings Act 1986 applies, the definition of “owner” in subsection (1) does not apply where it is excluded by section 2(5) or 21(4) or by paragraph 7(4) of Schedule 2.

(3) For the purposes of this Part, the Broads are to be treated as a National Park and the Broads Authority as a National Park authority.

(4) In subsection (3) “the Broads” has the same meaning as in the Norfolk and Suffolk Broads Act 1988.

Notes

- ¹ Definition inserted by Marine and Coastal Access Act 2009 c. 23 Pt 9 s.303(9) (January 12, 2010)
- ² Definitions repealed subject to the transitional provisions specified in 2003 c.21 Sch.18 para.13 and SI 2003/1900 art.3(1) by Communications Act 2003 c. 21 Sch.19 para.1 (July 25, 2003 as SI 2003/1900, subject to the transitional provisions specified in 2003 c.21 Sch.18 para.13 and SI 2003/1900 art.3(1))

Other Application

In relation to pilot areas in England:

[45.— Interpretation of Part I.

(1) In this Part, unless a contrary intention appears—

- “access authority” has the meaning given by section 1(2);
- “access land” has the meaning given by section 1(1);
- “the appropriate countryside body” has the meaning given by section 1(2);
- “coastal margin” has the meaning given by section 1(2);
- “excepted land” has the meaning given by section 1(2);
- “Inner London” means the area comprising the inner London boroughs, the City of London, the Inner Temple and the Middle Temple;
- “interest”, in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an estate or interest in land or by virtue of a licence or agreement, and in particular includes rights of common and sporting rights, and references to a person interested in land shall be construed accordingly;
- “livestock” means cattle, sheep, goats, swine, horses or poultry, and for the purposes of this definition “cattle” means bulls, cows, oxen, heifers or calves, “horses” include asses and mules, and “poultry” means domestic fowls, turkeys, geese or ducks;
- “local highway authority” has the same meaning as in the Highways Act 1980;
- “local or private Act” includes an Act confirming a provisional order;
- “mountain” has the meaning given by section 1(2);
- “open country” has the meaning given by section 1(2);
- “owner”, in relation to any land, means, subject to subsection (2), any person, other than a mortgagee not in possession, who, whether in his own right or as trustee for another person, is entitled to receive the rack rent of the land, or, where the land is not let at a rack rent, would be so entitled if it were so let;
- “prescribed” means prescribed by regulations;
- “registered common land” has the meaning given by section 1(3);
- “regulations” means regulations made by the Secretary of State (as respects England) or by the National Assembly for Wales (as respects Wales);
- “rights of common” has the same meaning as in the Commons Act 2006.

(2) In relation to any land which is subject to a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 or a tenancy to which the Agricultural Holdings Act 1986 applies, the definition of “owner” in subsection (1) does not apply where it is excluded by section 2(5) or 21(4) or by paragraph 7(4) of Schedule 2.

(3) For the purposes of this Part, the Broads are to be treated as a National Park and the Broads Authority as a National Park authority.

(4) In subsection (3) “the Broads” has the same meaning as in the Norfolk and Suffolk Broads Act 1988.

] ¹

Notes

¹ Words substituted by Commons Act 2006 c. 26 Sch.5 para.7(4) (October 31, 2011 as SI 2011/2460)

Amendments Pending

Pt I c. IV s. 45(1) definition of "rights of common": substituted by Commons Act 2006 c. 26 Sch. 5 para. 7(4) (Not yet in force)


Pt I c. IV s. 45(1) definition of "rights of common": words substituted by Commons Act 2006 c. 26 Sch. 5 para. 7(4) (Not yet in force)

Commencement

Pt I c. IV s. 45(1)-(4): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt I c. IV s. 45(1)-(4): England, Wales

 Partially In Force

46.— Repeal of previous legislation, and amendments relating to Part I.

(1) [...] ¹

(2) No access agreement or access order under Part V of the National Parks and Access to the Countryside Act 1949 (access to open country) may be made after the commencement of this [subsection] ² in relation to land which is open country or registered common land for the purposes of this Part.

(3) Schedule 4 (which contains minor and consequential amendments relating to access to the countryside) has effect.

Notes

¹ Repealed by Commons Act 2006 c. 26 Sch.6(1) para.1 (September 6, 2007 as SI 2007/2386)

² Substituted by Commons Act 2006 c. 26 Sch.5 para.7(5) (September 6, 2007 as SI 2007/2386)

Commencement

Pt I c. IV s. 46(1): April 1, 2001

Pt I c. IV s. 46(1)(a): June 21, 2004 in relation to Wales; not yet in force otherwise (SI 2004/1489 art. 2(c), art. 3)

Pt I c. IV s. 46(1)(b): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(a); SI 2001/1410 art. 2(a))


Pt I c. IV s. 46(2): Date to be appointed (not yet in force)

Pt I c. IV s. 46(3): April 1, 2001 in relation to England for provisions specified in SI 2001/114 art.2(2); May 1, 2001 in relation to Wales for provisions specified in SI 2001/1410 art.2; September 19, 2004 in relation to England for provisions specified in SI 2004/2173 art.2(g); May 28, 2005 in relation to Wales for provisions specified in SI 2005/423 art.2(e); not yet in force otherwise (SI 2001/114 art. 2(2)(b); SI 2001/1410 art. 2(b); SI 2004/2173 art. 2(1)(g); SI 2005/423 art. 2(e))

Extent

Pt I c. IV s. 46(1)-(3): England, Wales

PART II**PUBLIC RIGHTS OF WAY AND ROAD TRAFFIC***Public rights of way and definitive maps and statements*

 Law In Force

47.— Redesignation of roads used as public paths.

(1) In the Wildlife and Countryside Act 1981 (in this Act referred to as “the 1981 Act”), section 54 (duty to reclassify roads used as public paths) shall cease to have effect.

(2) Every way which, immediately before the commencement of this section, is shown in any definitive map and statement as a road used as a public path shall be treated instead as shown as a restricted byway; and the expression “road used as a public path” shall not be used in any definitive map and statement to describe any way.

Commencement

Pt II s. 47(1)-(2): May 2, 2006 in relation to England subject to savings specified in SI 2006/1172 art.3; May 11, 2006 otherwise subject to transitional provisions specified in SI 2006/1279 art.3(1) (SI 2006/1172 art. 2(a), art. 3; SI 2006/1279 art. 2(a), art. 3(1))

Extent

Pt II s. 47-(2): England, Wales

✓ Law In Force

48.— Restricted byway rights.

(1) Subject to subsections (2) and (3), the public shall have restricted byway rights over any way which, immediately before the commencement of section 47, is shown in a definitive map and statement as a road used as a public path.

(2) Subsection (1) has effect subject to the operation of any enactment or instrument (whether coming into operation before or after the commencement of section 47), and to the effect of any event otherwise within section 53(3)(a) of the 1981 Act, whereby a highway—

(a) is authorised to be stopped up, diverted, widened or extended, or

(b) becomes a public path;

and subsection (1) applies accordingly to any way as so diverted, widened or extended.

(3) Subsection (1) does not apply to any way, or part of a way, over which immediately before the commencement of section 47 there was no public right of way.

(4) In this Part—

“restricted byway rights” means—

(a) a right of way on foot,

(b) a right of way on horseback or leading a horse, and

(c) a right of way for vehicles other than mechanically propelled vehicles; and

“restricted byway” means a highway over which the public have restricted byway rights, with or without a right to drive animals of any description along the highway, but no other rights of way.

(5) A highway at the side of a river, canal or other inland navigation is not excluded from the definition of “restricted byway” in subsection (4) merely because the public have a right to use the highway for purposes of navigation, if the highway would fall within that definition if the public had no such right over it.

(6) Subsection (1) is without prejudice to any question whether the public have over any way, in addition to restricted byway rights, a right of way for mechanically propelled vehicles or any other right.

(7) In subsections (4) and (6) “mechanically propelled vehicle” does not include a vehicle falling within paragraph (c) of section 189(1) of the Road Traffic Act 1988.

(8) Every surveying authority shall take such steps as they consider expedient for bringing to the attention of the public the effect of section 47(2) and this section.

(9) The powers conferred by section 103(5) must be so exercised as to secure that nothing in section 47 or this section affects the operation of section 53 or 54 of, or Schedule 14 or 15 to, the 1981 Act in relation to—

(a) a relevant order made before the commencement of section 47, or

(b) an application made before that commencement for a relevant order.

(10) In subsection (9) “relevant order” means an order which relates to a way shown in a definitive map and statement as a road used as a public path and which—

(a) is made under section 53 of the 1981 Act and contains modifications relating to that way by virtue of subsection (3)(c)(ii) of that section, or

(b) is made under section 54 of the 1981 Act.

(11) Where—

- (a) by virtue of an order under subsection (3) of section 103 (“the commencement order”) containing such provision as is mentioned in subsection (5) of that section, an order under Part III of the 1981 Act (“the Part III order”) takes effect, after the commencement of section 47, in relation to any way which, immediately before that commencement, was shown in a definitive map and statement as a road used as a public path,
- (b) the commencement order does not prevent subsection (1) from having effect on that commencement in relation to that way, and
- (c) if the Part III order had taken effect before that commencement, that way would not have fallen within subsection (1),

all rights over that way which exist only by virtue of subsection (1) shall be extinguished when the Part III order takes effect.

Commencement

Pt II s. 48(1)-(11)(c): May 2, 2006 in relation to England subject to savings specified in SI 2006/1172 art.3; May 11, 2006 otherwise subject to transitional provisions specified in SI 2006/1279 art.3(1) (SI 2006/1172 art. 2(b), art. 3; SI 2006/1279 art. 2(b), art. 3(1))

Extent

Pt II s. 48-(11)(c): England, Wales

✓ Law In Force

49.— Provisions supplementary to ss. 47 and 48.

(1) Every way over which the public have restricted byway rights by virtue of subsection (1) of section 48 (whether or not they also have a right of way for mechanically propelled vehicles or any other right) shall, as from the commencement of that section, be a highway maintainable at the public expense.

(2) As from the commencement of that section, any liability, under a special enactment (within the meaning of the Highways Act 1980) or by reason of tenure, enclosure or prescription, to maintain, otherwise than as a highway maintainable at the public expense, a restricted byway to which subsection (1) applies is extinguished.

(3) Every way which, in pursuance of—

- (a) paragraph 9 of Part III of Schedule 3 to the Countryside Act 1968, or
- (b) any order made under section 54(1) of the 1981 Act before the coming into force of section 47,

is shown in any definitive map and statement as a byway open to all traffic, a bridleway or a footpath, shall continue to be maintainable at the public expense.

(4) Nothing in subsections (1) and (3) or in section 48(1) obliges a highway authority to provide on any way a metalled carriage-way or a carriage-way which is by any other means provided with a surface suitable for cycles or other vehicles.

(5) Nothing in section 48, or in section 53 of the 1981 Act, limits the operation of orders under the Road Traffic Regulation Act 1984 or the operation of any byelaws.

(6) Section 67 of the 1981 Act (application to the Crown) has effect as if this section and sections 47, 48 and 50 were contained in Part III of that Act.

Commencement

Pt II s. 49(1)-(6): May 2, 2006 in relation to England; May 11, 2006 otherwise (SI 2006/1172 art. 2(c); SI 2006/1279 art. 2(c))

Extent

Pt II s. 49-(6): England, Wales

✓ Law In Force

50.— Private rights over restricted byways.

(1) Restricted byway rights over any way by virtue of subsection (1) of section 48 are subject to any condition or limitation to which public rights of way over that way were subject immediately before the commencement of that section.

(2) Any owner or lessee of premises adjoining or adjacent to a relevant highway shall, so far as is necessary for the reasonable enjoyment and occupation of the premises, have a right of way for vehicular and all other kinds of traffic over the relevant highway.

(3) In subsection (2), in its application to the owner of any premises, “relevant highway” means so much of any highway maintainable at the public expense by virtue of section 49(1) as was, immediately before it became so maintainable, owned by the person who then owned the premises.

(4) In subsection (2), in its application to the lessee of any premises, “relevant highway” means so much of any highway maintainable at the public expense by virtue of section 49(1) as was, immediately before it became so maintainable, included in the lease on which the premises are held.

(5) In this section—

“lease” and “lessee” have the same meaning as in the 1980 Act;

“owner” , in relation to any premises, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the premises, whether in possession or in reversion, and “owned” shall be construed accordingly; and


“premises” has the same meaning as in the 1980 Act.

Commencement

Pt II s. 50(1)-(5) definition of "premises": May 2, 2006 in relation to England; May 11, 2006 otherwise (SI 2006/1172 art. 2(d); SI 2006/1279 art. 2(d))

Extent

Pt II s. 50-(5) definition of "premises": England, Wales

 Partially In Force

51. Amendments relating to definitive maps and statements and restricted byways.


Schedule 5 to this Act (which contains amendments relating to definitive maps and statements and restricted byways) has effect.

Commencement

Pt II s. 51: May 31, 2005 in relation to Wales for provisions specified in SI 2005/1314 art.2(a); September 27, 2005 in relation to England for provisions specified in SI 2005/2459 art.2(1)(a); September 27, 2005 in relation to England for provisions and purposes specified in SI 2005/2459 art.2(2)(a) and (b); November 21, 2005 in relation to Wales for provisions specified in SI 2005/1314 art.4(a); May 2, 2006 in relation to England for provisions specified in SI 2006/1172 art.2(e); May 11, 2006 in relation to Wales for provisions specified in SI 2006/1279 art.2(f) and (g); February 18, 2008 for the purpose specified in SI 2008/308 art.2; not yet in force otherwise (SI 2005/1314 art. 2(a), art. 4(a); SI 2005/2459 art. 2(1)(a), art. 2(2)(a), art. 2(2)(b); SI 2006/1172 art. 2(e); SI 2006/1279 art. 2(e), art. 2(f), art. 2(g); SI 2008/308 art. 2)

Extent

Pt II s. 51-: England, Wales

 Law In Force

52.— Restricted byways: power to amend existing legislation.

(1) The Secretary of State may by regulations—

(a) provide for any relevant provision which relates—

- (i) to highways or highways of a particular description,
- (ii) to things done on or in connection with highways or highways of a particular description, or
- (iii) to the creation, stopping up or diversion of highways or highways of a particular description,

not to apply, or to apply with or without modification, in relation to restricted byways or to ways shown in a definitive map and statement as restricted byways, and

(b) make in any relevant provision such amendments, repeals or revocations as appear to him appropriate in consequence of the coming into force of sections 47 to 50 or provision made by virtue of paragraph (a) or subsection (6)(a).

(2) In this section—

“relevant provision” means a provision contained—

- (a) in an Act passed before or in the same Session as this Act, or
- (b) in any subordinate legislation made before the passing of this Act;

“relevant Welsh provision” means a provision contained—

- (a) in a local or private Act passed before or in the same Session as this Act and relating only to areas in Wales, or
- (b) in any subordinate legislation which was made before the passing of this Act and which the National Assembly for Wales has power to amend or revoke as respects Wales.

(3) In exercising the power to make regulations under subsection (1), the Secretary of State—

- (a) may not make provision which has effect in relation to Wales unless he has consulted the National Assembly for Wales, and
 - (b) may not without the consent of the National Assembly for Wales make any provision which (otherwise than merely by virtue of the amendment or repeal of a provision contained in an Act) amends or revokes subordinate legislation made by the Assembly.
- (4) The National Assembly for Wales may submit to the Secretary of State proposals for the exercise by the Secretary of State of the power conferred by subsection (1).
- (5) The powers conferred by subsection (1) may be exercised in relation to a relevant provision even though the provision is amended or inserted by this Act.
- (6) As respects Wales, the National Assembly for Wales may by regulations—
- (a) provide for any relevant Welsh provision which relates—
 - (i) to highways or highways of a particular description,
 - (ii) to things done on or in connection with highways or highways of a particular description, or
 - (iii) to the creation, stopping up or diversion of highways or highways of a particular description,not to apply, or to apply with or without modification, in relation to restricted byways or to ways shown in a definitive map and statement as restricted byways, and
 - (b) make in any relevant Welsh provision such amendments, repeals or revocations as appear to the Assembly appropriate in consequence of the coming into force of sections 47 to 50 or provision made by virtue of subsection (1)(a) or paragraph (a).
- (7) Regulations under this section shall be made by statutory instrument, but no such regulations shall be made by the Secretary of State unless a draft of the instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
- (8) Where the Secretary of State lays before Parliament the draft of an instrument containing regulations under subsection (1) in respect of which consultation with the National Assembly for Wales is required by subsection (3)(a), he shall also lay before each House of Parliament a document giving details of the consultation and setting out any representations received from the Assembly.

Commencement

Pt II s. 52(1)-(8): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt II s. 52(1)-(8): England, Wales

 Not Yet In Force

53.— Extinguishment of unrecorded rights of way.

- (1) Subsection (2) applies to a highway if—
- (a) it was on 1st January 1949 a footpath or a bridleway, is on the cut-off date (in either case) a footpath or a bridleway, and between those dates has not been a highway of any other description,

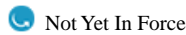
- (b) it is not on the cut-off date shown in a definitive map and statement as a highway of any description, and
 - (c) it is not on the cut-off date an excepted highway, as defined by section 54(1).
- (2) All public rights of way over a highway to which this subsection applies shall be extinguished immediately after the cut-off date.
- (3) Where a public right of way created before 1949—
- (a) falls within subsection (4) on the cut-off date, and
 - (b) is not on that date an excepted right of way, as defined by section 54(5),
- that right of way shall be extinguished immediately after the cut-off date.
- (4) A public right of way falls within this subsection if it is—
- (a) a public right of way on horseback, leading a horse or for vehicles over a bridleway, restricted byway or byway open to all traffic which is shown in a definitive map and statement as a footpath;
 - (b) a right for the public to drive animals of any description along a bridleway, restricted byway or byway open to all traffic which is shown in a definitive map and statement as a footpath;
 - (c) a public right of way for vehicles over a restricted byway or byway open to all traffic which is shown in a definitive map and statement as a bridleway; or
 - (d) a public right of way for mechanically propelled vehicles over a byway open to all traffic which is shown in a definitive map and statement as a restricted byway.
- (5) Where by virtue of subsection (3) a highway ceases to be a bridleway, the right of way created over it by section 30 of the Countryside Act 1968 (riding of pedal cycles on bridleways) is also extinguished.
- (6) In determining—
- (a) for the purposes of subsection (1) whether any part of a highway was on 1st January 1949 a footpath or bridleway, or
 - (b) for the purposes of subsection (3) whether a public right of way over any part of a highway was created before 1st January 1949,
- any diversion, widening or extension of the highway on or after that date (and not later than the cut-off date) is to be treated as having occurred before 1st January 1949.
- (7) Where a way shown on the cut-off date in a definitive map and statement has at any time been diverted, widened or extended, it is to be treated for the purposes of subsections (1) to (5) as shown as so diverted, widened or extended, whether or not it is so shown.
- (8) In this section—
- “cut-off date” has the meaning given in section 56, and
 - “mechanically propelled vehicle” does not include a vehicle does not include a vehicle falling within paragraph (c) of section 189(1) of the Road Traffic Act 1988.

Commencement

Pt II s. 53(1)-(8) definition of "mechanically propelled vehicle": Date to be appointed (not yet in force)

Extent

Pt II s. 53(1)-(8) definition of "mechanically propelled vehicle": England, Wales



Not Yet In Force

54.— Excepted highways and rights of way.

- (1) A footpath or bridleway is an excepted highway for the purposes of section 53(1) if—
- (a) it is a footpath or bridleway which satisfies either of the conditions in subsections (2) and (3),
 - (b) it is, or is part of, a footpath or bridleway any part of which is in an area which, immediately before 1st April 1965, formed part of the administrative county of London,
 - (c) it is a footpath or bridleway—
 - (i) at the side of (whether or not contiguous with) a carriageway constituting or comprised in another highway, or
 - (ii) between two carriageways comprised in the same highway (whether or not the footpath or bridleway is contiguous with either carriageway),
 - (d) it is a footpath or bridleway of such other description as may be specified in regulations made (as respects England) by the Secretary of State or (as respects Wales) by the National Assembly for Wales, or
 - (e) it is a footpath or bridleway so specified.
- (2) A footpath or bridleway (“the relevant highway”) satisfies the first condition if—
- (a) it became a footpath or bridleway on or after 1st January 1949 by the diversion, widening or extension of a footpath or, as the case may be, of a bridleway by virtue of an event within section 53(3)(a) of the 1981 Act,
 - (b) it became a footpath on or after 1st January 1949 by the stopping up of a bridleway,
 - (c) it was on 1st January 1949 a footpath and is on the cut-off date a bridleway,
 - (d) it is so much of a footpath or bridleway as on or after 1st January 1949 has been stopped up as respects part only of its width, or
 - (e) it is so much of a footpath or bridleway as passes over a bridge or through a tunnel, and it communicates with a retained highway, either directly or by means of one or more footpaths or bridleways each of which forms part of the same highway as the relevant highway and each of which either falls within any of paragraphs (a) to (e) or satisfies the condition in subsection (3).
- (3) A footpath or bridleway satisfies the second condition if—
- (a) it extends from a footpath or bridleway (“the relevant highway”) which—
 - (i) falls within any of paragraphs (a) to (e) of subsection (2), or
 - (ii) is an excepted highway by virtue of subsection (1)(c),to, but not beyond, a retained highway, and
 - (b) it forms part of the same highway as the relevant highway.
- (4) A retained highway for the purposes of subsections (2) and (3) is any highway over which, otherwise than by virtue of subsection (1)(a), section 53(2) does not extinguish rights of way.
- (5) A public right of way is an excepted right of way for the purposes of section 53(3) if—
- (a) it subsists over land over which there subsists on the cut-off date any public right of way created on or after 1st January 1949 otherwise than by virtue of section 30 of the Countryside Act 1968 (riding of pedal cycles on bridleways),
 - (b) it subsists over the whole or part of a way any part of which is in an area which, immediately before 1st April 1965, formed part of the administrative county of London,

- (c) it is a public right of way of such other description as may be specified in regulations made (as respects England) by the Secretary of State or (as respects Wales) by the National Assembly for Wales, or
- (d) it subsists over land so specified.

(6) Regulations under subsection (1)(d) or (e) or (5)(c) or (d) shall be made by statutory instrument, and a statutory instrument containing such regulations made by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement

Pt II s. 54(1)-(6): Date to be appointed (not yet in force)

Extent

Pt II s. 54(1)-(6): England, Wales

 Not Yet In Force

55.— Bridleway rights over ways shown as bridleways.

(1) Subject to subsections (2) and (3), the public shall, as from the day after the cut-off date, have a right of way on horseback or leading a horse over any way which—

- (a) was immediately before 1st January 1949 either a footpath or a bridleway, and
- (b) is, throughout the period beginning with the commencement of this section and ending with the cut-off date,

a footpath which is shown in a definitive map and statement as a bridleway.

(2) Subsection (1) has effect subject to the operation of any enactment or instrument (whether coming into operation before or after the cut-off date), and to the effect of any event otherwise within section 53(3)(a) of the 1981 Act, whereby a highway is authorised to be stopped up, diverted, widened or extended; and subsection (1) applies accordingly to any way as so diverted, widened or extended.

(3) Subsection (1) does not apply in relation to any way which is, or is part of, a footpath any part of which is in an area which, immediately before 1st April 1965, formed part of the administrative county of London.

(4) Any right of way over a way by virtue of subsection (1) is subject to any condition or limitation to which the public right of way on foot over that way was subject on the cut-off date.

(5) Where—

- (a) by virtue of regulations under section 56(2) an order under Part III of the 1981 Act takes effect after the cut-off date in relation to any footpath which, at the cut-off date was shown in a definitive map and statement as a bridleway,
- (b) the regulations do not prevent subsection (1) from having effect after the cut-off date in relation to that footpath, and
- (c) if the order had taken effect before that date, that footpath would not have fallen within subsection (1),

all rights over that way which exist only by virtue of subsection (1) shall be extinguished when the order takes effect.


(6) In this section “cut-off date” has the meaning given in section 56.

Commencement

Pt II s. 55(1)-(6): Date to be appointed (not yet in force)

Extent

Pt II s. 55(1)-(6): England, Wales

 Not Yet In Force

[55A Other protected rights: England

(1) A surveying authority in England may not, at any time after the cut-off date, make a modification to a definitive map and statement under section 53(2)(b) of the Wildlife and Countryside Act 1981 if—

- (a) the modification might affect the exercise of a protected right of way, and
- (b) the only basis for the authority considering that the modification is requisite is the discovery by the authority of evidence that the right of way did not exist before 1 January 1949.

(2) In subsection (1), “protected right of way” means any right of way over land shown in the definitive map and statement on the cut-off date as a footpath, bridleway, restricted byway or byway open to all traffic.


(3) In this section, “cut-off date” has the meaning given in section 56.
]¹

Notes

¹ Added by Deregulation Act 2015 c. 20 s.20 (date to be appointed)

Extent

Pt II s. 55A(1)-(3): England, Wales

 Not Yet In Force With Amendments Pending

56.— Cut-off date for extinguishment etc.

(1) The cut-off date for the purposes of sections 53 and 55 is, subject to regulations under subsection (2), 1st January 2026.

(2) The Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales) may make regulations—

- (a) substituting as the cut-off date for the purposes of those sections a date later than the date specified in subsection (1) or for the time being substituted under this paragraph;
- (b) containing such transitional provisions or savings as appear to the Secretary of State or the National Assembly for Wales (as the case may be) to be necessary or expedient in

connection with the operation of those sections, including in particular their operation in relation to any way as respects which—

- (i) on the cut-off date an application for an order under section 53(2) of the 1981 Act is pending,
- (ii) on that date an order under Part III of that Act has been made but not confirmed, or
- (iii) after that date such an order or any provision of such an order is to any extent quashed.

(3) Regulations under subsection (2)(a)—

- (a) may specify different dates for different areas; but
- (b) may not specify a date later than 1st January 2031, except as respects an area within subsection (4).

(4) An area is within this subsection if it is in—

- (a) the Isles of Scilly, or
- (b) an area which, at any time before the repeal by section 73 of the 1981 Act of sections 27 to 34 of the National Parks and Access to the Countryside Act 1949—
 - (i) was excluded from the operation of those sections by virtue of any provision of the 1949 Act, or
 - (ii) would have been so excluded but for a resolution having effect under section 35(2) of that Act.

(5) Where by virtue of regulations under subsection (2) there are different cut-off dates for areas into which different parts of any highway extend, the cut-off date in relation to that highway is the later or latest of those dates.

(6) Regulations under this section shall be made by statutory instrument, and a statutory instrument containing such regulations made by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Amendments Pending

Pt II s. 56(1): words substituted by Deregulation Act 2015 c. 20 s. 22(2) (Not yet in force)

Commencement

Pt II s. 56(1)-(6): Date to be appointed (not yet in force)

Extent

Pt II s. 56(1)-(6): England, Wales

 Not Yet In Force

[56A Unrecorded rights of way: protection from extinguishment

(1) The provision that may be made by regulations under section 56(2) by the Secretary of State includes—

- (a) provision enabling a surveying authority to designate, at any time during the period of one year beginning with the cut-off date, public rights of way in their area that were

extinguished immediately after that date, subject to any conditions or exceptions specified in the regulations;

(b) provision for a designated right of way to cease to be regarded as extinguished as from the time of the designation;

(c) provision requiring a surveying authority to determine, within a period specified in the regulations, whether to make an order under section 53(2) of the 1981 Act making modifications to a definitive map and statement to show a designated right of way;

(d) provision as to the procedure applicable in relation to such a determination, including provision for an application to be made to a magistrates' court where a surveying authority fails to make the determination within a period specified in the regulations;

(e) provision for a designated right of way to be extinguished if a surveying authority determines not to make an order under section 53(2) of the 1981 Act or if such an order is made but is not confirmed or is quashed, subject to any exceptions specified in the regulations;

(f) provision requiring a surveying authority to keep such information as may be specified in the regulations about designated rights of way in a separate part of the register maintained by them under section 53B of the 1981 Act.

(2) The provision that may be made by virtue of subsection (1)(d) includes provision applying Schedule 14A to the 1981 Act, subject to such modifications as may be specified in the regulations.

(3) Regulations under section 56(2) made by the Secretary of State may also provide—

(a) that an enactment specified in the regulations which would otherwise apply in relation to a designated right of way does not so apply, or so applies with modifications specified in the regulations, in relation to times during the designation period (see subsection (4) below);

(b) where an order under section 53(2) of the 1981 Act making modifications to a definitive map and statement to show a designated right of way takes effect, that the modifications are to be treated, for the purposes of section 55A, as having taken effect immediately before the cut-off date.

(4) In subsection (3)(a), “the designation period” means the period which—

(a) begins when the right of way is designated, and

(b) ends when—

(i) an order under section 53(2) of the 1981 Act making modifications to a definitive map and statement to show the right of way takes effect, or

(ii) if no such order is made, the right of way is extinguished in accordance with the regulations.

(5) In this section—

“cut-off date” has the meaning given in section 56;

“enactment” means a provision of an Act or of subordinate legislation (within the meaning of the Interpretation Act 1978).


] ¹

Notes

¹ Added by Deregulation Act 2015 c. 20 s.21 (date to be appointed)

Extent

Pt II s. 56A(1)-(5) definition of "enactment": England, Wales

 Not Yet In Force

[56B Conversion of certain public rights of way to private rights of way

(1) This section applies where—

- (a) a public right of way over land in England would be extinguished under section 53 immediately after the cut-off date, and
- (b) on the cut-off date, the exercise of the right of way—
 - (i) is reasonably necessary to enable a person with an interest in land to obtain access to it, or
 - (ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if the person had an interest in that part only.

(2) The public right of way becomes, immediately after the cut-off date, a private right of way of the same description for the benefit of the land or (as the case may be) the part of the land.

(3) For the purposes of subsection (1)(b), it is irrelevant whether the person is, on the cut-off date, in fact—

- (a) exercising the existing public right of way, or
- (b) able to exercise it.

(4) In this section, “cut-off date” has the meaning given in section 56.

] ¹


Notes

¹ Added by Deregulation Act 2015 c. 20 s.22(1) (date to be appointed)

Extent

Pt II s. 56B(1)-(4): England, Wales

Creation, stopping up and diversion of highways

 Partially In Force

57. Creation, stopping up and diversion of highways.


The Highways Act 1980 (in this Act referred to as “the 1980 Act”) has effect subject to the amendments in Part I of Schedule 6 (which relate to the creation, stopping up and diversion of highways); and Part II of that Schedule (which contains consequential amendments of other Acts) has effect.

Commencement

Pt II s. 57: January 30, 2001 in relation to England for provisions specified in SI 2001/114 art.2; May 1, 2001 in relation to Wales for provisions specified in SI 2001/1410 art.2(1); February 12, 2003 in relation to England for provisions specified in SI 2003/272 art.2(a); May 31, 2005 in relation to Wales for provisions specified in SI 2005/1314 art.2(b); July 15, 2005 in relation to Wales for provisions specified in SI 2005/1314 art.3; September 27, 2005 in relation to England for provisions and purposes specified in SI 2005/2459 art.2(2)(c) and (d); November 21, 2005 in relation to Wales for provisions specified in SI 2005/1314 art.4(b); May 11, 2006 in relation to Wales for the provisions specified in SI 2006/1279 art.2(n); December 6, 2006 in relation to Wales for provisions specified in SI 2006/3257 art.2(a); May 21, 2007 in relation to England for provisions specified in SI 2007/1493 art.2; October 1, 2007 in relation to England for the provision specified in SI 2007/2335 art.2; not yet in force otherwise (SI 2001/114 art. 2(1)(a); SI 2001/1410 art. 2(1); SI 2003/272 art. 2(a); SI 2005/1314 art. 2(b), art. 3, art. 4(b); SI 2005/2459 art. 2(2)(c), art. 2(2)(d); SI 2006/1279 art. 2(1), art. 2(n); SI 2006/3257 art. 2(a); SI 2007/1493 art. 2; SI 2007/2335 art. 2)

Extent

Pt II s. 57-: England, Wales

 Law In Force

58.— Application for path creation order for purposes of Part I.

[(1) An application for the making of a public path creation order under section 26(2) of the 1980 Act may be made—

- (a) by Natural England to the Secretary of State, or
- (b) for the purpose of enabling the public to obtain access to any access land (within the meaning of Part 1) or of facilitating such access, by [the Natural Resources Body for Wales]² to the National Assembly for Wales.

] ¹

(2) Before making a request under subsection (1), the body making the request shall have regard to any rights of way improvement plan prepared by any local highway authority whose area includes land over which the proposed footpath or bridleway would be created.

Notes

¹ Substituted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.159 (October 1, 2006)

² Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.406 (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Pt II s. 58(1)-(2): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt II s. 58(1)-(2): England, Wales

✓ Law In Force

59.— Effect of Part I on powers to stop up or divert highways.

(1) This section applies to any power to stop up or divert a highway of any description or to make or confirm an order authorising the stopping up or diversion of a highway of any description; and in the following provisions of this section—

- (a) “the relevant authority” means the person exercising the power, and
- (b) “the existing highway” means the highway to be stopped up or diverted.

(2) Where the relevant authority is required (expressly or by implication) to consider—

- (a) whether the existing highway is unnecessary, or is needed for public use,
- (b) whether an alternative highway should be provided, or
- (c) whether any public right of way should be reserved,

the relevant authority, in considering that question, is not to regard the fact that any land is access land in respect of which the right conferred by section 2(1) is exercisable as reducing the need for the existing highway, for the provision of an alternative highway or for the reservation of a public right of way.

(3) Where—

- (a) the existing highway is situated on, or in the vicinity of, any access land, and
- (b) the relevant authority is required (expressly or by implication) to consider the extent (if any) to which the existing highway would, apart from the exercise of the power, be likely to be used by the public,

the relevant authority, in considering that question, is to have regard, in particular, to the extent to which the highway would be likely to be used by the public at any time when the right conferred by section 2(1) is not exercisable in relation to the access land.

(4) In this section “access land” has the same meaning as in Part I.

Commencement

Pt II s. 59(1)-(4): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt II s. 59(1)-(4): England, Wales

Rights of way improvement plans

✓ Law In Force

60.— Rights of way improvement plans.

(1) Every local highway authority other than an inner London authority shall, within five years after the commencement of this section, prepare and publish a plan, to be known as a rights of way improvement plan, containing—

- (a) the authority's assessment of the matters specified in subsection (2),

- (b) a statement of the action they propose to take for the management of local rights of way, and for securing an improved network of local rights of way, with particular regard to the matters dealt with in the assessment, and
 - (c) such other material as the Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales) may direct.
- (2) The matters referred to in subsection (1)(a) are—
- (a) the extent to which local rights of way meet the present and likely future needs of the public,
 - (b) the opportunities provided by local rights of way (and in particular by those within paragraph (a) of the definition in subsection (5)) for exercise and other forms of open-air recreation and the enjoyment of the authority's area,
 - (c) the accessibility of local rights of way to blind or partially sighted persons and others with mobility problems, and
 - (d) such other matters relating to local rights of way as the Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales) may direct.
- (3) An authority by whom a rights of way improvement plan is published shall, not more than ten years after first publishing it and subsequently at intervals of not more than ten years—
- (a) make a new assessment of the matters specified in subsection (2), and
 - (b) review the plan and decide whether to amend it.
- (4) On such a review the authority shall—
- (a) if they decide to amend the plan, publish it as amended, and
 - (b) if they decide to make no amendments to it, publish a report of their decision and of their reasons for it.
- (5) In this section—
- “cycle track” —
 - (a) means a way over which the public have the following, but no other, rights of way, that is to say, a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988) with or without a right of way on foot; but
 - (b) does not include a way in or by the side of a highway consisting of or comprising a made-up carriageway (within the meaning of the 1980 Act);
 - “inner London authority” means Transport for London, the council of an inner London borough or the Common Council of the City of London;
 - “local highway authority” has the same meaning as in the 1980 Act;
 - “local rights of way” in relation to a local highway authority, means—
 - (a) the footpaths, cycle tracks, bridleways and restricted byways within the authority's area, and
 - (b) the ways within the authority's area which are shown in a definitive map and statement as restricted byways or byways open to all traffic.
- (6) In subsection (5) the definition of “local rights of way” has effect until the commencement of section 47 with the substitution for the references to restricted byways and to ways shown in a definitive map and statement as restricted byways of a reference to ways shown in a definitive map and statement as roads used as public paths.

Commencement

Pt II s. 60(1)-(6): November 1, 2002 in relation to Wales; November 21, 2002 in relation to England (SI 2002/2615 art. 2; SI 2002/2833 art. 2)

Extent

Pt II s. 60-(6): England, Wales

✔ Law In Force

61.— Rights of way improvement plans: supplemental.

(1) Before preparing or reviewing a rights of way improvement plan, and in particular in making any assessment under section 60(1)(a) or (3)(a), a local highway authority shall consult—

- (a) each local highway authority whose area adjoins their area;
- (b) each district council, and each parish or community council, whose area is within their area;
- (c) the National Park authority for a National Park any part of which is within their area;
- (d) where any part of the Broads is within their area, the Broads Authority;
- (e) any local access forum established for their area or any part of it;
- (f) [Natural England]¹ or [the Natural Resources Body for Wales]² (as appropriate);
- (g) such persons as the Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales) may by regulations prescribe in relation to the local highway authority's area; and
- (h) such other persons as the local highway authority may consider appropriate.

(2) In preparing or amending a rights of way improvement plan, a local highway authority shall—

- (a) publish a draft of the plan or of the plan as amended,
- (b) publish, in two or more local newspapers circulating in their area, notice of how a copy of the draft can be inspected or obtained and how representations on it can be made to them, and
- (c) consider any representations made in accordance with the notice.

(3) As regards their rights of way improvement plan, any draft plan on which representations may be made and any report under section 60(4)(b), a local highway authority shall—

- (a) keep a copy available for inspection free of charge at all reasonable times at their principal offices, and
- (b) supply a copy to any person who requests one, either free of charge or on payment of a reasonable charge determined by the authority.

(4) Local highway authorities shall, in carrying out their functions under section 60 and this section, have regard to such guidance as may from time to time be given to them by the Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales).

(5) A local highway authority may make arrangements with—

- (a) any district council whose area is within their area, or
- (b) the National Park authority for a National Park any part of which is within their area,

for the functions of the local highway authority under section 60 and this section so far as relating to the area of that council or to the part of the Park within the local highway authority's area, to be discharged jointly by the local highway authority and by that council or National Park authority.

(6) Regulations under subsection (1)(g) shall be made by statutory instrument, and a statutory instrument containing such regulations made by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In this section—

“local highway authority” has the same meaning as in the 1980 Act;

“the Broads” has the same meaning as in the Norfolk and Suffolk Broads Act 1988.

Notes

¹ Words substituted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.160 (October 1, 2006)


² Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.406 (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Pt II s. 61(1)-(7) definition of "the Broads": November 1, 2002 in relation to Wales; November 21, 2002 in relation to England (SI 2002/2615 art. 2; SI 2002/2833 art. 2)

Extent

Pt II s. 61-(7) definition of "the Broads": England, Wales

 Partially In Force

62.— Application of ss. 60 and 61 to inner London.

(1) The council of an inner London borough or the Common Council of the City of London may by resolution adopt sections 60 and 61 as respects their area or any part of it which is specified in the resolution.

(2) On the passing by any authority of a resolution under subsection (1), sections 60 and 61 shall, as respects their area or the part of it specified in the resolution, apply in relation to that authority—

(a) as they apply in relation to a local highway authority other than an inner London authority, but

(b) with the substitution for the reference in subsection (1) of section 60 to the commencement of that section of a reference to the date on which the resolution comes into operation.

Commencement

Pt II s. 62(1)-(2)(b): November 21, 2002 in relation to England, not yet in force otherwise (SI 2002/2833 art. 2)

Extent

Pt II s. 62(1)-(2)(b): England, Wales

Removal of obstructions from highways

✓ Law In Force

63.— Enforcement of duty to prevent obstructions.

(1) After section 130 of the 1980 Act there is inserted—

“130A.— Notices to enforce duty regarding public paths.

(1) Any person who alleges, as respects any highway for which a local highway authority other than an inner London authority are the highway authority—

- (a) that the highway falls within subsection (2) below, and
- (b) that it is obstructed by an obstruction to which this section applies,

may serve on the highway authority notice requesting them to secure the removal of the obstruction from the highway.

(2) A highway is within this subsection if it is—

- (a) a footpath, bridleway, or restricted byway, or
- (b) a way shown in a definitive map and statement as a restricted byway or a byway open to all traffic.

(3) Subject to subsection (4) below, this section applies to an obstruction of the highway if the obstruction is without lawful authority and either—

- (a) the powers conferred by section 143, 149 or 154 below are exercisable in respect of it, or
- (b) it is of a description prescribed by regulations made by the Secretary of State and the authority have power (otherwise than under any of those sections) to secure its removal.

(4) This section does not apply to an obstruction if—

- (a) it is or forms part of—
 - (i) a building (whether temporary or permanent) or works for the construction of a building, or
 - (ii) any other structure (including a tent, caravan, vehicle or other temporary or movable structure) which is designed, adapted or used for human habitation,
- (b) an order may be made in respect of it under section 56 above, or
- (c) the presence of any person constitutes the obstruction.

(5) A person serving a notice under subsection (1) above must include in the notice the name and address, if known to him, of any person who it appears to him may be for the time being responsible for the obstruction.

(6) A highway authority on whom a notice under subsection (1) above is served shall, within one month from the date of service of the notice, serve—

- (a) on every person whose name and address is, pursuant to subsection (5) above, included in the notice and, so far as reasonably practicable, on every other person who it appears to them may be for the time being responsible for the obstruction, a notice informing that person that a notice under subsection (1) above has been served in relation to the obstruction and stating what, if any, action the authority propose to take, and
 - (b) on the person who served the notice under subsection (1) above, a notice containing the name and address of each person on whom notice is served under paragraph (a) above and stating what, if any, action the authority propose to take in relation to the obstruction.
- (7) For the purposes of this section the persons for the time being responsible for an obstruction include the owner and any other person who for the time being—
- (a) has possession or control of it, or
 - (b) may be required to remove it.
- (8) A notice under subsection (1) or (6) above shall be in such form and contain such information as may be prescribed by regulations made by the Secretary of State.
- (9) In this section “inner London authority” means Transport for London, the council of an inner London borough or the Common Council of the City of London.
- (10) Subsection (2) above has effect until the commencement of section 47 of the Countryside and Rights of Way Act 2000 with the substitution for the references to a restricted byway and to a way shown in a definitive map and statement as a restricted byway of a reference to a way shown in a definitive map and statement as a road used as a public path.

130B.— Orders following notice under section 130A.

- (1) Where a notice under section 130A(1) above has been served on a highway authority in relation to any obstruction, the person who served it, if not satisfied that the obstruction has been removed, may apply to a magistrates' court in accordance with section 130C below for an order under this section.
- (2) An order under this section is an order requiring the highway authority to take, within such reasonable period as may be fixed by the order, such steps as may be specified in the order for securing the removal of the obstruction.
- (3) An order under this section shall not take effect—
- (a) until the end of the period of twenty-one days from the day on which the order is 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.
- (4) Subject to subsection (5) below, the court may make an order under this section if it is satisfied—
- (a) that the obstruction is one to which section 130A above applies or, in a case falling within subsection (4)(a)(ii) of that section, is one to which that section would apply but for the obstruction having become used for human habitation since service of the notice relating to it under subsection (1) of that section,

- (b) that the way obstructed is a highway within subsection (2) of that section, and
 - (c) that the obstruction significantly interferes with the exercise of public rights of way over that way.
- (5) No order shall be made under this section if the highway authority satisfy the court—
- (a) that the fact that the way obstructed is a highway within section 130A(2) above is seriously disputed,
 - (b) on any other grounds, that they have no duty under section 130(3) above to secure the removal of the obstruction, or
 - (c) that, under arrangements which have been made by the authority, its removal will be secured within a reasonable time, having regard to the number and seriousness of obstructions in respect of which they have such a duty.
- (6) A highway authority against whom an order is made under this section shall, as soon as practicable after the making of the order, cause notice of the order and of the right to appeal against it to be displayed in such manner and at such places on the highway concerned as may be prescribed by regulations made by the Secretary of State, and the notice shall be in such form and contain such information as may be so prescribed.
- (7) An order under this section may be varied on the application of the highway authority to whom it relates.

130C.— Section 130B: procedure.

- (1) A person proposing to make an application under section 130B above shall before making the application serve notice of his intention to do so on the highway authority concerned.
- (2) A notice under subsection (1) above shall be in such form and contain such information as may be prescribed by regulations made by the Secretary of State.
- (3) The notice may not be served before the end of two months beginning with the date of service on the highway authority of the notice under section 130A(1) above (“the request notice”).
- (4) An application in respect of which notice has been served under subsection (1) above may be made at any time—
- (a) after the end of five days beginning with the date of service of that notice, and
 - (b) before the end of six months beginning with the date of service on the highway authority of the request notice.
- (5) On making the application the applicant must give notice to the court of the names and addresses of which notice was given to the applicant under section 130A(6)(b) above.
- (6) On the hearing of the application any person who is, within the meaning of section 130A above, a person for the time being responsible for the obstruction to which the application relates has a right to be heard as respects the matters mentioned in section 130B(4) above.
- (7) Notice of the hearing, of the right to be heard under subsection (6) above and of the right to appeal against a decision on the application shall be given by the court to each person whose name and address is notified to the court under subsection (5) above.

130D. Section 130B: costs.

Where an application under section 130B above is dismissed by virtue of paragraph (a), (b) or (c) of subsection (5) of that section, the court, in determining whether and if so how to exercise its power under section 64(1) of the Magistrates' Courts Act 1980 (costs), shall have particular regard to any failure by the highway authority to give the applicant appropriate notice of, and information about, the grounds relied on by the authority under that paragraph.”

(2) In section 317 of the 1980 Act (appeals to the Crown Court from decisions of magistrates' courts) after subsection (2) there is inserted—

“(3) Any person who, in relation to the decision of a magistrates' court on an application under section 130B above, does not fall within subsection (1) above but—

(a) is, within the meaning of section 130A above, a person for the time being responsible for the obstruction to which the application related, or

(b) when the application was heard, was such a person and was, or claimed to be, heard on the application,


may appeal to the Crown Court against the decision on any ground relating to the matters mentioned in section 130B(4) above.”

Commencement

Pt II s. 63(1)-(2): February 13, 2004 in relation to England; April 1, 2004 in relation to Wales (SI 2004/292 art. 2(a); SI 2004/315 art. 2(a))

Extent

Pt II s. 63-(2): England, Wales

 Law In Force

64.— Power to order offender to remove obstruction.

(1) After section 137 of the 1980 Act (penalty for wilful obstruction) there is inserted—

“137ZA.— Power to order offender to remove obstruction.

(1) Where a person is convicted of an offence under section 137 above in respect of the obstruction of a highway and it appears to the court that—

(a) the obstruction is continuing, and

(b) it is in that person's power to remove the cause of the obstruction,

the court may, in addition to or instead of imposing any punishment, order him to take, within such reasonable period as may be fixed by the order, such steps as may be specified in the order for removing the cause of the obstruction.

(2) The time fixed by an order under subsection (1) above may be extended or further extended by order of the court on an application made before the end of the time as originally fixed or as extended under this subsection, as the case may be.

(3) If a person fails without reasonable excuse to comply with an order under subsection (1) above, he is guilty of an offence and liable to a fine not exceeding level 5 on the standard scale; and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding one-twentieth of that level for each day on which the offence is so continued.

(4) Where, after a person is convicted of an offence under subsection (3) above, the highway authority for the highway concerned exercise any power to remove the cause of the obstruction, they may recover from that person the amount of any expenses reasonably incurred by them in, or in connection with, doing so.

(5) A person against whom an order is made under subsection (1) above is not liable under section 137 above in respect of the obstruction concerned—

- (a) during the period fixed under that subsection or any extension under subsection (2) above, or
- (b) during any period fixed under section 311(1) below by a court before whom he is convicted of an offence under subsection (3) above in respect of the order.”


(2) Subsection (1) does not have effect in relation to any offence under section 137 of the 1980 Act committed before the commencement of this section.

Commencement

Pt II s. 64(1)-(2): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt II s. 64(1)-(2): England, Wales

 Law In Force

65. Overhanging vegetation obstructing horse-riders.

In section 154 of the 1980 Act (cutting or felling etc. trees etc. that overhang or are a danger to roads or footpaths) in subsection (1) after “public lamp,” there is inserted “or overhangs a highway so as to endanger or obstruct the passage of horse-riders,”.

Commencement

Pt II s. 65: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt II s. 65: England, Wales

Miscellaneous

✓ Law In Force

66.— Making of traffic regulation orders for purposes of conserving natural beauty, etc.

(1) In section 22 of the Road Traffic Regulation Act 1984 (traffic regulation for special areas in the countryside), in subsection (1)(a)—

- (a) the words “(other than Greater London)” are omitted,
- (b) at the end of paragraph (vi), the word “or” is omitted, and
- (c) before the word “and” at the end of paragraph (vii) there is inserted—

“or

(viii) a site of special scientific interest (within the meaning of the Wildlife and Countryside Act 1981);”.

(2) In subsection (2) of that section, for “the paragraphs of subsection (1) of that section” there is substituted “paragraphs (a) to (g) of subsection (1) of that section and referred to in section 6(1)(b) of this Act”.

(3) After subsection (4) of that section there is inserted—

“(5) In subsection (2) above the reference to conserving the natural beauty of an area shall be construed as including a reference to conserving its flora, fauna and geological and physiographical features.”.

(4) After that section there is inserted—

“22A.— Traffic regulation on certain roads for purpose of conserving natural beauty.

(1) This section applies to roads other than—

- (a) roads to which section 22 of this Act applies,
- (b) special roads, or
- (c) any road which is a trunk road, a classified road, a GLA road, a cycle track, a bridleway or a footpath, as those expressions are defined by section 329 of the Highways Act 1980.

(2) This Act shall have effect as respects roads to which this section applies as if, in relation to the making of provision with respect to vehicular traffic, the list of purposes for which a traffic regulation order under section 1 of this Act may be made, as set out in paragraphs (a) to (g) of subsection (1) of that section and referred to in section 6(1)(b) of this Act, included the purpose of conserving or enhancing the natural beauty of the area.


(3) In subsection (2) above the reference to conserving the natural beauty of an area shall be construed as including a reference to conserving its flora, fauna and geological and physiographical features.”

Commencement

Pt II s. 66(1)-(4): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt II s. 66(1)-(4): England, Wales

 Law In Force

67. Prohibition on driving mechanically propelled vehicles elsewhere than on roads.

Schedule 7 (which makes amendments relating to the driving of mechanically propelled vehicles elsewhere than on roads) has effect.

Commencement

Pt II s. 67: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt II s. 67: England, Wales, Scotland

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)

 Repealed

Wales

68.— [...]¹

Notes


¹ Repealed by Commons Act 2006 c. 26 Sch.6(5) para.1 (September 6, 2007 as SI 2007/2386)

England

[...]¹

Notes

¹ Repealed by Commons Act 2006 c. 26 Pt 4 s.51 (October 1, 2006 as SI 2006/2504)

 Partially In Force

69.— Erection or improvement of stiles, etc.

(1) In section 147 of the 1980 Act (power to authorise erection of stiles etc on footpath or bridleway) after subsection (2) there is inserted—

“(2A) In exercising their powers under subsection (2) above a competent authority shall have regard to the needs of persons with mobility problems.

(2B) The Secretary of State may issue guidance to competent authorities as to matters to be taken into account for the purposes of subsection (2) above; and in exercising their powers under subsection (2) above competent authorities shall have regard to any such guidance issued to them.”

(2) In subsection (5) of that section, at the end there is inserted “or for the breeding or keeping of horses.”

(3) After that section there is inserted—

“147ZA.— Agreements relating to improvements for benefit of persons with mobility problems.

(1) With respect to any relevant structure, a competent authority may enter into an agreement with the owner, lessee or occupier of the land on which the structure is situated which provides—

- (a) for the carrying out by the owner, lessee or occupier of any qualifying works and the payment by the competent authority of the whole or any part of the costs incurred by him in carrying out those works, or
- (b) for the carrying out by the competent authority of any qualifying works at their own expense or subject to the payment by the owner, lessee or occupier of the whole or any part of the costs incurred in carrying out those works.

(2) In this section—

- (a) “competent authority” has the same meaning as in section 147 above,
- (b) “relevant structure” means a stile, gate or other structure which—
 - (i) is authorised by a condition or limitation subject to which the public right of way over the footpath or bridleway was created, or
 - (ii) is authorised under section 147 above,

but does not include a structure to which an agreement falling within section 146(5)(b) above relates, and

- (c) “qualifying works”, in relation to a relevant structure, means works for replacing or improving the structure which will result in a structure that is safer or more convenient for persons with mobility problems.

(3) An agreement under this section may include such conditions as the competent authority think fit.

(4) Those conditions may in particular include conditions expressed to have enduring effect—

- (a) for the maintenance of the structure as replaced or improved, and
- (b) for enabling the public right of way to be exercised without undue inconvenience to the public.

(5) Where an agreement under this section has been entered into in relation to any structure—

- (a) the public right of way is to be deemed to be subject to a condition that the structure as replaced or improved may be erected and maintained in accordance with the agreement so long as any conditions included by virtue of subsection (4) above are complied with,

(b) in a case falling within subsection (2)(b)(i) above, as from the effective date the previous condition or limitation relating to the relevant structure shall cease to have effect, and

(c) in a case falling within subsection (2)(b)(ii) above, as from the effective date the previous authorisation under section 147 above shall cease to have effect in relation to the relevant structure.

(6) In subsection (5) above “the effective date” means—

(a) the first anniversary of the day on which the agreement was entered into, or

(b) such earlier date as may be specified for the purposes of this subsection in the agreement.

(7) For the purposes of section 143 above, any stile, gate or other structure replaced or improved in pursuance of an agreement under this section is to be deemed to be erected under this section only if any conditions included by virtue of subsection (4) above are complied with.

(8) A competent authority may not enter into an agreement under this section except with the consent of every owner, lessee or occupier of the land on which the relevant structure is situated who is not a party to the agreement.

(9) The Secretary of State may issue guidance to competent authorities as to matters to be taken into account for the purposes of this section; and in exercising their powers under this section competent authorities shall have regard to any such guidance issued to them.”

(4) In section 146 of the 1980 Act (duty to maintain stiles etc. on footpaths and bridleways) in subsection (5), before the word “or” at the end of paragraph (a) there is inserted—

“(aa) if any conditions for the maintenance of the structure imposed by virtue of subsection (4) of section 147ZA below are for the time being in force under that section,”.

(5) In section 344 of the 1980 Act (application to Isles of Scilly) in subsection (2)(a) after “147”, there is inserted “147ZA,”.

Commencement

Pt II s. 69(1), (3): December 6, 2006 in relation to Wales; October 1, 2007 otherwise (SI 2006/3257 art. 2(b); SI 2007/2595 art. 2)


Pt II s. 69(2): September 27, 2005 in relation to England; May 11, 2006 otherwise (SI 2005/2459 art. 2(1)(d); SI 2006/1279 art. 2(m))

Pt II s. 69(4): April 1, 2007 in relation to Wales; October 1, 2007 otherwise (SI 2006/3257 art. 3; SI 2007/2595 art. 2)

Pt II s. 69(5): October 1, 2007 in relation to England; not yet in force otherwise (SI 2007/2595 art. 2)

Extent

Pt II s. 69(1)-(5): England, Wales

 Law In Force

70.— Minor amendments.

- (1) In section 66(3) of the 1980 Act (works for safeguarding persons using footpaths)—
- (a) after “footpath” there is inserted “or bridleway”, and
 - (b) after “barriers,” there is inserted “posts,”.
- (2) In section 134 of that Act, subsection (5) (which limits the persons who may bring proceedings for failure to restore a public path disturbed by ploughing etc.) is omitted.
- (3) In section 300 of that Act (right of local authorities to use vehicles and appliances on footways and bridleways), in subsection (1) after “verges,” there is inserted “for preventing or removing obstructions to them or otherwise preventing or abating nuisances or other interferences with them,”.
- (4) In section 21(2)(b) of the Road Traffic Act 1988 (defence to charge of driving or parking on cycle track for highway authority vehicles), after “verges” there is inserted “, or the preventing or removing of obstructions to the cycle track or the preventing or abating in any other way of nuisances or other interferences with the cycle track,”.

Commencement

Pt II s. 70(1)-(1)(b), (3): February 13, 2004 in relation to England; April 1, 2004 in relation to Wales (SI 2004/292 art. 2(b); SI 2004/315 art. 2(b))

Pt II s. 70(2), (4): April 1, 2001 in relation to England; May 1, 2001 in relation to Wales (SI 2001/114 art. 2(2)(d); SI 2001/1410 art. 2(e))

Extent

Pt II s. 70(1)-(4): England, Wales

 Not Yet In Force

71.— Reports on functions relating to rights of way.


- (1) The Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales) may make regulations requiring local highway authorities of a description specified in the regulations to publish reports on the performance of any of their functions so far as relating to local rights of way (whether or not those functions are conferred on them as highway authorities).
- (2) Subsection (1) is without prejudice to section 230 of the Local Government Act 1972 (reports and returns).
- (3) Regulations under subsection (1) may prescribe the information to be given in such reports and how and when reports are to be published.
- (4) Regulations under subsection (1) shall be made by statutory instrument, and a statutory instrument containing such regulations made by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section—
- “local highway authority” has the same meaning as in the 1980 Act, except that it does not include Transport for London; and
 - “local rights of way” has the same meaning as in section 60.

Commencement

Pt II s. 71(1)-(5) definition of "local rights of way": Date to be appointed (not yet in force)

Extent

Pt II s. 71(1)-(5) definition of "local rights of way": England, Wales

 Law In Force

72.— Interpretation of Part II.

(1) In this Part, unless a contrary intention appears—

- (a) “restricted byway” and “restricted byway rights” have the meaning given by section 48(4);
- (b) expressions which are defined for the purposes of Part III of the 1981 Act by section 66(1) of that Act have the same meaning as in that Part.

(2) In this Part any reference to a highway includes a reference to part of a highway.

Commencement

Pt II s. 72(1)-(2): January 30, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(1)(b); SI 2001/1410 art. 2(f))

Extent

Pt II s. 72-(2): England, Wales

PART III**NATURE CONSERVATION AND WILDLIFE PROTECTION**

The Nature Conservancy Council for England

 Repealed

73.— [...]¹**Notes**

¹ Repealed by Natural Environment and Rural Communities Act 2006 c. 16 Sch.12 para.1 (October 1, 2006 as SI 2006/2541)


Biological diversity

 Repealed

74.— [...]¹**Notes**

¹ Repealed by Natural Environment and Rural Communities Act 2006 c. 16 Sch.12 para.1 (October 1, 2006 as SI 2006/2541)

Sites of special scientific interest

 Law In Force

75.— Sites of special scientific interest.

(1) Schedule 9 (which makes amendments of the 1981 Act to change the law relating to sites of special scientific interest, including provision as to offences) has effect.

(2) A notification under section 23 of the National Parks and Access to the Countryside Act 1949 (notification to local planning authorities of areas of special scientific interest) which by virtue of section 28(13) of the 1981 Act as originally enacted had effect as if given under section 28(1)(a) of that Act, shall cease to have effect.

(3) In section 15(2) of the Countryside Act 1968 (which provides for agreements between the Nature Conservancy Council and those with interests in land which is included in an area of special scientific interest, or is adjacent to such land), for “adjacent” there is substituted “other”.

(4) After section 15 of the Countryside Act 1968 there is inserted—

“15A.— Compulsory purchase.

(1) The Nature Conservancy Council may in circumstances set out in subsection (2) acquire compulsorily all or any part of the land referred to in section 15(2).

(2) The circumstances are—

(a) that the Nature Conservancy Council are satisfied that they are unable to conclude, on reasonable terms, such an agreement as is referred to in section 15(2), or

(b) that they have entered into such an agreement, but they are satisfied it has been breached in such a way that the flora, fauna or geological or physiographical features referred to there are not being conserved satisfactorily.

(3) A dispute about whether or not there has been a breach of the agreement for the purposes of subsection (2)(b) shall be determined by an arbitrator appointed by the Lord Chancellor.

(4) Where the Nature Conservancy Council have acquired land compulsorily under this section, they may—

- (a) themselves take steps to conserve the flora, fauna or geological or physiographical features in question, or
- (b) dispose of the land on terms designed to secure that those flora, fauna or features are satisfactorily conserved.


(5) In this section, “Nature Conservancy Council” means English Nature as respects land in England, and the Council as respects land in Wales.”

Commencement

Pt III s. 75(1)-(4): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt III s. 75(1)-(4): England, Wales

 Law In Force

76.— Consequential amendments, transitional provisions and savings relating to s. 75.

(1) Schedule 10 (which makes amendments of the 1981 Act consequential upon the substitution or repeal as respects England and Wales of certain sections in that Act, and also makes other consequential amendments) has effect.

(2) Schedule 11 (which makes transitional provisions and savings relating to the coming into force of section 75) has effect.


Commencement

Pt III s. 76(1)-(2): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt III s. 76(1)-(2): England, Wales, Scotland

Ramsar sites

 Law In Force

77. Ramsar sites.

After section 37 of the 1981 Act there is inserted—

“37A.— Ramsar sites.

(1) Where a wetland in Great Britain has been designated under paragraph 1 of article 2 of the Ramsar Convention for inclusion in the list of wetlands of international importance referred to in that article, the Secretary of State shall—

- (a) notify English Nature if all or part of the wetland is in England;

- (b) notify the Countryside Council for Wales if it is in Wales; or
- (c) notify both of them if it is partly in England and partly in Wales.

(2) Subject to subsection (3), upon receipt of a notification under subsection (1), each body notified shall, in turn, notify—

- (a) the local planning authority in whose area the wetland is situated;
- (b) every owner and occupier of any of that wetland;
- (c) the Environment Agency; and
- (d) every relevant undertaker (within the meaning of section 4(1) of the Water Industry Act 1991) and every internal drainage board (within the meaning of section 61C(1) of the Land Drainage Act 1991) whose works, operations or activities may affect the wetland.

(3) English Nature and the Countryside Council for Wales may agree that in a case where the Secretary of State notifies both of them under subsection (1)(c), any notice under subsection (2) is to be sent by one or the other of them (and not both), so as to avoid duplicate notices under that subsection.

(4) Subject to subsection (5), the “Ramsar Convention” is the Convention on Wetlands of International Importance especially as Waterfowl Habitat signed at Ramsar on 2nd February 1971, as amended by—

- (a) the Protocol known as the Paris Protocol done at Paris on 3rd December 1982; and
- (b) the amendments known as the Regina Amendments adopted at the Extraordinary Conference of the Contracting Parties held at Regina, Saskatchewan, Canada, between 28th May and 3rd June 1987.

(5) If the Ramsar Convention is further amended after the passing of the Countryside and Rights of Way Act 2000, the reference to the Ramsar Convention in subsection (1) is to be taken after the entry into force of the further amendments as referring to that Convention as further amended (and the reference to paragraph 1 of article 2 is, if necessary, to be taken as referring to the appropriate successor provision).”

Commencement

Pt III s. 77: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt III s. 77: England, Wales

Limestone pavement orders

 Repealed

78.— [...]¹

Notes

- ¹ Repealed by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015/664 Sch.4(3) para.100 (March 12, 2015: repeal has effect subject to savings specified in SI 2015/664 reg.5(1))
-

Payments under certain agreements

✓ Law In Force

79. Payments under agreements under s.16 of 1949 Act or s.15 of 1968 Act.

In section 50 of the 1981 Act (which makes provision relating to payments under section 16 of the National Parks and Access to the Countryside Act 1949 or section 15 of the Countryside Act 1968), in subsection (1)(a), for sub-paragraphs (i) and (ii) and the preceding word “to” there is substituted “to any person; or”.

Commencement

Pt III s. 79: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt III s. 79: England, Wales

Powers of entry

✓ Law In Force

80.— Powers of entry.

(1) Section 51 of the 1981 Act (powers of entry) is amended as follows.

(2) In subsection (1), for paragraphs (a) to (d) there is substituted—

- “(a) to determine whether the land should be notified under section 28(1);
- (b) to assess the condition of the flora, fauna, or geological or physiographical features by reason of which land which has been notified under section 28(1) is of special interest;
- (c) to determine whether or not to offer to enter into an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act in relation to the land;
- (d) to ascertain whether a condition to which a consent referred to in section 28E(3)(a) was subject has been complied with in relation to the land;
- (e) to ascertain whether an offence under section 28P or under byelaws made by virtue of section 28R is being, or has been, committed on or in relation to the land;

- (f) to formulate a management scheme for the land or determine whether a management scheme (or a proposed management scheme) for the land should be modified;
- (g) to prepare a management notice for the land;
- (h) to ascertain whether the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act in relation to the land, or the terms of a management scheme or the requirements of a management notice in relation to the land, have been complied with;
- (i) to determine whether or not to offer to make a payment under section 28M in relation to the land;
- (j) to determine any question in relation to the acquisition of the land by agreement or compulsorily;
- (k) to determine any question in relation to compensation under section 20(3) of the 1949 Act as applied by section 28R of this Act;
- (l) to ascertain whether an order should be made in relation to the land under section 34 or if an offence under that section is being, or has been, committed on the land;
- (m) to ascertain whether an order should be made in relation to the land under section 42 or if an offence under that section is being, or has been, committed on the land;”.

(3) After subsection (1) there is inserted—

“(1A) The power conferred by subsection (1) to enter land for any purpose includes power to enter for the same purpose any land other than that referred to in subsection (1).

(1B) More than one person may be authorised for the time being under subsection (1) to enter any land.”

(4) In subsection (2)—

(a) [...]¹

(b) in paragraph (b), for “paragraph (c)” there is substituted “paragraph (1)”; and

(c) in paragraph (c), for “paragraph (d)” there is substituted “paragraph (m)”.

(5) For subsection (3)(b) there is substituted—

“(b) the purpose of the entry is to ascertain if an offence under section 28P, 34 or 42 is being, or has been, committed on or (as the case may be) in relation to that land.”

(6) After subsection (3) there is inserted—

“(3A) A person acting in the exercise of a power conferred by subsection (1) may—

(a) use a vehicle or a boat to enter the land;

(b) take a constable with him if he reasonably believes he is likely to be obstructed;

(c) take with him equipment and materials needed for the purpose for which he is exercising the power of entry;

(d) take samples of the land and of anything on it.

(3B) If in the exercise of a power conferred by subsection (1) a person enters land which is unoccupied or from which the occupier is temporarily absent, he must on his departure leave it as effectively secured against unauthorised entry as he found it.”

(7) After subsection (4) there is inserted—

“(5) It is the duty of a relevant authority to compensate any person who has sustained damage as a result of—

- (a) the exercise of a power conferred by subsection (1) by a person authorised to do so by that relevant authority, or
- (b) the failure of a person so authorised to perform the duty imposed on him by subsection (3B),

except where the damage is attributable to the fault of the person who sustained it; and any dispute as to a person's entitlement to compensation under this subsection or as to its amount shall be referred to an arbitrator to be appointed, in default of agreement, by the Secretary of State”.

Notes

- ¹ Repealed by Natural Environment and Rural Communities Act 2006 c. 16 Sch.12 para.1 (October 1, 2006 as SI 2006/2541)


Commencement

Pt III s. 80(1)-(7): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt III s. 80(1)-(7): England, Wales

Enforcement of wildlife legislation

 Partially In Force

81.— Enforcement of wildlife legislation.

(1) Schedule 12 to this Act (which contains amendments relating to offences and enforcement powers under Part I of the 1981 Act) has effect.

(2)-(3) [...] ¹

Notes

- ¹ Repealed by Criminal Justice Act 2003 c. 44 Sch.37(9) para.1 (November 20, 2003 for repeals specified in s.336(1); not yet in force otherwise)

Commencement

Pt III s. 81(1): Date to be appointed (not yet in force) (2000 c. 37 Pt V s. 103(1))


Pt III s. 81(2)-(3)(c): November 30, 2000

Extent

Pt III s. 81(1)-(3)(c): England, Wales

PART IV

AREAS OF OUTSTANDING NATURAL BEAUTY

 Law In Force

82.— Designation of areas.

[(1) Where it appears to Natural England that an area which is in England but not in a National Park is of such outstanding natural beauty that it is desirable that the provisions of this Part relating to areas designated under this section should apply to it, [Natural England may]², for the purpose of conserving and enhancing the natural beauty of the area, by order designate the area for the purposes of this Part as an area of outstanding natural beauty.]¹

(2) Where it appears to [the Natural Resources Body for Wales (in this Part referred to as “the NRBW”)]³ that an area which is in Wales but not in a National Park is of such outstanding natural beauty that it is desirable that the provisions of this Part relating to areas designated under this section should apply to it, the [NRBW]⁴ may, for the purpose of conserving and enhancing the natural beauty of the area, by order designate the area for the purposes of this Part as an area of outstanding natural beauty.

(3) In this Part “area of outstanding natural beauty” means an area designated under this section as an area of outstanding natural beauty.

Notes

- ¹ Words substituted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.163(a) (October 1, 2006)
- ² Words substituted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.163(b) (October 1, 2006)
- ³ Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.407(2) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)
- ⁴ Word substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.407(3) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Pt IV s. 82(1)-(3): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Pt IV s. 82-(3): England, Wales

✓ Law In Force

83.— Procedure for designation orders.

(1) Where [Natural England]¹ or the [NRBW]² propose to make an order under section 82, [Natural England]¹ or the [NRBW]² shall consult every local authority whose area includes any part of the area to which the proposed order is to relate.

(2) Before making the order, [Natural England]¹ or the [NRBW]² shall then publish, in the London Gazette and in one or more newspapers circulating in the area of every such local authority, notice that they propose to make the order, indicating the effect of the order and stating the time within which and manner in which representations with respect to the proposed order may be made to [Natural England]¹ or the [NRBW]² (as the case may be), and shall consider any representations duly made.

(3) An order under section 82 shall not come into operation unless and until confirmed—

(a) in the case of an order made by [Natural England]¹, by the Secretary of State, or

(b) in the case of an order made by the [NRBW]², by the National Assembly for Wales, and, in submitting any such order to the Secretary of State or the Assembly, [Natural England]¹ or [NRBW]² shall forward to the Secretary of State or the Assembly any representations made by a local authority consulted under subsection (1) or made by any other person under subsection (2), other than representations to which effect is given by the order as submitted to the Secretary of State or the Assembly.

(4) The Secretary of State or the National Assembly for Wales may confirm an order submitted to him or it under this section either as submitted or with such modifications as the Secretary of State or the Assembly thinks expedient.

(5) Before refusing to confirm an order under section 82, or determining to confirm it with modifications, the Secretary of State shall consult [Natural England]¹ and every local authority whose area includes any land to which the order as submitted, or as proposed to be modified, relates.

(6) Before refusing to confirm an order under section 82, or determining to confirm it with modifications, the National Assembly for Wales shall consult the [NRBW]² and every local authority whose area includes any land to which the order as submitted, or as proposed to be modified, relates.

(7) An order under section 82 may be revoked or varied by a subsequent order under that section.

(8) Without prejudice to the powers of [Natural England]¹ or the [NRBW]² to vary an order under section 82, the Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales) may by order vary any order under that section made by [Natural England]¹ or the [NRBW]²; and subsection (1) applies to any order under section 82 made by the Secretary of State or the Assembly by virtue of this subsection with the substitution for references to [Natural England]¹ of references to the Secretary of State and for references to the [NRBW]² of references to the Assembly.

(9) It is the duty of [Natural England]¹ and the [NRBW]² to secure that copies of any order under section 82 relating to England or, as the case may be, to Wales, are available for inspection by the public at all reasonable times—

(a) at the office of [Natural England]¹ or, as the case may be, the [NRBW]²,

(b) at the offices of each local authority whose area includes any part of the area to which the order relates, and

(c) at such other place or places in or near that area as [Natural England]¹ or, as the case may be, the [NRBW]² may determine.

Notes

¹ Words substituted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.164(a) (October 1, 2006)

² Word substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.408 (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Pt IV s. 83(1)-(9)(c): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Pt IV s. 83-(9)(c): England, Wales

✔ Law In Force

84.— Functions of certain bodies in relation to areas of outstanding natural beauty.

(1) The following provisions of the National Parks and Access to the Countryside Act 1949 (in this Part referred to as “the 1949 Act”)—

(a) section 6(4)(e) (duty of [Natural England]¹ or [NRBW]² to give advice in connection with development matters),

(b) section 9 (consultation in connection with development plan),

(c) section 64(5) (consultation in connection with access agreements), and

(d) section 65(5) and (5A) (consultation in connection with access orders),

apply in relation to areas of outstanding natural beauty as they apply in relation to National Parks.

(2) In section 6(4)(e) of the 1949 Act as it applies by virtue of subsection (1), “appropriate planning authority” means a local planning authority whose area consists of or includes the whole or any part of an area of outstanding natural beauty and includes a local authority, not being a local planning authority, by whom any powers of a local planning authority as respects an area of outstanding natural beauty are exercisable, whether under the 1949 Act or otherwise.

(3) Section 4A of the 1949 Act (which confers on the [NRBW]² functions under Part II of that Act corresponding to those exercisable as respects England by [Natural England]¹) applies to the provisions mentioned in subsection (1)(a) and (b) for the purposes of their application to areas of outstanding natural beauty as that section applies for the purposes of Part II of the 1949 Act.

(4) A local planning authority whose area consists of or includes the whole or any part of an area of outstanding natural beauty has power, subject to subsections (5) and (6), to take all such action as appears to them expedient for the accomplishment of the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty or so much of it as is included in their area.

(5) Nothing in this Part is to be taken to limit the generality of subsection (4); but in so far as the provisions of this Part or of the 1949 Act confer specific powers falling within that subsection those

powers are to be exercised in accordance with those provisions and subject to any limitations expressed or implied in them.

(6) Without prejudice to the powers conferred by this Part, subsection (4) has effect only for the purpose of removing any limitation imposed by law on the capacity of a local planning authority by virtue of its constitution, and does not authorise any act or omission on the part of such an authority which apart from that subsection would be actionable at the suit of any person on any ground other than such a limitation.

(7) In this section “local planning authority” has the same meaning as in the Town and Country Planning Act 1990.

Notes


- ¹ Words substituted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.164(b) (October 1, 2006)
- ² Word substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.408 (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Pt IV s. 84(1)-(7): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Pt IV s. 84-(7): England, Wales

 Law In Force

85.— General duty of public bodies etc.

(1) In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.

(2) The following are relevant authorities for the purposes of this section—

- (a) any Minister of the Crown,
- (b) any public body,
- (c) any statutory undertaker,
- (d) any person holding public office.

(3) In subsection (2)—

“public body” includes

- (a) a county council, county borough council, district council, parish council or community council;
- (b) a joint planning board within the meaning of section 2 of the Town and Country Planning Act 1990;
- (c) a joint committee appointed under section 102(1)(b) of the Local Government Act 1972;
- (d) [...]¹

[(e) a corporate joint committee established by regulations made under Part 5 of the Local Government and Elections (Wales) Act 2021;]²

“public office” means—

- (a) an office under Her Majesty;
- (b) an office created or continued in existence by a public general Act; or
- (c) an office the remuneration in respect of which is paid out of money provided by Parliament.

[“statutory undertaker” means a person who is or is deemed to be a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990.]³

Notes


- ¹ Repealed by Local Government and Elections (Wales) Act 2021 asc. 1 Sch.9(1) para.37 (January 21, 2021)
- ² Added by Countryside and Rights of Way Act 2000 (Meaning of Public Body) (Wales) Regulations 2021/1355 reg.2 (December 3, 2021)
- ³ Definition inserted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.165 (October 1, 2006)

Commencement

Pt IV s. 85(1)-(3) definition of "public office" (c): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Pt IV s. 85-(3) definition of "statutory undertaker": England, Wales

 Law In Force

86.— Establishment of conservation boards.

(1) The Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales) may—

- (a) in the case of any existing area of outstanding natural beauty, or
 - (b) in connection with the designation of any area as an area of outstanding natural beauty,
- by order establish a board (in this Part referred to as “a conservation board”) to carry out in relation to that area the functions conferred on such a board by or under this Part.

(2) Schedule 13 (which relates to the constitution of conservation boards) has effect.

(3) Where the Secretary of State or the National Assembly for Wales considers it expedient for either of the purposes mentioned in section 87(1), an order under subsection (1) may—

- (a) provide for the transfer to the conservation board to which the order relates of any of the functions of local authorities, so far as relating to the area of outstanding natural beauty in question, or
- (b) provide for any function of a local authority, so far as relating to the area of outstanding natural beauty in question, to be exercisable concurrently by the local authority and by the conservation board.

(4) Subsection (3) does not apply to functions of a local authority under [Part III, VII or XIII of the Town and Country Planning Act 1990 or under Part 2 or 6 of the Planning and Compulsory Purchase Act 2004]¹.

(5) An order under subsection (1) may make further provision as to the constitution and administration of the conservation board to which it relates, including provision with respect to—

- (a) the appointment of members,
- (b) the removal and disqualification of members,
- (c) the conduct of members,
- (d) proceedings of the board,
- (e) the appointment of staff,
- (f) consultation with other public bodies,
- (g) records and documents of the board,
- (h) the provision of information by the board, and
- (i) complaints of maladministration.

(6) Before making an order under subsection (1) in relation to an area of outstanding natural beauty in England, the Secretary of State shall consult—

- (a) [Natural England]², and
- (b) every local authority whose area consists of or includes the whole or part of the area of outstanding natural beauty,

and shall not make the order unless satisfied that the majority of those local authorities consent.

(7) Before making an order under subsection (1) in relation to an area of outstanding natural beauty in Wales, the National Assembly for Wales shall consult—

- (a) the [NRBW]³, and
- (b) every local authority whose area consists of or includes the whole or part of the area of outstanding natural beauty,

and shall not make the order unless satisfied that the majority of those local authorities consent.

(8) An order under subsection (1) which amends or revokes a previous order under that subsection establishing a conservation board—

- (a) may be made only after consultation with the conservation board to which it relates (as well as the consultation required by subsection (6) or (7)), and
- (b) in the case of an order revoking a previous order, may provide for the winding up of the board.

(9) Subject to any order under subsection (10), where there is a variation of the area of an area of outstanding natural beauty for which there is or is to be a conservation board, the area of outstanding natural beauty for which that board is or is to be the conservation board shall be taken, as from the time when the variation takes effect, to be that area as varied.

(10) Where provision is made for the variation of the area of an area of outstanding natural beauty for which there is or is to be a conservation board, the Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales) may by order make such transitional provision as he or it thinks fit with respect to—

- (a) any functions which, in relation to any area that becomes part of the area of outstanding natural beauty, are by virtue of the variation to become functions of that conservation board; and

(b) any functions which, in relation to any area that ceases to be part of the area of outstanding natural beauty, are by virtue of the variation to become functions of a person other than that conservation board.

Notes


- ¹ Amended by Planning and Compulsory Purchase Act 2004 c. 5 Sch.7 para.23 (October 15, 2005 as SI 2005/2847)
- ² Words substituted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.164(c) (October 1, 2006)
- ³ Word substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.408 (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Pt IV s. 86(1)-(10)(b): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Pt IV s. 86-(10)(b): England, Wales

 Law In Force

87.— General purposes and powers.

- (1) It is the duty of a conservation board, in the exercise of their functions, to have regard to—
- (a) the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty, and
 - (b) the purpose of increasing the understanding and enjoyment by the public of the special qualities of the area of outstanding natural beauty,
- but if it appears to the board that there is a conflict between those purposes, they are to attach greater weight to the purpose mentioned in paragraph (a).
- (2) A conservation board, while having regard to the purposes mentioned in subsection (1), shall seek to foster the economic and social well-being of local communities within the area of outstanding natural beauty [...] ¹ and shall for that purpose co-operate with local authorities and public bodies whose functions include the promotion of economic or social development within the area of outstanding natural beauty.
- (3) Sections 37 and 38 of the Countryside Act 1968 (general duties as to the protection of interests of the countryside and the avoidance of pollution) apply to conservation boards as they apply to local authorities.
- (4) The powers of a conservation board include power to do anything which, in the opinion of the board, is calculated to facilitate, or is conducive or incidental to—
- (a) the accomplishment of the purposes mentioned in subsection (1), or
 - (b) the carrying out of any functions conferred on it by virtue of any other provision of this Part or by virtue of any enactment not contained in this Part.
- (5) The powers conferred on a conservation board by subsection (4) do not include—

- (a) power to do anything in contravention of any restriction imposed by virtue of this Part in relation to any express power of the board, or
- (b) power to raise money (whether by borrowing or otherwise) in a manner which is not authorised apart from that subsection,

but the things that may be done in exercise of those powers are not to be treated as excluding anything by reason only that it involves the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights.

(6) Schedule 14 (which relates to the supplemental and incidental powers of conservation boards) has effect.

(7) An order under section 86(1) may—

- (a) make further provision with respect to the supplemental and incidental powers of the conservation board to which it relates or the limits on those powers, including provision relating to the borrowing of money, and
- (b) provide for any enactment which relates to or limits the supplemental or incidental powers or duties of local authorities or relates to the conduct of, or transactions by, local authorities to apply in relation to the conservation board with such modifications as may be specified in the order.

Notes


- ¹ Words repealed by Natural Environment and Rural Communities Act 2006 c. 16 Sch.12 para.1 (October 1, 2006 as SI 2006/2541)

Commencement

Pt IV s. 87(1)-(7)(b): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Pt IV s. 87-(7)(b): England, Wales

 Law In Force

88.— Orders establishing conservation boards.

- (1) Any power of the Secretary of State or the National Assembly for Wales to make an order under section 86(1) or (10) is exercisable by statutory instrument.
- (2) No order shall be made under section 86(1) by the Secretary of State unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (3) A statutory instrument containing an order made under section 86(10) by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) If a draft of an order made under section 86(1) by the Secretary of State would, apart from this section, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.

(5) The power of the Secretary of State or the National Assembly for Wales to make an order under section 86(1) or (10) includes power to make such incidental, supplemental, consequential and transitional provision as the person making the order thinks necessary or expedient.

(6) The power of the Secretary of State or the National Assembly for Wales by an order under section 86(1) or (10) to make incidental, supplemental, consequential or transitional provision includes power for any incidental, supplemental, consequential or, as the case may be, transitional purpose—

- (a) to apply with or without modifications,
- (b) to extend, exclude or modify, or
- (c) to repeal or revoke with or without savings,

any enactment or any instrument made under any enactment.

(7) The provision that may be made for incidental, supplemental, consequential or transitional purposes in the case of any order under section 86(1) or (10) which—

- (a) establishes a conservation board or provides for the winding up of such a board, or
- (b) otherwise has the effect of transferring functions from one person to another or of providing for functions to become exercisable concurrently by two or more persons or to cease to be so exercisable,

includes provision for the transfer of property, rights and liabilities from one person to another.

(8) The power of the Secretary of State or the National Assembly for Wales under section 86(1) or (10) to provide by order for the transfer of any property, rights or liabilities, or to make transitional provision in connection with any such transfer or with any order by which functions become or cease to be exercisable by any conservation board, includes, in particular, power to provide—

- (a) for the management and custody of any transferred property (whether real or personal);
- (b) for any liabilities transferred to include liabilities under any enactment;
- (c) for legal proceedings commenced by or against any person to be continued by or against a person to whom property, rights or liabilities are transferred or, as the case may be, any board or other authority by whom any functions are to become exercisable;
- (d) for the transfer of staff, compensation for loss of office, pensions and other staffing matters; and
- (e) for treating any person to whom a transfer of property, rights or liabilities is made or, as the case may be, by whom any functions are to become exercisable as, for some or all purposes, the same person in law as the person from whom the transfer is made or the authority by whom the functions have previously been exercisable.

(9) The power of the Secretary of State or the National Assembly for Wales to make an order under section 86(1) or (10) includes power to make different provision for different cases, including different provision for different areas or localities and for different boards.

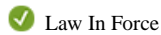
(10) In this section “enactment” includes an enactment contained in an Act passed after this Act.

Commencement

Pt IV s. 88(1)-(10): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Pt IV s. 88-(10): England, Wales



Law In Force

89.— Management plans.

- (1) Every conservation board shall, within two years after the date on which they are established, prepare and publish a plan which formulates their policy for the management of their area of outstanding natural beauty and for the carrying out of their functions in relation to it.
- (2) Subject to subsection (3), the relevant local authority in respect of an area of outstanding natural beauty shall, before the end of the period of three years beginning with whichever is the later of—
 - (a) the commencement of this section, or
 - (b) the date on which the area is designated as an area of outstanding natural beauty,prepare and publish a plan which formulates their policy for the management of the area of outstanding natural beauty and for the carrying out of their functions in relation to it.
- (3) Subsection (2) does not apply where, before the end of the period mentioned in that subsection, a conservation board has been established for the area of outstanding natural beauty.
- (4) A plan prepared under subsection (1) or (2) is to be known as an area of outstanding natural beauty management plan.
- (5) A conservation board or relevant local authority may, instead of preparing a plan under subsection (1) or (2),—
 - (a) review any plan for the management of the area of outstanding natural beauty which has been prepared before the commencement of this section—
 - (i) by a local authority, or
 - (ii) by a joint committee established by two or more local authorities, and
 - (b) adopt the plan as reviewed as their area of outstanding natural beauty management plan, and
 - (c) publish it under subsection (1) or (2) within the time required by that subsection.
- (6) A conservation board may, within six months of the date on which they are established, adopt an area of outstanding natural beauty management plan prepared for their area of outstanding natural beauty by the relevant local authority as their area of outstanding natural beauty management plan, and publish it under subsection (1).
- (7) Subject to subsection (8), a conservation board shall review their area of outstanding natural beauty management plan before the end of the period of five years beginning with the date on which it was published and, after the first review, at intervals of not more than five years.
- (8) Where a conservation board have adopted a plan under subsection (6), the first review must take place before the end of the period of three years beginning with the date on which the plan was published.
- (9) Where an area of outstanding natural beauty management plan has been prepared under subsection (2), the relevant local authority shall review the plan before the end of the period of five years beginning with the date on which it was published and, after the first review, at intervals of not more than five years, but this subsection does not apply where a conservation board has been established for the area of outstanding natural beauty.

(10) Where a conservation board or relevant local authority review any plan under this section, they shall—

- (a) determine on that review whether it would be expedient to amend the plan and what (if any) amendments would be appropriate,
- (b) make any amendments that they consider appropriate, and
- (c) publish a report on the review specifying any amendments made.

(11) In this section “relevant local authority” means—

- (a) in the case of an area of outstanding natural beauty which is wholly comprised in one principal area, the local authority for that area, and
- (b) in any other case, the local authorities for all the principal areas wholly or partly comprised in the area of outstanding natural beauty, acting jointly.

Commencement

Pt IV s. 89(1)-(11)(b): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Pt IV s. 89-(11)(b): England, Wales



Law In Force With Amendments Pending

90.— Supplementary provisions relating to management plans.

(1) A conservation board or relevant local authority which is proposing to publish, adopt or review any plan under section 89 shall—

- (a) give notice of the proposal—
 - (i) if the area of outstanding natural beauty is in England, to [Natural England]¹ [...]²,
 - (ii) if the area of outstanding natural beauty is in Wales, to the [NRBW]³, and
 - (iii) in the case of a conservation board, to every local authority whose area is wholly or partly comprised in the area of outstanding natural beauty,
- (b) send a copy of the plan, together (where appropriate) with any proposed amendments of the plan, to every body to which notice of the proposal is required to be given by paragraph (a), and
- (c) take into consideration any observations made by any such body.

[(1A) In the case of an area of outstanding natural beauty in Wales, a conservation board or relevant local authority which is proposing to publish, adopt or review any plan under section 89 must have regard to—

- (a) the state of natural resources report published under section 8 of the Environment (Wales) Act 2016, and
- (b) any area statement published under section 11 of that Act for an area that includes all or part of the area of outstanding natural beauty.

] ⁴

(2) A conservation board or relevant local authority shall send to the Secretary of State or the National Assembly for Wales a copy of every plan, notice or report which they are required to publish under section 89.

(3) In this section “relevant local authority” has the same meaning as in section 89.

Notes

- ¹ Words substituted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.164(d) (October 1, 2006)
- ² Words repealed by Natural Environment and Rural Communities Act 2006 c. 16 Sch.12 para.1 (October 1, 2006 as SI 2006/2541)
- ³ Word substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.408 (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)
- ⁴ Added by Environment (Wales) Act 2016 anaw. 3 Sch.2(1) para.7 (May 21, 2016)

Proposed Draft Amendments

Pt IV s. 90(1A)(a): word repealed by Agriculture (Wales) Bill [as introduced] (GB/06/2022) Sch. 2(2) para. 4(a) (Stage 1: Committee considerations of general principles, October 27, 2022) (date to be appointed)


Pt IV s. 90(1A)(c): added by Agriculture (Wales) Bill [as introduced] (GB/06/2022) Sch. 2(2) para. 4(b) (Stage 1: Committee considerations of general principles, October 27, 2022) (date to be appointed)

Commencement

Pt IV s. 90(1)-(3): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Pt IV s. 90-(3): England, Wales

 Law In Force

91.— Grants to conservation boards.

(1) The Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales) may make grants to a conservation board, of such amounts and on such terms and conditions as the Secretary of State or the Assembly thinks fit.

(2) [...]¹

(3) Before determining the amount of any grant which it proposes to make to a conservation board under this section, or the purpose for which the grant is to be made, the National Assembly for Wales shall consult the [NRBW]² .

Notes

- ¹ Repealed by Deregulation Act 2015 c. 20 Sch.22(1) para.15(1) (May 26, 2015)
- ² Word substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.408 (April 1, 2013)

Commencement

Pt IV s. 91(1)-(3): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Pt IV s. 91-(3): England, Wales

✓ Law In Force

92.— Interpretation of Part IV and supplementary provision.

(1) In this Part, unless a contrary intention appears—

“the 1949 Act” means the National Parks and Access to the Countryside Act 1949;

[...]¹

“area of outstanding natural beauty” has the meaning given by section 82(3);

“conservation board” has the meaning given by section 86(1);

[...]²

“liability”, in relation to the transfer of liabilities from one person to another, does not include criminal liability;

“local authority” means a principal council within the meaning of the Local Government Act 1972;

[“the NRBW” means the Natural Resources Body for Wales;]³

“principal area” has the same meaning as in the Local Government Act 1972.

(2) Any reference in this Part to the conservation of the natural beauty of an area includes a reference to the conservation of its flora, fauna and geological and physiographical features.

(3) This Part does not apply in relation to any of the lands mentioned in section 112(1) of the 1949 Act (Epping Forest and Burnham Beeches).

Notes

¹ Definition repealed by Natural Environment and Rural Communities Act 2006 c. 16 Sch.12 para.1 (October 1, 2006 as SI 2006/2541)

² Definition repealed by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.409(2) (April 1, 2013: repeal has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

³ Definition inserted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.409(3) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Pt IV s. 92(1)-(3): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Pt IV s. 92-(3): England, Wales

✓ Law In Force

93. Consequential amendments and transitional provisions.

Schedule 15 (which contains consequential amendments and transitional provisions relating to areas of outstanding natural beauty) has effect.

Commencement

Pt IV s. 93: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Pt IV s. 93: England, Wales

PART V

MISCELLANEOUS AND SUPPLEMENTARY

Local access forums

✓ Law In Force

94.— Local access forums.

(1) The appointing authority for any area shall in accordance with regulations establish for that area, or for each part of it, an advisory body to be known as a local access forum.

(2) For the purposes of this section—

(a) the local highway authority is the appointing authority for their area, except any part of it in a National Park, and

(b) the National Park authority for a National Park is the appointing authority for the National Park.

(3) A local access forum consists of members appointed by the appointing authority in accordance with regulations.

(4) It is the function of a local access forum, as respects the area for which it is established, to advise—

(a) the appointing authority,

(b) any body exercising functions under Part I in relation to land in that area,

(c) if the appointing authority is a National Park authority, the local highway authority for any part of that area, and

(d) such other bodies as may be prescribed,

as to the improvement of public access to land in that area for the purposes of open-air recreation and the enjoyment of the area, and as to such other matters as may be prescribed.

(5) The bodies mentioned in paragraphs (a) to (d) of subsection (4) shall have regard, in carrying out their functions, to any relevant advice given to them by a local access forum under that subsection or any other provision of this Act.

(6) In carrying out its functions, a local access forum shall have regard to—

- (a) the needs of land management,
- (b) the desirability of conserving the natural beauty of the area for which it is established, including the flora, fauna and geological and physiographical features of the area, and
- (c) guidance given from time to time by the Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales).

(7) Subsection (1) does not apply to the council of a London borough or to any part of their area unless the council so resolve.

(8) The Secretary of State, as respects England, or the National Assembly for Wales, as respects Wales, if satisfied that no local access forum is required for any area or part of any area, may direct that subsection (1) is not to apply in relation to that area or part.

(9) Before giving a direction under subsection (8) as respects an area or part of an area, the Secretary of State or the National Assembly for Wales must consult the appointing authority for the area and the appropriate countryside body.

(10) In this section—


- “appropriate countryside body” has the same meaning as in Part I;
- “local highway authority” has the same meaning as in the 1980 Act;
- “prescribed” means prescribed by regulations;
- “regulations” means regulations made, as respects England, by the Secretary of State, and, as respects Wales, by the National Assembly for Wales.

Commencement

Pt V s. 94(1)-(10) definition of "regulations": January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt V s. 94(1)-(10) definition of "regulations": England, Wales

 Law In Force

95.— Local access forums: supplementary.

(1) Regulations under section 94 may in particular include provision—

- (a) as to the appointment as members of a local access forum of persons appearing to the appointing authority to be representative of persons of any specified description or of any specified body;
- (b) as to the establishment by appointing authorities of joint local access forums.

(2) The regulations must provide for the appointment of persons appearing to the appointing authority to be representative of—

- (a) users of local rights of way or the right conferred by section 2(1);
- (b) owners and occupiers of access land or land over which local rights of way subsist;

- (c) any other interests especially relevant to the authority's area.
- (3) In subsection (2)—
“access land” has the same meaning as in Part I;
“local rights of way” has the meaning given by section 60(5), but as if the references there to a local highway authority and their area were references to an appointing authority and their area.
- (4) The Secretary of State and the National Assembly for Wales, in making regulations under section 94 containing such provision as is mentioned in subsection (2), must have regard to the desirability of maintaining a reasonable balance between the number of members of any local access forum appointed in accordance with paragraph (a) and in accordance with paragraph (b) of subsection (2).
- (5) Regulations under section 94 may include such supplementary or incidental provision as appears to the Secretary of State or National Assembly for Wales (as the case may be) to be necessary or expedient.
- (6) For the purposes of section 94, the Broads are to be treated as a National Park and the Broads Authority as a National Park authority.
- (7) In subsection (6) “the Broads” has the same meaning as in the Norfolk and Suffolk Broads Act 1988.
- (8) Regulations under section 94 shall be made by statutory instrument, and a statutory instrument containing such regulations made by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement

Pt V s. 95(1)-(8): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Pt V s. 95(1)-(8): England, Wales

Management agreements

 Law In Force

96. Management agreements.

In section 39 of the 1981 Act (management agreements with owners and occupiers of land)—

- (a) in subsection (1) the words “both in the countryside and” are omitted, and
(b) at the end of subsection (5) (authorities which may enter into management agreements) there is inserted—

- “(d) as respects any land in England, the Countryside Agency;
(e) as respects any land in Wales, the Countryside Council for Wales;

(f) as respects land in any area of outstanding natural beauty designated under section 82 of the Countryside and Rights of Way Act 2000 for which a conservation board has been established under section 86 of that Act, that board.”


Commencement

Pt V s. 96(a)-(b): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(f); SI 2001/1410 art. 2(h))

Extent

Pt V s. 96-(b): England, Wales

Norfolk and Suffolk Broads

 Partially In Force

97. Duty of public bodies etc. regarding the Broads.

In Part IV of the Norfolk and Suffolk Broads Act 1988, before section 18 there is inserted—

“17A.— General duty of public bodies etc.

(1) In exercising or performing any functions in relation to, or so as to affect, land in the Broads, a relevant authority shall have regard to the purposes of—

- (a) conserving and enhancing the natural beauty of the Broads;
- (b) promoting the enjoyment of the Broads by the public; and
- (c) protecting the interests of navigation.

(2) The following are relevant authorities for the purposes of this section—

- (a) any Minister of the Crown,
- (b) any public body,
- (c) any statutory undertaker,
- (d) any person holding public office.

(3) In subsection (2)—

“public body” includes

- (a) a county council, district council or parish council;
- (b) a joint planning board within the meaning of section 2 of the Town and Country Planning Act 1990;
- (c) a joint committee appointed under section 102(1)(b) of the Local Government Act 1972;

“public office” means—

- (a) an office under Her Majesty;
- (b) an office created or continued in existence by a public general Act; or
- (c) an office the remuneration in respect of which is paid out of money provided by Parliament.”

Commencement

Pt V s. 97: April 1, 2001 in relation to England; not yet in force otherwise (SI 2001/114 art. 2(2)(g))

Extent

Pt V s. 97: England, Wales

Town and village greens

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)

 Repealed

Wales

98.— [...]¹

Notes

¹ Repealed by Commons Act 2006 c. 26 Sch.6(1) para.1 (September 6, 2007 as SI 2007/2386)


England

[...]¹

Notes

¹ Repealed by Commons Act 2006 c. 26 Sch.6(1) para.1 (April 6, 2007 as SI 2007/456)

Supplementary

 Partially In Force

99.— Wales.

(1) In Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999—

- (a) the reference to the 1980 Act is to be treated as referring to that Act as amended by this Act, and
- (b) the reference to the 1981 Act is to be treated as referring to that Act as amended by this Act.

(2) In that Schedule, at the end of the list of Public General Acts there is inserted—

“Countryside and Rights of Way Act 2000 (c. 37)Schedule 11.”.


(3) Subsection (1), and the amendment made by subsection (2), do not affect the power to make further Orders varying or omitting the references mentioned in subsection (1) or the provision inserted by subsection (2).

Commencement

Pt V s. 99(1)-(3): January 30, 2001 in relation to Wales; not yet in force otherwise (SI 2001/203 art. 2)

Extent

Pt V s. 99(1)-(3): England, Wales

 Partially In Force

100.— Isles of Scilly.

(1) Subject to the provisions of any order under this section, the following provisions of this Act do not apply in relation to the Isles of Scilly—

- (a) Part I; and
- (b) sections 58 to 61 and 71.

(2) The Secretary of State may by order made by statutory instrument provide for the application of any of the provisions mentioned in subsection (1) in relation to the Isles of Scilly, subject to such modifications as may be specified in the order.

(3) Part IV applies in relation to the Isles of Scilly subject to such modifications as may be specified in an order made by the Secretary of State by statutory instrument.

(4) Before making an order under subsection (2) or (3), the Secretary of State shall consult the Council of the Isles of Scilly.

(5) In section 344 of the 1980 Act (application to the Isles of Scilly)—

- (a) in subsection (2)(a) for “121” there is substituted “121E, 130A to 130D”, and
- (b) before “146” there is inserted “137ZA(4)”.

Commencement


Pt V s. 100(1)-(2), (4)-(5), (5)(b): January 30, 2001 in relation to England; not yet in force otherwise (SI 2001/114 art. 2(1)(c))

Pt V s. 100(3): April 1, 2001 in relation to England; not yet in force otherwise (SI 2001/114 art. 2(2)(h))

Pt V s. 100(5)(a): Date to be appointed (not yet in force)

Extent

Pt V s. 100(1)-(5)(b): England, Wales

 Not Yet In Force With Amendments Pending

101. Expenses.

There shall be paid out of money provided by Parliament—

- (a) any increase attributable to this Act in the sums required by the Secretary of State for making grants to the Countryside Agency or English Nature,
 - (b) any administrative expenses of a Minister of the Crown which are attributable to this Act,
 - (c) any other expenditure of a Minister of the Crown or government department which is attributable to this Act,
 - (d) any increase attributable to this Act in the sums which under any other enactment are payable out of money so provided.
-

Amendments Pending


Pt V s. 101(a): repealed by Natural Environment and Rural Communities Act 2006 c. 16 Sch. 12 para. 1 (Not yet in force: repeal came into force on October 1, 2006 as specified in SI 2006/2541 but cannot take effect until the commencement of 2000 c.37 s.101)

Commencement

Pt V s. 101(a)-(d): Date to be appointed (not yet in force)

Extent

Pt V s. 101(a)-(d): England, Wales

 Partially In Force

102. Repeals.

The enactments mentioned in Schedule 16 are repealed to the extent specified.

Commencement

Pt V s. 102: January 30, 2001 for repeals specified in s.103(2); January 30, 2001 in relation to England for repeals specified in SI 2001/114 art.2(1); April 1, 2001 for repeals specified in SI 2001/114 art.2(2)(k)-(m); May 1, 2001 in relation to Wales for repeals specified in SI 2001/1410 art.2; May 28, 2005 in relation to Wales for repeals specified in SI 2005/423 art.2(f); October 31, 2005 in relation to England for repeals specified in SI 2005/2752 art.2(1)(c)(i)

and (ii); May 2, 2006 in relation to England for the repeal specified in SI 2006/1172 art.2(f); May 11, 2006 in relation to Wales for repeals specified in SI 2006/1279 art.2(i)-(k); December 6, 2006 in relation to Wales for repeals specified in SI 2006/3257 art.2(c); not yet in force otherwise (SI 2001/114 art. 2(1)(d)(i), art. 2(1)(g), art. 2(2)(k), art. 2(2)(l), art. 2(2)(m); SI 2001/1410 art. 2; SI 2005/423 art. 2(f); SI 2005/2752 art. 2(1)(b); SI 2006/1172 art. 2(f); SI 2006/1279 art. 2(h), art. 2(i), art. 2(j), art. 2(k); SI 2006/3257 art. 2(c); 2000 c. 37 Pt V s. 103(2))

Extent

Pt V s. 102-: England, Wales

✔ Law In Force

103.— Commencement.

- (1) The following provisions of this Act come into force on the day on which this Act is passed—
section 81(2) and (3),
this section, and
section 104.
- (2) The following provisions of this Act come into force at the end of the period of two months beginning with the day on which this Act is passed—
section 1 and Schedule 1,
sections 3 to 11 and Schedule 3,
sections 15 to 17,
section 19,
Chapters II and III of Part I,
sections 40 to 45,
section 52,
sections 58 and 59,
sections 64 to 67 and Schedule 7 (apart from paragraphs 6 and 7 of that Schedule),
Part III (apart from section 81(2) and (3)), and Schedules 8, 9, 10, 11 and 12 and Parts III and IV of Schedule 16,
sections 94 and 95, and
section 98.
- (3) The remaining provisions of this Act come into force on such day as the Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales) may by order made by statutory instrument appoint.
- (4) Different days may be appointed under subsection (3) for different purposes or different areas.
- (5) An order under subsection (3) may contain such transitional provisions or savings (including provisions modifying the effect of any enactment) as appear to the Secretary of State or the National Assembly for Wales (as the case may be) to be necessary or expedient in connection with any provision brought into force by the order.

Commencement

Pt V s. 103(1)-(5): November 30, 2000

Extent

Pt V s. 103(1)-(5): England, Wales

✔ Law In Force

104.— Interpretation, short title and extent.

(1) In this Act—

“the 1980 Act” means the Highways Act 1980;

“the 1981 Act” means the Wildlife and Countryside Act 1981;

“local access forum” means a local access forum established under section 94.

(2) Any reference in this Act, or in any enactment amended by this Act, to the commencement of any provision of this Act is, in relation to any area, a reference to the commencement of that provision in relation to that area.

(3) This Act may be cited as the Countryside and Rights of Way Act 2000.

(4) Subject to the following provisions of this section, this Act extends to England and Wales only.

(5) The following provisions extend also to Scotland—
sections 67 and 76;
in Schedule 7, paragraphs 3 and 5 to 7;
in Schedule 10, paragraph 2.

(6) Paragraph 1 of Schedule 10 extends to Scotland only.

(7) The provisions of Schedule 8 and of so much of Part III of Schedule 16 as relates to the enactments referred to in paragraphs 2 and 3 of Schedule 8 have the same extent as the enactments which they amend or repeal.

Commencement

Pt V s. 104(1)-(7): November 30, 2000 (2000 c. 37 Pt V s. 103(1))

Extent

Pt V s. 104(1)-(7): England, Wales


SCHEDULE 1**EXCEPTED LAND FOR PURPOSES OF PART I****Section 1(2)**

PART I

EXCEPTED LAND

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)

 Law In Force

Wales

1.

Land on which the soil is being, or has at any time within the previous twelve months been, disturbed by any ploughing or drilling undertaken for the purposes of planting or sowing crops or trees.

England

[1.

Land on which the soil is being, or has at any time within the previous twelve months been, disturbed by any ploughing or drilling undertaken for the purposes of planting or sowing crops or trees (other than land which is coastal margin and is, or forms part of, a coastal route strip).

] ¹

Notes

¹ Words added by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(1) para.2 (April 6, 2010)

Commencement

Sch. 1(I) para. 1: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 1(I) para. 1: England, Wales

 Law In Force

2.

Land covered by buildings or the curtilage of such land.

Commencement


Sch. 1(I) para. 2: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 1(I) para. 2: England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)

 Law In Force

Wales

3.
Land within 20 metres of a dwelling.

England

[**3.**
Land (other than coastal margin) within 20 metres of a dwelling.
] ¹

Notes

¹ Words inserted by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(1) para.3 (April 6, 2010)

Commencement

Sch. 1(I) para. 3: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 1(I) para. 3: England, Wales

 Law In Force

4.
Land used as a park or garden.

Commencement

Sch. 1(I) para. 4: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 1(I) para. 4: England, Wales

✔ Law In Force

5.

Land used for the getting of minerals by surface working (including quarrying).

Commencement

Sch. 1(I) para. 5: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 1(I) para. 5: England, Wales

✔ Law In Force

6.

Land used for the purposes of a railway (including a light railway) or tramway.

Commencement

Sch. 1(I) para. 6: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 1(I) para. 6: England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)

✔ Law In Force

Wales

7.

Land used for the purposes of a golf course, racecourse or aerodrome.

England

[7.

Land used for the purposes of a golf course, racecourse or aerodrome (other than, in the case of land used for the purposes of a golf course, land which is coastal margin and is, or forms part of, a coastal route strip).

] ¹

Notes

¹ Words added by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(1) para.4 (April 6, 2010)

Commencement

Sch. 1(I) para. 7: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 1(I) para. 7: England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)



Law In Force

Wales

8.

Land which does not fall within any of the preceding paragraphs and is covered by works used for the purposes of a statutory undertaking or [an electronic communications code network] ¹ , or the curtilage of any such land.

Notes

¹ Words substituted by Communications Act 2003 c. 21 Sch.17 para.165(3) (July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2))

England

[8.

Land which does not fall within any of the preceding paragraphs and is covered by—

(a) works used for the purposes of a statutory undertaking (other than flood defence works, or sea defence works, on land which is coastal margin), or

(b) works used for the purposes of an electronic communications code network,

or the curtilage of any such land.

] ¹

Notes


¹ Substituted by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(1) para.5 (April 6, 2010)

Commencement

Sch. 1(I) para. 8: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 1(I) para. 8: England, Wales

 Law In Force

9.

Land as respects which development which will result in the land becoming land falling within any of paragraphs 2 to 8 is in the course of being carried out.


Commencement

Sch. 1(I) para. 9: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 1(I) para. 9: England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[Wales](#) | [England](#)

 Law In Force

Wales

10.

Land within 20 metres of a building which is used for housing livestock, not being a temporary or moveable structure.

England

[10.

Land (other than coastal margin) within 20 metres of a building which is used for housing livestock, not being a temporary or moveable structure.

]¹

Notes


¹ Words inserted by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(1) para.6 (April 6, 2010)

Commencement

Sch. 1(I) para. 10: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 1(I) para. 10: England, Wales

 Law In Force

11.

Land covered by pens in use for the temporary reception or detention of livestock.

Commencement


Sch. 1(I) para. 11: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 1(I) para. 11: England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)

 Law In Force

Wales

12.

Land habitually used for the training of racehorses.

England

[12.

Land (other than coastal margin) habitually used for the training of racehorses.

]¹

Notes


¹ Words inserted by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(1) para.7 (April 6, 2010)

Commencement

Sch. 1(I) para. 12: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 1(I) para. 12: England, Wales

 Law In Force

13.

Land the use of which is regulated by byelaws under section 14 of the Military Lands Act 1892 or section 2 of the Military Lands Act 1900.

Commencement


Sch. 1(I) para. 13: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 1(I) para. 13: England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)

 Partially In Force

Wales

[NOTE: not yet in force otherwise.]

England

[13A.

Land which is coastal margin and is, or forms part of, a regulated caravan or camping site (other than land which is, or forms part of, a coastal route strip).

]¹

Notes


¹ Added by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(1) para.8 (April 6, 2010)

Extent

Sch. 1(I) para. 13A: England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)

 Partially In Force

Wales

[NOTE: not yet in force otherwise.]

England

[13B.

Land which is coastal margin and is, or forms part of, a highway (within the meaning of the Highways Act 1980).

]¹


Notes

¹ Added by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(1) para.8 (April 6, 2010)

Extent

Sch. 1(I) para. 13B: England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[Wales](#) | [England](#)

 Partially In Force

Wales

[NOTE: not yet in force otherwise.]

England

[13C.

Land which is coastal margin and is, or forms part of, a burial ground (other than land which is, or forms part of, a coastal route strip).

]¹


Notes

¹ Added by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(1) para.8 (April 6, 2010)

Extent

Sch. 1(I) para. 13C: England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[Wales](#) | [England](#)

 Partially In Force

Wales

[NOTE: not yet in force otherwise.]

England

[13D.

Land which is coastal margin and—

- (a) is or forms part of a school playing field, or
- (b) is land otherwise occupied by a school and used for the purposes of that school.

] ¹**Notes**


¹ Added by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(1) para.8 (April 6, 2010)

Extent

Sch. 1(I) para. 13D(a)-(b): England, Wales

PART II**SUPPLEMENTARY PROVISIONS**

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[Wales](#) | [England](#)

 Law In Force

Wales

14.

In this Schedule—

“building” includes any structure or erection and any part of a building as so defined, but does not include any fence or wall, or anything which is a means of access as defined by section 34; and for this purpose “structure” includes any tent, caravan or other temporary or moveable structure;

“development” and “minerals” have the same meaning as in the Town and Country Planning Act 1990;

“ploughing” and “drilling” include respectively agricultural or forestry operations similar to ploughing and agricultural or forestry operations similar to drilling;

“statutory undertaker” means—

- (a) a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power,
- (b) any public gas transporter, within the meaning of Part I of the Gas Act 1986,
- (c) any water or sewerage undertaker,
- (d) any holder of a licence under section 6(1) of the Electricity Act 1989, or
- (e) the Environment Agency [, the Natural Resources Body for Wales] ¹ , [a universal service provider (within the meaning of [Part 3 of the Postal Services Act 2011] ³) in connection with the provision of a universal postal service (within the meaning of [that Part] ⁴)] ² [, the Civil Aviation Authority or a person who holds

a licence under Chapter I of Part I of the Transport Act 2000 (to the extent that the person is carrying out activities authorised by the licence)]⁵ ;

“statutory undertaking” means—

- (a) the undertaking of a statutory undertaker [(which, in the case of a universal service provider (within the meaning of [Part 3 of the Postal Services Act 2011]³), means his undertaking so far as relating to the provision of a universal postal service (within the meaning of [that Part]⁴) [and, in the case of a person who holds a licence under Chapter I of Part I of the Transport Act 2000, means that person's undertaking as licence holder]⁷)]⁶ , or
- (b) an airport to which Part V of the Airports Act 1986 applies.

Notes

- ¹ Words inserted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.410 (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)
- ² Words substituted by Postal Services Act 2000 (Consequential Modifications No. 1) Order 2001/1149 Sch.1(1) para.136(2) (March 26, 2001)
- ³ Words substituted by Postal Services Act 2011 c. 5 Sch.12(3) para.156(a) (October 1, 2011)
- ⁴ Words substituted by Postal Services Act 2011 c. 5 Sch.12(3) para.156(b) (October 1, 2011)
- ⁵ Words substituted by Transport Act 2000 (Consequential Amendments) Order 2001/4050 Sch.1(II) para.9(a) (December 21, 2001)
- ⁶ Words inserted by Postal Services Act 2000 (Consequential Modifications No. 1) Order 2001/1149 Sch.1(1) para.136(3) (March 26, 2001)
- ⁷ Words inserted by Transport Act 2000 (Consequential Amendments) Order 2001/4050 Sch.1(II) para.9(b) (December 21, 2001)

England

[14.

(1) In this Schedule—

“approved section of the English coastal route” means a route in relevant approved proposals, other than an official alternative route,

“building” —

- (a) includes any structure or erection and any part of a building as so defined, but
- (b) does not include any fence or wall, anything which is a means of access as defined by section 34 or, in the case of land which is coastal margin, any slipway, hard or quay;

and for this purpose “structure” includes any tent, caravan or other temporary or moveable structure;

“burial ground” means a place which, for the time being, is set apart as a churchyard, cemetery or other ground (whether or not consecrated) in which bodies are interred;

“coastal route strip” means—

- (a) land over which the line of an approved section of the English coastal route, or an official alternative route, passes, and
- (b) subject to sub-paragraph (2), land which is adjacent to and within 2 metres either side of such a line;

“development” and “minerals” have the same meaning as in the Town and Country Planning Act 1990;

“official alternative route” has the same meaning as in section 3A;

“ploughing” and “drilling” include respectively agricultural or forestry operations similar to ploughing and agricultural or forestry operations similar to drilling;

“regulated caravan or camping site” means—

(a) land which is used for the purposes of a caravan site (within the meaning of section 1(4) of the Caravan Sites and Control of Development Act 1960) by virtue of—

- (i) a site licence issued under Part 1 of that Act (caravan site licences),
- (ii) a certificate issued under paragraph 5 of Schedule 1 to that Act (sites approved by exempted organisations), or
- (iii) paragraph 11 of that Schedule (land occupied by a local authority as a caravan site), or

(b) land which is used for the purposes of a site for tents or other moveable dwellings (within the meaning of section 269 of the Public Health Act 1936) by virtue of a licence issued under subsection (1)(i) of that section (disregarding any certificate under subsection (6) of that section which has the effect of a licence);

“relevant approved proposals” has the same meaning as in section 3A;

“statutory undertaker” means—

- (a) a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power,
- (b) any public gas transporter, within the meaning of Part I of the Gas Act 1986,
- (c) any water or sewerage undertaker,
- (d) any holder of a licence under section 6(1) of the Electricity Act 1989, or
- (e) the Environment Agency [, the Natural Resources Body for Wales]² , a universal service provider (within the meaning of [Part 3 of the Postal Services Act 2011]³) in connection with the provision of a universal postal service (within the meaning of [that Part]⁴), the Civil Aviation Authority or a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (to the extent that the person is carrying out activities authorised by the licence);

“statutory undertaking” means—

- (a) the undertaking of a statutory undertaker (which, in the case of a universal service provider (within the meaning of [Part 3 of the Postal Services Act 2011]³), means his undertaking so far as relating to the provision of a universal postal service (within the meaning of [that Part]⁴) and, in the case of a person who holds a licence under Chapter I of Part I of the Transport Act 2000, means that person's undertaking as licence holder), or
- (b) an airport to which Part V of the Airports Act 1986 applies.

(2) Where relevant approved proposals contain a proposal under section 55D(2)(c) of the National Parks and Access to the Countryside Act 1949⁵ for the landward or seaward boundary of any part of a coastal route strip excluded from a description of excepted land by paragraph 1, 7, 13A or 13C to coincide with a physical feature identified in the proposal, the boundary in question is to coincide with that feature.

] ¹

Notes

- ¹ Amended by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(1) para.9 (April 6, 2010)
- ² Words inserted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.410 (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)
- ³ Words substituted by Postal Services Act 2011 c. 5 Sch.12(3) para.156(a) (October 1, 2011)
- ⁴ Words substituted by Postal Services Act 2011 c. 5 Sch.12(3) para.156(b) (October 1, 2011)
- ⁵ Section 55D was inserted by section 302 of the 2009 Act.

Commencement


Sch. 1(II) para. 14 definition of "building"- definition of "statutory undertaking" (b): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 1(II) para. 14 definition of "building"- definition of "statutory undertaking" (b): England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)

 Partially In Force

Wales

[NOTE: not yet in force otherwise.]

England

[14A.

In paragraph 5, the reference to the getting of minerals by surface working does not include the removal by any person of sand or shingle from an area of foreshore or beach which is coastal margin, in pursuance of a right which is enjoyed by the person under any grant or reservation, local or personal Act, Royal charter or letters patent or by prescription.

] ¹

Notes

- ¹ Added by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(1) para.10 (April 6, 2010)

Extent

Sch. 1(II) para. 14A: England, Wales

✓ Law In Force

15.—

(1) Land is not to be treated as excepted land by reason of any development carried out on the land, if the carrying out of the development requires planning permission under Part III of the Town and Country Planning Act 1990 and that permission has not been granted.

(2) Sub-paragraph (1) does not apply where the development is treated by section 191(2) of the Town and Country Planning Act 1990 as being lawful for the purposes of that Act.

Commencement

Sch. 1(II) para. 15(1)-(2): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 1(II) para. 15(1)-(2): England, Wales

✓ Law In Force

16.

The land which is excepted land by virtue of paragraph 10 does not include—

(a) any means of access, as defined by section 34, or

(b) any way leading to such a means of access,

if the means of access is necessary for giving the public reasonable access to access land.

Commencement

Sch. 1(II) para. 16(a)-(b): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 1(II) para. 16(a)-(b): England, Wales

✓ Law In Force

17.

Land which is habitually used for the training of racehorses is not to be treated by virtue of paragraph 11 as excepted land except—

(a) between dawn and midday on any day, and

(b) at any other time when it is in use for that purpose.

Commencement

Sch. 1(II) para. 17(a)-(b): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 1(II) para. 17(a)-(b): England, Wales

SCHEDULE 2**RESTRICTIONS TO BE OBSERVED BY PERSONS EXERCISING RIGHT OF ACCESS****Section 2***General restrictions*

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)

✓ Law In Force

Wales

1.

Section 2(1) does not entitle a person to be on any land if, in or on that land, he—

- (a) drives or rides any vehicle other than an invalid carriage as defined by section 20(2) of the Chronically Sick and Disabled Persons Act 1970,
- (b) uses a vessel or sailboard on any non-tidal water,
- (c) has with him any animal other than a dog,
- (d) commits any criminal offence,
- (e) lights or tends a fire or does any act which is likely to cause a fire,
- (f) intentionally or recklessly takes, kills, injures or disturbs any animal, bird or fish,
- (g) intentionally or recklessly takes, damages or destroys any eggs or nests,
- (h) feeds any livestock,
- (i) bathes in any non-tidal water,
- (j) engages in any operations of or connected with hunting, shooting, fishing, trapping, snaring, taking or destroying of animals, birds or fish or has with him any engine, instrument or apparatus used for hunting, shooting, fishing, trapping, snaring, taking or destroying animals, birds or fish,
- (k) uses or has with him any metal detector,
- (l) intentionally removes, damages or destroys any plant, shrub, tree or root or any part of a plant, shrub, tree or root,
- (m) obstructs the flow of any drain or watercourse, or opens, shuts or otherwise interferes with any sluice-gate or other apparatus,
- (n) without reasonable excuse, interferes with any fence, barrier or other device designed to prevent accidents to people or to enclose livestock,
- (o) neglects to shut any gate or to fasten it where any means of doing so is provided, except where it is reasonable to assume that a gate is intended to be left open,
- (p) affixes or writes any advertisement, bill, placard or notice,

- (q) in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land, does anything which is intended by him to have the effect—
 - (i) of intimidating those persons so as to deter them or any of them from engaging in that activity,
 - (ii) of obstructing that activity, or
 - (iii) of disrupting that activity,
- (r) without reasonable excuse, does anything which (whether or not intended by him to have the effect mentioned in paragraph (q)) disturbs, annoys or obstructs any persons engaged in a lawful activity on the land,
- (s) engages in any organised games, or in camping, hang-gliding or paragliding, or
- (t) engages in any activity which is organised or undertaken (whether by him or another) for any commercial purpose.

England

[1.

- (1) Subject to sub-paragraph (2), section 2(1) does not entitle a person to be on any land if, in or on that land, he—
- (a) drives or rides any vehicle other than an invalid carriage as defined by section 20(2) of the Chronically Sick and Disabled Persons Act 1970,
 - (b) uses a vessel or sailboard on any non-tidal water,
 - (c) has with him any animal other than a dog,
 - (d) commits any criminal offence,
 - (e) lights or tends a fire or does any act which is likely to cause a fire,
 - (f) intentionally or recklessly takes, kills, injures or disturbs any animal, bird or fish,
 - (g) intentionally or recklessly takes, damages or destroys any eggs or nests,
 - (h) feeds any livestock,
 - (i) bathes in any non-tidal water,
 - (j) engages in any operations of or connected with hunting, shooting, fishing, trapping, snaring, taking or destroying of animals, birds or fish or has with him any engine, instrument or apparatus used for hunting, shooting, fishing, trapping, snaring, taking or destroying animals, birds or fish,
 - (k) uses or has with him any metal detector,
 - (l) intentionally removes, damages or destroys any plant, shrub, tree or root or any part of a plant, shrub, tree or root,
 - (m) obstructs the flow of any drain or watercourse, or opens, shuts or otherwise interferes with any sluice-gate or other apparatus,
 - (n) without reasonable excuse, interferes with any fence, barrier or other device designed to prevent accidents to people or to enclose livestock,
 - (o) neglects to shut any gate or to fasten it where any means of doing so is provided, except where it is reasonable to assume that a gate is intended to be left open,
 - (p) affixes or writes any advertisement, bill, placard or notice,
 - (q) in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land, does anything which is intended by him to have the effect—

- (i) of intimidating those persons so as to deter them or any of them from engaging in that activity,
 - (ii) of obstructing that activity, or
 - (iii) of disrupting that activity,
- (r) without reasonable excuse, does anything which (whether or not intended by him to have the effect mentioned in paragraph (q)) disturbs, annoys or obstructs any persons engaged in a lawful activity on the land,
- (s) engages in any organised games, or in camping, hang-gliding or paragliding, or
- (t) engages in any activity which is organised or undertaken (whether by him or another) for any commercial purpose.

(2) Nothing in sub-paragraph (1)(f) or (j) affects a person's entitlement by virtue of section 2(1) to be on any land which is coastal margin if the person's conduct (to the extent that it falls within sub-paragraph (1)(f) or (j)) is limited to permitted fishing-related conduct.

(3) In sub-paragraph (2) the reference to permitted fishing-related conduct is a reference to the person—

- (a) having a fishing rod or line, or
- (b) engaging in any activities which—
 - (i) are connected with, or ancillary to, fishing with a rod and line, or with a line only, in the exercise of a right to fish, and
 - (ii) take place on land other than land used for grazing or other agricultural purposes.

] ¹

Notes


- ¹ Amended by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(2) para.12 (April 6, 2010)

Commencement

Sch. 2 para. 1(a)-(t): September 19, 2004 in relation to England; May 28, 2005 otherwise (SI 2004/2173 art. 2(1)(h); SI 2005/423 art. 2(g))

Extent

Sch. 2 para. 1-(t): England, Wales

 Law In Force

2.—

(1) In paragraph 1(k), “metal detector” means any device designed or adapted for detecting or locating any metal or mineral in the ground.


(2) For the purposes of paragraph 1(q) and (r), activity on any occasion on the part of a person or persons on land is “lawful” if he or they may engage in the activity on the land on that occasion without committing an offence or trespassing on the land.

Commencement

Sch. 2 para. 2(1)-(2): September 19, 2004 in relation to England; May 28, 2005 otherwise (SI 2004/2173 art. 2(1)(h); SI 2005/423 art. 2(g))

Extent

Sch. 2 para. 2-(2): England, Wales

 Law In Force

3.

Regulations may amend paragraphs 1 and 2.

Commencement


Sch. 2 para. 3: September 19, 2004 in relation to England; May 28, 2005 otherwise (SI 2004/2173 art. 2(1)(h); SI 2005/423 art. 2(g))

Extent

Sch. 2 para. 3: England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)

 Law In Force

Wales

4.

During the period beginning with 1st March and ending with 31st July in each year, section 2(1) does not entitle a person to be on any land if he takes, or allows to enter or remain, any dog which is not on a short lead.

England

[4.

(1) During the period beginning with 1st March and ending with 31st July in each year, section 2(1) does not entitle a person to be on any land if he takes, or allows to enter or remain, any dog which is not on a short lead.

(2) Sub-paragraph (1) does not apply in relation to land which is coastal margin.

]¹

Notes


¹ Existing Sch.2 para.4 renumbered as Sch.2 para.4(1) and Sch.2 para.4(2) added by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(2) para.13 (April 6, 2010)

Commencement

Sch. 2 para. 4: September 19, 2004 in relation to England; May 28, 2005 otherwise (SI 2004/2173 art. 2(1)(h); SI 2005/423 art. 2(g))

Extent

Sch. 2 para. 4: England, Wales

 Law In Force

5.


Whatever the time of year, section 2(1) does not entitle a person to be on any land if he takes, or allows to enter or remain, any dog which is not on a short lead and which is in the vicinity of livestock.

Commencement

Sch. 2 para. 5: September 19, 2004 in relation to England; May 28, 2005 otherwise (SI 2004/2173 art. 2(1)(h); SI 2005/423 art. 2(g))

Extent

Sch. 2 para. 5: England, Wales

 Law In Force

6.

In paragraphs 4 and 5, “short lead” means a lead of fixed length and of not more than two metres.

Commencement

Sch. 2 para. 6: September 19, 2004 in relation to England; May 28, 2005 otherwise (SI 2004/2173 art. 2(1)(h); SI 2005/423 art. 2(g))

Extent

Sch. 2 para. 6: England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)

1 Partially In Force

Wales

[NOTE: not yet in force otherwise.]

England

[6A.—

(1) Whatever the time of year, section 2(1) does not entitle a person to be on any land which is coastal margin at any time if—

- (a) that person has taken onto the land, or allowed to enter or remain on the land, any dog, and
- (b) at that time, the dog is not under the effective control of that person or another person.

(2) For this purpose a dog is under the effective control of a person if the following conditions are met.

(3) The first condition is that—

- (a) the dog is on a lead, or
- (b) the dog is within sight of the person and the person remains aware of the dog's actions and has reason to be confident that the dog will return to the person reliably and promptly on the person's command.

(4) The second condition is that the dog remains—

- (a) on access land, or
- (b) on other land to which that person has a right of access.

(5) For the purposes of sub-paragraph (4), a dog which is in tidal waters is to be regarded as remaining on access land.

] ¹

Notes


¹ Added by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(2) para.14 (April 6, 2010)

Extent

Sch. 2 para. 6A(1)-(5): England, Wales

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Wales](#) | [England](#)

 Partially In Force

Wales

[NOTE: not yet in force otherwise.]

England

[6B.—

(1) Section 2(1) does not entitle a person to be on any land which is coastal margin if, on that land, the person obstructs any person passing, or attempting to pass, on foot along any part of the English coastal route, any official alternative route or any relevant temporary route.

(2) In this paragraph—

“the English coastal route” means the route secured pursuant to the coastal access duty (within the meaning of section 296 of the Marine and Coastal Access Act 2009);

“official alternative route” has the meaning given by section 55J of the National Parks and Access to the Countryside Act 1949²;

“relevant temporary route” means a route for the time being having effect by virtue of a direction under section 55I of that Act³ to the extent that the line of the route passes over coastal margin.

] ¹

Notes

¹ Added by Access to the Countryside (Coastal Margin) (England) Order 2010/558 Sch.1(2) para.14 (April 6, 2010)

² Section 55J was inserted by section 302 of the 2009 Act.

³ Section 55I was inserted by section 302 of the 2009 Act.

Extent

Sch. 2 para. 6B(1)-(2) definition of "relevant temporary route": England, Wales

Removal or relaxation of restrictions

✓ Law In Force

7.—

(1) The relevant authority may by direction, with the consent of the owner of any land, remove or relax any of the restrictions imposed by paragraphs 1, 4 and 5 in relation to that land, either indefinitely or during a specified period.

(2) In sub-paragraph (1), the reference to a specified period includes references—

- (a) to a specified period in every calendar year, or
- (b) to a period which is to be determined by the owner of the land in accordance with the direction and notified by him to the relevant authority in accordance with regulations.

(3) Regulations may make provision as to—

- (a) the giving or revocation of directions under this paragraph,
- (b) the variation of any direction given under this paragraph by a subsequent direction so given,
- (c) the giving or revocation of consent for the purposes of sub-paragraph (1), and
- (d) the steps to be taken by the relevant authority or the owner for informing the public about any direction under this paragraph or its revocation.

(4) In this paragraph—

“the relevant authority” has the meaning given by section 21;

“owner”, in relation to any land which is subject to a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 or a tenancy to which the Agricultural Holdings Act 1986 applies, means the tenant under that tenancy.

Commencement

Sch. 2 para. 7(1)-(4) definition of "owner": September 19, 2004 in relation to England; May 28, 2005 otherwise (SI 2004/2173 art. 2(1)(h); SI 2005/423 art. 2(g))

Extent

Sch. 2 para. 7-(4) definition of "owner": England, Wales

Dedicated land

✓ Law In Force

8.

In relation to land to which a dedication under section 16 relates (whether or not it would be access land apart from the dedication), the provisions of this Schedule have effect subject to the terms of the dedication.


Commencement

Sch. 2 para. 8: September 19, 2004 in relation to England; May 28, 2005 otherwise (SI 2004/2173 art. 2(1)(h); SI 2005/423 art. 2(g))

Extent

Sch. 2 para. 8: England, Wales

SCHEDULE 3**DELEGATION OF APPELLATE FUNCTIONS****Section 8(2)**

 Law In Force

Interpretation**1.**

In this Schedule—

“appointed person” means a person appointed under section 8(1)(a);

“the appointing authority” means—

(a) the Secretary of State, in relation to an appointment made by him, or

(b) the National Assembly for Wales, in relation to an appointment made by it;

“appointment”, in the case of any appointed person, means appointment under section 8(1)(a).

Commencement

Sch. 3 para. 1 definition of "appointed person"- definition of "appointment": January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 3 para. 1 definition of "appointed person"- definition of "appointment": England, Wales

 Law In Force

Appointments**2.**

An appointment under section 8(1)(a) must be in writing and—

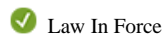
- (a) may relate to any particular appeal or matter specified in the appointment or to appeals or matters of a description so specified,
- (b) may provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of such conditions as may be specified in the appointment, and
- (c) may, by notice in writing given to the appointed person, be revoked at any time by the appointing authority in respect of any appeal or matter which has not been determined by the appointed person before that time.

Commencement

Sch. 3 para. 2(a)-(c): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 3 para. 2(a)-(c): England, Wales



Law In Force

Powers of appointed person

3.

Subject to the provisions of this Schedule, an appointed person shall, in relation to any appeal or matter to which his appointment relates, have the same powers and duties as the appointing authority, other than—

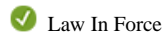
- (a) any function of making regulations;
- (b) any function of holding an inquiry or other hearing or of causing an inquiry or other hearing to be held; or
- (c) any function of appointing a person for the purpose—
 - (i) of enabling persons to appear before and be heard by the person so appointed;
 - or
 - (ii) of referring any question or matter to that person.

Commencement

Sch. 3 para. 3(a)-(c)(ii): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 3 para. 3(a)-(c)(ii): England, Wales



Law In Force

Holding of local inquiries and other hearings by appointed persons

4.—

- (1) If either of the parties to an appeal or matter expresses a wish to appear before and be heard by the appointed person, the appointed person shall give both of them an opportunity of appearing and being heard.
- (2) Whether or not a party to an appeal or matter has asked for an opportunity to appear and be heard, the appointed person—
 - (a) may hold a local inquiry or other hearing in connection with the appeal or matter, and
 - (b) shall, if the appointing authority so directs, hold a local inquiry in connection with the appeal or matter.
- (3) Where an appointed person holds a local inquiry or other hearing by virtue of this Schedule, an assessor may be appointed by the appointing authority to sit with the appointed person at the inquiry or hearing and advise him on any matters arising, notwithstanding that the appointed person is to determine the appeal or matter.
- (4) Subject to paragraph 5, the costs of a local inquiry held under this Schedule shall be defrayed by the appointing authority.

Commencement

Sch. 3 para. 4(1)-(4): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 3 para. 4(1)-(4): England, Wales



Law In Force

Local inquiries under this Schedule: evidence and costs

5.

- Subsections (2) to (5) of section 250 of the Local Government Act 1972 (local inquiries: evidence and costs) shall apply to local inquiries or other hearings held under this Schedule by an appointed person as they apply to inquiries caused to be held under that section by a Minister, but as if—
- (a) in subsection (2) (evidence) the reference to the person appointed to hold the inquiry were a reference to the appointed person,
 - (b) in subsection (4) (recovery of costs of holding the inquiry)—
 - (i) references to the Minister causing the inquiry to be held were references to the appointing authority, and
 - (ii) references to a local authority included references to the appropriate countryside body, and


(c) in subsection (5) (orders as to the costs of the parties) the reference to the Minister causing the inquiry to be held were a reference to the appointed person or the appointing authority.

Commencement

Sch. 3 para. 5(a)-(c): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 3 para. 5(a)-(c): England, Wales

 Law In Force

Revocation of appointments and making of new appointments

6.—

(1) Where under paragraph 2(c) the appointment of the appointed person is revoked in respect of any appeal or matter, the appointing authority shall, unless he proposes to determine the appeal or matter himself, appoint another person under section 8(1)(a) to determine the appeal or matter instead.

(2) Where such a new appointment is made, the consideration of the appeal or matter, or any hearing in connection with it, shall be begun afresh.


(3) Nothing in sub-paragraph (2) shall require any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

Commencement

Sch. 3 para. 6(1)-(3): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 3 para. 6(1)-(3): England, Wales

 Law In Force

Certain acts and omissions of appointed person to be treated as those of appointing authority

7.—

(1) Anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates shall be treated for all purposes as done or omitted to be done by the appointing authority.

(2) Sub-paragraph (1) does not apply—

- (a) for the purposes of so much of any contract made between the appointing authority and the appointed person as relates to the exercise of the function, or
- (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that sub-paragraph.


Commencement

Sch. 3 para. 7(1)-(2)(b): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 3 para. 7(1)-(2)(b): England, Wales

SCHEDULE 4**MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO PART I****Section 46(3)**

 Law In Force

Law of Property Act 1925 (c. 20)

1.


In section 193(1) of the Law of Property Act 1925 (rights of public over commons and waste lands), in paragraph (b) of the proviso, after “injuriously affected,” there is inserted “for conserving flora, fauna or geological or physiographical features of the land,”.

Commencement

Sch. 4 para. 1: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(b), art. 2(2)(j))

Extent

Sch. 4 para. 1: England, Wales

 Law In Force

Forestry Act 1967 (c. 10)

2.


In section 9 of the Forestry Act 1967 (requirement of licence for felling), in the definition of “public open space” in subsection (6), after “1949” there is inserted “or Part I of the Countryside and Rights of Way Act 2000”.

Commencement

Sch. 4 para. 2: September 19, 2004 in relation to England; May 28, 2005 otherwise (SI 2004/2173 art. 2(1)(i); SI 2005/423 art. 2(h))

Extent

Sch. 4 para. 2: England, Wales

 Law In Force

Agriculture Act 1967 (c. 52)**3.**


In section 52 of the Agriculture Act 1967 (control of afforestation), in the definition of “public open space” in subsection (15), after “1949” there is inserted “or Part I of the Countryside and Rights of Way Act 2000”.

Commencement

Sch. 4 para. 3: September 19, 2004 in relation to England; May 28, 2005 otherwise (SI 2004/2173 art. 2(1)(i); SI 2005/423 art. 2(h))

Extent

Sch. 4 para. 3: England, Wales

 Law In Force

Countryside Act 1968 (c. 41)**4.**

In section 2(6) of the Countryside Act 1968 (Countryside Agency and Countryside Council for Wales to make recommendations to public bodies in relation to byelaws) for “and the Act of 1949” there is substituted “, the Act of 1949 and Part I of the Countryside and Rights of Way Act 2000”.

Commencement

Sch. 4 para. 4: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(b), art. 2(2)(j))

Extent


Sch. 4 para. 4: England, Wales

 Repealed

5. [...]¹

Notes

- ¹ Repealed by Natural Environment and Rural Communities Act 2006 c. 16 Sch.12 para.1 (October 1, 2006 as SI 2006/2541)
-

 Law In Force

Wildlife and Countryside Act 1981 (c. 69)

6.

In paragraph 13(1) of Schedule 13 to the Wildlife and Countryside Act 1981 (Countryside Agency's annual report on the discharge of their functions) after “1968 Act” there is inserted “, the Countryside and Rights of Way Act 2000”.

Commencement

Sch. 4 para. 6: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(b), art. 2(2)(j))

Extent

Sch. 4 para. 6: England, Wales


SCHEDULE 5

DEFINITIVE MAPS AND STATEMENTS AND RESTRICTED BYWAYS

Section 51

PART I

AMENDMENTS OF PART III OF WILDLIFE AND COUNTRYSIDE ACT 1981

 Law In Force

1.—

(1) Section 53 of the 1981 Act is amended as follows.

(2) In subsection (1) (meaning of “definitive map and statement”) after “subject to section 57(3)” there is inserted “and 57A(1)”.

(3) In subsection (3)(a)(iii), after “public path” there is inserted “or a restricted byway”.

(4) In subsection (3)(c)(i) for “a right of way to which this Part applies” there is substituted “a right of way such that the land over which the right subsists is a public path or, subject to section 54A, a byway open to all traffic”.

(5) In subsection (4), after “public path” there is inserted “, restricted byway”.

(6) After subsection (4) there is inserted—

“(4A) Subsection (4B) applies to evidence which, when considered with all other relevant evidence available to the surveying authority, shows as respects a way shown in a definitive map and statement as a restricted byway that the public have, and had immediately before the commencement of section 47 of the Countryside and Rights of Way Act 2000, a right of way for vehicular and all other kinds of traffic over that way.

(4B) For the purposes of subsection (3)(c)(ii), such evidence is evidence which, when so considered, shows that the way concerned ought, subject to section 54A, to be shown in the definitive map and statement as a byway open to all traffic.”

(7) After subsection (5) there is inserted—

“(5A) Evidence to which subsection (4B) applies on the commencement of section 47 of the Countryside and Rights of Way Act 2000 shall for the purposes of subsection (5) and any application made under it be treated as not having been discovered by the surveying authority before the commencement of that section.”

Commencement

Sch. 5(I) para. 1(1)-(7): May 2, 2006 in relation to England; May 11, 2006 otherwise (SI 2006/1172 art. 2(g)(i); SI 2006/1279 art. 2(f)(i))

Extent

Sch. 5(I) para. 1-(7): England, Wales

 Law In Force

2.

After section 53 of that Act there is inserted—

“53A.— Power to include modifications in other orders.

(1) This section applies to any order—

- (a) which is of a description prescribed by regulations made by the Secretary of State,
- (b) whose coming into operation would, as regards any definitive map and statement, be an event within section 53(3)(a),
- (c) which is made by the surveying authority, and
- (d) which does not affect land outside the authority's area.

- (2) The authority may include in the order such provision as it would be required to make under section 53(2)(b) in consequence of the coming into operation of the other provisions of the order.
- (3) An authority which has included any provision in an order by virtue of subsection (2)—
- (a) may at any time before the order comes into operation, and
 - (b) shall, if the order becomes subject to special parliamentary procedure, withdraw the order and substitute for it an order otherwise identical but omitting any provision so included.
- (4) Anything done for the purposes of any enactment in relation to an order withdrawn under subsection (3) shall be treated for those purposes as done in relation to the substituted order.
- (5) No requirement for the confirmation of an order applies to provisions included in the order by virtue of subsection (2), but any power to modify an order includes power to make consequential modifications to any provision so included.
- (6) Provisions included in an order by virtue of subsection (2) shall take effect on the date specified under section 56(3A) as the relevant date.
- (7) Where any enactment provides for questioning the validity of an order on any grounds, the validity of any provision included by virtue of subsection (2) may be questioned in the same way on the grounds—
- (a) that it is not within the powers of this Part, or
 - (b) that any requirement of this Part or of regulations made under it has not been complied with.
- (8) Subject to subsections (5) to (7), the Secretary of State may by regulations provide that any procedural requirement as to the making or coming into operation of an order to which this section applies shall not apply, or shall apply with modifications prescribed by the regulations, to so much of the order as contains provision included by virtue of subsection (2).
- (9) 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.

53B.— Register of applications under section 53.

- (1) Every surveying authority shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect to applications under section 53(5).
- (2) The register shall contain such information as may be prescribed with respect to the manner in which such applications have been dealt with.
- (3) Regulations may make provision for the register to be kept in two or more parts, each part containing such information relating to applications under section 53(5) as may be prescribed.
- (4) Regulations may make provision—
- (a) for a specified part of the register to contain copies of applications and of the maps submitted with them, and

(b) for the entry relating to any application, and everything relating to it, to be removed from any part of the register when—

- (i) the application (including any appeal to the Secretary of State) has been finally disposed of, and
- (ii) if an order is made, a decision has been made to confirm or not to confirm the order,

(without prejudice to the inclusion of any different entry relating to it in another part of the register).

(5) Every register kept under this section shall be available for inspection free of charge at all reasonable hours.

(6) In this section—

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Secretary of State by statutory instrument;


and a statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Commencement

Sch. 5(I) para. 2: September 27, 2005 in relation to England for the purpose specified in SI 2005/2459 art.2(b); November 21, 2005 in relation to Wales; February 18, 2008 in relation to England otherwise (SI 2005/1314 art. 4(a); SI 2005/2459 art. 2(1)(b); SI 2008/308 art. 2)

Extent

Sch. 5(I) para. 2-: England, Wales

 Not Yet In Force

3.—

(1) Until the coming into force of section 47(1) of this Act, section 54 of the 1981 Act (duty to reclassify roads used as public paths) has effect as follows.

(2) In subsection (2)—

- (a) for the words from the beginning to “by” there is substituted “Where the particulars relating to any road used as a public path have been reviewed under subsection (1)(a), the definitive map and statement shall be modified so as to show that way by”, and
- (b) the words from “and shall not” to the end are omitted.

(3) In subsection (3), for the words “A road used as a public path” there is substituted “Such a way”.

(4) After subsection (5) there is inserted—

“(5A) No order under this Part modifying a definitive map and statement, and no provision included by virtue of section 53A(2) in any order, shall use the expression “road used as a public path” to describe any way not already shown as such in the map and statement.”

Commencement

Sch. 5(I) para. 3(1)-(4): Date to be appointed (not yet in force)

Extent

Sch. 5(I) para. 3(1)-(4): England, Wales

 Not Yet In Force

4.

After section 54 of that Act there is inserted—

“54A.— BOATs not to be added to definitive maps.

(1) No order under this Part shall, after the cut-off date, modify a definitive map and statement so as to show as a byway open to all traffic any way not shown in the map and statement as a highway of any description.

(2) In this section “the cut-off date” means, subject to regulations under subsection (3), 1st January 2026.

(3) The Secretary of State may make regulations—

- (a) substituting as the cut-off date a date later than the date specified in subsection (2) or for the time being substituted under this paragraph;
- (b) containing such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the operation of subsection (1), including in particular its operation in relation to—
 - (i) an order under section 53(2) for which on the cut-off date an application is pending,
 - (ii) an order under this Part which on that date has been made but not confirmed,
 - (iii) an order under section 55 made after that date, or
 - (iv) an order under this Part relating to any way as respects which such an order, or any provision of such an order, has after that date been to any extent quashed.

(4) Regulations under subsection (3)(a)—

- (a) may specify different dates for different areas; but
- (b) may not specify a date later than 1st January 2031, except as respects an area within subsection (5).

(5) An area is within this subsection if it is in—

- (a) the Isles of Scilly, or
- (b) an area which, at any time before the repeal by section 73 of this Act of sections 27 to 34 of the 1949 Act—
 - (i) was excluded from the operation of those sections by virtue of any provision of the 1949 Act, or

(ii) would have been so excluded but for a resolution having effect under section 35(2) of that Act.

(6) Where by virtue of regulations under subsection (3) there are different cut-off dates for areas into which different parts of any way extend, the cut-off date in relation to that way is the later or latest of those dates.

(7) Where it appears to the Secretary of State that any provision of this Part can by virtue of subsection (1) have no further application he may by order make such amendments or repeals in this Part as appear to him to be, in consequence, necessary or expedient.

(8) An order or 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.”

Commencement

Sch. 5(I) para. 4: Date to be appointed (not yet in force)

Extent

Sch. 5(I) para. 4: England, Wales

✓ Law In Force

5.

In section 55 of that Act (no further surveys or reviews under the National Parks and Access to the Countryside Act 1949), after subsection (6) there is inserted—

“(7) Every way which—

(a) in pursuance of an order under subsection (5) is shown in a definitive map and statement as a byway open to all traffic, a bridleway or a footpath, and

(b) before the making of the order, was shown in the map and statement under review as a road used as a public path,

shall be a highway maintainable at the public expense.

(8) Subsection (7) does not oblige a highway authority to provide, on a way shown in a definitive map and statement as a byway open to all traffic, a metalled carriage-way or a carriage-way which is by any other means provided with a surface suitable for the passage of vehicles.”

Commencement

Sch. 5(I) para. 5: September 27, 2005 in relation to England; May 11, 2006 otherwise (SI 2005/2459 art. 2(1)(c); SI 2006/1279 art. 2(f)(ii))

Extent

Sch. 5(I) para. 5: England, Wales

✓ Law In Force

6.—

(1) Section 56 of that Act (effect of definitive map and statement) is amended as follows.

(2) In subsection (1)(d)—

- (a) for “road used as a public path” there is substituted “restricted byway”,
- (b) after “the map shall” there is inserted “, subject to subsection (2A),”, and
- (c) after “leading a horse” there is inserted “together with a right of way for vehicles other than mechanically propelled vehicles”.

(3) After subsection (1) there is inserted—

“(1A) In subsection (1)(d) “mechanically propelled vehicle” does not include an electrically assisted pedal cycle of a class prescribed for the purposes of section 189(1)(c) of the Road Traffic Act 1988.”

(4) In subsection (2)—

(a) in paragraph (a)—

- (i) after “this Part” there is inserted “or an order to which section 53A applies which includes provision made by virtue of subsection (2) of that section”, and
- (ii) after “means” there is inserted “, subject to subsection (2A),” and

(b) in paragraph (b), after “(3)” there is inserted “or (3A)”.

(5) After that subsection there is inserted—

“(2A) In the case of a map prepared before the date of the coming into force of section 47 of the Countryside and Rights of Way Act 2000—

(a) subsection (1)(d) and (e) have effect subject to the operation of any enactment or instrument, and to any other event, whereby a way shown on the map as a restricted byway has, on or before that date—

- (i) been authorised to be stopped up, diverted or widened, or
- (ii) become a public path, and

(b) subsection (2)(a) has effect in relation to any way so shown with the substitution of that date for the date mentioned there.”

(6) After subsection (3) there is inserted—

“(3A) Every order to which section 53A applies which includes provision made by virtue of subsection (2) of that section shall specify, as the relevant date for the purposes of the order, such date as the authority may in accordance with regulations made by the Secretary of State determine.”

(7) After subsection (4) there is inserted—

“(4A) 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.”

(8) Subsection (5) is omitted.

Commencement

Sch. 5(I) para. 6(1)-(8): May 2, 2006 in relation to England; May 11, 2006 otherwise (SI 2006/1172 art. 2(g)(ii); SI 2006/1279 art. 2(f)(iii))

Extent

Sch. 5(I) para. 6-(8): England, Wales

 Partially In Force

7.—

(1) Section 57 of that Act (supplementary provisions as to definitive maps and statements) is amended as follows.

(2) In subsection (1), the words “on such scale as may be so prescribed,” are omitted.

(3) In subsection (2), for “section 55(3)” there is substituted “subsection (1) or any other provision of this Part”.

(4) In subsection (3) after “for the purposes of the foregoing provisions of this Part” there is inserted “, and for the purposes of section 57A(1),”.

(5) After that subsection there is inserted—

“(3A) Where as respects any definitive map and statement the requirements of section 53(2), and of section 55 so far as it applies, have been complied with, the map and statement are to be regarded for the purposes of subsection (3) as having been modified in accordance with the foregoing provisions of this Part whether or not, as respects the map and statement, the requirements of section 54 have been complied with.”

(6) After subsection (6) there is inserted—

“(6A) In subsection (1), the reference to an order under the foregoing provisions of this Part includes a reference to so much of an order to which section 53A applies as contains provision made by virtue of subsection (2) of that section; and subsections (5) and (6) apply to—

- (a) orders to which section 53A applies modifying the map and statement, and
- (b) such documents relating to them as may be prescribed by regulations made by the Secretary of State,

as those subsections apply to orders under this Part modifying the map and statement.

(6B) Regulations under paragraph (b) of subsection (6A) may require any document to be prepared by a surveying authority for the purposes of that paragraph, and any such document shall be in such form as may be prescribed by the regulations.

(6C) Regulations made by the Secretary of State may require any surveying authority—

- (a) to keep such other documents as may be prescribed by the regulations available for inspection at such times and places and in such manner as may be so prescribed, or

(b) to provide to any other surveying authority any document so prescribed which that authority is, by regulations under paragraph (a), required to keep available for inspection.”

Commencement

Sch. 5(I) para. 7(1)-(6): May 2, 2006 in relation to England; not yet in force otherwise (SI 2006/1172 art. 2(g)(ii))

Extent

Sch. 5(I) para. 7(1)-(6): England, Wales

✔ Law In Force

8.

After section 57 of that Act there is inserted—

“57A.— Consolidation of definitive maps and statements.

(1) Where—

(a) different definitive maps and statements relate to different parts of a surveying authority's area,

(b) as respects so much of each definitive map and statement as relates to that area the requirements of section 53(2), and of section 55 so far as it applies, have been complied with, and

(c) there is no part of that area to which no definitive map and statement relate, the authority may, if it appears to them expedient to do so, prepare a map and statement comprising copies of so much of each definitive map and statement as relates to the authority's area; and where they do so the map and statement so prepared and not, so far as copied, the earlier maps and statements shall be regarded for the purposes of sections 53 to 56 and 57(2) and (3) as the definitive map and statement for the area to which they relate.

(2) The power conferred by subsection (1) is not exercisable by a surveying authority if the definitive map and statement relating to any part of the authority's area is a map and statement in respect of which a review under section 33 of the 1949 Act was begun before the commencement date but has been neither abandoned in pursuance of a direction under section 55(1) nor completed.

(3) References in subsection (1) to a definitive map and statement are, in the case of a map and statement modified in accordance with any of the foregoing provisions of this Part, references to the map and statement as modified.

(4) The statement prepared under subsection (1) shall specify, as the relevant date for the purposes of the map, such date, not being earlier than six months before the preparation of the map and statement, as the authority may determine.

(5) Every surveying authority shall take such steps as they consider expedient for bringing to the attention of the public the preparation by them of any map and statement under subsection (1).”

Commencement

Sch. 5(I) para. 8: February 13, 2004 in relation to England; May 31, 2005 in relation to Wales (SI 2004/292 art. 2(d)(i); SI 2005/1314 art. 2(a)(i))

Extent

Sch. 5(I) para. 8: England, Wales

✔ Law In Force

9.

In section 66(1) of that Act (interpretation of Part III) after the definition of “public path” there is inserted—

““restricted byway” has the same meaning as in Part II of the Countryside and Rights of Way Act 2000;”.

Commencement

Sch. 5(I) para. 9: May 2, 2006 in relation to England; May 11, 2006 otherwise (SI 2006/1172 art. 2(g)(iii); SI 2006/1279 art. 2(f)(iv))

Extent

Sch. 5(I) para. 9: England, Wales

✔ Law In Force

10.

In Schedule 14 to that Act (applications for certain orders under Part III), in paragraph 4(2) at the end there is inserted “(which may include a direction as to the time within which an order is to be made)”

Commencement

Sch. 5(I) para. 10: February 13, 2004 in relation to England; May 31, 2005 in relation to Wales (SI 2004/292 art. 2(d)(ii); SI 2005/1314 art. 2(a)(ii))

Extent

Sch. 5(I) para. 10: England, Wales

✔ Law In Force

11.—

(1) Schedule 15 to that Act (procedure in connection with certain orders) is amended as follows.

(2) In paragraph 3, in sub-paragraph (1)(c) after “order” there is inserted “, which must include particulars of the grounds relied on,”.

(3) In sub-paragraph (9) of that paragraph—

(a) after “sub-paragraph” there is inserted “(1)(c) or”, and

(b) after “limiting” there is inserted “the grounds which may be relied on or”.

(4) In paragraph 7, in sub-paragraph (2) after “shall” there is inserted “, subject to sub-paragraph (2A),”.

(5) After sub-paragraph (2) of that paragraph there is inserted—

“(2A) The Secretary of State may, but need not, act as mentioned in sub-paragraph (2)(a) or (b) 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.”

(6) In sub-paragraph (3) of that paragraph, for “the person appointed to hold the inquiry” there is substituted “any person appointed to hold an inquiry”.

(7) In paragraph 8—

(a) in sub-paragraph (2)(a) after “the proposal” there is inserted “, which must include particulars of the grounds relied on,”,

(b) for sub-paragraph (2)(b) and (c) there is substituted—

“(b) if any representation or objection duly made is not withdrawn (but subject to sub-paragraph (3)), hold a local inquiry or afford any person by whom any such representation or objection has been made an opportunity of being heard by a person appointed by the Secretary of State for the purpose; and

(c) consider the report of any person appointed to hold an inquiry or to hear representations or objections.

(3) The Secretary of State may, but need not, act as mentioned in sub-paragraph (2)(b) 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 in accordance with his proposal.

(4) Sub-paragraph (2)(a) shall not be construed as limiting the grounds which may be relied on at any local inquiry or hearing held under this paragraph.”

(8) Paragraph 9 is omitted and after paragraph 10 there is inserted—

“10A.— Hearings and local inquiries

(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) shall apply in relation to any hearing or local inquiry held under paragraph 7 or 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 7 or 8 by a person appointed under paragraph 10(1), subsection (5) of that section shall 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) shall apply in relation to a hearing or local inquiry under paragraph 7 or 8 as it applies in relation to a hearing or local inquiry for the purposes referred to in that section.”


Commencement

Sch. 5(I) para. 11(1)-(8): February 13, 2004 in relation to England; May 31, 2005 in relation to Wales (SI 2004/292 art. 2(d)(iii), art. 3(1); SI 2005/1314 art. 2(a)(iii))

Extent

Sch. 5(I) para. 11-(8): England, Wales

PART II**AMENDMENTS OF OTHER ACTS***National Parks and Access to the Countryside Act 1949 (c. 97)*

 Law In Force

12.—

(1) Section 51 of the National Parks and Access to the Countryside Act 1949 (general provisions as to long-distance routes) is amended as follows.

(2) In subsection (2)(a), for the words from “any public path” to the end there is substituted “any highway along which the route passes and which is a public path, a restricted byway or a way shown in a definitive map and statement as a restricted byway or byway open to all traffic,”.

(3) In subsection (5), for the words from “existing public paths” to “route passes” there is substituted “existing highways falling within paragraph (a) of that subsection”.

(4) After that subsection there is inserted—

“(6) In this section—

“definitive map and statement” has the same meaning as in Part III of the Wildlife and Countryside Act 1981; and

“restricted byway” has the same meaning as in Part II of the Countryside and Rights of Way Act 2000.”

Commencement

Sch. 5(II) para. 12(1)-(4): May 2, 2006 in relation to England; May 11, 2006 otherwise (SI 2006/1172 art. 2(g)(iv); SI 2006/1279 art. 2(g))

Extent

Sch. 5(II) para. 12-(4): England, Wales

✔ Law In Force

13.—

(1) Section 57 of that Act (penalty for displaying on footpaths notices deterring public use) is amended as follows.

(2) In subsection (1), for “road used as a public path” there is substituted “restricted byway”.

(3) In subsection (3), for “or road used as a public path” there is substituted “restricted byway open to all traffic”.

(4) After that subsection there is inserted—

“(4) In this section—

“byway open to all traffic” has the same meaning as in Part III of the Wildlife and Countryside Act 1981;

“restricted byway” has the same meaning as in Part II of the Countryside and Rights of Way Act 2000.”

Commencement

Sch. 5(II) para. 13(1)-(4): May 2, 2006 in relation to England; May 11, 2006 otherwise (SI 2006/1172 art. 2(g)(iv); SI 2006/1279 art. 2(g))

Extent

Sch. 5(II) para. 13-(4): England, Wales

Countryside Act 1968 (c. 41)

✔ Law In Force

14.

In section 41(11) of the Countryside Act 1968 (power to make byelaws and related provision about wardens)—

(a) for “road used as a public path” there is substituted “restricted byway”, and

(b) after “27(6) of the Act of 1949” there is inserted “and section 48(4) of the Countryside and Rights of Way Act 2000”.

Commencement

Sch. 5(II) para. 14(a)-(b): May 2, 2006 in relation to England; May 11, 2006 otherwise (SI 2006/1172 art. 2(g)(iv); SI 2006/1279 art. 2(g))

Extent

Sch. 5(II) para. 14-(b): England, Wales

Highways Act 1980 (c. 66)

✓ Law In Force

15.

In section 116 of the 1980 Act (power of magistrates' court to authorise stopping up or diversion of highway) in subsection (4), for “or bridleway” there is substituted “, bridleway or restricted byway”.

Commencement

Sch. 5(II) para. 15: May 2, 2006 in relation to England; May 11, 2006 otherwise (SI 2006/1172 art. 2(g)(iv); SI 2006/1279 art. 2(g))

Extent

Sch. 5(II) para. 15: England, Wales

✓ Law In Force

16.

In section 329 of the 1980 Act (interpretation)—

(a) in subsection (1) after the definition of “reconstruction” there is inserted—

““restricted byway” has the same meaning as in Part II of the Countryside and Rights of Way Act 2000;”,

(b) in subsection (2) for “either “bridleway” or “footpath”” there is substituted ““bridleway”, “footpath” or “restricted byway””.

Commencement

Sch. 5(II) para. 16(a)-(b): May 2, 2006 in relation to England; May 11, 2006 otherwise (SI 2006/1172 art. 2(g)(iv); SI 2006/1279 art. 2(g))

Extent

Sch. 5(II) para. 16-(b): England, Wales

Criminal Justice and Public Order Act 1994 (c. 33)

✔ Law In Force

17.

In section 61 of the Criminal Justice and Public Order Act 1994 (power to remove trespassers on land), in paragraph (b)(i) of the definition of “land” in subsection (9) for the words from “it falls” to “public path)” there is substituted “it is a footpath, bridleway or byway open to all traffic within the meaning of Part III of the Wildlife and Countryside Act 1981, is a restricted byway within the meaning of Part II of the Countryside and Rights of Way Act 2000”.

Commencement

Sch. 5(II) para. 17: May 2, 2006 in relation to England; May 11, 2006 otherwise (SI 2006/1172 art. 2(g)(iv); SI 2006/1279 art. 2(g))

Extent

Sch. 5(II) para. 17: England, Wales

SCHEDULE 6**AMENDMENTS RELATING TO CREATION, STOPPING UP AND DIVERSION OF HIGHWAYS****Section 57****PART I****AMENDMENTS OF HIGHWAYS ACT 1980**

✔ Law In Force

1.

In section 26 of the 1980 Act (compulsory powers for creation of footpaths and bridleways) after subsection (3) there is inserted—

“(3A) The considerations to which—

- (a) the Secretary of State is to have regard in determining whether or not to confirm or make a public path creation order, and
- (b) a local authority are to have regard in determining whether or not to confirm such an order as an unopposed order,


include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the proposed footpath or bridleway would be created.”

Commencement

Sch. 6(I) para. 1: February 12, 2003 in relation to England; April 1, 2004 in relation to Wales as specified in SI 2004/315 art.2(c); December 6, 2006 in relation to Wales otherwise (SI 2003/272 art. 2(b); SI 2004/315 art. 2(c); SI 2006/3257 art. 2(a)(i))

Extent

Sch. 6(I) para. 1-: England, Wales

 Law In Force

2.

For section 29 of the 1980 Act there is substituted—

“29.— Duty to have regard to agriculture, forestry and nature conservation.

(1) In the exercise of their functions under this Part of this Act relating to the making of public path creation agreements and public path creation orders it shall be the duty of councils to have due regard to—

- (a) the needs of agriculture and forestry, and
- (b) the desirability of conserving flora, fauna and geological and physiographical features.

(2) In this section, “agriculture” includes the breeding or keeping of horses.”

Commencement

Sch. 6(I) para. 2: February 12, 2003 in relation to England; May 31, 2005 in relation to Wales (SI 2003/272 art. 2(c); SI 2005/1314 art. 2(b)(i))

Extent

Sch. 6(I) para. 2: England, Wales

 Repealed

3. [...]¹

Notes

¹ Repealed by Growth and Infrastructure Act 2013 c. 27 s.13(7) (June 25, 2013: repeal has effect from June 25, 2013 for the purposes of making regulations as SI 2013/1488 art.4(a); October 1, 2013 subject to saving specified in SI 2013/1766 arts 3(a) and 4 otherwise)

✓ Law In Force

4.

After section 31 of the 1980 Act there is inserted—

“31A.— Register of maps, statements and declarations.

(1) The appropriate council shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect to maps and statements deposited and declarations lodged with that council under section 31(6) above.

(2) Regulations may make provision for the register to be kept in two or more parts, each part containing such information as may be prescribed with respect to such maps, statements and declarations.

(3) Regulations may make provision as to circumstances in which an entry relating to a map, statement or declaration, or anything relating to it, is to be removed from the register or from any part of it.

(4) Every register kept under this section shall be available for inspection free of charge at all reasonable hours.

(5) In this section—

“appropriate council” has the same meaning as in section 31(6) above;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Secretary of State.”

Commencement

Sch. 6(I) para. 4: November 21, 2005 in relation to Wales; October 1, 2007 in relation to England (SI 2005/1314 art. 4(b)(i); SI 2007/2335 art. 2)

Extent

Sch. 6(I) para. 4: England, Wales

○ Partially In Force

5.

In section 36 of the 1980 Act (highways maintainable at public expense) in subsection (2), after paragraph (e) there is inserted—


“(f) a highway, being a footpath, a bridleway, a restricted byway or a way over which the public have a right of way for vehicular and all other kinds of traffic, created in consequence of a special diversion order or an SSSI diversion order.”

Commencement

Sch. 6(I) para. 5: February 12, 2003 in relation to England for the purpose specified in SI 2003/272 art.2(d); July 15, 2005 in relation to Wales for the purpose specified in SI 2005/1314 art.3(a); May 21, 2007 in relation to England otherwise; not yet in force otherwise (SI 2003/272 art. 2(d); SI 2005/1314 art. 3(a); SI 2007/1493 art. 2(a))

Extent

Sch. 6(I) para. 5-: England, Wales

 Law In Force

6.

In section 118 of the 1980 Act (stopping up of footpaths and bridleways) after subsection (6) there is inserted—

“(6A) The considerations to which—

(a) the Secretary of State is to have regard in determining whether or not to confirm a public path extinguishment order, and

(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,


include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.”

Commencement

Sch. 6(I) para. 6: February 12, 2003 in relation to England; April 1, 2004 in relation to Wales as specified in SI 2004/315 art.2(c); December 6, 2006 in relation to Wales otherwise (SI 2003/272 art. 2(b); SI 2004/315 art. 2(c); SI 2006/3257 art. 2(a)(i))

Extent

Sch. 6(I) para. 6-: England, Wales

 Not Yet In Force

7.

After section 118 of the 1980 Act there is inserted—

“118ZA.— Application for a public path extinguishment order.

(1) The owner, lessee or occupier of any land used for agriculture, forestry or the breeding or keeping of horses may apply to a council for the area in which the land is situated for the making of a public path extinguishment order in relation to any footpath or bridleway which crosses the land.

(2) An application under this section shall be in such form as may be prescribed and shall be accompanied by a map, on such scale as may be prescribed, showing the land over which it is proposed that the public right of way should be extinguished, and by such other information as may be prescribed.

(3) Regulations may provide—

- (a) that a prescribed charge is payable on the making of an application under this section, and
- (b) that further prescribed charges are payable by the applicant if the council make a public path extinguishment order on the application.

(4) An application under this section is not to be taken to be received by the council until the requirements of regulations under section 121A below have been satisfied in relation to it.

(5) A council which receives an application under this section shall determine the application as soon as reasonably practicable.

(6) Before determining to make a public path extinguishment order on an application under this section, the council may require the applicant to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards, any compensation which may become payable under section 28 above as applied by section 121(2) below.

(7) Where—

- (a) an application under this section has been made to a council, and
- (b) the council have not determined the application within four months of receiving it,

the Secretary of State may, at the request of the applicant and after consulting the council, by direction require the council to determine the application before the end of such period as may be specified in the direction.

(8) As soon as practicable after determining an application under this section, the council shall—

- (a) give to the applicant notice in writing of their decision and the reasons for it, and
- (b) give a copy of the notice to such other persons as may be prescribed.

(9) The council to whom an application under this section has been made may make a public path extinguishment order on the application only if the land over which the public right of way is to be extinguished by the order is that shown for the purposes of subsection (2) above on the map accompanying the application.

(10) Any reference in this Act to the map accompanying an application under this section includes a reference to any revised map submitted by the applicant in prescribed circumstances in substitution for that map.

(11) This section has effect subject to the provisions of sections 121A and 121C below.

(12) In this section—


- “prescribed” means prescribed by regulations;
- “regulations” means regulations made by the Secretary of State.”

Commencement

Sch. 6(I) para. 7: Date to be appointed (not yet in force)

Extent

Sch. 6(I) para. 7: England, Wales

 Partially In Force

8.

After section 118A of the 1980 Act there is inserted—

“118B.— Stopping up of certain highways for purposes of crime prevention, etc.

(1) This section applies where it appears to a council—

(a) that, as respects any relevant highway for which they are the highway authority and which is in an area designated by the Secretary of State by order for the purposes of this section, the conditions in subsection (3) below are satisfied and it is expedient, for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, that the highway should be stopped up, or

(b) that, as respects any relevant highway for which they are the highway authority and which crosses land occupied for the purposes of a school, it is expedient, for the purpose of protecting the pupils or staff from—

- (i) violence or the threat of violence,
- (ii) harassment,
- (iii) alarm or distress arising from unlawful activity, or
- (iv) any other risk to their health or safety arising from such activity,

that the highway should be stopped up.

(2) In subsection (1) above “relevant highway” means—

(a) any footpath, bridleway or restricted byway,

(b) any highway which is shown in a definitive map and statement as a footpath, a bridleway, or a restricted byway, but over which the public have a right of way for vehicular and all other kinds of traffic, or

(c) any highway which is shown in a definitive map and statement as a byway open to all traffic,

but does not include a highway that is a trunk road or a special road.

(3) The conditions referred to in subsection (1)(a) above are—

(a) that premises adjoining or adjacent to the highway are affected by high levels of crime, and

(b) that the existence of the highway is facilitating the persistent commission of criminal offences.

(4) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the highway.

(5) An order under subsection (4) above is in this Act referred to as a “special extinguishment order”.

(6) Before making a special extinguishment order, the council shall consult the police authority for the area in which the highway lies.

(7) The Secretary of State shall not confirm a special extinguishment order made by virtue of subsection (1)(a) above, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the conditions in subsection (3) above are satisfied, that the stopping up of the highway is expedient as mentioned in subsection (1)(a) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to—

- (a) whether and, if so, to what extent the order is consistent with any strategy for the reduction of crime and disorder prepared under section 6 of the Crime and Disorder Act 1998,
- (b) the availability of a reasonably convenient alternative route or, if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the highway under section 119B below rather than stopping it up, and
- (c) the effect which the extinguishment of the right of way would have as respects land served by the highway, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

(8) The Secretary of State shall not confirm a special extinguishment order made by virtue of subsection (1)(b) above, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the stopping up of the highway is expedient as mentioned in subsection (1)(b) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to—

- (a) any other measures that have been or could be taken for improving or maintaining the security of the school,
- (b) whether it is likely that the coming into operation of the order will result in a substantial improvement in that security,
- (c) the availability of a reasonably convenient alternative route or, if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the highway under section 119B below rather than stopping it up, and
- (d) the effect which the extinguishment of the right of way would have as respects land served by the highway, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

(9) A special extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be prescribed, defining the land over which the public right of way is thereby extinguished.

(10) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of special extinguishment orders.

118C.— Application by proprietor of school for special extinguishment order.

(1) The proprietor of a school may apply to a council for the making by virtue of section 118B(1)(b) above of a special extinguishment order in relation to any highway for which the council are the highway authority and which—

- (a) crosses land occupied for the purposes of the school, and
- (b) is a relevant highway as defined by section 118B(2) above.


(2) Subsections (2) to (11) of section 118ZA above shall apply to applications under this section as they apply to applications under that section, with the substitution for references to a public path extinguishment order of references to a special extinguishment order; and regulations made under that section by virtue of this subsection may make different provision for the purposes of this section and for the purposes of that section.”

Commencement

Sch. 6(I) para. 8: February 12, 2003 in relation to England for the purpose specified in SI 2003/272 art.2(e); July 15, 2005 in relation to Wales for the purpose specified in SI 2005/1314 art.3(b); not yet in force otherwise (SI 2003/272 art. 2(e); SI 2005/1314 art. 3(b))

Extent

Sch. 6(I) para. 8: England, Wales

 Partially In Force

9.—

- (1) Section 119 of the 1980 Act (diversion of footpaths and bridleway) is amended as follows.
- (2) In subsection (1)(b), for “so specified” there is substituted “specified in the order or determined”.
- (3) For subsection (3), there is substituted—

“(3) Where it appears to the council that work requires to be done to bring the new site of the footpath or bridleway into a fit condition for use by the public, the council shall—

- (a) specify a date under subsection (1)(a) above, and
- (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.”

- (4) In subsection (5)—
 - (a) after “diversion order” there is inserted “on an application under section 119ZA below or”, and
 - (b) for “him” there is substituted “the person who made the application or representations”.
- (5) After subsection (6) there is inserted—

“(6A) The considerations to which—

- (a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and
- (b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.”

Commencement


Sch. 6(I) para. 9(1)-(3): February 12, 2003 in relation to England; May 31, 2005 in relation to Wales (SI 2003/272 art. 2(f); SI 2005/1314 art. 2(b)(iii))

Sch. 6(I) para. 9(4)-(4)(b): Date to be appointed (not yet in force)

Sch. 6(I) para. 9(5): February 12, 2003 in relation to England; April 1, 2004 in relation to Wales as specified in SI 2004/315 art.2(c); December 6, 2006 in relation to Wales otherwise (SI 2003/272 art. 2(b); SI 2004/315 art. 2(c); SI 2006/3257 art. 2(a)(i))

Extent

Sch. 6(I) para. 9(1)-(5): England, Wales

 Not Yet In Force

10.

After section 119 of the 1980 Act there is inserted—

“119ZA.— Application for a public path diversion order.

(1) Subject to subsection (2) below, the owner, lessee or occupier of any land used for agriculture, forestry or the breeding or keeping of horses may apply to a council for the area in which the land is situated for the making of a public path diversion order in relation to any footpath or bridleway which crosses the land, on the ground that in his interests it is expedient that the order should be made.

(2) No application may be made under this section for an order which would create a new footpath or bridleway communicating with—

- (a) a classified road,
- (b) a special road,
- (c) a GLA road, or
- (d) any highway not falling within paragraph (a) or (b) above for which the Minister is the highway authority,

unless the application is made with the consent of the highway authority for the way falling within paragraph (a), (b), (c) or (d) above.

(3) No application under this section may propose the creation of a new right of way over land covered by works used by any statutory undertakers for the purposes of their undertaking or the curtilage of such land, unless the application is made with the consent of the statutory undertakers; and in this subsection “statutory undertaker” and “statutory undertaking” have the same meaning as in Schedule 6 to this Act.

(4) An application under this section shall be in such form as may be prescribed and shall be accompanied by a map, on such scale as may be prescribed—

- (a) showing the existing site of so much of the line of the path or way as it is proposed to divert and the new site to which it is proposed to be diverted,

- (b) indicating whether it is proposed to create a new right of way over the whole of the new site or whether some of it is already comprised in a footpath or bridleway, and
 - (c) where some part of the new site is already so comprised, defining that part, and by such other information as may be prescribed.
- (5) Regulations may provide—
- (a) that a prescribed charge is payable on the making of an application under this section, and
 - (b) that further prescribed charges are payable by the applicant if the council make a public path diversion order on the application.
- (6) An application under this section is not to be taken to be received by the council until the requirements of regulations under section 121A below have been satisfied in relation to it.
- (7) A council which receives an application under this section shall determine the application as soon as reasonably practicable.
- (8) Where—
- (a) an application under this section has been made to a council, and
 - (b) the council have not determined the application within four months of receiving it,
- the Secretary of State may, at the request of the applicant and after consulting the council, by direction require the council to determine the application before the end of such period as may be specified in the direction.
- (9) As soon as practicable after determining an application under this section, the council shall—
- (a) give to the applicant notice in writing of their decision and the reasons for it, and
 - (b) give a copy of the notice to such other persons as may be prescribed.
- (10) The council to whom an application under this section has been made may make a public path diversion order on the application only if—
- (a) the land over which the public right of way is to be extinguished by the order, and
 - (b) the new site to which the path or way is to be diverted,
- are those shown for the purposes of subsection (4) above on the map accompanying the application.
- (11) Any reference in this Act to the map accompanying an application under this section includes a reference to any revised map submitted by the applicant in prescribed circumstances in substitution for that map.
- (12) This section has effect subject to the provisions of sections 121A and 121C below.
- (13) In this section—
- “prescribed” means prescribed by regulations;
 - “regulations” means regulations made by the Secretary of State.”

Commencement

Sch. 6(I) para. 10: Date to be appointed (not yet in force)

Extent

Sch. 6(I) para. 10: England, Wales

✔ Law In Force

11.—

(1) Section 119A (diversion of footpaths and bridleways crossing railways) is amended as follows.

(2) In subsection (2)(b), for “so specified” there is substituted “specified in the order or determined under subsection (7) below”.

(3) For subsection (7) there is substituted—

“(7) Where it appears to the council that work requires to be done to bring the new site of the footpath or bridleway into a fit condition for use by the public, the council shall—

(a) specify a date under subsection (2)(a) above, and

(b) provide that so much of the order as extinguishes (in accordance with subsection (2)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.”.

Commencement

Sch. 6(I) para. 11(1)-(3): February 11, 2003 february 12, 2003 in relation to England; May 31, 2005 in relation to Wales (SI 2003/272 art. 2(g); SI 2005/1314 art. 2(b)(iv))

Extent

Sch. 6(I) para. 11-(3): England, Wales

ⓘ Partially In Force

12.

After section 119A of the 1980 Act there is inserted—

“119B.— Diversion of certain highways for purposes of crime prevention, etc.

(1) This section applies where it appears to a council—

(a) that, as respects any relevant highway for which they are the highway authority and which is in an area designated by the Secretary of State by order under section 118B(1)(a) above, the conditions in subsection (3) below are satisfied and it is expedient, for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, that the line of the highway, or part of that line

should be diverted (whether on to land of the same or another owner, lessee or occupier), or

(b) that, as respects any relevant highway for which they are the highway authority and which crosses land occupied for the purposes of a school, it is expedient, for the purpose of protecting the pupils or staff from—

- (i) violence or the threat of violence,
- (ii) harassment,
- (iii) alarm or distress arising from unlawful activity, or
- (iv) any other risk to their health or safety arising from such activity,

that the line of the highway, or part of that line, should be diverted (whether on to land of the same or another owner, lessee or occupier).

(2) In subsection (1) above “relevant highway” means—

- (a) any footpath, bridleway or restricted byway,
- (b) any highway which is shown in a definitive map and statement as a footpath, a bridleway, or a restricted byway, but over which the public have a right of way for vehicular and all other kinds of traffic, or
- (c) any highway which is shown in a definitive map and statement as a byway open to all traffic,

but does not include a highway that is a trunk road or a special road.

(3) The conditions referred to in subsection (1)(a) above are—

- (a) that premises adjoining or adjacent to the highway are affected by high levels of crime, and
- (b) that the existence of the highway is facilitating the persistent commission of criminal offences.

(4) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order—

- (a) create, as from such date as may be specified in the order, any such—
 - (i) new footpath, bridleway or restricted byway, or
 - (ii) in a case falling within subsection (2)(b) or (c) above, new highway over which the public have a right of way for vehicular and all other kinds of traffic,

as appears to the council requisite for effecting the diversion, and

(b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (8) below, the public right of way over so much of the highway as appears to the council to be requisite for the purpose mentioned in paragraph (a) or (b) of subsection (1) above.

(5) An order under subsection (4) above is in this Act referred to as a “special diversion order”.

(6) Before making a special diversion order, the council shall consult the police authority for the area in which the highway is situated.

(7) A special diversion order shall not alter a point of termination of the highway—

- (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.

(8) Where it appears to the council that work requires to be done to bring the new site of the highway into a fit condition for use by the public, the council shall—

- (a) specify a date under subsection (4)(a) above, and
- (b) provide that so much of the order as extinguishes (in accordance with subsection (4)(b) above) a public right of way is not to come into force until the local highway authority for the new highway certify that the work has been carried out.

(9) A right of way created by a special diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.

(10) The Secretary of State shall not confirm a special diversion order made by virtue of subsection (1)(a) above, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the conditions in subsection (3) above are satisfied, that the diversion of the highway is expedient as mentioned in subsection (1)(a) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to—

- (a) whether and, if so, to what extent the order is consistent with any strategy for the reduction of crime and disorder prepared under section 6 of the Crime and Disorder Act 1998,
 - (b) the effect which the coming into operation of the order would have as respects land served by the existing public right of way, and
 - (c) the effect which any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,
- so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

(11) The Secretary of State shall not confirm a special diversion order made by virtue of subsection (1)(b) above, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the diversion of the highway is expedient as mentioned in subsection (1)(b) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to—

- (a) any other measures that have been or could be taken for improving or maintaining the security of the school,
 - (b) whether it is likely that the coming into operation of the order will result in a substantial improvement in that security,
 - (c) the effect which the coming into operation of the order would have as respects land served by the existing public right of way, and
 - (d) the effect which any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,
- so, however, that for the purposes of paragraphs (c) and (d) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

(12) A special diversion order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed—

- (a) showing the existing site of so much of the line of the highway as is to be diverted by the order and the new site to which it is to be diverted,
- (b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a highway, and
- (c) where some part of the new site is already so comprised, defining that part.

(13) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of special diversion orders.

(14) Section 27 above (making up of new footpaths and bridleways) applies to a highway created by a special diversion order with the substitution—

- (a) for references to a footpath or bridleway of references to a footpath, a bridleway, a restricted byway or a highway over which the public have a right of way for vehicular and all other kinds of traffic,
- (b) for references to a public path creation order of references to a special diversion order, and
- (c) for references to section 26(2) above of references to section 120(3) below.

(15) Neither section 27 nor section 36 above is to be regarded as obliging a highway authority to provide on any highway created by a special diversion order a metalled carriage-way.

119C.— Application by proprietor of school for special diversion order.

(1) The proprietor of a school may apply to a council for the making by virtue of section 119B(1)(b) above of a special diversion order in relation to any highway for which the council are the highway authority and which—

- (a) crosses land occupied for the purposes of the school, and
- (b) is a relevant highway as defined by section 119B(2) above.

(2) No application may be made under this section for an order which would create a new highway communicating with—

- (a) a classified road,
- (b) a special road,
- (c) a GLA road, or
- (d) any highway not falling within paragraph (a) or (b) above for which the Minister is the highway authority,

unless the application is made with the consent of the highway authority for the way falling within paragraph (a), (b), (c) or (d) above.

(3) Before determining to make a special diversion order on an application under this section, the council may require the applicant to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards—

- (a) any compensation which may become payable under section 28 above as applied by section 121(2) below, or
- (b) to the extent that the council are the highway authority for the highway in question, any expenses which they may incur in bringing the new site of the highway into fit condition for use by the public, or
- (c) to the extent that the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by section 119B(14) above.

- (4) Subsections (3) to (12) of section 119ZA above shall apply to applications under this section as they apply to applications under that section, with the substitution—
- (a) for references to a public path diversion order of references to a special diversion order, and
 - (b) for references to a footpath or bridleway of references to a highway,
- and regulations made under that section by virtue of this subsection may make different provision for the purposes of this section and for the purposes of that section.

119D.— Diversion of certain highways for protection of sites of special scientific interest.

(1) Subsection (3) below applies where, on an application made in accordance with this section by the appropriate conservation body, it appears to a council, as respects any relevant highway for which they are the highway authority and which is in, forms part of, or is adjacent to or contiguous with, a site of special scientific interest—

- (a) that public use of the highway is causing, or that continued public use of the highway is likely to cause, significant damage to the flora, fauna or geological or physiographical features by reason of which the site of special scientific interest is of special interest, and
- (b) that it is expedient that the line of the highway, or part of that line should be diverted (whether on to land of the same or another owner, lessee or occupier) for the purpose of preventing such damage.

(2) In subsection (1) “relevant highway” means—

- (a) a footpath, bridleway or restricted byway,
- (b) a highway which is shown in a definitive map and statement as a footpath, a bridleway or a restricted byway but over which the public have a right of way for vehicular and all other kinds of traffic, or
- (c) any highway which is shown in a definitive map and statement as a byway open to all traffic,

but does not include any highway that is a trunk road or special road.

(3) Where this subsection applies, the council may, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,—

- (a) create, as from such date as may be specified in the order, any such—
 - (i) new footpath, bridleway or restricted byway, or
 - (ii) in a case falling within subsection (2)(b) or (c) above, new highway over which the public have a right of way for vehicular and all other kinds of traffic,

as appears to the council requisite for effecting the diversion, and

- (b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (6) below, the public right of way over so much of the way as appears to the council to be requisite for the purpose mentioned in subsection (1)(b) above.

(4) An order under this section is referred to in this Act as an “SSSI diversion order”.

(5) An SSSI diversion order shall not alter a point of termination of the highway—

- (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.

(6) Where it appears to the council that work requires to be done to bring the new site of the highway into a fit condition for use by the public, the council shall—

(a) specify a date under subsection (3)(a) above, and

(b) provide that so much of the order as extinguishes (in accordance with subsection (3)(b) above) a public right of way is not to come into force until the local highway authority for the new highway certify that the work has been carried out.

(7) A right of way created by an SSSI diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.

(8) Before determining to make an SSSI diversion order, the council may require the appropriate conservation body to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—

(a) any compensation which may become payable under section 28 above as applied by section 121(2) below,

(b) to the extent that the council are the highway authority for the highway, any expenses which they may incur in bringing the new site of the highway into fit condition for use for the public, or

(c) to the extent that the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by section 119E(6) below.

(9) The Secretary of State shall not confirm an SSSI diversion order, and a council shall not confirm such an order as an unopposed order, unless he, or as the case may be, they are satisfied that the conditions in subsection (1)(a) and (b) are satisfied, and that it is expedient to confirm the order having regard to the effect which—

(a) the diversion would have on public enjoyment of the right of way as a whole;

(b) the coming into operation of the order would have as respects other land served by the existing public right of way; and

(c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,

so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (8)(a) above.

(10) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of SSSI diversion orders.

(11) This section has effect subject to section 119E below.

(12) In this section—

“the appropriate conservation body” means—

(a) as respects England, English Nature, and

(b) as respects Wales, [the Natural Resources Body for Wales]¹ ;

“site of special scientific interest” has the same meaning as in the Wildlife and Countryside Act 1981.

119E.— Provisions supplementary to section 119D.

(1) An application under section 119D above shall be in such form as may be prescribed and shall be accompanied by—

- (a) a map, on such scale as may be prescribed,—
 - (i) showing the existing site of so much of the line of the highway as would be diverted if the order were made and the new site to which it would be diverted,
 - (ii) indicating whether a new right of way would be created by the order over the whole of the new site or whether some of it is already comprised in a highway, and
 - (iii) where some part of the new site is already so comprised, defining that part,
- (b) by an assessment in the prescribed form of the effects of public use of the right of way on the site of special scientific interest, and
- (c) by such other information as may be prescribed.

(2) At least fourteen days before making an application under section 119D above, the appropriate conservation body shall give a notice in the prescribed form of their intention to do so—

- (a) to any owner, lessee or occupier of land over which the proposed order would create or extinguish a public right of way;
- (b) to such other persons as may be prescribed; and
- (c) in the case of English Nature, to the Countryside Agency.

(3) A council, in determining whether it is expedient to make or confirm an SSSI diversion order, and the Secretary of State, in determining whether to confirm such an order, shall, in particular, have regard to the following questions—

- (a) whether the council would be able to prevent damage of the kind referred to in section 119D(1) above by making a traffic regulation order, and
- (b) if so, whether the making of a traffic regulation order would cause less inconvenience to the public than that which would be caused by the diversion of the highway.

(4) The Secretary of State, in determining whether it is expedient to make an SSSI diversion order under section 120(3) below in a case where by virtue of section 22(4) of the Road Traffic Regulation Act 1984 he has power to make a traffic regulation order shall, in particular, have regard to the following questions—

- (a) whether he would be able to prevent damage of the kind referred to in section 119D(1) above by making a traffic regulation order, and
- (b) if so, whether the making of a traffic regulation order would cause less inconvenience to the public than that which would be caused by the diversion of the highway.

(5) An SSSI diversion order shall be in such form as may be prescribed and shall contain a map, on such scale as may be prescribed,—

- (a) showing the existing site of so much of the line of the highway as is to be diverted by the order and the new site to which it is to be diverted,
- (b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a highway, and

(c) where some part of the new site is already so comprised, defining that part.

(6) Section 27 above (making up of new footpaths and bridleways) applies to a highway created by an SSSI diversion order with the substitution—

(a) for references to a footpath or bridleway of references to a footpath, a bridleway, a restricted byway or a highway over which the public have a right of way for vehicular and all other kinds of traffic,

(b) for references to a public path creation order, of references to an SSSI diversion order, and

(c) for references to section 26(2) above, of references to section 120(3) below.

(7) Neither section 27 nor section 36 above is to be regarded as obliging a highway authority to provide on any highway created by an SSSI diversion order a metalled carriage-way.

(8) In this section—

“the appropriate conservation body” has the same meaning as in section 119D above;

“prescribed” means prescribed by regulations made by the Secretary of State;

“site of special scientific interest” has the same meaning as in the Wildlife and Countryside Act 1981;

“traffic regulation order” means an order under section 1 or 6 of the Road Traffic Regulation Act 1984.”

Notes


- ¹ Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.411(2) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Sch. 6(I) para. 12: February 12, 2003 in relation to England for purpose specified in SI 2003/272 art.2(h); July 15, 2005 in relation to Wales for the purpose specified in SI 2005/1314 art.3(c); May 21, 2007 in relation to England for the purpose specified in SI 2007/1493; not yet in force otherwise (SI 2003/272 art. 2(h); SI 2005/1314 art. 3(c); SI 2007/1493 art. 2(b))

Extent

Sch. 6(I) para. 12-: England, Wales

 Partially In Force

13.—

(1) Section 120 of the 1980 Act (exercise of powers of making public path extinguishment and diversion orders) is amended as follows.

(2) In subsection (1), for “to 119A” there is substituted “, 118A, 119 and 119A”.

(3) After that subsection there is inserted—

“(1A) Where a council are the highway authority for only part of a highway, the powers conferred on the council by sections 118B, 119B and 119D above are exercisable with respect to the whole of the highway, but subject to subsection (2) and only with the consent

of every other council which is a highway authority for any other part with respect to which the powers are exercised.”

(4) In subsection (2)—

- (a) for “to 119A” there is substituted “to 119D”, and
- (b) for “footpath or bridleway”, wherever occurring, there is substituted “highway”.

(5) In subsection (3)—

- (a) after “or diverted” there is inserted “or where it appears to the Secretary of State as respects a relevant highway as defined by section 118B(2), 119B(2) or 119D(2) that it is expedient as mentioned in section 118B(1)(a) or (b), 119B(1)(a) or (b) or 119D(1)(b) that the highway should be stopped up or diverted”,
- (b) in paragraph (a), for “a rail crossing diversion order or a public path diversion order” there is substituted “a special extinguishment order, a public path diversion order, a rail crossing diversion order, a special diversion order or an SSSI diversion order”,
- (c) in paragraph (b), for “to 119A” there is substituted “to 119D”,
- (d) for “(subject to subsection (3A) below)” there is substituted “(subject to the following provisions of this section)”, and
- (e) at the end there is inserted “and, in the case of an SSSI diversion order, with the appropriate conservation body”.

(6) After subsection (3) there is inserted—

“(3ZA) Where an appeal to the Secretary of State is brought under section 121D(1) below, paragraph (a) of subsection (3) above does not apply, and the power conferred on him by that subsection may be exercised without consultation with the appropriate authority.”

(7) After subsection (3A) there is inserted—

“(3B) Unless an appeal to the Secretary of State is brought under section 121D(1) below, the power conferred on the Secretary of State by subsection (3) above to make a special extinguishment order or a special diversion order is exercisable only after consultation with the police authority in whose area the highway lies.

(3C) The power conferred on the Secretary of State by subsection (3) above to make an SSSI diversion order may be exercised even though the appropriate conservation body has not made an application under section 119D above to the council who are the highway authority for the highway.

(3D) Where—

- (a) the appropriate conservation body has made an application under section 119D above to a council in respect of a highway for which the council are the highway authority, and
 - (b) the council have neither confirmed the order nor submitted it to the Secretary of State for confirmation within 6 months of receiving the application,
- the power conferred on the Secretary of State by subsection (3) above to make an SSSI diversion order may be exercised without consultation with the council.”

(8) In subsection (4)—

- (a) for “or a rail crossing diversion order” there is substituted “, a rail crossing diversion order, a special diversion order or an SSSI diversion order”, and
- (b) for “path or way” there is substituted “highway”.

(9) For subsection (5) there is substituted—

“(5) The Secretary of State may, before determining—

- (a) under subsection (3) above, to make a public path diversion order,
- (b) under subsection (3) above, to make a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order on an appeal under section 121D(1)(a) below,
- (c) to confirm a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order in respect of which an appeal under section 121D(1)(b) or (c) below has been brought, or
- (d) under subsection (3) above, to make a rail crossing diversion order on the representations of the operator of the railway concerned,

require the appropriate person to enter into such agreement as he may specify with such council as he may specify for that person to defray, or to make such contribution as may be specified in the agreement towards, any such compensation or expenses as are specified in paragraphs (a), (b) and (c) of section 119(5), or as the case may be, section 118ZA(6), 119A(8) or 119C(3) above.

(6) In subsection (5) above “the appropriate person” means—

- (a) in a case falling within paragraph (a) of that subsection—
 - (i) where an appeal under section 121D(1)(a) below has been brought, the appellant, or
 - (ii) in any other case, the person on whose representations the Secretary of State is acting,
- (b) in a case falling within paragraph (b) or (c) of that subsection, the appellant, and
- (c) in a case falling within paragraph (d) of that subsection, the operator of the railway concerned.”

(10) After subsection (6) there is inserted—

“(7) Where under subsection (3) above the Secretary of State decides to make an SSSI diversion order he may require the appropriate conservation body to enter into an agreement with such council as he may specify for the body to defray, or to make such contribution as may be specified in the agreement towards, any such compensation or expenses as are specified in paragraphs (a), (b) and (c) of section 119D(8) above.

(8) In this section “the appropriate conservation body” has the same meaning as in section 119D above.”

Commencement

Sch. 6(I) para. 13(1)-(4)(b), (5)(a)-(5)(d), (7)-(9): February 12, 2003 in relation to England for the purpose specified in SI 2003/272 art.2(i); July 15, 2005 in relation to Wales for the purpose specified in SI 2005/1314 art.3(d); May 21,

2007 in relation to England for purpose specified in SI 2007/1493 art.2(c); not yet in force otherwise (SI 2003/272 art. 2(i); SI 2005/1314 art. 3(d), art. 3(d)(i); SI 2007/1493 art. 2(c))

Sch. 6(I) para. 13(5): February 12, 2003


Sch. 6(I) para. 13(5)(e): February 12, 2003 in relation to England for the purpose specified in SI 2003/272 art.2(i); May 21, 2007 in relation to England for purpose specified in SI 2007/1493 art.2(c); not yet in force otherwise (SI 2003/272 art. 2(i); SI 2007/1493 art. 2(c))

Sch. 6(I) para. 13(6): Date to be appointed (not yet in force)

Sch. 6(I) para. 13(10): May 21, 2007 in relation to England for the purpose specified in SI 2007/1493 art.2(c); not yet in force otherwise (SI 2007/1493 art. 2(c))

Extent

Sch. 6(I) para. 13(1)-(10): England, Wales

 Partially In Force

14.—

(1) Section 121 of the 1980 Act (supplementary provisions as to public path extinguishment and diversion orders) is amended as follows.

(2) In subsection (1)—

- (a) after “rail crossing extinguishment order,” there is inserted “a special extinguishment order”,
- (b) for “or a rail crossing diversion order”, wherever occurring, there is substituted “, a rail crossing diversion order, a special diversion order or an SSSI diversion order”, and
- (c) for “path or way”, wherever occurring, there is substituted “highway”.

(3) In subsection (2)—

- (a) after “rail crossing extinguishment orders,” there is inserted “special extinguishment orders”,
- (b) for “and rail crossing diversion orders” there is substituted “, rail crossing diversion orders, special diversion orders and SSSI diversion orders”, and
- (c) for the words from “but” onwards there is substituted—

“but as if—

- (a) the references in it to section 26(2) above were references to section 120(3) above, and
- (b) in relation to special extinguishment orders, special diversion orders and SSSI diversion orders, the reference in section 28(4) to a footpath or bridleway included a reference to a restricted byway or a highway over which the public have a right of way for vehicular and all other kinds of traffic.”.

(4) In subsection (3)—

- (a) for “(protection for agriculture and forestry)” there is substituted “(duty to have regard to agriculture, forestry and nature conservation)”,
- (b) after “rail crossing extinguishment orders,” there is inserted “special extinguishment orders”, and

(c) for “and rail crossing diversion orders” there is substituted “, rail crossing diversion orders, special diversion orders and SSSI diversion orders”.

(5) In subsection (4)—

(a) after “rail crossing extinguishment order,” there is inserted “a special extinguishment order”, and

(b) for “or a rail crossing diversion order” there is substituted “, a rail crossing diversion order, a special diversion order or an SSSI diversion order”.

(6) After subsection (5) there is inserted—

“(5A) Before making a determination under subsection (5) above the appropriate Minister may, if he thinks fit, give any person an opportunity to be heard on the question, and he must either give such an opportunity or cause a local inquiry to be held if a request to be heard with respect to the question to be determined is made—

(a) by the statutory undertakers,

(b) in the case of an order made on an application under section 118ZA, 118C, 119ZA or 119C above, by the person who made the application, and

(c) in the case of an order to be made on an appeal under section 121D(1)(a) below, by the appellant.

(5B) The appropriate Minister may appoint any person to exercise on his behalf, with or without payment, the function of determining a question falling to be determined under subsection (5) above.

(5C) Schedule 12ZA to this Act shall have effect with respect to appointments under subsection (5B) above; and subsection (5A) above has effect subject to the provisions of that Schedule.

(5D) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (giving of evidence at, and defraying of costs of, inquiries) shall apply in relation to hearings or local inquiries which the appropriate Minister causes to be held under subsection (5A) above as they apply (by virtue of section 302(1) of this Act) to local inquiries which the Secretary of State causes to be held under this Act.

(5E) 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 inquiry under subsection (5A) above as it applies in relation to a hearing or local inquiry for the purposes referred to in that section, but as if references to the Secretary of State were references to the appropriate Minister.”

(7) In subsection (6), for “subsection (5)” there is substituted “subsections (5) to (5E)”.

Commencement

Sch. 6(I) para. 14(1): February 12, 2003 in relation to England for purposes specified in SI 2003/272 art.2(j); May 31, 2005 in relation to Wales for purposes specified in SI 2005/1314 art.2(b)(v); May 21, 2007 in relation to England for purposes specified in SI 2007/1493 art.2(d); not yet in force otherwise (SI 2003/272 art. 2(j); SI 2005/1314 art. 2(b)(v); SI 2007/1493 art. 2(d))

Sch. 6(I) para. 14(2)-(3)(c), (4)(b)-(7): February 12, 2003 in relation to England for purposes specified in SI 2003/272 art.2(j); July 15, 2005 in relation to Wales for the purpose specified in SI 2005/1314 art.3(d); May 21, 2007 in relation


to England for purpose specified in SI 2007/1493 art.2(d); not yet in force otherwise (SI 2003/272 art. 2(j); SI 2005/1314 art. 3(d), art. 3(d)(ii); SI 2007/1493 art. 2(d))

Sch. 6(I) para. 14(4): February 12, 2003

Sch. 6(I) para. 14(4)(a): February 12, 2003 in relation to England for purposes specified in SI 2003/272 art.2(j); May 31, 2005 in relation to Wales; May 21, 2007 in relation to England for purpose specified in SI 2007/1493 art.2(d); not yet in force otherwise (SI 2003/272 art. 2(j); SI 2005/1314 art. 2(b)(v); SI 2007/1493 art. 2(d))

Extent

Sch. 6(I) para. 14(1)-(7): England, Wales

 Partially In Force

15.

After section 121 of the 1980 Act there is inserted—

“121A.— Regulations with respect to applications for orders.

(1) The Secretary of State may by regulations make provision as respects applications under section 118ZA, 118C, 119ZA or 119C above—

- (a) requiring the applicant to issue a certificate as to the interests in, or rights in or over, the land to which the application relates and the purpose for which the land is used,
- (b) requiring the applicant to give notice of the application to such persons as may be prescribed,
- (c) requiring the applicant to certify that any requirement of regulations under this section has been complied with or to provide evidence that any such requirement has been complied with,
- (d) as to the publicising of any application,
- (e) as to the form, content and service of such notices and certificates, and
- (f) as to the remission or refunding in prescribed circumstances of the whole or part of any prescribed charge.

(2) If any person—

- (a) issues a certificate which purports to comply with any requirement imposed by virtue of subsection (1) above and contains a statement which he knows to be false or misleading in a material particular; or
- (b) recklessly issues a certificate which purports to comply with any such requirement and contains a statement which is false or misleading in a material particular,

he shall be guilty of an offence.

(3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Notwithstanding section 127 of the Magistrates' Courts Act 1980 (limitation of time for taking proceedings) summary proceedings for an offence under this section may be instituted at any time within three years after the commission of the offence.

121B.— Register of applications.

- (1) Every council shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect to applications under section 118ZA, 118C, 119ZA or 119C above.
- (2) The register shall contain such information as may be prescribed with respect to the manner in which such applications have been dealt with.
- (3) Regulations may make provision for the register to be kept in two or more parts, each part containing such information relating to applications under section 118ZA, 118C, 119ZA or 119C above as may be prescribed.
- (4) Regulations may make provision—
 - (a) for a specified part of the register to contain copies of applications and of the maps submitted with them, and
 - (b) for the entry relating to any application, and everything relating to it, to be removed from any part of the register when the application (including any appeal to the Secretary of State) has been finally disposed of (without prejudice to the inclusion of any different entry relating to it in another part of the register).
- (5) Every register kept under this section shall be available for inspection by the public free of charge at all reasonable hours.
- (6) In this section—
 - “prescribed” means prescribed by regulations;
 - “regulations” means regulations made by the Secretary of State.

121C.— Cases where council may decline to determine applications.

- (1) A council may decline to determine an application under section 118ZA, 118C, 119ZA or 119C above if, within the period of three years ending with the date on which the application is received, the Secretary of State—
 - (a) has refused to make an order on an appeal under section 121D(1)(a) below in respect of a similar application, or
 - (b) has refused to confirm an order which is similar to the order requested.
- (2) Before declining under subsection (1) above to determine an application under section 118C or 119C above, the council shall consider whether since the previous decision of the Secretary of State was made the risks referred to in subsection (1)(b)(i) to (iv) of section 118B or of section 119B have substantially increased.
- (3) A council may decline to determine an application under section 118ZA, 118C, 119ZA or 119C above if—
 - (a) in respect of an application previously made to them under that section which is similar to the current application or relates to any of the land to which the current application relates, the council have not yet determined whether to make a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order, or
 - (b) the council have made a similar order or an order which relates to any of the land to which the current application relates but no final decision as to the confirmation of the order has been taken.

(4) For the purposes of this section an application or order is similar to a later application or order only if they are, in the opinion of the council determining the later application, the same or substantially the same, but an application or order may be the same or substantially the same as a later application or order even though it is made to or by a different council.

121D.— Right of appeal to Secretary of State in respect of applications for orders.

(1) Subject to the provisions of this section, where, in relation to an application made under section 118ZA, 118C, 119ZA or 119C above, the council to which the application was made—

- (a) refuse to make an order on the application,
- (b) refuse to confirm as an unopposed order an order made on the application, or
- (c) refuse to submit to the Secretary of State an order which is made on the application and against which any representation or objection has been duly made and not withdrawn,

the applicant may, by giving notice to the Secretary of State, appeal to the Secretary of State.

(2) Subsection (1)(a) above does not confer any right to appeal to the Secretary of State where—

- (a) the council have no power to make the order requested without the consent of another person and that consent has not been given, or
- (b) the reason, or one of the reasons, for the refusal to make the order is that the applicant has refused to enter into an agreement required by the council—
 - (i) in the case of a public path extinguishment order, under subsection (6) of section 118ZA above,
 - (ii) in the case of a special extinguishment order, under that subsection as applied by section 118C(2) above,
 - (iii) in the case of a public path diversion order, under section 119(5) above,
 - (iv) in the case of a special diversion order, under section 119C(3) above.

(3) Paragraph (b) of subsection (1) above does not confer any right to appeal to the Secretary of State in a case where the council has no power to confirm the order without the consent of another person and that consent has not been given; and paragraph (c) of that subsection does not confer any right to appeal to the Secretary of State in a case where, if the order had been unopposed, the council would have had no power to confirm it without the consent of another person and that consent has not been given.

121E.— Determination of appeals.

(1) Where an appeal to the Secretary of State is brought under section 121D(1)(a) above, the Secretary of State shall—

- (a) prepare a draft of a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order under section 120(3) above giving effect to the application and containing such other provisions as, after consultation with such persons as he thinks fit, the Secretary of State may determine,
- (b) give notice of the draft order in accordance with paragraph 1(2) of Schedule 6 to this Act, and

- (c) subject to subsection (6) below and to paragraph 2 of that Schedule, determine whether to make the order (with or without modifications) under section 120(3) above.
- (2) Where an appeal to the Secretary of State is brought under section 121D(1)(b) or (c) above, the order made on the application shall be treated as having been submitted to him for confirmation (with or without modifications).
- (3) Where an appeal to the Secretary of State is brought under section 121D(1) above, the Secretary of State may not make or confirm a public path diversion order or special diversion order if it appears to him that—
- (a) work is necessary to bring the new highway created by the order into a fit condition for use by the public,
 - (b) if the order were made, the work could not be carried out by the highway authority without—
 - (i) the consent of another person, or
 - (ii) any authorisation (however described) which is required by or under any enactment, and
 - (c) the consent or authorisation has not been obtained.
- (4) Where an appeal to the Secretary of State is brought under section 121D(1) above, the Secretary of State may not—
- (a) make a public path diversion order or special diversion order so as to create a public right of way over land covered by works used for the purposes of a statutory undertaking or the curtilage of such land, or
 - (b) modify such an order so as to create such a public right of way,
- unless the statutory undertaker has consented to the making or modification of the order.
- (5) In subsection (4) above “statutory undertaker” and “statutory undertaking” have the same meaning as in Schedule 6 to this Act.
- (6) Subsection (1)(c) above does not apply where any consent required by section 121(4) above has not been obtained.
- (7) The Secretary of State may by regulations make further provision with respect to appeals under section 121D(1) above.
- (8) Regulations under subsection (7) above may, in particular, make provision—
- (a) as to the manner in which, and time within which, notice of an appeal is to be given,
 - (b) as to the provision of information to the Secretary of State by the council to which the application to which the appeal relates was made,
 - (c) for the payment by the applicant of any expenses incurred by the Secretary of State—
 - (i) in preparing a draft order,
 - (ii) in giving any notice required by subsection (1)(b) above or Schedule 6 to this Act,
 - (d) requiring the production by the council to whom the application was made of any certificates required by regulations under section 121A(1)(a) above,
 - (e) requiring the applicant to give notice of the appeal to such persons as may be prescribed,

- (f) requiring the applicant to certify that any requirement of regulations under this section has been complied with or to provide evidence that any such requirement has been complied with,
- (g) as to the publicising of any appeal,
- (h) as to the form, content and service of such notices and certificates,
- (i) modifying the provisions of Schedule 6 to this Act in their application to the procedure on appeals under section 121D(1) above, and
- (j) as to the remission or refunding in prescribed circumstances of any prescribed charge.

(9) The Secretary of State may by regulations provide that section 28 above, as applied by section 121(2) above, is to have effect in cases where a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order is made under section 120(3) above on an appeal under section 121D(1)(a) above, as if the reference to such one of the authorities referred to as may be nominated by the Secretary of State were a reference to such one of those authorities as may be specified in, or determined in accordance with, the regulations.

(10) Subsections (2) to (4) of section 121A above shall apply in relation to any certificate purporting to comply with a requirement imposed by virtue of this section as they apply to a certificate purporting to comply with a requirement imposed by virtue of subsection (1) of that section.

(11) For the purposes of this section—

- (a) a draft public path extinguishment order or special extinguishment order gives effect to an application under section 118ZA or 118C above only if the land over which the public right of way is to be extinguished by the order is that shown for the purposes of subsection (2) of section 118ZA above (or that subsection as applied by section 118C(2) above) on the map accompanying the application, and
- (b) a draft public path diversion order or draft special diversion order gives effect to an application made to a council under section 119ZA or 119C above only if—
 - (i) the land over which the public right of way is to be extinguished by the order, and
 - (ii) the new site to which the highway is to be diverted,are those shown for the purposes of subsection (4) of section 119ZA above (or that subsection as applied by section 119C(4) above) on the map accompanying the application.

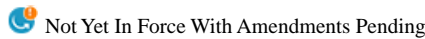
(12) In this section “prescribed” means prescribed by regulations made by the Secretary of State.”

Commencement

Sch. 6(I) para. 15: November 21, 2005 in relation to Wales for the purpose specified in SI 2005/1314 art.4(b)(ii); not yet in force otherwise (SI 2005/1314 art. 4(b)(ii))

Extent

Sch. 6(I) para. 15: England, Wales

**16.**

After section 135 of the 1980 Act there is inserted—

“135A.— Temporary diversion for dangerous works.

(1) Where works of a prescribed description are likely to cause danger to users of a footpath or bridleway which passes over any land, the occupier of the land may, subject to the provisions of this section, temporarily divert—

- (a) so much of the footpath or bridleway as passes over that land, and
- (b) so far as is requisite for effecting that diversion, so much of the footpath or bridleway as passes over other land occupied by him.

(2) A person may not under this section divert any part of a footpath or bridleway if—

- (a) the period or periods for which that part has been diverted under this section, and
 - (b) the period or periods for which any other part of the same footpath or bridleway passing over land occupied by him has been diverted under this section,
- amount in aggregate to more than fourteen days in any one calendar year.

(3) Where a person diverts a footpath or bridleway under this section—

- (a) he shall do so in a manner which is reasonably convenient for the exercise of the public right of way, and
- (b) where the diversion is by means of a temporary footpath or bridleway, he shall so indicate the line of the temporary footpath or bridleway on the ground to not less than the minimum width that it is apparent to members of the public wishing to use it.

(4) This section does not authorise a person—

- (a) to divert a footpath or bridleway on to land not occupied by him without the consent of the occupier of that land and of any other person whose consent is needed to obtain access to it,
- (b) to divert a footpath onto a highway other than a footpath or bridleway, or
- (c) to divert a bridleway onto a highway other than a bridleway.

(5) The person by whom a footpath or bridleway is diverted under this section shall—

- (a) at least fourteen days before the commencement of the diversion, give notice of the diversion in accordance with subsection (6) below,
- (b) at least seven days before the commencement of the diversion, publish notice of the diversion in a local newspaper circulating in the area in which the footpath or bridleway is situated, and
- (c) display such notices as may be prescribed at such places, in such manner and at such times before or during the diversion as may be prescribed.

(6) Notice under subsection (5)(a) above shall be given—

- (a) to the highway authority for the footpath or bridleway,
- (b) if the footpath or bridleway is on or contiguous with access land in England, to the Countryside Agency, and
- (c) if the footpath or bridleway is on or contiguous with access land in Wales, to the Countryside Council for Wales.

(7) A notice under subsection (5)(a), (b) or (c) above shall be in such form and contain such information as may be prescribed.

(8) If a person—

- (a) in a notice which purports to comply with the requirements of subsection (5)(a) or (b) above, makes a statement which he knows to be false in a material particular,
- (b) by a notice displayed on or near a footpath or bridleway, falsely purports to be authorised under this section to divert the footpath or bridleway, or
- (c) in diverting a footpath or bridleway under this section, fails to comply with subsection (3) above,

he shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(9) In this section—

“access land” has the same meaning as in Part I of the Countryside and Rights of Way Act 2000;

“minimum width” in relation to a temporary footpath or bridleway, means the minimum width, within the meaning of Schedule 12A to this Act, of the footpath or bridleway diverted;

“prescribed” means prescribed by regulations made by the Secretary of State.

135B.— Temporary diversion for dangerous works: supplementary.

(1) The person by whom a footpath or bridleway is diverted under section 135A above shall, before the diversion ceases to be authorised by that section, make good any damage to the footpath or bridleway resulting from the works mentioned in subsection (1) of that section, and remove from the footpath or bridleway any obstruction resulting from those works.

(2) Any person who fails to comply with the duty imposed on him by subsection (1) above is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(3) The highway authority may make good any damage, or remove any obstruction, in respect of which any person has failed to comply with that duty and recover from that person the amount of any expenses reasonably incurred by them in or in connection with doing so.

(4) Paragraph 3(1) of Schedule 12A to this Act does not apply in relation to any disturbance of the surface of a footpath or bridleway which subsection (1) above requires any person to make good; but paragraphs 7 and 8 of that Schedule apply for the purposes of subsection (3) above as if—

- (a) references to the authority were references to the highway authority,
- (b) references to the work were references to work carried out under subsection (3) above in relation to a footpath or bridleway, and
- (c) references to the relevant land were references to the land over which the footpath or bridleway passes.

(5) The diversion of a footpath or bridleway under section 135A above does not—

- (a) affect the liability of any person for anything done in relation to the path or way otherwise than for the purposes of or in consequence of the works mentioned in subsection (1) of that section, or

(b) authorise any interference with the apparatus or works of any statutory undertakers.

(6) Without prejudice to section 130 (protection of public rights of way) above, it is the duty of the highway authority to enforce the provisions of section 135A and this section.”

Amendments Pending


Sch. 6(I) para. 16: words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch. 2(1) para. 411(3) (Not yet in force: substitution came into force on April 1, 2013 subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7 but cannot take effect until the commencement of 2000 c.37 Sch.6 para.16)

Commencement

Sch. 6(I) para. 16: Date to be appointed (not yet in force)

Extent

Sch. 6(I) para. 16: England, Wales

 Partially In Force

17.

In section 293 of the 1980 Act (powers of entry for purposes connected with certain orders relating to footpaths and bridleways), in subsection (1)—

- (a) after “rail crossing extinguishment order,” there is inserted “a special extinguishment order”, and
- (b) for “or a rail crossing diversion order” there is substituted “, a rail crossing diversion order, a special diversion order or an SSSI diversion order”.


Commencement

Sch. 6(I) para. 17(a): February 12, 2003 in relation to England; July 15, 2005 in relation to Wales for the purpose specified in SI 2005/1314 art.3(d); not yet in force otherwise (SI 2003/272 art. 2(k)(i); SI 2005/1314 art. 3(d), art. 3(d)(iii))

Sch. 6(I) para. 17(b): February 12, 2003 in relation to England for provisions specified in SI 2003/272 art.2(k)(ii); July 15, 2005 in relation to Wales for the purpose specified in SI 2005/1314 art.3(d); May 21, 2007 in relation to England otherwise; not yet in force otherwise (SI 2003/272 art. 2(k)(ii); SI 2005/1314 art. 3(d), art. 3(d)(iii); SI 2007/1493 art. 2(e))

Extent

Sch. 6(I) para. 17(a)-(b): England, Wales

 Partially In Force

18.

In section 325 of the 1980 Act (regulations, schemes and orders)—

- (a) in subsection (1)(d), for “118, 119,” there is substituted “118, 118A, 118B(4), 119, 119A, 119B(4), 119D”, and
- (b) in subsection (2)(b), after “17” there is inserted “or 118B(1)(a)”.


Commencement

Sch. 6(I) para. 18(a): January 30, 2001 in relation to England for the purpose specified in SI 2001/114 art.2(1)(e); May 1, 2001 in relation to Wales for the purpose specified in SI 2001/1410 art.2(k); February 12, 2003 in relation to England for the purpose specified in SI 2003/272 art.2(1)(i); July 15, 2005 in relation to Wales for purposes specified in SI 2005/1314 art.3(d) and art.3(d)(iv)(aa); May 21, 2007 in relation to England otherwise; not yet in force in relation to Wales otherwise (SI 2001/114 art. 2(1)(e); SI 2001/1410 art. 2(k); SI 2003/272 art. 2(1)(i); SI 2005/1314 art. 3(d), art. 3(d)(iv)(aa); SI 2007/1493 art. 2(f))

Sch. 6(I) para. 18(b): February 12, 2003 in relation to England as specified in SI 2003/272 art.2(1)(ii); July 15, 2005 in relation to Wales as specified in SI 2005/1314 art.3(d)(iv)(bb) (SI 2003/272 art. 2(1)(ii); SI 2005/1314 art. 3(d)(iv)(bb))

Extent

Sch. 6(I) para. 18(a)-(b): England, Wales

 Partially In Force

19.


In section 326 of the 1980 Act (revocation and variation of schemes and orders) in subsection (5), for “a public path diversion order” there is substituted “a rail crossing extinguishment order, a special extinguishment order, a public path diversion order, a rail crossing diversion order, a special diversion order or an SSSI diversion order”.

Commencement

Sch. 6(I) para. 19: January 30, 2001 in relation to England for provisions specified in SI 2001/114 art.2(1)(f); May 1, 2001 in relation to Wales for provisions specified in SI 2001/1410 art.2(1); February 12, 2003 in relation to England for purposes specified in SI 2003/272 art.2(m); July 15, 2005 in relation to Wales for purposes specified in SI 2005/1314 art.3(d)(v); May 21, 2007 in relation to England otherwise; not yet in force otherwise (SI 2001/114 art. 2(1)(f); SI 2001/1410 art. 2(1); SI 2003/272 art. 2(m); SI 2005/1314 art. 3(d), art. 3(d)(v); SI 2007/1493 art. 2(g))

Extent

Sch. 6(I) para. 19-: England, Wales

 Partially In Force

20.

In section 329(1) of the 1980 Act (interpretation)—

- (a) after the definition of “cycle track” there is inserted—

““definitive map and statement” has the same meaning as in Part III of the Wildlife and Countryside Act 1981;”,

- (b) after the definition of “proposed highway” there is inserted—

““proprietor”, in relation to a school, has the same meaning as in the Education Act 1996;”,

(c) after the definition of “road-ferry” there is inserted—

““school” has the same meaning as in the Education Act 1996;”,

(d) after the definition of “service area” there is inserted—

““special diversion order” means an order under section 119B(4) above;”,

(e) after the definition of “special enactment” there is inserted—

““special extinguishment order” means an order under section 118B(4) above;”,

, and

(f) after the definition of “special road authority” there is inserted—

““SSSI diversion order” means an order under section 119D above;”.

Commencement


Sch. 6(I) para. 20(a)-(c): February 12, 2003 in relation to England; May 31, 2005 in relation to Wales (SI 2003/272 art. 2(n); SI 2005/1314 art. 2(b)(vi))

Sch. 6(I) para. 20(d)-(e): February 12, 2003 in relation to England; July 15, 2005 in relation to Wales for the purpose specified in SI 2005/1314 art.3(d); not yet in force otherwise (SI 2003/272 art. 2(n); SI 2005/1314 art. 3(d), art. 3(d)(vi))

Sch. 6(I) para. 20(f): February 12, 2003 in relation to England; not yet in force otherwise (SI 2003/272 art. 2(n))

Extent

Sch. 6(I) para. 20(a)-(f): England, Wales

 Partially In Force

21.

In section 334 of the 1980 Act (savings relating to telecommunications apparatus) in subsection (2), for “and a public path diversion order” there is substituted “, a special extinguishment order, a public path diversion order, a special diversion order and an SSSI diversion order”.

Commencement

Sch. 6(I) para. 21: February 12, 2003 in relation to England for purposes specified in SI 2003/272 art.2(o); July 15, 2005 in relation to Wales for purposes specified in SI 2005/1314 art.3(d) and art.3(d)(vii); May 21, 2007 in relation to England otherwise; not yet in force otherwise (SI 2003/272 art. 2(o); SI 2005/1314 art. 3(d), art. 3(d)(vii); SI 2007/1493 art. 2(h))

Extent

Sch. 6(I) para. 21-: England, Wales

 Not Yet In Force

22.


In section 344 of the 1980 Act (application to Isles of Scilly) in subsection (2)(a) after “135,” there is inserted “135A, 135B,”.

Commencement

Sch. 6(I) para. 22: Date to be appointed (not yet in force)

Extent

Sch. 6(I) para. 22: England, Wales

 Partially In Force

23.—

(1) Schedule 6 to the 1980 Act (provisions as to making, confirmation, validity and date of operation of certain orders relating to footpaths and bridleways), including that Schedule as applied by section 32(2) of the Acquisition of Land Act 1981, is amended as follows.

(2) In paragraph 1(1) and (2)—

(a) after “rail crossing extinguishment order,” there is inserted “a special extinguishment order”, and

(b) for “or a rail crossing diversion order” there is substituted “, a rail crossing diversion order, a special diversion order or an SSSI diversion order”.

(3) In paragraph 1(3A)—

(a) after “rail crossing extinguishment orders,” there is inserted “special extinguishment orders”, and

(b) for “and rail crossing diversion orders” there is substituted “, rail crossing diversion orders, special diversion orders and SSSI diversion orders”.

(4) In paragraph 1(3B)—

(a) after “draft rail crossing extinguishment orders,” there is inserted “draft special extinguishment orders”, and

(b) for “and draft rail crossing diversion orders” there is substituted “, draft rail crossing diversion orders, draft special diversion orders and draft SSSI diversion orders”.

(5) In paragraph 2—

(a) in sub-paragraph (1), at the beginning of paragraph (a) there is inserted “subject to sub-paragraph (2A)”,

(b) in sub-paragraphs (2) and (3), for “or a public path diversion order,” there is substituted “, a public path diversion order, a special diversion order or an SSSI diversion order”, and

(c) after sub-paragraph (2) there is inserted—

“(2A) Before making or confirming an order on an appeal under section 121D(1) of this Act, the Secretary of State shall—

(a) if requested by the authority who made an order to which the appeal relates to cause a local inquiry to be held, cause such an inquiry to be held, and

(b) if a request to be heard with respect to the question to be determined is made by the appellant, either afford to the appellant an opportunity of being heard by a person appointed by the Secretary of State for the purpose or cause a local inquiry to be held,

whether or not he would be required to do so apart from this sub-paragraph.”

(6) After paragraph 2 there is inserted—

“2ZA.—

(1) Where a public path extinguishment order, a special extinguishment order, a public path diversion order or a special diversion order is made by an authority other than the Secretary of State on an application under section 118ZA, 118C, 119ZA or 119C of this Act, that authority shall, as soon as reasonably practicable after the expiry of the time for representations, determine—

(a) whether, in the case of an unopposed order, to confirm it under paragraph 2(1)(b) above, or

(b) whether to submit the order to the Secretary of State.

(2) The authority making a determination required by sub-paragraph (1) above shall, as soon as practicable after making it, give to the applicant notice in writing of their determination and the reasons for it and give a copy of the notice to such other persons as may be prescribed.

(3) Where—

(a) an authority other than the Secretary of State have made a public path extinguishment order, a special extinguishment order, a public path diversion order or a special diversion order on an application under section 118ZA, 118C, 119ZA or 119C of this Act, and

(b) at the end of the period of two months beginning with the expiry of the time for representations, that authority have not determined—

(i) whether, in the case of an unopposed order, to confirm it under paragraph 2(1)(b) above, or

(ii) whether to submit the order to the Secretary of State,

the Secretary of State may, at the request of the person on whose application the order was made, by direction require the authority to determine that question before the end of such period as may be specified in the direction.

(4) In this paragraph “the time for representations” means the time specified by the authority in accordance with paragraph 1(1)(c) above.

2ZB.

Where, in relation to any public path extinguishment order, special extinguishment order, public path diversion order or special diversion order which was made by an authority other than the Secretary of State on an application under section 118ZA, 118C, 119ZA or 119C of this Act, no representations or objections are duly made or any representations or

objections so made are withdrawn, that authority may not submit the order to the Secretary of State for confirmation with any modification of the map contained in the order.”

(7) In paragraph 2A(1), for the words from the beginning to “shall” there is substituted—

“The following decisions—

(a) a decision of the Secretary of State under paragraph 2 above as respects an order made by an authority other than the Secretary of State including any related decision under section 120(5) of this Act, and

(b) a decision of the Secretary of State under section 121E(1)(c) of this Act, including any related decision under section 120(5) of this Act,

shall”.

(8) After paragraph 2A there is inserted—

“2B.—

(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 to a hearing which the Secretary of State causes to be held under paragraph 2 above as they apply (by virtue of section 302(1) of this Act) to a local inquiry which he causes to be held under this Act.

(2) In its application to a hearing or local inquiry held under paragraph 2 above by a person appointed under paragraph 2A(1) above, subsection (5) of section 250 of that Act shall 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 inquiry under paragraph 2 above as it applies in relation to a hearing or local inquiry for the purposes referred to in that section.”.

(9) In paragraph 3(2)—

(a) for “or a rail crossing extinguishment order” there is substituted “, a rail crossing extinguishment order or a special extinguishment order”, and

(b) for “or a rail crossing diversion order” there is substituted “, a rail crossing diversion order, a special diversion order or an SSSI diversion order”.

(10) At the end of paragraph 4(3) there is inserted “other than any person on whom notice of the decision is required to be served under paragraph 2ZA(2) above”.

Commencement

Sch. 6(I) para. 23(1), (2)(a), (3)(a), (4)(a): February 12, 2003 in relation to England for purposes specified in SI 2003/272 art.2(p); July 15, 2005 in relation to Wales for the purpose specified in SI 2005/1314 art.3(d); May 21, 2007 in relation to England otherwise; not yet in force otherwise (SI 2003/272 art. 2(p); SI 2005/1314 art. 3(d), art. 3(d)(viii)(aa); SI 2007/1493 art. 2(i))

Sch. 6(I) para. 23(2), (3), (4), (5), (9): February 12, 2003

Sch. 6(I) para. 23(2)(b): February 12, 2003 in relation to England for purposes specified in SI 2003/272 art.2(p); July 15, 2005 in relation to Wales for purposes specified in SI 2005/1314 art.3(d) and art.3(d)(viii)(bb); May 21, 2007 in

relation to England otherwise; not yet in force otherwise (SI 2003/272 art. 2(p); SI 2005/1314 art. 3(d), art. 3(d)(viii)(bb); SI 2007/1493 art. 2(i))

Sch. 6(I) para. 23(3)(b): February 12, 2003 in relation to England for purposes specified in SI 2003/272 art.2(p); July 15, 2005 in relation to Wales for purposes specified in SI 2005/1314 art.3(d) and art.3(d)(viii)(cc); May 21, 2007 in relation to England otherwise; not yet in force otherwise (SI 2003/272 art. 2(p); SI 2005/1314 art. 3(d), art. 3(d)(viii)(cc); SI 2007/1493 art. 2(i))

Sch. 6(I) para. 23(4)(b): February 12, 2003 in relation to England for purposes specified in SI 2003/272 art.2(p); July 15, 2005 in relation to Wales for purposes specified in SI 2005/1314 art.3(d) and art.3(d)(viii)(dd); May 21, 2007 in relation to England otherwise; not yet in force otherwise (SI 2003/272 art. 2(p); SI 2005/1314 art. 3(d), art. 3(d)(viii)(dd); SI 2007/1493 art. 2(i))

Sch. 6(I) para. 23(5)(a), (5)(c)-(6), (10): Date to be appointed (not yet in force)

Sch. 6(I) para. 23(5)(b): February 12, 2003 in relation to England for purposes specified in SI 2003/272 art.2(p); July 15, 2005 in relation to Wales for purposes specified in SI 2005/1314 art.3(d) and art.3(d)(viii)(ee); May 21, 2007 in relation to England otherwise; not yet in force otherwise (SI 2003/272 art. 2(p); SI 2005/1314 art. 3(d), art. 3(d)(viii)(ee); SI 2007/1493 art. 2(i))

Sch. 6(I) para. 23(7): February 12, 2003 in relation to England for purposes specified in SI 2003/272 art.2(p); July 15, 2005 in relation to Wales for purposes specified in SI 2005/1314 art.3(d) and art.3(d)(viii)(ee); May 21, 2007 in relation to England except for purposes specified in SI 2007/1493 art.2(i); not yet in force otherwise (SI 2003/272 art. 2(p); SI 2005/1314 art. 3(d), art. 3(d)(viii)(ff); SI 2007/1493 art. 2(i))


Sch. 6(I) para. 23(8): February 12, 2003 in relation to England for purposes specified in SI 2003/272 art.2(p); July 15, 2005 in relation to Wales for the purpose specified in SI 2005/1314 art.3(d); May 11, 2006 in relation to Wales otherwise; May 21, 2007 in relation to England otherwise (SI 2003/272 art. 2(p); SI 2005/1314 art. 3(d), art. 3(d)(viii)(gg); SI 2006/1279 art. 2(n); SI 2007/1493 art. 2(i))

Sch. 6(I) para. 23(9)(a): February 12, 2003 in relation to England as specified in SI 2003/272 art.2(p); July 15, 2005 in relation to Wales as specified in SI 2005/1314 art.3(d)(viii)(hh) (SI 2003/272 art. 2(p); SI 2005/1314 art. 3(d)(viii)(hh))

Sch. 6(I) para. 23(9)(b): February 12, 2003 in relation to England for purposes specified in SI 2003/272 art.2(p); July 15, 2005 in relation to Wales for purposes specified in SI 2005/1314 art.3(d) and art.3(d)(viii)(hh); May 21, 2007 in relation to England as specified in SI 2007/1439 art.2(i); not yet in force otherwise (SI 2003/272 art. 2(p); SI 2005/1314 art. 3(d), art. 3(d)(viii)(hh); SI 2007/1493 art. 2(i))

Extent

Sch. 6(I) para. 23(1)-(10): England, Wales

 Partially In Force

24.

After Schedule 12 to the 1980 Act there is inserted—

“SCHEDULE 12ZA

DELEGATION OF FUNCTION OF MAKING DETERMINATION

Interpretation

1.

In this Schedule—

“appointed person” means a person appointed under section 121(5B) of this Act;
“appropriate Minister” has the same meaning as in section 121(5) of this Act;
“appointment”, in the case of any appointed person, means appointment under section 121(5B) of this Act.

Appointments

2.

An appointment under section 121(5B) of this Act must be in writing and—

- (a) may relate to a particular question specified in the appointment or to questions of a description so specified,
- (b) may provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of such conditions as may be specified in the appointment, and
- (c) may, by notice in writing given to the appointed person, be revoked at any time by the appropriate Minister in respect of any question which has not been determined by the appointed person before that time.

Powers of appointed person

3.

Subject to the provisions of this Schedule, an appointed person shall, in relation to the determination of any question to which his appointment relates, have the same powers and duties as the appropriate Minister, other than—

- (a) any function of holding an inquiry or other hearing or of causing an inquiry or other hearing to be held; or
- (b) any function of appointing a person for the purpose—
 - (i) of enabling persons to appear before and be heard by the person so appointed; or
 - (ii) of referring any question or matter to that person.

Holding of inquiries and other hearings by appointed persons

4.—

(1) If either of the following persons—

(a) the statutory undertakers to which the question relates, and

(b) in the case of an order to be made on an application under section 118ZA, 118C, 119ZA or 119C of this Act, the person who made the application, express a wish to appear before and be heard by the appointed person, the appointed person shall give them an opportunity of appearing and being heard.

(2) Whether or not sub-paragraph (1) above applies, the appointed person—

(a) may hold an inquiry or other hearing in connection with the determination of the question, and

(b) shall, if the appropriate Minister so directs, hold an inquiry in connection with that determination.

(3) Where an appointed person holds an inquiry or other hearing by virtue of this Schedule, an assessor may be appointed by the appropriate Minister to sit with the appointed person at the inquiry or hearing and advise him on any matters arising, notwithstanding that the appointed person is to determine the question.

(4) Subject to paragraph 7 below, the costs of an inquiry or other hearing held under this Schedule shall be defrayed by the appropriate Minister.

Revocation of appointments and making of new appointments

5.—

(1) Where under paragraph 2(c) above the appointment of the appointed person is revoked in respect of any question, the appropriate Minister shall, unless he proposes to determine the question himself, appoint another person under section 121(5B) of this Act to determine the question instead.

(2) Where such a new appointment is made, the consideration of the question, or any hearing in connection with it, shall be begun afresh.

(3) Nothing in sub-paragraph (2) above shall require any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

Certain acts and omissions of appointed person to be treated as those of appropriate Minister

6.—

(1) Anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates shall be treated for all purposes as done or omitted to be done by the appropriate Minister.

- (2) Sub-paragraph (1) above does not apply—
- (a) for the purposes of so much of any contract made between the appropriate Minister and the appointed person as relates to the exercise of the function, or
 - (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that sub-paragraph.

Local inquiries and hearings: evidence and costs

7.

Subsections (2) to (5) of section 250 of the Local Government Act 1972 (local inquiries: evidence and costs) shall apply to local inquiries or other hearings held under this Schedule by an appointed person as they apply to inquiries caused to be held under that section by a Minister, but as if—

- (a) in subsection (2) (evidence) the reference to the person appointed to hold the inquiry were a reference to the appointed person,
- (b) in subsection (4) (recovery of costs of holding inquiry) references to the Minister causing the inquiry to be held were references to the appropriate Minister, and
- (c) in subsection (5) (orders as to the costs of the parties) the reference to the Minister causing the inquiry to be held were a reference to the appointed person or the appropriate Minister.”

Commencement


Sch. 6(I) para. 24: February 12, 2003 in relation to England for purposes specified in SI 2003/272 art.2(p); May 31, 2005 in relation to Wales; May 21, 2007 in relation to England for purpose specified in SI 2007/1493 art.2(j); not yet in force otherwise (SI 2003/272 art. 2(q); SI 2005/1314 art. 2(b)(vii); SI 2007/1493 art. 2(j))

Extent

Sch. 6(I) para. 24-: England, Wales

PART II

CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

 Partially In Force

Norfolk and Suffolk Broads Act 1988 (c.4)

25.

In Schedule 3 to the Norfolk and Suffolk Broads Act 1988 (functions of Broads Authority), in paragraph 47 (footpaths and bridleways)—

- (a) for “118 to 121” there is substituted “118 to 121E”, and


(b) after “footpaths etc.” there is inserted “, except sections 118B and 119B of that Act (stopping up and diversion for purposes of crime prevention, etc.)”.

Commencement

Sch. 6(II) para. 25(a)-(b): February 12, 2003 in relation to England; not yet in force otherwise (SI 2003/272 art. 2(r))

Extent

Sch. 6(II) para. 25(a)-(b): England, Wales

 Law In Force

Environment Act 1995 (c. 25)**26.**

In Schedule 9 to the Environment Act 1995 (miscellaneous functions of National Park authorities), in paragraph 11 (footpaths and bridleways) for paragraph (c) there is substituted—

“(c) sections 118 to 121E (stopping up and diversion of public paths, etc.), except sections 118B and 119B (stopping up and diversion for purposes of crime prevention, etc.), and”.

Commencement

Sch. 6(II) para. 26: February 12, 2003 in relation to England; December 6, 2006 in relation to Wales (SI 2003/272 art. 2(s); SI 2006/3257 art. 2(a)(ii))

Extent

Sch. 6(II) para. 26: England, Wales

SCHEDULE 7**DRIVING OF MECHANICALLY PROPELLED VEHICLES ELSEWHERE THAN ON
ROADS****Section 67**

National Parks and Access to the Countryside Act 1949 (c. 97)

✓ Law In Force

1.

In section 51(1) of the National Parks and Access to the Countryside Act 1949 (general provisions as to long-distance routes), for “not being a motor vehicle” there is substituted “not being a mechanically propelled vehicle”.

Commencement

Sch. 7 para. 1: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 7 para. 1: England, Wales

Countryside Act 1968 (c. 41)

✓ Law In Force

2.—

(1) Section 30 of the Countryside Act 1968 (riding of pedal cycles on bridleways) is amended as follows.

(2) In subsection (1), for “not being a motor vehicle” there is substituted “not being a mechanically propelled vehicle”.

(3) For subsection (5) there is substituted—

“(5) In this section “mechanically propelled vehicle” does not include a vehicle falling within paragraph (c) of section 189(1) of the Road Traffic Act 1988.”

Commencement

Sch. 7 para. 2(1)-(3): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 7 para. 2(1)-(3): England, Wales

Chronically Sick and Disabled Persons Act 1970 (c. 44)

✓ Law In Force

3.

In section 20 of the Chronically Sick and Disabled Persons Act 1970 (use of invalid carriages on highways), in subsection (1)(b) after “sections 1 to 4,” there is inserted “21, 34,”.

Commencement

Sch. 7 para. 3: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 7 para. 3: England, Wales, Scotland

Road Traffic Act 1988 (c. 52)

✔ Law In Force

4.—

(1) Section 21 of the Road Traffic Act 1988 (prohibition of driving or parking on cycle tracks) is amended as follows.

(2) In subsection (1), for “motor” there is substituted “mechanically propelled”.

(3) In subsection (3), after paragraph (a) there is inserted—

“(aa) in subsection (1) “mechanically propelled vehicle” does not include a vehicle falling within paragraph (a), (b) or (c) of section 189(1) of this Act.”.

Commencement

Sch. 7 para. 4(1)-(3): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 7 para. 4(1)-(3): England, Wales

✔ Law In Force

5.

For section 34 of that Act there is substituted—

“34.— Prohibition of driving mechanically propelled vehicles elsewhere than on roads.

(1) Subject to the provisions of this section, if without lawful authority a person drives a mechanically propelled vehicle—

(a) on to or upon any common land, moorland or land of any other description, not being land forming part of a road, or

(b) on any road being a footpath, bridleway or restricted byway,

he is guilty of an offence.

- (2) For the purposes of subsection (1)(b) above, a way shown in a definitive map and statement as a footpath, bridleway or restricted byway is, without prejudice to section 56(1) of the Wildlife and Countryside Act 1981, to be taken to be a way of the kind shown, unless (subject to section 34A of this Act) the contrary is proved.
- (3) It is not an offence under this section to drive a mechanically propelled vehicle on any land within fifteen yards of a road, being a road on which a motor vehicle may lawfully be driven, for the purpose only of parking the vehicle on that land.
- (4) A person shall not be convicted of an offence under this section with respect to a vehicle if he proves to the satisfaction of the court that it was driven in contravention of this section for the purpose of saving life or extinguishing fire or meeting any other like emergency.
- (5) It is hereby declared that nothing in this section prejudices the operation of—
(a) section 193 of the Law of Property Act 1925 (rights of the public over commons and waste lands), or
(b) any byelaws applying to any land,
or affects the law of trespass to land or any right or remedy to which a person may by law be entitled in respect of any such trespass or in particular confers a right to park a vehicle on any land.
- (6) Subsection (2) above and section 34A of this Act do not extend to Scotland.
- (7) In this section—
“definitive map and statement” has the same meaning as in Part III of the Wildlife and Countryside Act 1981;
“mechanically propelled vehicle” does not include a vehicle falling within paragraph (a), (b) or (c) of section 189(1) of this Act; and
“restricted byway” means a way over which the public have restricted byway rights within the meaning of Part II of the Countryside and Rights of Way Act 2000, with or without a right to drive animals of any description along the way, but no other rights of way.”.

Commencement

Sch. 7 para. 5: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 7 para. 5: England, Wales, Scotland

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[Scotland and Wales](#) | [England](#)

 Repealed

Scotland and Wales

6. [...]¹**Notes**

- ¹ Repealed by Natural Environment and Rural Communities Act 2006 c. 16 Sch.12 para.1 (October 1, 2006 as SI 2006/2541)

England

[...]¹**Notes**

- ¹ Repealed by Natural Environment and Rural Communities Act 2006 c. 16 Sch.12 para.1 (May 2, 2006 as SI 2006/1176)

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[Scotland and Wales](#) | [England](#)

 Repealed

Scotland and Wales

7. [...]¹**Notes**

- ¹ Repealed by Natural Environment and Rural Communities Act 2006 c. 16 Sch.12 para.1 (October 1, 2006 as SI 2006/2541)

England

[...]¹**Notes**

- ¹ Repealed by Natural Environment and Rural Communities Act 2006 c. 16 Sch.12 para.1 (May 2, 2006 as SI 2006/1176)

Road Traffic Offenders Act 1988 (c. 53)

✔ Law In Force

8.

In Schedule 2 to the Road Traffic Offenders Act 1988 (prosecution and punishment of offences), in the second column of the entry in Part I relating to section 34 of the Road Traffic Act 1988, for “motor” there is substituted “mechanically propelled”.

Commencement

Sch. 7 para. 8: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 7 para. 8: England, Wales

✔ Law In Force

9.

In Schedule 3 to that Act (fixed penalty offences), in the second column of the entry relating to section 34 of the Road Traffic Act 1988, for “motor” there is substituted “mechanically propelled”.

Commencement

Sch. 7 para. 9: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 7 para. 9: England, Wales

SCHEDULE 8**AMENDMENTS CONSEQUENTIAL ON CHANGE OF NAME OF NATURE
CONSERVANCY COUNCIL FOR ENGLAND****Section 73(4)**

✘ Repealed

1. [...]¹

Notes


¹ Repealed by Natural Environment and Rural Communities Act 2006 c. 16 Sch.12 para.1 (October 1, 2006 as SI 2006/2541)

 Repealed

2. [...] ¹

Notes

¹ Repealed by Natural Environment and Rural Communities Act 2006 c. 16 Sch.12 para.1 (October 1, 2006 as SI 2006/2541)

 Law In Force

3.

In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (which sets out offices the holders of which are disqualified from membership of the House of Commons), the entry for “Any member of the Nature Conservancy Council for England or the Countryside Council for Wales in receipt of remuneration” is omitted, and in the appropriate places there are inserted the following two entries—

“Any member of the Countryside Council for Wales in receipt of remuneration.”

“Any member of English Nature in receipt of remuneration.”

Commencement

Sch. 8 para. 3: January 30, 2001 (2000 c. 37 Pt V s. 103(2))


Extent

Sch. 8 para. 3: England, Wales

SCHEDULE 9

SITES OF SPECIAL SCIENTIFIC INTEREST

Section 75(1)

 Law In Force

1.

For section 28 of the 1981 Act (areas of special scientific interest) there is substituted—

“28.— Sites of special scientific interest.

(1) Where the Nature Conservancy Council are of the opinion that any area of land is of special interest by reason of any of its flora, fauna, or geological or physiographical features, it shall be the duty of the Council to notify that fact—

- (a) to the local planning authority in whose area the land is situated;
- (b) to every owner and occupier of any of that land; and

(c) to the Secretary of State.

(2) The Council shall also publish a notification of that fact in at least one local newspaper circulating in the area in which the land is situated.

(3) A notification under subsection (1) shall specify the time (not being less than three months from the date of the giving of the notification) within which, and the manner in which, representations or objections with respect to it may be made; and the Council shall consider any representation or objection duly made.

(4) A notification under subsection (1)(b) shall also specify—

(a) the flora, fauna, or geological or physiographical features by reason of which the land is of special interest, and

(b) any operations appearing to the Council to be likely to damage that flora or fauna or those features,

and shall contain a statement of the Council's views about the management of the land (including any views the Council may have about the conservation and enhancement of that flora or fauna or those features).

(5) Where a notification under subsection (1) has been given, the Council may within the period of nine months beginning with the date on which the notification was served on the Secretary of State either—

(a) give notice to the persons mentioned in subsection (1) withdrawing the notification; or

(b) give notice to those persons confirming the notification (with or without modifications).

(6) A notification shall cease to have effect—

(a) on the giving of notice of its withdrawal under subsection (5)(a) to any of the persons mentioned in subsection (1); or

(b) if not withdrawn or confirmed by notice under subsection (5) within the period of nine months referred to there, at the end of that period.

(7) The Council's power under subsection (5)(b) to confirm a notification under subsection (1) with modifications shall not be exercised so as to add to the operations specified in the notification or extend the area to which it applies.

(8) As from the time when there is served on the owner or occupier of any land which has been notified under subsection (1)(b) a notice under subsection (5)(b) confirming the notification with modifications, the notification shall have effect in its modified form in relation to so much (if any) of that land as remains subject to it.

(9) A notification under subsection (1)(b) of land in England and Wales shall be a local land charge.

(10) For the purposes of this section and sections 28A to 28D, "local planning authority", in relation to land within the Broads, includes the Broads Authority.

28A.— Variation of notification under section 28.

(1) At any time after notice has been given under section 28(5)(b) confirming a notification (with or without modifications), the Nature Conservancy Council may by notice vary the

matters specified or stated in the confirmed notification (whether by adding to them, changing them, or removing matter from them).

(2) The area of land cannot be varied under this section.

(3) The Council shall give notice setting out the variation to—

- (a) the local planning authority in whose area the land is situated,
- (b) every owner and occupier of any of the land who in the opinion of the Council may be affected by the variation, and
- (c) the Secretary of State,

and after service of a notice under paragraph (b) the notification under section 28(1)(b) shall have effect in its varied form.

(4) Section 28(3) shall apply to such a notice as it applies to a notification under section 28(1).

(5) Where a notice under subsection (3) has been given, the Council may within the period of nine months beginning with the date the last of the owners and occupiers referred to in subsection (3)(b) was served with the notice either—

- (a) give notice to the persons mentioned in subsection (3) withdrawing the notice; or
- (b) give notice to them confirming the notice (with or without modifications).

(6) A notice under subsection (3) shall cease to have effect—

- (a) on the giving of notice of its withdrawal under subsection (5)(a) to any of the persons mentioned in subsection (3); or
- (b) if not withdrawn or confirmed by notice under subsection (5) within the period of nine months referred to in that subsection, at the end of that period.

(7) As from the time when there is served on the owner or occupier of any land a notice under subsection (5)(b) confirming a notice of variation with modifications, the notification under section 28(1)(b) shall have effect as so varied.

(8) A local land charge existing by virtue of section 28(9) shall be varied in accordance with a notice under subsection (3) or (5)(b).

28B.— Notification of additional land.

(1) Where the Nature Conservancy Council are of the opinion that if land adjacent to a site of special scientific interest (“the extra land”) were combined with the site of special scientific interest (“the SSSI”), the combined area of land would be of special interest by reason of any of its flora, fauna, or geological or physiographical features, the Council may decide to notify that fact.

(2) If they do so decide, the persons whom they must notify are—

- (a) the local planning authority in whose area the extra land is situated;
- (b) every owner and occupier of any of that extra land; and
- (c) the Secretary of State.

(3) No such notification may be given until after notice has been given under section 28(5)(b) confirming (with or without modifications) the notification under section 28(1) relating to the SSSI.

- (4) Subsections (2) and (3) of section 28 shall apply for the purposes of this section as they apply for the purposes of that section.
- (5) A notification under subsection (2)(b) shall also specify—
- (a) the area of land constituting the SSSI;
 - (b) what (as at the date of the notification under subsection (2)(b)) is specified or contained in the notification under section 28(1)(b) relating to the SSSI by virtue of section 28(4); and
 - (c) the reasons why the Council is of the opinion referred to in subsection (1).
- (6) In addition, the notification under subsection (2)(b) shall include a statement—
- (a) saying whether or not anything among the matters specified in the notification by virtue of subsection (5)(c) is particularly relevant to the extra land; and
 - (b) if any such thing is of particular relevance, specifying which.
- (7) Subsections (5) to (7) of section 28 apply in relation to a notification under subsection (2) of this section as they apply in relation to a notification under subsection (1) of that section, as if references to “subsection (1)” in section 28(5) to (7) were references to subsection (2) of this section.
- (8) As from the time when a notification under subsection (2)(b) is served on the owner or occupier of any land, the notification under section 28(1)(b) shall have effect as if it included the notification under subsection (2)(b).
- (9) As from the time when there is served on the owner or occupier of any land which has been notified under subsection (2)(b) a notice under section 28(5)(b) (as applied by subsection (7) of this section) confirming the notification under subsection (2)(b) with modifications, the notification under section 28(1)(b) (as extended by virtue of subsection (8) of this section) shall have effect in its modified form.
- (10) A local land charge existing by virtue of section 28(9) shall be varied in accordance with a notification under subsection (2) or under section 28(5)(b) as applied by subsection (7) of this section.

28C.— Enlargement of SSSI.

- (1) Where the Nature Conservancy Council are of the opinion that any area of land which includes, but also extends beyond, a site of special scientific interest (“the SSSI”) is of special interest by reason of any of its flora, fauna, or geological or physiographical features, the Council may decide to notify that fact.
- (2) If they do so decide, the persons whom they must notify are—
- (a) the local planning authority in whose area the land (including the SSSI) is situated;
 - (b) every owner and occupier of any of that land (including the SSSI); and
 - (c) the Secretary of State.
- (3) Subsections (2) to (8) of section 28 apply to a notification under subsection (2) of this section as they apply to a notification under subsection (1) of that section, as if references to “subsection (1)” and “subsection (1)(b)” in section 28(2) to (8) were references to subsection (2) and subsection (2)(b) of this section respectively.

- (4) No notification may be given under subsection (2) until after notice has been given under section 28(5)(b) (or section 28(5)(b) as applied by subsection (3)) confirming (with or without modifications) the notification under section 28(1) (or subsection (2)) relating to the SSSI.
- (5) As from the time when a notification under subsection (2) is served on the owner or occupier of any land included in the SSSI, the notification in relation to that land which had effect immediately before the service of the notification under subsection (2) shall cease to have effect.
- (6) A notification under subsection (2)(b) of land in England and Wales shall be a local land charge; and, to the extent that any such land was the subject of a local land charge by virtue of section 28(9), that local land charge shall be discharged.
- (7) A notice under section 28E(1)(a) and a consent under section 28E(3)(a) given before a notification under subsection (2)(b) continue to have effect.
- (8) The enlargement of a site of special scientific interest under this section does not affect anything done under section 28J to 28L.
- (9) Any reference to—
- (a) a notification under section 28(1) (or any of its paragraphs) shall be construed as including the corresponding notification under subsection (2);
 - (b) a notification under section 28(5)(b) shall be construed as including a notification under that provision as applied by subsection (3); and
 - (c) a local land charge existing by virtue of section 28(9) shall be treated as including one existing by virtue of subsection (6).

28D.— Denotification.

- (1) Where the Nature Conservancy Council are of the opinion that all or part of a site of special scientific interest is no longer of special interest by reason of any of the matters mentioned in section 28(1), they may decide to notify that fact.
- (2) If they do so decide, the persons whom they must notify are—
- (a) the local planning authority in whose area the land which the Council no longer consider to be of special interest is situated;
 - (b) every owner and occupier of any of that land;
 - (c) the Secretary of State;
 - (d) the Environment Agency; and
 - (e) every relevant undertaker (within the meaning of section 4(1) of the Water Industry Act 1991) and every internal drainage board (within the meaning of section 61C(1) of the Land Drainage Act 1991) whose works, operations or activities may affect the land.
- (3) The Council shall also publish a notification of that fact in at least one local newspaper circulating in the area in which the land referred to in subsection (2)(a) is situated.
- (4) Section 28(3) shall apply to a notification under subsection (2) or (3) as it applies to a notification under section 28(1).

(5) Where a notification under subsection (2) has been given, the Council may within the period of nine months beginning with the date on which the notification was served on the Secretary of State either—

- (a) give notice to the persons mentioned in subsection (2) withdrawing the notification, or
- (b) give notice to those persons confirming the notification, or confirming it in relation to an area of land specified in the notice which is smaller than that specified in the notification under subsection (2),

but if they do neither the notification shall cease to have effect.

(6) A notification under subsection (2) shall have effect in relation to any land as from the time a notice under subsection (5)(b) is served on its owner or occupier, and from that time a notification under section 28(1)(b) in relation to that land shall cease to have effect.

(7) A local land charge existing by virtue of section 28(9) shall be discharged in relation to land which is the subject of a notice under subsection (5)(b).

28E.— Duties in relation to sites of special scientific interest.

(1) The owner or occupier of any land included in a site of special scientific interest shall not while the notification under section 28(1)(b) remains in force carry out, or cause or permit to be carried out, on that land any operation specified in the notification unless—

- (a) one of them has, after service of the notification, given the Nature Conservancy Council notice of a proposal to carry out the operation specifying its nature and the land on which it is proposed to carry it out; and
- (b) one of the conditions specified in subsection (3) is fulfilled.

(2) Subsection (1) does not apply to an owner or occupier being an authority to which section 28G applies acting in the exercise of its functions.

(3) The conditions are—

- (a) that the operation is carried out with the Council's written consent;
- (b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act;
- (c) that the operation is carried out in accordance with a management scheme under section 28J or a management notice under section 28K.

(4) A consent under subsection (3)(a) may be given—

- (a) subject to conditions, and
- (b) for a limited period,

as specified in the consent.

(5) If the Council do not consent, they shall give notice saying so to the person who gave the notice under subsection (1).

(6) The Council may, by notice given to every owner and occupier of any of the land included in the site of special scientific interest, or the part of it to which the consent relates—

- (a) withdraw the consent; or
- (b) modify it (or further modify it) in any way.

(7) The following—

- (a) a consent under subsection (3)(a) granting consent subject to conditions or for a limited period, and
 - (b) a notice under subsection (5) or (6),
- must include a notice of the Council's reasons for imposing the conditions, for the limitation of the period, for refusing consent, or for withdrawing or modifying the consent, and also a notice of the matters set out in subsection (8).
- (8) The matters referred to in subsection (7) are—
 - (a) the rights of appeal under section 28F;
 - (b) the effect of subsection (9); and
 - (c) in the case of a notice under subsection (6), the effect of section 28M.
 - (9) A withdrawal or modification of a consent is not to take effect until—
 - (a) the expiry of the period for appealing against it; or
 - (b) if an appeal is brought, its withdrawal or final determination.
 - (10) The Council shall have power to enforce the provisions of this section.

28F.— Appeals in connection with consents.

- (1) The following persons—
 - (a) an owner or occupier who has been refused a consent under section 28E(3)(a),
 - (b) an owner or occupier who has been granted such a consent but who is aggrieved by conditions attached to it, or by the fact that it is for a limited period, or by the length of that period,
 - (c) an owner or occupier who is aggrieved by the modification of a consent;
 - (d) an owner or occupier who is aggrieved by the withdrawal of a consent,may by notice appeal to the Secretary of State against the relevant decision.
- (2) If the Nature Conservancy Council neither give consent nor refuse it within the period of four months beginning with the date on which the notice referred to in section 28E(1)(a) was sent, the person who gave that notice may for the purposes of subsection (1) treat the Council as having refused consent (and his appeal is to be determined on that basis).
- (3) Notice of an appeal must reach the Secretary of State—
 - (a) except in a case falling within subsection (2), within the period of two months beginning with the date of the notice giving consent or the notice under section 28E(5) or (6), or
 - (b) in a case falling within subsection (2), within the period of two months beginning immediately after the expiry of the four-month period referred to there,or, in either case, within such longer period as is agreed in writing between the Council and the appellant.
- (4) Before determining an appeal, the Secretary of State may, if he thinks fit—
 - (a) cause the appeal to take, or continue in, the form of a hearing (which may be held wholly or partly in private if the appellant so requests and the person hearing the appeal agrees), or
 - (b) cause a local inquiry to be held,and he must act as mentioned in paragraph (a) or (b) if either party to the appeal asks to be heard in connection with the appeal.

- (5) On determining an appeal against a decision, the Secretary of State may—
- (a) affirm the decision,
 - (b) where the decision was a refusal of consent, direct the Council to give consent,
 - (c) where the decision was as to the terms of a consent (whether the original or a modified one), quash all or any of those terms,
 - (d) where the decision was a withdrawal or modification of consent, quash the decision,
- and where he exercises any of the powers in paragraphs (b), (c) or (d) he may give directions to the Council as to the terms on which they are to give consent.
- (6) The Secretary of State may by regulations made by statutory instrument make provision about appeals under this section, and in particular about—
- (a) notices of appeal and supporting documentation required, and
 - (b) how appeals are to be brought and considered,
- and any such regulations may make different provision for different cases and circumstances.
- (7) A statutory instrument containing regulations under subsection (6) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) The Secretary of State may appoint any person to exercise on his behalf, with or without payment, his function of determining an appeal under this section or any matter involved in such an appeal.
- (9) Schedule 10A shall have effect with respect to appointments under subsection (8).
- (10) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (local inquiries: evidence and costs) apply in relation to hearings or local inquiries under this section as they apply in relation to local inquiries under that section, but as if the reference there—
- (a) to the person appointed to hold the inquiry were a reference to the Secretary of State or to the person appointed to conduct the hearing or hold the inquiry under this section; and
 - (b) to the Minister causing an inquiry to be held were to the Secretary of State.
- (11) 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 this section as it applies in relation to a hearing or local inquiry referred to in that section.

28G.— Statutory undertakers, etc.: general duty.

- (1) An authority to which this section applies (referred to in this section and in sections 28H and 28I as “a section 28G authority”) shall have the duty set out in subsection (2) in exercising its functions so far as their exercise is likely to affect the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest.
- (2) The duty is to take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.
- (3) The following are section 28G authorities—
- (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975) or a Government department;

- (b) the National Assembly for Wales;
- (c) a local authority;
- (d) a person holding an office—
 - (i) under the Crown,
 - (ii) created or continued in existence by a public general Act of Parliament,
 - or
 - (iii) the remuneration in respect of which is paid out of money provided by Parliament;
- (e) a statutory undertaker (meaning the persons referred to in section 262(1), (3) and (6) of the Town and Country Planning Act 1990); and
- (f) any other public body of any description.

28H.— Statutory undertakers, etc.: duty in relation to carrying out operations.

(1) A section 28G authority shall give notice to the Nature Conservancy Council before carrying out, in the exercise of its functions, operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest.

(2) Subsection (1) applies even if the operations would not take place on land included in a site of special scientific interest.

(3) In response to the notice referred to in subsection (1), the Council may send a notice—

- (a) saying that they do not assent to the proposed operations, or
- (b) assenting to them (with or without conditions),

but if they do not send a notice under paragraph (b) within the period of 28 days beginning with the date of the notice under subsection (1) they shall be treated as having declined to assent.

(4) If the Council do not assent, or if the authority proposes to carry out the operations otherwise than in accordance with the terms of the Council's assent, the authority—

- (a) shall not carry out the operations unless the condition set out in subsection (5) is satisfied, and
- (b) shall comply with the requirements set out in subsection (6) when carrying them out.

(5) The condition is that the authority has, after the expiry of the period of 28 days beginning with the date of the notice under subsection (1), notified the Council of—

- (a) the date on which it proposes to start the operations (which must be after the expiry of the period of 28 days beginning with the date of the notification under this paragraph), and
- (b) how (if at all) it has taken account of any written advice it received from the Council, before the date of the notification under this paragraph, in response to the notice under subsection (1).

(6) The requirements are—

- (a) that the authority carry out the operations in such a way as to give rise to as little damage as is reasonably practicable in all the circumstances to the flora, fauna or geological or physiographical features by reason of which the site is of special

- interest (taking account, in particular, of any such advice as is referred to in subsection (5)(b)); and
- (b) that the authority restore the site to its former condition, so far as is reasonably practicable, if any such damage does occur.

28I.— Statutory undertakers, etc.: duty in relation to authorising operations.

- (1) This section applies where the permission of a section 28G authority is needed before operations may be carried out.
- (2) Before permitting the carrying out of operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest, a section 28G authority shall give notice of the proposed operations to the Nature Conservancy Council.
- (3) Subsection (2) applies even if the operations would not take place on land included in a site of special scientific interest.
- (4) The authority shall wait until the expiry of the period of 28 days beginning with the date of the notice under subsection (2) before deciding whether to give its permission, unless the Nature Conservancy Council have notified the authority that it need not wait until then.
- (5) The authority shall take any advice received from the Council into account—
- (a) in deciding whether or not to permit the proposed operations, and
 - (b) if it does decide to do so, in deciding what (if any) conditions are to be attached to the permission.
- (6) If the Council advise against permitting the operations, or advise that certain conditions should be attached, but the section 28G authority does not follow that advice, the authority—
- (a) shall give notice of the permission, and of its terms, to the Council, the notice to include a statement of how (if at all) the authority has taken account of the Council's advice, and
 - (b) shall not grant a permission which would allow the operations to start before the end of the period of 21 days beginning with the date of that notice.
- (7) In this section “permission” , in relation to any operations, includes authorisation, consent, and any other type of permission (and “permit” and “permitting” are to be construed accordingly).

28J.— Management schemes.

- (1) The Nature Conservancy Council may formulate a management scheme for all or part of a site of special scientific interest.
- (2) A management scheme is a scheme for—
- (a) conserving the flora, fauna, or geological or physiographical features by reason of which the land (or the part of it to which the scheme relates) is of special interest;
 - or
 - (b) restoring them; or
 - (c) both.

- (3) The Council shall serve notice of a proposed management scheme on every owner and occupier of any of the land (or the part of it to which the scheme would relate); but it may be served on them only after they have been consulted about the proposed management scheme.
- (4) The notice may be served with the notification referred to in section 28(1)(b) or afterwards.
- (5) The owners and occupiers upon whom the notice must be served (referred to in this section as “the relevant owners and occupiers”) are—
- (a) if it is served with the notification under section 28(1)(b), or later but before the notification referred to in section 28(5)(b), the owners and occupiers referred to in section 28(1)(b);
 - (b) if it is served with the notification under section 28(5)(b) or later, the owners and occupiers of such of the land as remains subject to the notification.
- (6) The notice of a proposed management scheme must include a copy of the proposed scheme.
- (7) The notice must specify the time (not being less than three months from the date of the giving of the notice) within which, and the manner in which, representations or objections with respect to the proposed management scheme may be made; and the Council shall consider any representation or objection duly made.
- (8) Where a notice under subsection (3) has been given, the Council may within the period of nine months beginning with the date on which the notice was served on the last of the relevant owners and occupiers either—
- (a) give notice to the relevant owners and occupiers withdrawing the notice, or
 - (b) give notice to them confirming the management scheme (with or without modifications),
- and if notice under paragraph (b) is given, the management scheme shall have effect from the time the notice is served on all of the relevant owners or occupiers.
- (9) A notice under subsection (3) shall cease to have effect—
- (a) on the giving of a notice of withdrawal under subsection (8)(a) to any of the relevant owners and occupiers; or
 - (b) if not withdrawn or confirmed by notice under subsection (8) within the period of nine months referred to there, at the end of that period.
- (10) The Council's power under subsection (8)(b) to confirm a management scheme with modifications shall not be exercised so as to make complying with it more onerous.
- (11) The Council may at any time cancel or propose the modification of a management scheme.
- (12) In relation to—
- (a) the cancellation of a management scheme, subsections (3) to (5) apply, and
 - (b) a proposal to modify a management scheme, subsections (3) to (10) apply,
- as they apply in relation to a proposal for a management scheme.
- (13) An agreement under section 16 of the 1949 Act or section 15 of the 1968 Act relating to a site of special scientific interest may provide for any matter for which a management scheme relating to that site provides (or could provide).

28K.— Management notices.

- (1) Where it appears to the Nature Conservancy Council that—
 - (a) an owner or occupier of land is not giving effect to a provision of a management scheme, and
 - (b) as a result any flora, fauna or geological or physiographical features by reason of which the land is of special interest are being inadequately conserved or restored,they may if they think fit serve a notice on him (a “management notice”).
- (2) They may not serve a management notice unless they are satisfied that they are unable to conclude, on reasonable terms, an agreement with the owner or occupier as to the management of the land in accordance with the management scheme.
- (3) A management notice is a notice requiring the owner or occupier to—
 - (a) carry out such work on the land, and
 - (b) do such other things with respect to it,as are specified in the notice, and to do so before the dates or within the periods so specified.
- (4) The work and other things specified in the notice must appear to the Council to be measures which it is reasonable to require in order to ensure that the land is managed in accordance with the management scheme.
- (5) The management notice must explain the effect of subsection (7) and (8) and of sections 28L and 28M(2) to (4).
- (6) A copy of the management notice must be served on every other owner and occupier of the land.
- (7) If any of the work or other things required by a management notice have not been done within the period or by the date specified in it, Council may—
 - (a) enter the land, and any other land, and carry out the work, or do the other things; and
 - (b) recover from the owner or occupier upon whom the notice was served any expenses reasonably incurred by them in carrying out the work or doing the other things.
- (8) If an appeal is brought against the management notice, and upon the final determination of the appeal the notice is affirmed (with or without modifications), subsection (7) applies as if the references there to the management notice were to the notice as affirmed.

28L.— Appeals against management notices.

- (1) A person who is served with a management notice may appeal against its requirements to the Secretary of State; and a management notice does not take effect until—
 - (a) the expiry of the period for appealing against it; or
 - (b) if an appeal is brought, its withdrawal or final determination.
- (2) An appeal may be on the ground that some other owner or occupier of the land should take all or any of the measures specified in the management notice, or should pay all or part of their cost.
- (3) Where the grounds of appeal are, or include, that mentioned in subsection (2), the appellant must serve a copy of his notice of appeal on each other person referred to.

- (4) Before determining an appeal, the Secretary of State may, if he thinks fit—
- (a) cause the appeal to take, or continue in, the form of a hearing (which may be held wholly or partly in private if the appellant so requests and the person hearing the appeal agrees), or
 - (b) cause a local inquiry to be held,
- and he must act as mentioned in paragraph (a) or (b) if either party to the appeal (or, in a case falling within subsection (2), any of the other persons mentioned there) asks to be heard in connection with the appeal.
- (5) On determining the appeal, the Secretary of State may quash or affirm the management notice; and if he affirms it, he may do so either in its original form or with such modifications as he thinks fit.
- (6) In particular, on determining an appeal whose grounds are, or include, those mentioned in subsection (2), the Secretary of State may—
- (a) vary the management notice so as to impose its requirements (or some of them) upon any such other person as is referred to in the grounds; or
 - (b) determine that a payment is to be made by any such other person to the appellant.
- (7) In exercising his powers under subsection (6), the Secretary of State must take into account, as between the appellant and any of the other people referred to in subsection (2)—
- (a) their relative interests in the land (considering both the nature of the interests and the rights and obligations arising under or by virtue of them);
 - (b) their relative responsibility for the state of the land which gives rise to the requirements of the management notice; and
 - (c) the relative degree of benefit to be derived from carrying out the requirements of the management notice.
- (8) The Secretary of State may by regulations made by statutory instrument make provision about appeals under this section, and in particular about—
- (a) the period within which and the manner in which appeals are to be brought, and
 - (b) the manner in which they are to be considered,
- and any such regulations may make different provision for different cases or circumstances.
- (9) A statutory instrument containing regulations under subsection (8) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) The Secretary of State may appoint any person to exercise on his behalf, with or without payment, his function of determining an appeal under this section or any matter involved in such an appeal.
- (11) Schedule 10A shall have effect with respect to appointments under subsection (10).
- (12) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (local inquiries: evidence and costs) apply in relation to hearings or local inquiries under this section as they apply in relation to local inquiries under that section, but as if the reference there—
- (a) to the person appointed to hold the inquiry were a reference to the Secretary of State or to the person appointed to conduct the hearing or hold the inquiry under this section; and
 - (b) to the Minister causing an inquiry to be held were to the Secretary of State.

(13) 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 this section as it applies in relation to a hearing or local inquiry referred to in that section.

28M.— Payments.

(1) Where the Council, under section 28E(6), modify or withdraw a consent, they shall make a payment to any owner or occupier of the land who suffers loss because of the modification or withdrawal.

(2) The Council may, if they think fit, make one or more payments to any owner or occupier of land in relation to which a management scheme under section 28J is in force.

(3) The amount of a payment under this section is to be determined by the Council in accordance with guidance given and published by the Ministers.

(4) Section 50(3) applies to the determination of the amount of payments under this section as it applies to the determination of the amount of payments under that section.

28N.— Compulsory purchase.

(1) The Nature Conservancy Council may in circumstances set out in subsection (2) acquire compulsorily all or any part of a site of special scientific interest.

(2) The circumstances are—

(a) that the Council are satisfied that they are unable to conclude, on reasonable terms, an agreement with the owner or occupier as to the management of the land; or

(b) that the Council have entered into such an agreement, but they are satisfied that it has been breached in such a way that the land is not being managed satisfactorily.

(3) A dispute about whether or not there has been a breach of the agreement for the purposes of subsection (2)(b) is to be determined by an arbitrator appointed by the Lord Chancellor.

(4) Where the Council have acquired land compulsorily under this section, they may—

(a) manage it themselves; or

(b) dispose of it, or of any interest in it, on terms designed to secure that the land is managed satisfactorily.

(5) Section 103 of the 1949 Act (general provisions as to acquisition of land) applies for the purposes of this section as it applies for the purposes of that Act.

28P.— Offences.

(1) A person who, without reasonable excuse, contravenes section 28E(1) is guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.

(2) A section 28G authority which, in the exercise of its functions, carries out an operation which damages any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest—

(a) without first complying with section 28H(1), or

- (b) (if it has complied with section 28H(1)) without first complying with section 28H(4)(a),
is, unless there was a reasonable excuse for carrying out the operation without complying, guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.
- (3) A section 28G authority acting in the exercise of its functions which, having complied with section 28H(1), fails without reasonable excuse to comply with section 28H(4)(b) is guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.
- (4) For the purposes of subsections (1), (2) and (3), it is a reasonable excuse in any event for a person to carry out an operation (or to fail to comply with a requirement to send a notice about it) if—
- (a) subject to subsection (5), the operation in question was authorised by a planning permission granted on an application under Part III of the Town and Country Planning Act 1990 or permitted by a section 28G authority which has acted in accordance with section 28I; or
 - (b) the operation in question was an emergency operation particulars of which (including details of the emergency) were notified to the Nature Conservancy Council as soon as practicable after the commencement of the operation.
- (5) If an operation needs both a planning permission and the permission of a section 28G authority, subsection (4)(a) does not provide reasonable excuse unless both have been obtained.
- (6) A person (other than a section 28G authority acting in the exercise of its functions) who without reasonable excuse—
- (a) intentionally or recklessly destroys or damages any of the flora, fauna, or geological or physiographical features by reason of which land is of special interest, or intentionally or recklessly disturbs any of those fauna, and
 - (b) knew that what he destroyed, damaged or disturbed was within a site of special scientific interest,
- is guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.
- (7) It is a reasonable excuse in any event for a person to do what is mentioned in subsection (6) if—
- (a) paragraph (a) or (b) of subsection (4) is satisfied in relation to what was done (reading references there to an operation as references to the destruction, damage or disturbance referred to in subsection (6)), and
 - (b) where appropriate, subsection (5) is also satisfied, reading the reference there to an operation in the same way.
- (8) A person who without reasonable excuse fails to comply with a requirement of a management notice is guilty of an offence and is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.
- (9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

(10) Proceedings in England and Wales for an offence under this section shall not, without the consent of the Director of Public Prosecutions, be taken by a person other than the Council.

(11) In this section, “a section 28G authority” means an authority to which section 28G applies.

28Q.— Change of owner or occupier.

(1) This section applies where the owner of land included in a site of special scientific interest—

- (a) disposes of any interest of his in the land; or
- (b) becomes aware that it is occupied by an additional or a different occupier.

(2) If this section applies, the owner shall send a notice to the Nature Conservancy Council before the end of the period of 28 days beginning with the date on which he disposed of the interest or became aware of the change in occupation.

(3) The notice is to specify the land concerned and—

- (a) in a subsection (1)(a) case, the date on which the owner disposed of the interest in the land, and the name and address of the person to whom he disposed of the interest; or
- (b) in a subsection (1)(b) case, the date on which the change of occupation took place (or, if the owner does not know the exact date, an indication of when to the best of the owner's knowledge it took place), and, as far as the owner knows them, the name and address of the additional or different occupier.

(4) A person who fails without reasonable excuse to comply with the requirements of this section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(5) For the purposes of subsection (1), an owner “disposes of” an interest in land if he disposes of it by way of sale, exchange or lease, or by way of the creation of any easement, right or privilege, or in any other way except by way of mortgage.

28R.— Byelaws.

(1) The Nature Conservancy Council may make byelaws for the protection of a site of special scientific interest.

(2) The following provisions of the 1949 Act apply in relation to byelaws under this section as they apply in relation to byelaws under section 20 of that Act—

- (a) subsections (2) and (3) of section 20 (reading references there to nature reserves as references to sites of special scientific interest); and
- (b) sections 106 and 107.”

Commencement

Sch. 9 para. 1: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 9 para. 1: England, Wales

✔ Law In Force

2.

Section 29 (special protection for certain areas of special scientific interest) and section 30 (compensation where an order is made under section 29) of the 1981 Act shall cease to have effect.

Commencement

Sch. 9 para. 2: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 9 para. 2: England, Wales

✔ Law In Force

3.—

(1) Section 31 of the 1981 Act (restoration where order under section 29 is contravened) is amended as follows.

(2) For subsection (1) there is substituted—

“(1) Where—

(a) the operation in respect of which a person is convicted of an offence under section 28P(1), (2) or (3) has destroyed or damaged any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest, or

(b) a person is convicted of an offence under section 28P(6),

the court by which he is convicted, in addition to dealing with him in any other way, may make an order requiring him to carry out, within such period as may be specified in the order, such operations (whether on land included in the site of special scientific interest or not) as may be so specified for the purpose of restoring the site of special scientific interest to its former condition.”

(3) For the sidenote, there is substituted “Restoration following offence under section 28P”.

Commencement

Sch. 9 para. 3(1)-(3): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 9 para. 3(1)-(3): England, Wales

✔ Law In Force

4.

In section 32 (duties of agriculture Ministers with respect to areas of special scientific interest), in subsection (1), for “land notified under section 28(1)” there is substituted “land included in a site of special scientific interest”.

Commencement

Sch. 9 para. 4: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 9 para. 4: England, Wales

✔ Law In Force

5.—

(1) Section 52 of the 1981 Act (interpretation of Part II) is amended as follows.

(2) In subsection (1), after the definition of “the Nature Conservancy Councils” there is inserted—

““notice” and “notification” mean notice or notification in writing;
“site of special scientific interest” means an area of land which has been notified under section 28(1)(b);”.

(3) In subsection (2), after “district planning authority” there is inserted “and, in sections 28 to 28D, shall also be construed in accordance with section 28(10);”.

(4) After subsection (2) there is inserted—

“(2A) Where a notification under section 28(1)(b) has been—

- (a) modified under section 28(5)(b),
- (b) varied under section 28A(3), or
- (c) varied with modifications under section 28A(5)(b),
- (d) extended under section 28B(2), or
- (e) extended with modifications by virtue of section 28B(7),

a reference to such a notification (however expressed) is (unless the context otherwise requires) a reference to the notification as thus altered.

(2B) References to a notification under section 28(1) or 28(5)(b), or to a local land charge existing by virtue of section 28(9), shall be construed in accordance with section 28C(9).

(2C) For the purposes of this Part, in relation to land in England and Wales which is common land, “occupier” includes the commoners or any of them; and

(a) “common land” means common land as defined in section 22 of the Commons Registration Act 1965; and

(b) “commoner” means a person with rights of common as defined in that section.”

Commencement

Sch. 9 para. 5(1)-(4): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 9 para. 5(1)-(4): England, Wales

✔ Law In Force

6.

In section 67 of the 1981 Act (application to Crown), after subsection (1) there is inserted—

“(1A) An interest in Crown land, other than one held by or on behalf of the Crown, may be acquired under section 28N, but only with the consent of the appropriate authority.

(1B) Byelaws made by virtue of section 28R may apply to Crown land if the appropriate authority consents.”

Commencement

Sch. 9 para. 6: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 9 para. 6: England, Wales

✔ Law In Force

7.

In the 1981 Act, after Schedule 10 there is inserted the following Schedule—

“SCHEDULE 10A

DELEGATION OF APPELLATE FUNCTIONS

Interpretation

1.

In this Schedule—

“appointed person” means a person appointed under section 28F(8) or 28L(10); and
“appointment”, in the case of any appointed person, means appointment under either of those provisions.

Appointments

2.

An appointment under section 28F(8) or 28L(10) must be in writing and—

- (a) may relate to any particular appeal or matter specified in the appointment or to appeals or matters of a description so specified;
- (b) may provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of such conditions as may be specified in the appointment; and
- (c) may, by notice in writing given to the appointed person, be revoked at any time by the Secretary of State in respect of any appeal or matter which has not been determined by the appointed person before that time.

Powers of appointed person

3.

Subject to the provisions of this Schedule, an appointed person shall, in relation to any appeal or matter to which his appointment relates, have the same powers and duties as the Secretary of State, other than—

- (a) any function of making regulations;
- (b) any function of holding an inquiry or other hearing or of causing an inquiry or other hearing to be held; or
- (c) any function of appointing a person for the purpose—
 - (i) of enabling persons to appear before and be heard by the person so appointed, or
 - (ii) of referring any question or matter to that person.

Holding of local inquiries and other hearings by appointed persons

4.—

- (1) If either of the parties to an appeal or matter expresses a wish to appear before and be heard by the appointed person, the appointed person shall give both of them an opportunity of appearing and being heard.
- (2) Whether or not a party to an appeal or matter has asked for an opportunity to appear and be heard, the appointed person—
 - (a) may hold a local inquiry or other hearing in connection with the appeal or matter, and
 - (b) shall, if the Secretary of State so directs, hold a local inquiry in connection with the appeal or matter.
- (3) Where an appointed person holds a local inquiry or other hearing by virtue of this Schedule, an assessor may be appointed by the Secretary of State to sit with the appointed person at the inquiry or hearing and advise him on any matters arising, notwithstanding that the appointed person is to determine the appeal or matter.
- (4) Subject to section 28F(10) or 28L(12), the costs of a local inquiry held under this Schedule shall be defrayed by the Secretary of State.

Revocation of appointments and making of new appointments

5.—

- (1) Where under paragraph 2(c) the appointment of the appointed person is revoked in respect of any appeal or matter, the Secretary of State shall, unless he proposes to determine the appeal or matter himself, appoint another person under section 28F(8) or 28L(10) to determine the appeal or matter instead.
- (2) Where such a new appointment is made, the consideration of the appeal or matter, or any hearing in connection with it, shall be begun afresh.
- (3) Nothing in sub-paragraph (2) shall require any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

Certain acts and omissions of appointed persons to be treated as those of the Secretary of State

6.—

- (1) Anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates shall be treated for all purposes as done or omitted to be done by the Secretary of State.
- (2) Sub-paragraph (1) shall not apply—

- (a) for the purposes of so much of any contract made between the Secretary of State and the appointed person as relates to the exercise of the function; or
- (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that sub-paragraph.”


Commencement

Sch. 9 para. 7: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 9 para. 7: England, Wales

SCHEDULE 10**CONSEQUENTIAL AMENDMENTS RELATING TO SITES OF SPECIAL SCIENTIFIC INTEREST****Section 76(1)****PART I****AMENDMENTS OF WILDLIFE AND COUNTRYSIDE ACT 1981**

 Law In Force

1.—


- (1) The 1981 Act is amended as follows.
- (2) In section 28 (areas of special scientific interest)—
 - (a) in subsection (8)(a), “Part III of the Town and Country Planning Act 1990 or” is omitted; and
 - (b) subsections (10) and (11) are omitted.
- (3) In section 29 (special protection for certain areas of special scientific interest), in subsection (9)(a), “Part III of the Town and Country Planning Act 1990 or” is omitted.
- (4) In section 30 (compensation where order is made under section 29)—
 - (a) in subsection (4)(c), “section 10 of the Land Compensation Act 1973 (mortgages, trusts for sale and settlements) or” is omitted;
 - (b) in subsection (5), “section 5 of the Land Compensation Act 1961 or” is omitted;
 - (c) in subsection (7), “section 32 of the Land Compensation Act 1961 or” is omitted;
 - (d) in subsection (8), “the Lands Tribunal or” is omitted; and
 - (e) in subsection (9), “sections 2 and 4 of the Land Compensation Act 1961 or” is omitted.

Commencement

Sch. 10(I) para. 1(1)-(4)(e): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 10(I) para. 1(1)-(4)(e): Scotland

 Law In Force

2.

In section 74 of the 1981 Act (short title, commencement and extent), after subsection (5) there is inserted—

“(5A) Sections 29 and 30 extend to Scotland only.”


Commencement

Sch. 10(I) para. 2: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 10(I) para. 2: England, Wales, Scotland

PART II**OTHER AMENDMENTS**

 Law In Force

Harbours Act 1964 (c. 40)

3.

In Schedule 3 to the Harbours Act 1964 (procedure for making harbour revision and empowerment orders), in paragraph 1 (interpretation), for paragraph (a) of the definition of “sensitive area” there is substituted—


“(a) land within a site of special scientific interest (within the meaning of the Wildlife and Countryside Act 1981);”.

Commencement

Sch. 10(II) para. 3: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 10(II) para. 3: England, Wales

 Law In Force

Conservation of Seals Act 1970 (c. 30)**4.**

In section 10 of the Conservation of Seals Act 1970 (power to grant licences to kill or take seals), in subsection (4), for paragraph (b) there is substituted—


“(b) is a site of special scientific interest (within the meaning of the Wildlife and Countryside Act 1981); or”.

Commencement

Sch. 10(II) para. 4: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 10(II) para. 4: England, Wales

 Law In Force

Highways Act 1980 (c. 66)**5.**

In section 105A of the Highways Act 1980 (environmental impact assessments), in subsection (6), for paragraph (a) there is substituted—

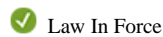
“(a) a site of special scientific interest (within the meaning of the Wildlife and Countryside Act 1981);”.

Commencement

Sch. 10(II) para. 5: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 10(II) para. 5: England, Wales



Law In Force

Channel Tunnel Act 1987 (c. 53)

6.

In section 9 of the Channel Tunnel Act 1987 (planning permission), for subsection (7) there is substituted—

“(7) Section 28I of the Wildlife and Countryside Act 1981 (statutory undertakers: duty in relation to authorising operations) shall not apply in relation to any operation which is connected with the carrying out of any works authorised to be carried out by this Act and which is carried out within the limits of land to be acquired for any of those works, and neither shall the following—

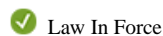
- (a) section 28E(1) (prohibition of operations on land forming part of a site of special scientific interest), in relation to an owner or occupier other than an authority to which section 28G of that Act applies;
- (b) sections 28G(2) (general duty of statutory undertakers) and 28H (duty of statutory undertakers when carrying out operations), in relation to such an authority.”

Commencement

Sch. 10(II) para. 6: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 10(II) para. 6: England, Wales



Law In Force

Town and Country Planning Act 1990 (c. 8)

7.

In section 87 of the Town and Country Planning Act 1990 (exclusion of certain descriptions of land or development from a simplified planning zone), in subsection (1), for paragraph (f) there is substituted—

“(f) land within a site of special scientific interest (within the meaning of the Wildlife and Countryside Act 1981).”

Commencement

Sch. 10(II) para. 7: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent


Sch. 10(II) para. 7: England, Wales

 Repealed

8. [...]¹

Notes

¹ Repealed by Environmental Permitting (England and Wales) Regulations 2007/3538 Sch.23 para.1 (April 6, 2008)

 Law In Force

Water Industry Act 1991 (c. 56)

9.

In section 156 of the Water Industry Act 1991 (restriction on disposals of land), in subsection (8), for paragraph (b) in the definition of “area of outstanding natural beauty or special scientific interest” there is substituted—


“(b) is a site of special scientific interest within the meaning of the Wildlife and Countryside Act 1981;”.

Commencement

Sch. 10(II) para. 9: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 10(II) para. 9: England, Wales

 Law In Force

Environment Act 1995 (c. 25)

10.

In Schedule 13 to the Environment Act 1995 (review of old mineral planning permissions), for paragraph 2(4)(b) there is substituted—

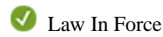
“(b) a site of special scientific interest (within the meaning of the Wildlife and Countryside Act 1981);”.

Commencement

Sch. 10(II) para. 10: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 10(II) para. 10: England, Wales



Law In Force

Channel Tunnel Rail Link Act 1996 (c. 61)

11.

In Schedule 10 to the Channel Tunnel Rail Link Act 1996 (disapplication and modification of miscellaneous controls), for paragraph 6 and the heading preceding it there is substituted—

Sites of special scientific interest

“6.

Section 28I of the Wildlife and Countryside Act 1981 (statutory undertakers: duty in relation to authorising operations) shall not apply to any operation carried out for the purposes of or in connection with the exercise of any of the powers conferred by this Part of this Act with respect to works, and neither shall the following—

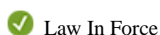
- (a) section 28E(1) (prohibition of operations on land forming part of a site of special scientific interest), in relation to an owner or occupier other than an authority to which section 28G of that Act applies;
- (b) sections 28G(2) (general duty of statutory undertakers) and 28H (duty of statutory undertakers when carrying out operations), in relation to such an authority.”

Commencement

Sch. 10(II) para. 11: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 10(II) para. 11: England, Wales

SCHEDULE 11**TRANSITIONAL PROVISIONS AND SAVINGS RELATING TO SITES OF SPECIAL SCIENTIFIC INTEREST****Section 76(2)***Interpretation*

Law In Force

1.—

(1) In this Schedule—

“the Nature Conservancy Council” has the meaning given by section 27A of the 1981 Act and “stop notice” has the meaning given by paragraph 9(3) of this Schedule;

“old section 28” means section 28 of the 1981 Act as it had effect before its substitution by section 75(1) of and Schedule 9 to this Act;

“new section 28” means section 28 of the 1981 Act as substituted by section 75(1) of and Schedule 9 to this Act; and

“the substitution date” means the date on which new section 28 is substituted for old section 28,

and references to other sections are to those sections in the 1981 Act unless otherwise specified.

(2) Nothing in this Schedule prejudices the application of section 16 (general savings) or 17 (repeal and re-enactment) of the Interpretation Act 1978 to any case not provided for in this Schedule.

Commencement

Sch. 11 para. 1(1)-(2): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 1(1)-(2): England, Wales

Notifications given under old section 28

✔ Law In Force

2.

Except as mentioned in paragraphs 4 and 5, a notification under old section 28(1)(a), (b) or (c) (including one having effect in modified form by virtue of old section 28(4C)) has effect from the substitution date as if it were a notification under new section 28(1)(a), (b) or (c) respectively.

Commencement

Sch. 11 para. 2: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 2: England, Wales

✔ Law In Force

3.

A notice under old section 28(4A)(a) or (b) has effect from the substitution date as if it were a notice under new section 28(5)(a) or (b) respectively.

Commencement

Sch. 11 para. 3: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 3: England, Wales

Modification of operation of new section 28

✔ Law In Force

4.

New section 28(2) does not apply to a notification taking effect as mentioned in paragraph 2.

Commencement

Sch. 11 para. 4: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 4: England, Wales

✔ Law In Force

5.

The words following paragraph (b) in new section 28(4) do not apply to a notification taking effect as mentioned in paragraph 2, but instead paragraph 6 applies.

Commencement

Sch. 11 para. 5: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 5: England, Wales

✔ Law In Force

6.—

(1) The Nature Conservancy Council shall, within the period of five years beginning with the substitution date, give a notice to every owner and occupier of any land which is the subject of—

- (a) a notification under old section 28(4A)(b), or
- (b) a notice under new section 28(5)(b) following a notification under old section 28(1),

containing a statement of the Council's views about the matters referred to in the words following paragraph (b) in new section 28(4).

(2) The notice shall specify the date (not being less than three months from the date of the giving of the notice) on or before which, and the manner in which, representations or objections with respect to it may be made; and the Council shall consider any representation or objection duly made.

(3) Within the period of two months beginning immediately after the date referred to in sub-paragraph (2), the Council shall give a notice to every owner and occupier of the land confirming the statement referred to in sub-paragraph (1) or containing a revised statement.

Commencement

Sch. 11 para. 6(1)-(3): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 6(1)-(3): England, Wales

Modification of operation of [sections 28A to 28C]¹

Notes

¹ Words substituted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.170(2) (October 1, 2006)

 Law In Force

7.—

(1) This paragraph applies to a notification under old section 28(1) given—

- (a) before the commencement of the Wildlife and Countryside (Amendment) Act 1985; or
- (b) after the commencement of that Act but preceded by a notice under section 28(2) as originally enacted, given during the six months immediately preceding that commencement.

(2) In relation to a notification to which this paragraph applies, the reference in section 28A(1) to—

- (a) notice given under section 28(5)(b) confirming a notification with or without modifications, and
- (b) the confirmed notification,

shall be construed as a reference to the notification under old section 28(1).

[(3) In relation to a site of special scientific interest which is the subject of a notification to which this paragraph applies—

- (a) section 28B (notification of additional land) shall have effect as if subsection (3) were omitted; and
- (b) section 28C (enlargement of SSSI) shall have effect as if subsection (4) were omitted.

] ¹

Notes

¹ Added by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.170(1) (October 1, 2006)

Commencement

Sch. 11 para. 7(1)-(2)(b): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 7(1)-(3)(b): England, Wales

Modification of operation of section 28E

✓ Law In Force

8.—

(1) Except as provided in paragraph 9—

- (a) notice given under old section 28(5)(a) has effect from the substitution date as if it were a notice given under section 28E(1)(a); and
- (b) a consent given under old section 28(6)(a) has effect from that date as if it were a consent under section 28E(3)(a).

(2) In relation to such a consent, section 28E has effect as if for subsections (7) and (8) there were substituted—

“(7) A notice under subsection (6) must include a notice of—

- (a) the Council's reasons for withdrawing or modifying the consent;
- (b) the rights of appeal under section 28F;
- (c) the effect of subsection (9); and
- (d) the effect of section 28M.”

Commencement

Sch. 11 para. 8(1)-(2): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 8(1)-(2): England, Wales

✓ Law In Force

9.—

(1) Subject to paragraph 10, this paragraph applies where—

- (a) a notice has been given under old section 28(5)(a) before the substitution date;

(b) on the substitution date neither of the conditions set out in old section 28(6)(a) and (b) is fulfilled; and

(c) on the substitution date four months have expired since the notice under old section 28(5)(a) was given,

but even if those conditions are fulfilled, this paragraph does not apply in relation to operations specified in a notice under section 29(4)(a) on any land if immediately before the substitution date an order under section 29 was in effect in relation to that land.

(2) Where this paragraph applies, but subject to sub-paragraph (7), the prohibition in section 28E(1) on carrying out, or causing or permitting to be carried out, an operation does not apply in relation to an operation specified in the notice under old section 28(5)(a).

(3) Where this paragraph applies, the Nature Conservancy Council may, on or after the substitution date, give a notice (a “stop notice”) to every owner and occupier of the land to which the stop notice is to apply.

(4) A stop notice is to specify—

(a) the date on which it is to take effect;

(b) the operations to which it applies; and

(c) the land to which it applies,

and must contain a notice of the right of the person to whom the stop notice is given to appeal against it in accordance with paragraph 11, and a notice of the effect of sub-paragraph (8).

(5) The date on which a stop notice is to take effect may not be sooner than the end of the period of three days beginning with the date the stop notice is given, unless the Council consider that there are special reasons which justify a shorter period, and a statement of those reasons is included with the stop notice.

(6) The operations to which a stop notice may apply are all or any of the operations specified in the notice under old section 28(5)(a).

(7) From the date on which the stop notice takes effect, sub-paragraph (2) of this paragraph ceases to apply in relation to the operations specified in the stop notice on the land to which the stop notice applies.

(8) Where the Council give a stop notice, they shall make a payment to any owner or occupier of the land who suffers loss because of it.

(9) The amount of a payment under sub-paragraph (8) is to be determined by the Council in accordance with guidance given and published by the Ministers (within the meaning of section 50).

(10) Section 50(3) applies to the determination of the amount of a payment under sub-paragraph (8) as it applies to the determination of the amount of payments under that section.

(11) This paragraph ceases to apply, in relation to any operation specified in the notice referred to in sub-paragraph (1)(a) except an operation to which a stop notice applies, if the operation has not begun before the end of the period of—

(a) three years beginning with the substitution date; or

(b) in a case falling within paragraph 10(2) or (3), three years beginning immediately after the expiry of the period of one month or longer referred to there.

Commencement

Sch. 11 para. 9(1)-(11)(b): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 9(1)-(11)(b): England, Wales

✔ Law In Force

10.—

(1) An agreement under old section 28(6A) in effect immediately before the substitution date has effect from the substitution date as an agreement that paragraph 9 is not to apply in relation to the operation which is the subject of the agreement; and, accordingly, paragraph 9 does not apply in relation to that operation (as regards both the owner and the occupier of the land).

(2) Where a notice has been given under old section 28(6B) before the substitution date, paragraph 9 has effect, in relation to the operation in question, as if for the period mentioned in paragraph 9(1)(c) there were substituted the period of one month from the giving of the notice or (if a longer period is specified in the notice) that longer period.

(3) If after an agreement has taken effect as mentioned in sub-paragraph (1) the relevant person (whether a party to the agreement or not) gives the Nature Conservancy Council written notice that he wishes to terminate the agreement, then as from the giving of the notice paragraph 9 has effect, in relation to the operation in question (as regards both the owner and the occupier of the land), as if for the period mentioned in paragraph 9(1)(c) there were substituted the period of one month from the giving of the notice or (if a longer period is specified in the notice) that longer period.

(4) In sub-paragraph (3), “relevant person” has the same meaning as in old section 28(6C).

Commencement

Sch. 11 para. 10(1)-(4): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 10(1)-(4): England, Wales

✔ Law In Force

11.—

(1) A person to whom a stop notice is given may be notice appeal against it to the Secretary of State, but meanwhile it remains in effect.

(2) Section 28F(3) to (11) shall apply in relation to such an appeal as they apply in relation to an appeal against a decision to withdraw a consent (see section 28F(1)(d)), but with the following modifications—

- (a) as if, in section 28F(3), for paragraphs (a) and (b) and the following words “or, in either case,” there were substituted “within the period of two months beginning with the date of the stop notice, or”; and
- (b) as if, for section 28F(5), there were substituted—


“(5) On determining the appeal, the Secretary of State may quash or affirm the stop notice; and if he affirms it, he may do so either in its original form or with the removal from it of such operations as he thinks fit, or in relation to such reduced area of land as he thinks fit.”

Commencement

Sch. 11 para. 11(1)-(2)(b): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 11(1)-(2)(b): England, Wales

 Law In Force

12.—

(1) The Nature Conservancy Council may, by notice given to every owner and occupier of land to which a stop notice applies, vary a stop notice by removing any operation to which it applies or reducing the area of land to which it applies.

(2) Where after giving a stop notice—

- (a) the Council consent to an operation to which the stop notice applies;
- (b) an operation to which it applies becomes one which may be carried out under the terms of an agreement under section 16 of the National Parks and Access to the Countryside Act 1949 or section 15 of the Countryside Act 1968; or
- (c) an operation to which it applies becomes one which may be carried out in accordance with a management scheme under section 28J or a management notice under section 28K,

the stop notice shall be deemed to be varied accordingly by the removal from the stop notice of the operation in question in relation to the land to which the consent, agreement or management scheme or notice relates.

Commencement

Sch. 11 para. 12(1)-(2)(c): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 12(1)-(2)(c): England, Wales

Modification of operation of section 28F

✔ Law In Force

13.—

(1) Section 28F(1)(a) does not apply to a refusal of a consent under old section 28(6)(a).

(2) Section 28F(1)(b) does not apply to consents taking effect as mentioned in paragraph 8(1)(b).

Commencement

Sch. 11 para. 13(1)-(2): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 13(1)-(2): England, Wales

Modification of operation of section 28H

✔ Law In Force

14.

Section 28H does not apply in relation to operations which have already begun on the date section 28H comes into force.

Commencement

Sch. 11 para. 14: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 14: England, Wales

Section 29

✔ Law In Force

15.

Paragraphs 16 and 17 apply where, immediately before the coming into force of paragraph 2 of Schedule 9 to this Act, there is in effect an order applying section 29(3) to any land (“the relevant land”).

Commencement

Sch. 11 para. 15: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 15: England, Wales

✔ Law In Force

16.—

(1) If the relevant land is not included in a site of special scientific interest, section 28E applies to it as if it were (and accordingly section 28P(1) applies also); and references in section 28E to a notification under section 28(1)(b) shall be construed as references to an order under section 29.

(2) Whether or not the relevant land is included in a site of special scientific interest, a notice given under section 29(4)(a) has effect as if it were a notice given under section 28E(1)(a), except as provided in paragraph 17.

(3) Whether or not the relevant land is included in a site of special scientific interest, a consent given under section 29(5)(a) has effect as if it were a consent given under section 28E(3)(a), and in relation to such a consent section 28E has effect as if for subsections (7) and (8) there were substituted—

- “(7) A notice under subsection (6) must include a notice of—
- (a) the Council's reasons for withdrawing or modifying the consent;
 - (b) the rights of appeal under section 28F;
 - (c) the effect of subsection (9); and
 - (d) the effect of section 28M.”

Commencement

Sch. 11 para. 16(1)-(3): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 16(1)-(3): England, Wales

✔ Law In Force

17.—

(1) This paragraph applies where—

- (a) a notice has been given under section 29(4)(a) before the repeal of section 29 by paragraph 2 of Schedule 9 to this Act;
- (b) on the date on which paragraph 2 of Schedule 9 to this Act comes into force, neither of the conditions set out in section 29(5)(a) and (b) is fulfilled; and

(c) on that date the period mentioned in paragraph (c) of section 29(5) (or in that paragraph as it has effect by virtue of section 29(6) or (7)) has expired.

(2) Where this paragraph applies, but subject to paragraph 9(7) as it has effect by virtue of sub-paragraph (3) of this paragraph, the prohibition in section 28E(1) on carrying out, or causing or permitting to be carried out, an operation does not apply in relation to an operation specified in the notice under section 29(4)(a).

(3) Paragraphs 9(3) to (11) and 11 of this Schedule apply also in relation to this paragraph, but as if—

(a) in those provisions references to a notice under old section 28(5)(a) were to a notice under section 29(4)(a); and

(b) the reference to “sub-paragraph (2)” in paragraph 9(7) were to sub-paragraph (2) of this paragraph.

Commencement

Sch. 11 para. 17(1)-(3)(b): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 17(1)-(3)(b): England, Wales

✔ Law In Force

18.—

(1) This paragraph applies where—

(a) as a result of the coming into force of paragraph 2 of Schedule 9 to this Act, a local inquiry or a hearing (as mentioned in paragraph 4(1)(a) and (b) respectively of Schedule 11 to the 1981 Act) comes to an end, and

(b) an owner or occupier of land in relation to which an order under section 29 has been made has incurred expense in connection with opposing the order at the local inquiry or hearing.

(2) If this paragraph applies, the Nature Conservancy Council shall (subject to sub-paragraph (3)) pay a person's expenses referred to in paragraph (1)(b) to the extent that they are reasonable.

(3) The Council need not pay any such expenses unless the person—

(a) applies to the Council for such a payment; and

(b) satisfies the Council that he has incurred the expenses.

Commencement

Sch. 11 para. 18(1)-(3)(b): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 18(1)-(3)(b): England, Wales

Compensation and grants

✓ Law In Force

19.—

(1) Despite its repeal by paragraph 2 of Schedule 9 to this Act, section 30 (compensation where order made under section 29) continues to apply in connection with an order made under section 29 before the coming into force of that paragraph.

(2) After the repeal of section 29 by that paragraph, section 32 (duties of agriculture Ministers with respect to areas of special scientific interest) continues to apply, in relation to an application under that section relating to land to which section 29(3) applied immediately before its repeal, as if that land were included in a site of special scientific interest.

Commencement

Sch. 11 para. 19(1)-(2): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 19(1)-(2): England, Wales

Offences and restoration orders

✓ Law In Force

20.—

(1) Section 28P does not have effect in relation to an offence committed before the substitution date, but old section 28 or, as the case may be, section 29, has effect instead.

(2) In relation to an offence under section 29, section 31 as it had effect before the coming into force of paragraph 3 of Schedule 9 to this Act shall continue to apply.

Commencement

Sch. 11 para. 20(1)-(2): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 20(1)-(2): England, Wales

Powers of entry

✔ Law In Force

21.

Section 51 (powers of entry) has effect on and after the substitution date as if, in subsection (1), after paragraph (m) there were inserted—

“(n) to determine whether or not to give or vary a stop notice;”,
and as if, in subsection (2)(a), after “paragraphs (a) to (k)” there were inserted “and paragraph (n)”.

Commencement

Sch. 11 para. 21: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 21: England, Wales

Service of notices

✔ Law In Force

22.

Section 70A (service of notices) applies in relation to notices given under this Schedule as it applies in relation to notices and other documents required or authorised to be served or given under the 1981 Act.

Commencement

Sch. 11 para. 22: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 11 para. 22: England, Wales

SCHEDULE 12**AMENDMENTS RELATING TO PART I OF WILDLIFE AND COUNTRYSIDE ACT 1981****Section 81(1)**

✔ Law In Force

1.

In section 1(5) of the 1981 Act (offence of intentional disturbance of wild birds) after “intentionally” there is inserted “or recklessly”.

Commencement

Sch. 12 para. 1: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 12 para. 1: England, Wales

✔ Law In Force

2.

In section 3 of that Act (areas of special protection) in subsection (1)(c) for “the offender shall be liable to a special penalty” there is substituted “the offence shall be treated as falling within section 7(3A)”.

Commencement

Sch. 12 para. 2: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 12 para. 2: England, Wales

✔ Law In Force

3.

In section 6 of that Act (sale etc. of live or dead wild birds, eggs etc.), in subsection (2) the words from “who is not” to “Secretary of State” are omitted.

Commencement

Sch. 12 para. 3: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 12 para. 3: England, Wales

✔ Law In Force

4.—

(1) In section 7 of that Act (registration etc. of certain captive birds), in subsection (3)(a), for “for which a special penalty is provided” there is substituted “which falls within subsection (3A)”.

(2) After subsection (3) of that section there is inserted—

“(3A) The offences falling within this subsection are—

(a) any offence under section 1(1) or (2) in respect of—


- (i) a bird included in Schedule 1 or any part of, or anything derived from, such a bird,
- (ii) the nest of such a bird, or
- (iii) an egg of such a bird or any part of such an egg;
- (b) any offence under section 1(5) or 5;
- (c) any offence under section 6 in respect of—
 - (i) a bird included in Schedule 1 or any part of, or anything derived from, such a bird, or
 - (ii) an egg of such a bird or any part of such an egg;
- (d) any offence under section 8.”.

Commencement

Sch. 12 para. 4(1)-(2): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 12 para. 4(1)-(2): England, Wales

 Law In Force

5.

In section 9 of that Act (protection of certain wild animals)—

- (a) [...] ¹
- (b) after that subsection there is inserted—

“(4A) Subject to the provisions of this Part, if any person intentionally or recklessly disturbs any wild animal included in Schedule 5 as—

- (a) a dolphin or whale (cetacea), or
 - (b) a basking shark (*cetorhinus maximus*),
- he shall be guilty of an offence.”

Notes

¹ Repealed by Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007/1843 reg.8 (August 21, 2007)

Commencement

Sch. 12 para. 5(a)-(b): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 12 para. 5(a)-(b): England, Wales

✔ Law In Force

6.

In section 16(3) of that Act (power to grant licences) for “and (4)” there is substituted “, (4) and (4A)”.

Commencement

Sch. 12 para. 6: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 12 para. 6: England, Wales

✔ Law In Force

7.

In section 19 of that Act (enforcement of Part I), in subsection (3) for the words from “suspecting that” to “has been committed” there is substituted “suspecting that an offence under this Part has been committed”.

Commencement

Sch. 12 para. 7: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 12 para. 7: England, Wales

✘ Repealed

8. [...]¹

Notes

¹ Repealed by Natural Environment and Rural Communities Act 2006 c. 16 Sch.12 para.1 (October 1, 2006 as SI 2006/2541)

✔ Law In Force

9.—

(1) In section 20 of that Act (time limit for summary prosecution of certain offences under Part I)—

(a) subsection (1) is omitted, and

(b) in subsection (2) for “an offence to which this section applies” there is substituted “an offence under this Part”.

(2) Sub-paragraph (1) does not have effect in relation to any offence committed before the commencement of this paragraph.

Commencement

Sch. 12 para. 9(1)-(2): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 12 para. 9(1)-(2): England, Wales

✔ Law In Force

10.—

(1) Section 21 of that Act (penalties, forfeitures etc. for offences under Part I) is amended as follows.

(2) For subsections (1) to (3) there is substituted—

“(1) Subject to subsection (5), a person guilty of an offence under any of sections 1 to 13 or section 17 shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.”

(3) In subsection (4)—

(a) in paragraph (a) for the words from “to a fine” to the end there is substituted “to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both”, and

(b) in paragraph (b) for “to a fine” there is substituted “to imprisonment for a term not exceeding two years or to a fine, or to both”.

(4) After subsection (4) there is inserted—

“(4A) Except in a case falling within subsection (4B), a person guilty of an offence under section 19ZA(7) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4B) A person guilty of an offence under subsection (7) of section 19ZA in relation to a wildlife inspector acting in the exercise of the power conferred by subsection (3)(c) of that section shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(4C) A person guilty of an offence under section 19ZA(8) shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(4D) A person guilty of an offence under section 19ZB(9) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

(5) In subsection (5) the words “, (2) or (3)” are omitted.


(6) Sub-paragraphs (1) to (5) and the repeal by this Act of provisions of the 1981 Act relating to special penalties do not have effect in relation to any offence committed before the commencement of this paragraph.

Commencement

Sch. 12 para. 10(1)-(6): January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 12 para. 10(1)-(6): England, Wales

 Law In Force

11.

In section 24 of that Act (functions of the Nature Conservancy Councils), in subsection (4) for paragraph (c) there is substituted—


“(c) any wildlife inspector.”

Commencement

Sch. 12 para. 11: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 12 para. 11: England, Wales

 Law In Force

12.

In section 27 of that Act (interpretation of Part I), in subsection (1) after the definition of “wild plant” there is inserted—

““wildlife inspector” has the meaning given by section 19ZA(1).”

Commencement

Sch. 12 para. 12: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 12 para. 12: England, Wales


 Repealed

13. [...]¹

Notes

¹ Repealed by Police Reform Act 2002 c. 30 Sch.8 para.1 (October 1, 2002 as SI 2002/2306)

SCHEDULE 13**AREAS OF OUTSTANDING NATURAL BEAUTY: CONSERVATION BOARDS****Section 86(2)***Interpretation*

 Law In Force

1.

In this Schedule—

“an English conservation board” means a conservation board for an area of outstanding natural beauty in England;

“the relevant order”, in relation to a conservation board, means—

- (a) the order under section 86 establishing that board,
- (b) any order under that section relating to that board, or
- (c) any order made in relation to that board in exercise of the power to amend an order under that section.

Commencement

Sch. 13 para. 1 definition of "an English conservation board"- definition of "the relevant order" (c): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 13 para. 1- definition of "the relevant order" (c): England, Wales

Status and constitution of conservation boards

 Law In Force

2.

A conservation board shall be a body corporate.

Commencement

Sch. 13 para. 2: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 13 para. 2: England, Wales

✔ Law In Force

3.—

(1) A conservation board shall consist of—

- (a) such number of local authority members as may be specified in the relevant order,
- (b) such number of members to be appointed by the Secretary of State or the National Assembly for Wales as may be so specified, and
- (c) in the case of an English conservation board, such number of parish members as may be so specified.

(2) The numbers specified in the relevant order for any conservation board in relation to the membership of the board must be such that—

- (a) the number of local authority members is at least 40 per cent. of the total number of members, and
- (b) in the case of an English conservation board, the number of parish members is at least 20 per cent. of the total number of members.

Commencement

Sch. 13 para. 3(1)-(2)(b): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 13 para. 3-(2)(b): England, Wales

Local authority members

✔ Law In Force

4.—

(1) The local authority members of a conservation board shall be appointed in accordance with the provisions of the relevant order.

(2) The relevant order must provide either—

- (a) for the local authority members to be appointed by such of the local authorities for areas wholly or partly comprised in the area of outstanding natural beauty as may be specified in or determined under the order (“the relevant councils”), or
- (b) for the local authority members to be appointed by such of the relevant councils as may be determined in accordance with a scheme contained in the relevant order.

(3) A person shall not be appointed as a local authority member of a conservation board unless he is a member of a local authority the area of which is wholly or partly comprised in the relevant area of outstanding natural beauty; and, in appointing local authority members of a conservation board, a local authority shall have regard to the desirability of appointing members of the authority who represent wards, or (in Wales) electoral [wards]¹, situated wholly or partly within the relevant area of outstanding natural beauty.

(4) Subject to the following provisions of this Schedule and to the provisions of the relevant order, where a person who qualifies for his appointment by virtue of his membership of any local authority is appointed as a local authority member of a conservation board—

- (a) he shall hold office from the time of his appointment until he ceases to be a member of that authority; but
- (b) his appointment may, before any such cessation, be terminated for the purposes of, and in accordance with, sections 15 to 17 of the Local Government and Housing Act 1989 (political balance).

(5) Sub-paragraph (4)(a) shall have effect so as to terminate the term of office of a person who, on retiring from any local authority, immediately becomes such a member again as a newly elected councillor; but a person who so becomes a member again shall be eligible for re-appointment to the conservation board.

(6) The appointment of any person as a local authority member of a conservation board may provide that he is not to be treated for the purposes of sub-paragraph (4) as qualifying for his appointment by virtue of his membership of any local authority other than that specified in the appointment.

(7) In paragraph 2(1) of Schedule 1 to the Local Government and Housing Act 1989 (bodies to which appointments have to be made taking account of political balance), after paragraph (ba) there is inserted—

“(bb) a conservation board established by order under section 86 of the Countryside and Rights of Way Act 2000;”.

Notes

¹ Word substituted by Local Government and Elections (Wales) Act 2021 asc. 1 Sch.2(1) para.10 (March 20, 2021)

Commencement

Sch. 13 para. 4(1)-(7): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 13 para. 4-(7): England, Wales

Parish members

✓ Law In Force

5.—

(1) The parish members of an English conservation board shall be appointed in accordance with the provisions of the relevant order, by—

- (a) the parish councils for parishes the whole or any part of which is comprised in the relevant area of outstanding natural beauty, and
- (b) the parish meetings of any of those parishes which do not have separate parish councils.

(2) A person shall not be appointed as a parish member of an English conservation board unless he is—

- (a) a member of the parish council for a parish the whole or any part of which is comprised in the relevant area of outstanding natural beauty, or
- (b) the chairman of the parish meeting of a parish—
 - (i) which does not have a separate parish council, and
 - (ii) the whole or any part of which is comprised in the relevant area of outstanding natural beauty.

(3) Subject to the following provisions of this Schedule and to the provisions of the relevant order, where a person who qualifies for his appointment by virtue of his membership of a parish council is appointed as a parish member of an English conservation board, he shall hold office from the time of his appointment until he ceases to be a member of that parish council.

(4) Subject to the following provisions of this Schedule and to the provisions of the relevant order, where a person who qualifies for his appointment by virtue of his being the chairman of a parish meeting is appointed as a parish member of an English conservation board, he shall hold office from the time of his appointment until he ceases to be the chairman of that parish meeting.

(5) Sub-paragraph (3) or (4) shall not have effect so as to terminate the term of office of a person who retires from a parish council, or ceases to be the chairman of a parish meeting, until such time as may be determined by the Secretary of State or the National Assembly for Wales in accordance with the relevant order.

(6) A person who—

- (a) on retiring from a parish council, or
- (b) on ceasing to be the chairman of a parish meeting,

becomes a member of the parish council again as a newly elected councillor or, as the case may be, is elected to succeed himself as chairman of any parish meeting is eligible for re-appointment to the conservation board at the time mentioned in sub-paragraph (5).

Commencement

Sch. 13 para. 5(1)-(6)(b): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 13 para. 5-(6)(b): England, Wales

Members appointed by the Secretary of State or the National Assembly for Wales

✓ Law In Force

6.—

(1) Before appointing any person as a member of a conservation board, the Secretary of State shall consult [Natural England]¹ .

(2) Before appointing any person as a member of a conservation board, the National Assembly for Wales shall consult the [NRBW]² .

(3) Subject to the following provisions of this Schedule and to the provisions of the relevant order, a person appointed as a member of a conservation board by the Secretary of State or the National Assembly for Wales—

(a) shall hold office for such period of not less than one year nor more than three years as may be specified in the terms of his appointment; but

(b) on ceasing to hold office shall be eligible for re-appointment.

(4) The term of office of a person appointed by the Secretary of State or the National Assembly for Wales to fill such a vacancy in the membership of a conservation board as occurs where a person appointed by the Secretary of State or the Assembly ceases to be a member of the board before the end of his term of office may be for a period of less than one year if it is made to expire with the time when the term of office of the person in respect of whom the vacancy has arisen would have expired.

(5) Subject to the provisions of this Schedule and of the relevant order, a member of a conservation board appointed by the Secretary of State or the National Assembly for Wales shall hold office in accordance with the terms of his appointment.

Notes

¹ Words substituted by Natural Environment and Rural Communities Act 2006 c. 16 Sch.11(1) para.164(f) (October 1, 2006)

² Word substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.412 (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)


Commencement

Sch. 13 para. 6(1)-(5): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 13 para. 6-(5): England, Wales

Chairman and deputy chairman

 Law In Force

7.—

(1) The members of a conservation board shall elect, from amongst their members, both a chairman and a deputy chairman of the board.

(2) Subject to sub-paragraphs (3) and (4), the chairman and deputy chairman of a conservation board shall be elected for a period not exceeding one year; but a person so elected shall, on ceasing to hold office at the end of his term of office as chairman or deputy chairman, be eligible for re-election.

(3) A person shall cease to hold office as chairman or deputy chairman of a conservation board if he ceases to be a member of the board.

(4) Where a vacancy occurs in the office of chairman or deputy chairman of a conservation board, it shall be the duty of the members of that board to secure that the vacancy is filled as soon as possible.

Commencement

Sch. 13 para. 7(1)-(4): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 13 para. 7-(4): England, Wales

Audit

 Repealed

8. [...]¹

Notes

¹ Repealed by Local Audit and Accountability Act 2014 c. 2 Sch.1(2) para.1 (April 1, 2015)

SCHEDULE 14**SUPPLEMENTAL POWERS OF CONSERVATION BOARDS****Section 87(6)**

Interpretation

✔ Law In Force

1.

In this Schedule—

“common”, “disposal” and “open space” have the same meaning as in the Town and Country Planning Act 1990;

“relevant order” has the same meaning as in Schedule 13.

Commencement

Sch. 14 para. 1 definition of "common"- definition of "relevant order": April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 14 para. 1- definition of "relevant order": England, Wales

Power to acquire land

✔ Law In Force

2.—

(1) For the purposes of any of their functions under this or any other enactment, a conservation board may acquire by agreement any land, whether situated inside or outside their area of outstanding natural beauty.

(2) The reference in sub-paragraph (1) to acquisition by agreement is a reference to acquisition for money or money's worth as purchaser or lessee.

Commencement

Sch. 14 para. 2(1)-(2): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 14 para. 2-(2): England, Wales

Power to dispose of land

✓ Law In Force

3.

Subject to paragraphs 4 to 6 and to the provisions of the relevant order, a conservation board may dispose, in any manner they wish, of land which is held by them but no longer required by them for the purposes of their functions.

Commencement

Sch. 14 para. 3: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 14 para. 3: England, Wales

✓ Law In Force

4.—

(1) Except with the consent of the Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales), a conservation board may not—

- (a) dispose under paragraph 3 of land which consists of or forms part of a common, or formerly consisted of or formed part of a common, and is managed by a local authority in accordance with a local Act,
- (b) dispose under paragraph 3 of land, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.

(2) For the purposes of this paragraph a disposal of land is a disposal by way of a short tenancy if it consists—

- (a) of the grant of a term not exceeding seven years, or
- (b) of the assignment of a term which at the date of the assignment has not more than seven years to run.

Commencement

Sch. 14 para. 4(1)-(2)(b): April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 14 para. 4-(2)(b): England, Wales

✓ Law In Force

5.

A conservation board may not dispose under paragraph 3 of any land consisting of or forming part of an open space unless before disposing of the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating

in the area in which the land is situated, and consider any objections to the proposed disposal which may be made to them.

Commencement

Sch. 14 para. 5: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 14 para. 5: England, Wales

✔ Law In Force

6.

Section 128 of the Local Government Act 1972 (consents to land transactions by local authorities) applies in relation to a conservation board as if a conservation board were a principal council and as if paragraphs 3 to 5 were contained in Part VII of that Act.”)

Commencement

Sch. 14 para. 6: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 14 para. 6: England, Wales

Provisions as to charges

✔ Law In Force

7.

In section 152(2) of the Local Government and Housing Act 1989 (provisions as to charges), after paragraph (ja) there is inserted—

“(jb) a conservation board established by order under section 86 of the Countryside and Rights of Way Act 2000;”;

and section 151 of that Act (power to amend existing provisions as to charges) shall have effect as if references to an existing provision included references to any such provision as applied by or under Part IV of this Act.

Commencement

Sch. 14 para. 7: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 14 para. 7: England, Wales

SCHEDULE 15**AREAS OF OUTSTANDING NATURAL BEAUTY: CONSEQUENTIAL AMENDMENTS
AND TRANSITIONAL PROVISIONS****Section 93****PART I****CONSEQUENTIAL AMENDMENTS**


National Parks and Access to the Countryside Act 1949 (c. 97)

 Repealed

1. [...]¹

Notes

¹ Repealed by Natural Environment and Rural Communities Act 2006 c. 16 Sch.12 para.1 (October 1, 2006 as SI 2006/2541)

 Law In Force

2.


In section 112(2) of that Act (provisions not applying to Epping Forest and Burnham Beeches), for “eighty-seven” there is substituted “eighty-nine”.

Commencement

Sch. 15(I) para. 2: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 15(I) para. 2: England, Wales

 Law In Force

3.

In section 114(1) of that Act (interpretation), for the definition of “area of outstanding natural beauty” there is substituted—

““area of outstanding natural beauty” means an area designated under section 82 of the Countryside and Rights of Way Act 2000;”.


Commencement

Sch. 15(I) para. 3: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 15(I) para. 3: England, Wales

Harbours Act 1964 (c. 40)

 Law In Force

4.

In Schedule 3 to the Harbours Act 1964, in paragraph 1, in paragraph (i) of the definition of “sensitive area” for “section 87 of the National Parks and Access to the Countryside Act 1949” there is substituted “section 82 of the Countryside and Rights of Way Act 2000”.

Commencement

Sch. 15(I) para. 4: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 15(I) para. 4: England, Wales

Highways Act 1980 (c. 66)

✓ Law In Force

5.

In section 105A of the 1980 Act (environmental impact assessments), in subsection (6), for paragraph (e) there is substituted—

“(e) an area of outstanding beauty designated as such under section 82 of the Countryside and Rights of Way Act 2000.”.

Commencement

Sch. 15(I) para. 5: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 15(I) para. 5: England, Wales

Derelict Land Act 1982 (c. 42)

✓ Law In Force

6.

In section 1 of the Derelict Land Act 1982 (powers of Secretary of State), in subsection (11), in the definition of “area of outstanding natural beauty” for “section 87 of the National Parks and Access to the Countryside Act 1949” there is substituted “section 82 of the Countryside and Rights of Way Act 2000”.

Commencement

Sch. 15(I) para. 6: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 15(I) para. 6: England, Wales

Road Traffic Regulation Act 1984 (c. 27)

✔ Law In Force

7.

In section 22 of the Road Traffic Regulation Act 1984 (traffic regulation for special areas in the countryside), at the end of subsection (1)(a)(ii) there is inserted “designated as such under section 82 of the Countryside and Rights of Way Act 2000”.

Commencement

Sch. 15(I) para. 7: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 15(I) para. 7: England, Wales

Housing Act 1985 (c. 68)

✔ Law In Force

8.

In section 37 of the Housing Act 1985 (restriction on disposal of dwelling-houses in National Parks, etc), in subsection (1)(b) for “section 87 of the National Parks and Access to the Countryside Act 1949” there is substituted “section 82 of the Countryside and Rights of Way Act 2000”.

Commencement

Sch. 15(I) para. 8: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 15(I) para. 8: England, Wales

✔ Law In Force

9.

In section 157 of that Act (restriction on disposal of dwelling-houses in National Parks, etc), in subsection (1)(b) for “section 87 of the National Parks and Access to the Countryside Act 1949” there is substituted “section 82 of the Countryside and Rights of Way Act 2000”.

Commencement

Sch. 15(I) para. 9: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 15(I) para. 9: England, Wales

Town and Country Planning Act 1990 (c. 8)

✓ Law In Force

10.

In section 87 of the Town and Country Planning Act 1990 (exclusion of certain descriptions of land or development from a simplified planning zone), in subsection (1)(d) for “section 87 of the National Parks and Access to the Countryside Act 1949” there is substituted “section 82 of the Countryside and Rights of Way Act 2000”.

Commencement

Sch. 15(I) para. 10: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 15(I) para. 10: England, Wales

Environmental Protection Act 1990 (c. 43)

✓ Law In Force

11.

In section 130 of the Environmental Protection Act 1990 (countryside functions of Countryside Council for Wales), in subsection (2)(a) after “National Parks or” there is inserted “under the Countryside and Rights of Way Act 2000”.

Commencement

Sch. 15(I) para. 11: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 15(I) para. 11: England, Wales

Water Industry Act 1991 (c. 56)

✔ Law In Force

12.

In section 156 of the Water Industry Act 1991 (restriction on disposals of land), in subsection (8), in paragraph (a) of the definition of “area of outstanding natural beauty or special scientific interest”, for “for the purposes of the National Parks and Access to the Countryside Act 1949” there is substituted “under section 82 of the Countryside and Rights of Way Act 2000”.

Commencement

Sch. 15(I) para. 12: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 15(I) para. 12: England, Wales

Environment Act 1995 (c. 25)

✔ Law In Force

13.

In Schedule 13 to the Environment Act 1995 (review of old mineral planning permissions), in paragraph 2(4)(c) for “section 87 of the National Parks and Access to the Countryside Act 1949” there is substituted “section 82 of the Countryside and Rights of Way Act 2000”.

Commencement

Sch. 15(I) para. 13: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 15(I) para. 13: England, Wales

Housing Act 1996 (c. 52)

✓ Law In Force

14.

In section 13 of the Housing Act 1996 (restriction on disposal of houses in National Parks, etc), in subsection (1)(b) for “section 87 of the National Parks and Access to the Countryside Act 1949” there is substituted “section 82 of the Countryside and Rights of Way Act 2000”.

Commencement

Sch. 15(I) para. 14: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 15(I) para. 14: England, Wales

PART II

TRANSITIONAL PROVISIONS

✓ Law In Force

15.

In this Part “commencement” means the commencement of section 82.

Commencement

Sch. 15(II) para. 15: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 15(II) para. 15: England, Wales

✓ Law In Force

16.


Any order under section 87 of the 1949 Act (designation of areas of outstanding natural beauty) which is in force immediately before commencement is to be taken to have been made under section 82 in accordance with the provisions of Part IV of this Act, and may be amended or revoked by an order under that section.

Commencement

Sch. 15(II) para. 16: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 15(II) para. 16: England, Wales

 Law In Force

17.


Any reference in any instrument or document (whenever made) to designation as an area of outstanding natural beauty under section 87 of the 1949 Act or to an order under that section is, in relation to any time after commencement, to be taken to be a reference to designation as such an area under section 82 or to an order under that section.

Commencement

Sch. 15(II) para. 17: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 15(II) para. 17: England, Wales

 Law In Force

18.

Anything done before commencement in connection with a proposed order under section 87 of the 1949 Act is, as from commencement, to be taken to have been done in connection with a proposed order under section 82.


Commencement

Sch. 15(II) para. 18: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(e); SI 2001/1410 art. 2(g))

Extent

Sch. 15(II) para. 18: England, Wales

SCHEDULE 16**REPEALS****Section 102****PART I****ACCESS TO THE COUNTRYSIDE**

 Partially In Force

Chapter	Short title	Extent of repeal
1925 c. 20.	The Law of Property Act 1925.	Section 193(2).
1949 c. 97.	The National Parks and Access to the Countryside Act 1949.	Sections 61 to 63. In section 111A(3)(a), the words “61 to 63,”.
1972 c. 70.	The Local Government Act 1972.	In Schedule 17, paragraphs 35 and 35A.
1980 c. 65.	The Local Government, Planning and Land Act 1980.	In Schedule 3, paragraph 6.
1985 c. 51.	The Local Government Act 1985.	In Schedule 3, paragraph 5(9).
1990 c. 43.	The Environmental Protection Act 1990.	In Schedule 8, in paragraph 1(8), the words “62(1) and”.
1994 c. 19.	The Local Government (Wales) Act 1994.	In Schedule 6, paragraph 13.


Commencement

Sch. 16(I) para. 1: April 1, 2001 in relation to England for repeals specified in SI 2001/114 art.2(2)(k)-(m); May 1, 2001 in relation to Wales for repeals specified in SI 2001/1410 art.2(m); June 21, 2004 in relation to Wales for repeals specified in SI 2004/1489 art.2(c); October 31, 2005 in relation to England for repeals specified in SI 2005/2752 art.2(1)(c)(i) and (ii); December 6, 2006 in relation to Wales for repeals specified in SI 2006/3257 art.2(c)(i); not yet in force otherwise (SI 2001/114 art. 2(2)(k), art. 2(2)(l), art. 2(2)(m); SI 2001/1410 art. 2(m); SI 2004/1489 art. 2(c), art. 3; SI 2005/2752 art. 2(1)(c)(i), art. 2(1)(c)(ii); SI 2006/3257 art. 2(c)(i))

Extent

Sch. 16(I) para. 1-: England, Wales

PART II**PUBLIC RIGHTS OF WAY AND ROAD TRAFFIC**

 Partially In Force

Chapter	Short title	Extent of repeal
1980 c. 66.	The Highways Act 1980.	Section 134(5).
1981 c. 69.	The Wildlife and Countryside Act 1981.	Section 54. Section 56(5). In section 57(1), the words “on such scale as may be so prescribed.” In Schedule 15, paragraph 9.
1984 c. 27.	The Road Traffic Regulation Act 1984.	In section 22(1)(a), the words “(other than Greater London)” and, at the end of paragraph (vi), the word “or”.
1992 c. 42.	The Transport and Works Act 1992.	In Schedule 2, paragraphs 5(2), (4)(a), (d) and (e), (6) and (7), 6(2)(b) and 10(4)(a).

Commencement

Sch. 16(II) para. 1: January 30, 2001 for repeals specified in SI 2001/114 art.2(1); April 1, 2001 for repeals specified in SI 2001/114 art.2(2)(l); May 1, 2001 for repeals specified in SI 2001/1410 art.2 in relation to Wales; May 2, 2006 in relation to England for the repeal specified in SI 2006/1172 art.2(f); May 11, 2006 in relation to Wales for repeals specified in SI 2006/1279 art.2(i)-(k); December 6, 2006 in relation to Wales for repeals specified in SI 2006/3257 art.2(c)(i); not yet in force otherwise (SI 2001/114 art. 2; SI 2001/1410 art. 2; SI 2006/1172 art. 2(f); SI 2006/1279 art. 2(i), art. 2(j), art. 2(k); SI 2006/3257 art. 2(c)(ii))

Extent

Sch. 16(II) para. 1-: England, Wales

PART III

SITES OF SPECIAL SCIENTIFIC INTEREST

 Law In Force

Chapter	Short title	Extent of repeal
1958 c. 51.	The Public Records Act 1958.	In Schedule 1, in Part II of the Table in paragraph 3, the entry relating to the Nature Conservancy Council for England.
1964 c. 40.	The Harbours Act 1964.	In Schedule 3, in the definition of “sensitive area”, paragraph (b).
1965 c. 74.	The Superannuation Act 1965.	In section 39(1), in paragraph 7, the words “The Nature Conservancy Council for England.”.
1967 c. 13.	The Parliamentary Commissioner Act 1967.	In Schedule 2, the entry “Nature Conservancy Council for England.
1970 c. 30.	The Conservation of Seals Act 1970.	Section 10(4)(c) and the following word “or”.

Chapter	Short title	Extent of repeal
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part III, the entry “Any member of the Nature Conservancy Council for England or the Countryside Council for Wales in receipt of remuneration.”.
1980 c. 66.	The Highways Act 1980.	Section 105A(6)(c).
1981 c. 69.	The Wildlife and Countryside Act 1981.	Sections 29 and 30. In section 32(1), the words “or land to which section 29(3) applies”. In section 67(2), the word “29,”. In Schedule 11, in each of paragraphs 7(2) and 8, the words “29 or”.
1985 c. 31.	The Wildlife and Countryside (Amendment) Act 1985.	Section 2.
1985 c. 59.	The Wildlife and Countryside (Service of Notices) Act 1985.	Section 1(2).
1988 c. 4.	The Norfolk and Suffolk Broads Act 1988.	In Schedule 3, paragraph 31(1).
1990 c. 43.	The Environmental Protection Act 1990.	In Schedule 9, paragraph 11(9) to (11).
1996 c. 47.	The Trusts of Land and Appointment of Trustees Act 1996.	In Schedule 3, paragraph 20 and the heading preceding it.


Commencement

Sch. 16(III) para. 1: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 16(III) para. 1: England, Wales

PART IV WILDLIFE

 Law In Force

Chapter	Short title	Extent of repeal
1981 c. 69.	The Wildlife and Countryside Act 1981.	In section 1, subsection (4) and, in subsection (5), the words “and liable to a special penalty”. In section 5(1), the words “and be liable to a special penalty”. In section 6, in subsection (2) the words from “who is not” to “Secretary of State”, and subsections (4) and (7) to (10).

Chapter	Short title	Extent of repeal
1997 c. 55.	The Birds (Registration Charges) Act 1997.	In section 7, in subsection (1) the words “and be liable to a special penalty”, and subsections (6) and (7). In section 8, in subsections (1) and (3) the words “and be liable to a special penalty”. Section 14(5) and (6). In section 17 the words “6(2) or”. Section 20(1). In section 21(5) the words “, (2) or (3)”. Section 1(1).


Commencement

Sch. 16(IV) para. 1: January 30, 2001 (2000 c. 37 Pt V s. 103(2))

Extent

Sch. 16(IV) para. 1: England, Wales

PART V**AREAS OF OUTSTANDING NATURAL BEAUTY**

 Law In Force

Chapter	Short title	Extent of repeal
1949 c. 97.	The National Parks and Access to the Countryside Act 1949.	Sections 87 and 88.
1990 c. 43.	The Environmental Protection Act 1990.	In Schedule 8, paragraph 1(12).
1995 c. 25.	The Environment Act 1995.	In Schedule 10, paragraph 2(7).


Commencement

Sch. 16(V) para. 1: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(m); SI 2001/1410 art. 2)

Extent

Sch. 16(V) para. 1: England, Wales

PART VI**OTHER**

 Law In Force

Chapter	Short title	Extent of repeal
1981 c. 69.	The Wildlife and Countryside Act 1981.	In section 39(1), the words “both in the countryside and”.

Commencement

Sch. 16(VI) para. 1: April 1, 2001 in relation to England; May 1, 2001 otherwise (SI 2001/114 art. 2(2)(f); SI 2001/1410 art. 2)

Extent

Sch. 16(VI) para. 1: England, Wales

EXPLANATORY NOTES**INTRODUCTION**

1. These explanatory notes relate to the Countryside and Rights of Way Act which received Royal Assent on 30 November. They have been prepared by the Department of the Environment, Transport and the Regions (DETR) with the Office of the Secretary of State for Wales, in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.
3. The Act contains measures to improve public access to the open countryside and registered common land while recognising the legitimate interests of those who own and manage the land concerned; it amends the law relating to rights of way; it amends the law relating to nature conservation by strengthening protection for Sites of Special Scientific Interest including tougher penalties and by providing extra powers for the prosecution of wildlife crime; it provides a basis for the conservation of biological diversity; and it provides for better management of Areas of Outstanding Natural Beauty.

4. This Act has five Parts covering:
- Access to the countryside
 - Public rights of way and road traffic
 - Nature conservation and wildlife enforcement
 - Areas of Outstanding Natural Beauty
 - Miscellaneous and supplementary

PART I: ACCESS TO THE COUNTRYSIDE

Summary

5. Part I of the Act is intended to give greater freedom for people to explore open countryside. It contains provisions to introduce a new statutory right of access for open-air recreation to mountain, moor, heath, down and registered common land. It also includes a power to extend the right to coastal land by order, and enables landowners voluntarily to dedicate irrevocably any land to public access.

6. There will be restrictions on the new right — for example, the Act includes provisions for landowners to exclude or restrict access for any reason for up to 28 days a year, and to exclude dogs on grouse moors and in small fields during lambing time, without seeking permission. Landowners will also be able to seek further exclusions or restrictions on access for reasons of land management, fire prevention and to avoid danger to the public. The Countryside Agency (in Wales, the Countryside Council for Wales — together referred to as the countryside bodies) and in national parks, the National Park authorities, will be able to give directions for these purposes and, in addition, will be able to direct the exclusion or restriction of access on grounds of nature and heritage conservation. The Act also includes provisions for further restrictions on dogs on access land.

Background

7. There is a long history of people desiring to have greater access to open countryside. Since the turn of the last century some reforms have been made, for example the Law of Property Act 1925 gave people the right of access for air and exercise to metropolitan and urban district commons, including large areas in the Lake District and South Wales. In 1949, the National Parks and Access to the Countryside Act provided for the creation of public access to open country by agreement or order: some 50,000 hectares of access are thought to have been secured under this Act. Despite such measures, it is estimated that there are still around 500,000 hectares of open countryside in England and Wales where access is not permitted and a further 600,000 hectares where public access occurs on an informal or *de facto* basis¹.

8. In February 1998 the Government issued a consultation paper, *Access to the Open Countryside in England and Wales*², which invited views on how best to secure more and better access to open countryside. The paper sought views on both statutory and voluntary approaches to achieving greater access, and estimated that the total extent of mountain, moor, heath, down and registered common land was some 1.2 to 1.8 million hectares or around 10% of the land area of England and Wales. The consultation paper set out key criteria against which the approaches would be judged — extent, quality and permanence of access, together with cost, clarity and certainty, and monitoring and enforcement.

9. The consultation paper attracted over 2,000 responses from a wide range of organisations and individuals, including recreational users, landowners and local authorities. Of these, a large majority supported the introduction of a statutory right of access. The Government undertook an analysis of the responses and consulted further, including with other Government departments, relevant

statutory agencies, and organisations representing landowners, recreational users and conservation interests.

10. In the light of the results of consultation and of a study of the costs and benefits of different approaches for securing greater public access, the Government decided to legislate to create a new statutory right of area access as part of a wider package to improve public access to the countryside. Ministers announced the decision to Parliament on 8 March 1999³. The Government also published its conclusions in *The Government's Framework for Action: Access to the Countryside in England & Wales*⁴ outlining a package of measures for improving public access to the countryside. It also issued an *Analysis of Responses on Access to the Open Countryside of England and Wales*⁵ and, separately, an *Appraisal of Options on Access to the Open Countryside of England and Wales*⁶.

11. When the Government's *Framework* document was published in March 1999, the Government asked the countryside bodies and the Forestry Commission to report later in 1999 on access to other types of open countryside, such as woods, coastal land and riverside⁷. The Countryside Agency recommended in October 1999 that the statutory right of access should be extended to coastal land such as beaches and cliffs. This recommendation is reflected in the inclusion in the Act of a power to extend the statutory right to coastal land by order.

Commentary on sections

Sections 1 to 3 and Schedules 1 and 2: General

12. Section 1 sets out the categories of access land to which the public are to acquire a right of access. Land which is wholly or predominantly mountain, moor, heath or down is defined as “open country”. Open country will qualify as access land if it has been shown on a map of open country issued by the countryside bodies. The countryside bodies will be responsible for deciding the extent of any mountain, moor, heath and down. However, land is not to be regarded as mountain, moor, heath or down if it is improved or semi-improved grassland. Land over 600 metres above sea level and registered common land immediately qualifies as access land without any requirement for mapping by the countryside bodies, but the bodies will in due course also include these categories of land on their maps. Access land will also include land which under section 16 is irrevocably dedicated by the owner to public access.

13. Subsection (1) of section 1 provides that “excepted land” (defined in subsection (2) and Schedule 1) is not treated as access land, even where it appears on maps of open country and registered common land. Land of the descriptions set out in Part I of Schedule 1 — such as land on which there are buildings, golf courses or parks, and land within 20 metres of a dwelling — is to be regarded as excepted land, to which there is no right of access whilst it remains of that description. Paragraph 15 of Schedule 1 requires that, in order to qualify as excepted land, any necessary planning permissions must have been granted or any development must have been otherwise treated as lawful for the purposes of planning legislation. Paragraph 1 provides that land will qualify as excepted where the soil has been disturbed within the past year by ploughing, drilling or similar agricultural or forestry operations for the purposes of planting or sowing crops or trees. Land over which there are byelaws in force made by the Secretary of State for Defence for the purposes of military training or national defence will also count as “excepted land”: the new statutory right will not apply, but any existing access provided for in the byelaws (where applicable) will continue.

14. Subsection (1) also provides, by reference to section 15(1), that land to which there is an existing statutory right of access for recreation — such as under section 193 of the Law of Property Act 1925 (metropolitan, urban and certain other commons) or under an access agreement or order made

under Part V of the National Parks and Access to the Countryside Act 1949 — will not be regarded as access land for the purposes of the legislation. The new statutory right will not apply to such land, but the existing right of access will continue.

15. Subsection (3) defines registered common land as land which has been registered as such under the Commons Registration Act 1965, and whose registration has become final under that Act. The 1965 Act provided for the registration of all rights of common, as well as land subject to rights of common (and caused any rights of common which were not registered in due time to be incapable of being exercised). A right of common is “a right, which one or more persons may have, to take or use some portion of that which another man's soil naturally produces”⁸. Subsections (3)(b) and (4) provide that, where land has been removed from the register of common land in pursuance of an application for that purpose made after the date of Royal Assent, it will continue to be treated for the purposes of Part I (but not otherwise) as registered common land. However, this special provision does not apply to land which is removed from the register under various statutory powers of acquisition or exchange.

16. Section 2 gives people a right of entry onto access land (defined in section 1) for the purposes of open-air recreation, provided that they enter without breaking any wall, fence or gate, and that they do not contravene any of the restrictions set out in Schedule 2 or imposed under Chapter II. By virtue of subsection (3), the right does not apply where entry is prohibited in or under any other public legislation. Schedule 2 restricts activities and behaviour which may be undertaken in pursuance of the right of access. In particular, paragraph 1(a)–(c) excludes the use of any vehicle (including bicycles) or craft (on water), and horse-riding. Paragraph 1(d) provides that the commission of any criminal offence (which includes transgression of a byelaw) on access land will amount to a breach of the restrictions. Schedule 2 also includes specific restrictions for the control of dogs, including a requirement for dogs to be kept on short leads during the designated period, and in the vicinity of livestock. By virtue of section 2(4), people who break any of these restrictions will lose their right of access to land in the same ownership as that on which the breach occurred, for a period of 72 hours, and may be treated as trespassers by the owner of the land. Breach of a restriction will not in itself constitute a criminal offence, although some of the activities set out in Schedule 2 may constitute criminal offences under other legislation.

17. Paragraph 3 of Schedule 2 enables the Secretary of State (or the National Assembly for Wales) to amend by regulations the list of restrictions in paragraphs 1 and 2 (but not the restrictions relating to the control of dogs). By virtue of paragraph 7, any of the restrictions in Schedule 2 may be lifted or relaxed by the relevant authority with the consent of the owner, so that the public may exercise wider rights than those normally permitted. This provision might be used to allow people, for example, to exercise the right of access on horseback, or without keeping dogs on leads during March to July.

18. Section 3 enables the Secretary of State (in England) or the National Assembly for Wales (in Wales) by order to extend the statutory right of access to all or any part of the foreshore and land adjacent to the foreshore. In making such an order, the Secretary of State (or the National Assembly for Wales) may modify the application of this Part of the Act in so far as it applies to access to the foreshore.

Sections 4 to 11 and Schedule 3: **Maps**

19. Sections 4 and 5 require the countryside bodies to draw up and consult on maps of open country and registered common land.

20. Section 4 imposes a duty on the countryside bodies to prepare maps of open country and registered common land (which must be separately identified). It also gives the countryside bodies a discretion not to map small areas of open country, and to map the boundary of open country to an appropriate physical feature. This discretion does not apply in the mapping of registered common land.

21. Section 5 sets out a procedure for public consultation on draft maps. The countryside bodies are required to take any comments during the consultation into account when revising the maps, which they must then issue as provisional maps.

22. Section 6 provides a right of appeal to the Secretary of State (or the National Assembly for Wales) against the showing of any land on provisional maps as open country or registered common land. The right may be exercised by anyone with an interest in the land, which includes the owner, a tenant, a commoner, or generally anyone with any rights over the land (see the definition of interest in section 45). An appeal against the showing of land as open country may be brought on the grounds that the land is not wholly or predominantly open countryside, and (where relevant) that the boundary of the land should not have been mapped to a nearby physical feature. However, an appeal against the showing of land as registered common land may be brought only on the ground that the land is not registered as common land under the Commons Registration Act 1965 (see the definition of registered common land in section 1). On determining an appeal, the Secretary of State (or the National Assembly for Wales) may confirm the map with or without modifications, or he (or it) may direct the relevant countryside body to prepare a new map (which may be of the land subject to the appeal, or all or part of the map on which the land is included). If a new map is prepared, further consultation will then take place on the new map in draft form.

23. Sections 7 and 8 and Schedule 3 set out a procedure for the hearing of appeals, and appellate functions in respect of which the Secretary of State (or the National Assembly for Wales) may delegate his (or its) powers.

24. Under subsection (1) of section 7, an appellant (or the relevant countryside body) may elect for a hearing of the appeal (rather than for the appeal to be determined by correspondence), and the Secretary of State (or the National Assembly for Wales) may decide to deal with any case by means of a hearing or a local inquiry, whether or not one has been requested. Subsection (2) of section 7 provides (by reference to subsections (2) to (5) of section 250 of the Local Government Act 1972) that, where a hearing or inquiry is held, witnesses may be required to attend and give evidence, and costs may be awarded. Costs arising from any planned hearing or inquiry which does not take place may also be awarded under subsection (3), where the hearing or inquiry has been requested by either of the parties.

25. Section 9 provides for a provisional map to be confirmed as a conclusive map once all appeals (in relation to the land shown on the map) have been determined, or, if there were no appeals (or any appeals were withdrawn), after the period for lodging appeals has passed. The Secretary of State (or the National Assembly for Wales) may at any time direct the countryside body to issue in conclusive form any part of a provisional map in respect of which there are no appeals outstanding. A conclusive map will incorporate any modifications made by the Secretary of State (or the National Assembly for Wales) on appeal. Subsection (6) ensures that a document which has been certified by the appropriate countryside body as a copy of a conclusive map may be used in evidence in court without further proof of provenance.

26. Section 10 requires the countryside bodies to review a statutory map within ten years and not less frequently than every ten years thereafter (or any other periods specified by the Secretary of

State or the National Assembly for Wales by regulation). On review, the bodies must consider both whether land shown on the map as open country or registered common land remains of that description, and whether other land should now be shown as open country or registered common land.

27. Section 11 makes provision for the Secretary of State and the National Assembly for Wales to make regulations supplementing the provisions of sections 4 to 10 on mapping. These regulations will (among other things) provide for the procedure to be followed on a review.

Sections 12 to 14: Rights and liabilities of owners and occupiers

28. Section 12 provides that the right of access does not increase the liability of a person interested in the land in respect of the state of the land or things done on it. It also provides that persons interested in the land will not be liable for the breach of any covenant restricting the use of the land, and that the statutory right takes precedence over the covenant. Under subsections (3) and (4), use of any path or area of land in exercise of the right of access cannot support a claim for the existence of a right of way or of a town or village green.

29. Section 13 amends the Occupiers' Liability Act 1957 so as to reduce the liability of occupiers of land owed to those exercising the right of access to the same level which would be owed to trespassers, but further provides (by amending the Occupiers' Liability Act 1984) that, at any time when the right is exercisable, occupiers of access land will owe no liability to those exercising the right of access, nor to trespassers, in respect of risks arising from: natural features of the landscape; any river, stream, ditch or pond; and the passage of any person across a wall, fence or gate (except by proper use of a gate or stile). "Natural features" are defined so as to include any plant, shrub or tree. Liability is not excluded in any of these circumstances if the risk arises from anything done intentionally or recklessly by the occupier. Subsection (3) provides that the courts, in determining whether any liability is owed to non-visitors on access land, must have regard to certain additional considerations.

30. Section 14 introduces a new offence of displaying a notice containing false or misleading information on or near access land (or a way leading to it) likely to deter the exercise of the statutory right. The offence is similar to an existing offence relating to rights of way (section 57 of the National Parks and Access to the Countryside Act 1949). The offence would apply, for example, to notices forbidding access to access land, or purporting to indicate that access land is closed when it is not, and would attract a fine on conviction of up to level 1 on the standard scale (currently £200). The courts may order that an offender should remove the notice, and a further offence — attracting a penalty of level 3 (currently £1,000) on the standard scale — is committed if the offender does not comply with the order.

Sections 15 and 16: Access under other enactments and by dedication

31. Section 15 specifies the categories of land to be treated as accessible to the public (under other enactments) for the purposes of excluding the operation of the statutory right of access under section 2(1). It also extends the provision of any local or private enactment, or scheme made under the Commons Act 1899, which grants rights of access for open-air recreation to the inhabitants of a neighbourhood, so that they may be exercised by the public generally. (Such limited rights in particular arise under schemes made under the Commons Acts 1876 and 1899, and under local Acts of Parliament.)

32. Section 16 allows the owner of land to dedicate the land for the purposes of this Part of the Act, so that it is treated as access land for the purposes of the general right of access under section 2(1).

Such dedications are irrevocable, although land which has been dedicated under this section may nevertheless become excepted land. The owner of a lease with an unexpired term of at least 90 years may (by virtue of subsections (1) and (4)) dedicate the land for the duration of the lease. The person dedicating the land may provide that any of the restrictions set out in Schedule 2 should be relaxed or removed, so that, for example, people may exercise the right of access on horseback. The dedication may be subsequently amended in order to exclude or relax further restrictions, but not so as to reimpose any restrictions. Land may be dedicated under this section even if it would otherwise be access land (because it is open country or registered common land). This will allow the person dedicating the land to lift any of the restrictions set out in Schedule 2, and dedication will ensure that the land remains access land even if it ceases to be open country or registered common land (unless it becomes excepted land). Subsections (2) and (6) allow the Secretary of State (or the National Assembly for Wales) to make regulations, including regulations prescribing the form of dedication, requiring its notification to the appropriate countryside body and the access authority, and making provision for the dedication of land where interests are held in the land other than by the owner of the fee simple.

Sections 17 to 20: Miscellaneous

33. Section 17 provides a new power to make byelaws. Where necessary, access authorities (defined in section 1 as the local highway authority, or in national parks, the National Park authority) will be able to make byelaws to preserve order, to prevent damage on access land in their area, and so as to avoid undue interference with the enjoyment of the land by others. Byelaws will not affect the exercise of rights of way crossing the land to which they apply. Whereas a failure to comply with the restrictions set out in Schedule 2 will not in itself constitute a criminal offence, transgression of a byelaw may be made an offence punishable by a maximum fine of level 2 on the standard scale (currently £500). Byelaws will need to be confirmed by the Secretary of State (or the National Assembly for Wales). Byelaws may be made in anticipation of land becoming access land, but may not be confirmed until such time as the land is access land. Once confirmed, they may be enforced by any other county, district or parish council in whose area lies the land affected by the byelaws.

34. Section 18 enables access authorities to appoint wardens in respect of access land, so as to give advice both to access users and land owners, to secure compliance with byelaws, with the restrictions set out in Schedule 2 and with any restriction or exclusion imposed under Chapter II. Wardens will have a right of access to access land, but must produce evidence of their appointment if required. Wardens will generally have no powers to undertake any activities on the land which would cause damage to the owner.

35. Section 19 permits access authorities (after consulting with the owner or occupier of land affected) to erect notices indicating the boundaries of access land and excepted land, notifying the public of the general restrictions set out in Schedule 2 and any exclusions or restrictions in force under Chapter II, and providing information about any other matters relating to the land or access to it. Authorities may also contribute toward the cost of such signs provided by anyone else (such as the owner or user groups): they are not obliged to do so.

36. Section 20 imposes a duty on the countryside bodies to issue a code of conduct for the guidance of users of the right of access and persons interested in access land (such as farmers, landowners and commoners). It also requires the countryside bodies to take such steps as they consider expedient to ensure that the public are informed of the extent of and means of access to access land, and that both the public and persons interested in access land are informed of their rights and obligations under the statutory right of access. It also allows the countryside bodies to use the code as a means

of fulfilling their existing duties under section 86(1) of the National Parks and Access to the Countryside Act 1949 to prepare a country code relating to National Parks, Areas of Outstanding Natural Beauty and long distance routes. The section enables the countryside bodies to contribute towards expenses incurred by third parties in providing information about the new right.

Notes

- ¹ Source: Appraisal of Options on Access to the Open Countryside of England and Wales, published by DETR March 1999 (Full Report): Price £45 ISBN 1 85112 158 5. Available from DETR Publication Sale Centre, Goldthorpe Industrial Estate, Goldthorpe, Rotherham, S63 9DL. Tel. 01709 891318, Fax. 01709 881673. A summary document is available free of charge from: DETR Free literature, PO Box 236, Wetherby LS23 7NB. Tel. 0870 1226236, Fax. 0870 1226237. Published on the internet at: <http://www.wildlife-countryside.detr.gov.uk/cl/index.htm>
 - ² Published by the Department of the Environment, Transport and the Regions and the Welsh Office, February 1998. Available free of charge from: DETR Free Literature, PO Box 236, Wetherby LS23 7NB. Tel. 0870 1226236, Fax. 0870 1226237. Published on the internet at: <http://www.wildlife-countryside.detr.gov.uk/cl/index.htm>
 - ³ Hansard, House of Commons Debates. Cols. 22–33.
 - ⁴ Published by DETR March 1999. Available free of charge from: DETR Free Literature, PO Box 236, Wetherby LS23 7NB. Tel. 0870 1226236, Fax. 0870 1226237. Published on the internet at: <http://www.wildlife-countryside.detr.gov.uk/cl/index.htm>
 - ⁵ Published by DETR February 1999 (Full Report): Price £10 ISBN 1 85112 159 5. Available from DETR Publication Sale Centre, Goldthorpe Industrial Estate, Goldthorpe, Rotherham, S63 9DL. Tel. 01709 891318, Fax. 01709 881673. A summary document is available free of charge from: DETR Free literature, PO Box 236, Wetherby LS23 7NB. Tel. 0870 1226236, Fax. 0870 1226237. Published on the internet at: <http://www.wildlife-countryside.detr.gov.uk/cl/index.htm>
 - ⁶ See footnote 1. for full reference.
 - ⁷ These recommendations can be viewed on the internet, via the DETR website at: <http://www.wildlife-countryside.detr.gov.uk/cl/index.htm>
 - ⁸ Halsbury's Laws of England (4th ed.), vol 6, page 197.
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Sections 21 to 33: Exclusion or restriction of access

37. Section 21 defines exclusions or restrictions of access for the purposes of Chapter II, and gives examples of the forms which restrictions of access might take. Subsection (5) explains that, for the purposes of the Chapter, the “relevant authority” is the countryside body, or, where the land falls within a National Park, the National Park authority. However, subsection (6) enables the Forestry Commissioners to give notice that the Commissioners will act as the relevant authority for any land dedicated under section 16 which appears to the Commissioners to consist wholly or predominantly of woodland. Subsection (7) enables the notice to be revoked where land ceases to be woodland. (Where the Commissioners have given such notice, the Commissioners are the relevant authority from the date specified in the notice.)

38. Section 22 explains how landowners (or, where the land is subject to a farm tenancy, the tenant) will have a discretion to exclude or restrict access on up to 28 days each calendar year. However, no more than four of the 28 days may comprise a Saturday or Sunday, and the discretion may not be exercised at all in respect of Saturdays between 1 June and 11 August in each year, nor on Sundays between 1 June and 30 September, nor any bank holiday. The Secretary of State (or the National Assembly for Wales) will be able, by regulations, to vest the discretionary right to exclude or restrict access in any combination of persons with an interest in the land (such as the tenant and those with sporting rights), but only so that, taken together, their rights do not exceed 28 days in

any year. The person exercising the discretion will be required to inform the relevant authority of the exclusion or restriction. Subsection (8) will enable the Secretary of State (or the National Assembly for Wales) to make regulations requiring the exercise of discretion under section 22 to relate to land the boundaries of which are determined in accordance with regulations. The regulations could, for example, seek to ensure that land subject to discretionary restrictions is identifiable in practice — by requiring it to be bounded by, for example, a stream, ditch or fence.

39. Section 23 provides that landowners will also, in certain circumstances, have a discretion to restrict access so as to exclude the taking of dogs. The restriction may apply at any time in respect of land which is managed for the breeding and shooting of grouse; and for a period of no more than six weeks, in respect of any field of 15 hectares in size or less, in connection with lambing. Subsection (5) provides that any exclusion of dogs under this provision does not apply to trained guide or hearing dogs.

40. Sections 24 to 26 and section 28 set out the circumstances in which exclusions or restrictions may be directed by the relevant authority or, in the case of defence or national security, by the Secretary of State. In every case, the authority (or the Secretary of State) may impose only the minimum restriction consistent with the purpose for which it is sought. Exclusions or restrictions for the purposes of land management, the prevention of fire, the prevention of danger to the public, nature conservation, heritage, defence or national security may be for a fixed period or may take place at a time to be determined by a person specified for that purpose in the direction. Where a direction would exclude or restrict access to land indefinitely, or for a period of at least six months, the relevant authority must first consult any local access forum for the area (see the notes on sections 94 and 95 relating to the provision for local access forums in Part V of the Act).

41. An application may be made for a direction in respect of land which is not (at the time of the application) access land, but sections 24(4) and 25(5) provide that the relevant authority may not give such a direction unless they are satisfied that the land is likely to become access land during the period of the proposed direction. Such directions might be given in anticipation of land being shown as access land on the publication of a conclusive map by the countryside body, or in anticipation of the termination of an access agreement over land to which the new statutory right would apply but for the effect of section 15(1)(c).

42. Section 24 allows the relevant authority to exclude or restrict access for the purposes of land management. Any person with an interest in the land may apply. In deciding whether to approve such applications, the authority must take into consideration the use made or intended to be made by the applicant of the discretionary power to exclude or restrict access for up to 28 days each year.

43. Section 25 enables the relevant authority to exclude or restrict access where there is particular risk of fire, or to protect the public from any danger by reason of anything done or intended to be done on the land. Any person with an interest in the land may apply, or the relevant authority may initiate such an exclusion or restriction itself. In deciding whether to approve an application, the authority must take into consideration the use made or intended to be made by the applicant of the discretionary power under section 22.

44. Section 26 sets out provisions for excluding or restricting access to land in the interests of wildlife and habitat conservation, or to protect sites of historic or archaeological importance. The relevant authority will be responsible for directing such exclusions or restrictions of access, but in England, they must have regard to any advice given by English Nature or the Historic Buildings and Monuments Commission (English Heritage), as appropriate. In Wales, a National Park authority and the Forestry Commissioners must have regard to any advice given by the Countryside Council

for Wales (for proposals with respect to wildlife and nature conservation) or the National Assembly for Wales (Cadw — for proposals with respect to the preservation of sites of heritage or archaeological importance). The Countryside Council for Wales must have regard to any advice given by the Assembly (Cadw) on exclusions or restrictions for the preservation of sites of historic or archaeological importance. The body to whose advice the relevant authority must have regard are known as “the relevant advisory body”.

45. Section 27 provides for directions which exclude or restrict access on grounds of nature conservation, heritage, land management, fire or danger, to be revoked or modified by the relevant authority, after consulting (where reasonably practicable) the person who initially applied for the exclusion or restriction or his successor in title (or, in the case of nature conservation or heritage closures, consulting with the relevant advisory body). It also requires long-term or annual exclusions or restrictions which last for more than five years to be reviewed at least every five years.

46. Section 28 provides for the Secretary of State to exclude or restrict access for the purposes of defence or national security. Where such exclusions or restrictions last for more than five years, the Secretary of State must review them at least every five years. The Secretary of State must also prepare a report on any review of a direction given for the purposes of defence undertaken in a year, and lay a copy of his report before Parliament. The Secretary of State may revoke or modify a direction given under this section.

47. Section 29 outlines the provisions for a reference by a relevant advisory body in relation to exclusions or restrictions proposed under section 26. Where the advisory body has given advice and the relevant authority has decided not to direct the exclusion or restriction (or otherwise not to act in accordance with the advice), the advisory body may make a reference to the appropriate Minister (or to the National Assembly for Wales), who may require the authority to make such exclusions or restrictions as he (or it) thinks fit. The appropriate Minister will be the Secretary of State, except in relation to referrals arising from a decision of the Forestry Commissioners (in England), where the appropriate Minister will be the Minister of Agriculture, Fisheries and Food. This provision does not apply to proposals with respect to the preservation of sites of historic or archaeological importance in Wales, because Cadw are themselves an executive agency of the National Assembly for Wales.

48. Section 30 makes provision for an applicant for a direction under section 24 or 25 (exclusions or restrictions in interests of land management, fire or danger), to appeal to the appropriate Minister (or the National Assembly for Wales) where the relevant authority decides not to act in accordance with the application. The appropriate Minister is defined as in section 29. On hearing the appeal, the appropriate Minister (or the National Assembly for Wales) may require the authority to make such exclusion or restriction as he (or it) thinks fit. Subsection (5) provides for sections 7 and 8 (and Schedule 3) to apply to the procedure on appeal as they apply to the procedure on appeals against provisional maps.

49. It may be necessary to exclude or restrict access to land in an emergency. Section 31 provides that the Secretary of State (or the National Assembly for Wales) may make regulations to enable the relevant authority to exclude or restrict access in such circumstances for up to three months. Subsection (2) allows the regulations to apply any of the other provisions in Chapter II, with modifications, to a direction given under this section — for example, to allow for consultation (possibly after the direction has been made) with advisory bodies where the restriction or exclusion is made in the interests of the urgent protection of wildlife.

50. Section 32 enables the Secretary of State to make regulations providing for the procedures relating to the exclusion or restriction of access under Chapter II, including the requirements for the giving of notice, the undertaking of consultation, the giving of directions, and the procedure on an appeal. These regulations may also restrict applications for directions under section 24 or 25 from commoners: regulations might, for example, require applications to represent a majority of the commoners interested in the land, or to show that the applicants have the power to implement any direction given (by excluding or restricting public access to the common).

51. The Countryside Agency, and the Countryside Council for Wales, are generally responsible for administering the provisions for exclusions and restrictions under Chapter II outside the National Parks. Section 33 provides powers for those two bodies to issue guidance to National Park authorities on their role in administering these provisions within National Parks, and to the Forestry Commissioners where the Commissioners are the relevant authority for woodlands dedicated under section 16. The countryside bodies' guidance will need approval from the Secretary of State or the National Assembly for Wales, and must be published.

Sections 34 to 39: **Means of Access**

52. Chapter III sets out the arrangements for access to be secured or improved to access land. It allows the access authority (which is defined in section 1 as the highway authority or, in National Parks, the National Park authority) to seek agreement with landowners for the creation or safeguarding of means of access, or in default of such agreement, to secure the means of access by carrying out any necessary works themselves.

53. Section 34 defines a means of access for the purposes of this Chapter. It includes an opening in a fence, wall, hedge or gate on the land, or a construction (such as a stile or bridge) which allows the public to cross such a feature or any watercourse.

54. Section 35 sets out the circumstances in which an access authority may make an agreement with an owner or occupier in relation to means of access on their land. These are where the authority consider that an existing means of access needs to be opened up, improved, repaired or maintained, or a new means of access needs to be constructed. The authority may also make an agreement with a landowner to impose restrictions on any change to an existing means of access. Subsection (2) allows the authority to agree to carry out the works themselves, or to pay for the owner or occupier to do so. The authority may also make payments in consideration of the owner or occupier's agreement to restrictions.

55. Section 36 sets out the action the authority may take if the owner or occupier fails to carry out his obligations under the agreement. Where the agreement was for the owner or occupier to carry out work to an agreed timetable (or in reasonable time, if no timetable is stipulated in the agreement), the authority may, after giving at least 21 days' notice, carry out the work themselves. The authority may recover any costs incurred less any contribution which they were themselves to make under the agreement.

56. Where the agreement was for the owner or occupier to observe a restriction, and he fails to abide by that agreement, the authority may serve a notice requiring him to carry out work to remedy the breach of the restriction, within not fewer than 21 days. If the landowner fails to comply with the notice, the authority may carry out any work specified in the notice. Any costs incurred by the authority in carrying out the work may be recovered from the owner or occupier who entered into the agreement.

57. Section 37 sets out procedures which an access authority may follow if it considers that it cannot enter into an agreement on reasonable terms with a landowner to secure a means of access to the land. It may serve on the owner or occupier a notice stating its intention, after a period of at least 21 days, to carry out work to provide the means of access. The authority must serve a copy of the notice on any other owner or occupier of the land.

58. Section 38 allows for an appeal to the Secretary of State (or the National Assembly for Wales) against a notice from an access authority alleging the breach of an agreement imposing restrictions (under section 36(3)) or requiring the creation or safeguarding of a means of access (under section 37(1)). The appeal may be made on the grounds that any of the work specified in a notice under section 36(3) is not necessary to remedy the breach of the agreement or has been carried out or requires more time. An appeal against a notice under section 37(1) may be made on the grounds that any of the work specified in the notice is not necessary to secure reasonable public access to the land, has been carried out, that the means of access should be provided elsewhere (for example, because it would be detrimental to the effective management of the land), or that a different means of access should be provided (for example, a gate instead of a stile). The Secretary of State (or the National Assembly for Wales) may confirm the notice with any modifications, or cancel it. The access authority will not be able to carry out any works while they remain the subject of an appeal.

59. The Secretary of State (or the National Assembly for Wales) may make regulations as to the making of appeals. Sections 7 and 8 (and Schedule 3) apply to the procedure on appeal as they apply to the procedure on appeals against provisional maps.

60. Where an owner or occupier repeatedly fails to comply with notices served by the access authority, section 39 enables the authority to seek an order from the courts. The section applies where two or more notices under section 36(3) or 37(1) have been served on the owner or occupier within a period of three years, and the period for compliance with those notices has expired. In these circumstances, a magistrates' court may grant an order requiring the owner or occupier to remove any obstruction and to keep the means of access clear. Failure to comply with the order is an offence, attracting a fine on conviction of up to level 3 on the standard scale (currently £1,000). The access authority may also remove any such obstruction at the expense of the offender.

Sections 40 to 46: **General**

61. Section 40 concerns powers of entry to land. It may be necessary for the bodies charged with functions under Chapters I to III of Part I of the Act to enter land in order to carry out their functions. The section sets out the circumstances and manner in which the countryside bodies, the highway authorities, the Forestry Commissioners and the National Park authorities may enter land. Any person authorised by these bodies for the purposes of entering land which is not access land must give the occupier 24 hours' notice, unless it is not reasonably practicable to do so, or the entry is in relation to a possible offence under section 14 or 39. He must also produce evidence of his authority at any time. It will be an offence to obstruct access for authorised persons, attracting a fine on conviction of up to level 2 on the standard scale (currently £500). The power of entry does not extend to dwellings.

62. Section 41 requires a body exercising a power of entry under section 40 to compensate any person who has sustained damage in consequence. Any dispute as to entitlement to compensation is to be determined by an arbitrator appointed by the Secretary of State or the National Assembly for Wales, as appropriate.

63. Section 42 enables the Secretary of State or the National Assembly for Wales to make regulations to provide that the fact that land is subject to the right of access is to be disregarded in deciding whether the land is or is not a ‘public place’ for the purposes of a specified enactment. For example, regulations could provide that access land would not be treated as a public place for the purposes of the Firearms Act 1968 merely by virtue of the new statutory right applying to the land, and that the landowner would therefore not need to show “lawful authority or reasonable excuse” to use or carry a firearm on the land.

64. Section 43 explains that the access legislation binds the Crown as it does any other landowner.

65. Section 44 provides that orders and regulations made under this Part of the Act are to be made by statutory instrument and as respects England are to be subject to annulment by either House (except that any order made under section 3 extending the right of access in England to coastal land, or under paragraph 3 of Schedule 2 amending the restrictions in paragraphs 1 and 2 of that Schedule, will require to be approved in draft by a resolution of both Houses).

66. Section 45 comprises definitions of a number of terms used in this Part of the Act.

67. Section 46 and Part I of Schedule 16 effect repeals consequent on the provisions of Part I. Paragraph (a) of subsection (1) provides for the repeal of section 193(2) of the Law of Property Act 1925. Section 193(2) allows the owners of common land to execute a deed of dedication so that the common will become subject to the right of access for air and exercise provided for in section 193(1). This power will be rendered obsolete in view of the new powers to dedicate access over land contained in section 16. Any commencement order bringing this repeal into force is expected to contain a saving for existing deeds.

68. Paragraph (b) of subsection (1) provides for the repeal of sections 61 to 63 of Part V of the National Parks and Access to the Countryside Act 1949. These sections imposed an obligation on local planning authorities to survey the extent of open country within their areas, and to consider the need for increasing access to such open country by means of access agreements and orders. By virtue of subsection (2), local planning authorities will continue to be able to make access agreements and orders using their powers under Part V of the 1949 Act (as amended by the Countryside Act 1968), other than over land which is open country or registered common land for the purposes of the Act (the powers will continue to apply to open country which comprises woodland, land including or adjacent to rivers or canals, and, pending any order made under section 3, the foreshore).

69. Subsection (3) of section 46 introduces Schedule 4, which includes an amendment of section 193(1) of the Law of Property Act 1925 so that limitations or conditions qualifying the right of access to urban and other commons under the 1925 Act may also be imposed by the Secretary of State (or National Assembly for Wales) for the purpose of nature conservation. Paragraph 4 of Schedule 4 amends section 2(6) of the Countryside Act 1968, so that the duties of the countryside bodies, which include giving advice to local authorities about the use of their byelaw-making powers under the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968, extend equally to the giving of advice to access authorities about the use of their powers in section 17.

PART II: PUBLIC RIGHTS OF WAY AND ROAD TRAFFIC

Summary

70. Part II of the Act contains provisions designed to reform and improve rights of way in England and Wales.

71. The Act introduces measures for the strategic review, planning and reporting of improvements to rights of way, and the promotion of increased access for people with mobility problems. A new category of right of way — restricted byway — having rights for walkers, cyclists, horse riders and horse drawn vehicles, replaces the current category of Roads Used as Public Paths.

72. Local authorities are required to have regard to nature conservation when performing some of their rights of way functions. Other environmental safeguards include extended powers to regulate traffic for conservation purposes and new powers to divert rights of way to protect Sites of Special Scientific Interest (SSSIs).

73. The Act provides for a cut-off date for the recording of certain rights of way on definitive maps and the extinguishment of those not so recorded by that date. There are provisions for excepting rights of way from extinguishment; for extending the cut-off date; and for making savings for cases where modification orders have been made but not confirmed before the cut-off date, where applications for such orders have been submitted before the cut-off date, and where such orders have been quashed because of a legal error.

74. The Act gives a new right to certain landowners and occupiers to apply to a local authority for an order to divert or extinguish a footpath or bridleway over their land, and to appeal against refusal. Any resulting order would proceed in accordance with existing legislation which provides for objections to be heard and for a public inquiry or hearing to be held. Proprietors of schools are given similar rights, and local authorities will be able to make orders closing or diverting rights of way for school security reasons and to assist in the prevention of crime in certain areas.

75. There is provision for occupiers of any land to temporarily divert a footpath or bridleway which passes over that land where works (to be prescribed in regulations made by the Secretary of State or the National Assembly for Wales) are likely to cause danger to users of the right of way.

76. Stronger measures will be available for dealing with obstructions. Magistrates convicting a person of wilfully obstructing a highway will be able to order the removal of the obstruction. Magistrates will also be able to impose daily fines where the obstruction continues after a person has been convicted of failing to comply with such an order. In addition, any person will be able to serve notice on a local highway authority to secure the removal of certain obstructions, and if necessary to seek a magistrates' court order requiring the authority to comply with the notice.

77. Local authorities will be required to have regard to the needs of disabled people when authorising the erection of gates and other barriers across rights of way to control livestock. In addition, the Act gives authorities power to enter into agreements with owners, lessees or occupiers of land to improve or replace such existing barriers to make them safer or more convenient for disabled people.

78. Local highway authorities' existing powers to provide barriers in footpaths to safeguard the public are widened to allow authorities to erect posts and are extended to apply to bridleways which are maintainable at the public expense.

79. The unauthorised driving off-road of mechanically propelled vehicles becomes an offence and the existing offence of driving on a footpath or bridleway is extended to apply to restricted byways. For the purposes of the new offence there is provision to the effect that where a way is shown on a definitive map as a footpath, bridleway or restricted byway, it is presumed not to carry full vehicular rights unless the contrary is proved.

80. Part II also contains provisions relating to the grant of statutory easements for vehicular access over land (including common land) on which it is an offence to drive a vehicle.

Background

81. The Government's intention to legislate on rights of way was announced on 8 March 1999 in *The Government's Framework for Action: Access to the Countryside in England & Wales*. The Government's consultation paper on rights of way, *Improving Rights of Way in England and Wales*¹, was published in July 1999. The responses are summarised in a report: *Improving Rights of Way in England and Wales: Analysis of Responses*².

Commentary on sections

Sections 47 to 52: Definitive Maps and Statements and Restricted Byways

82. Currently, surveying authorities (normally the unitary authority, or the county council where there are two tiers of local government) are required to prepare and keep under review their definitive map and statement(s). These form the legal record of public rights of way in their area. The existing classes of public rights of way covered by these maps and statements are:

- Footpaths: highways over which there is a public right of way on foot only.
- Bridleways: highways over which pedestrians, horse riders and bicyclists (who must give way to people on foot or on horseback) have public rights of way. A bridleway may also carry a public right to drive animals.
- Byways open to all traffic (BOATs): highways over which the public right of way is for vehicles and all other kinds of traffic, but which are used mainly for the purposes for which footpaths and bridleways are used.
- Roads Used as Public Paths (RUPPs): an earlier classification used for various kinds of highway. Section 54 of the Wildlife and Countryside Act 1981 requires surveying authorities to review all RUPPs appearing on their definitive maps and reclassify them according to the rights which are found to exist. If vehicular rights are shown to exist over a RUPP then it should be reclassified as a byway open to all traffic. If no vehicular rights are shown to exist, a RUPP should be reclassified as a bridleway, unless bridleway rights are shown not to exist, in which case it should be reclassified as a footpath.

83. Sections 47 and 48 provide for a general redesignation of RUPPs, which are instead to be treated as shown in definitive maps and statements as restricted byways. All RUPPs will become restricted byways (defined in section 48) unless they already carry full vehicular rights of way and surveying authorities will be relieved of their current duty to reclassify RUPPs. Anyone with evidence of full vehicular rights over a particular way will still be entitled to apply for an order for its reclassification in the map and statement as a BOAT.

84. Section 47 repeals section 54 of the Wildlife and Countryside Act 1981 and provides that every road used as a public path which is shown in a definitive map and statement is to be treated as shown as a restricted byway.

85. Section 48 specifies that the public is to have restricted byway rights over ways shown in a definitive map and statement as RUPPs. It sets out what those rights are and stipulates that the existence of those rights is without prejudice to other rights, including public rights of way for mechanically propelled vehicles. It also requires that the relevant commencement orders made under section 103 preserve pre-commencement orders, and applications for orders, modifying the status of a RUPP so that they will be processed to a final determination.

86. Section 49 provides for the RUPPs affected by provisions in section 48 to be highways maintainable at the public expense. Private liabilities to maintain RUPPs over which restricted byway rights are created and which do not carry full vehicular rights are extinguished. Section 49 also provides for those RUPPs reclassified under section 54 of the 1981 Act, and earlier legislation, to remain maintainable at the public expense. It also sets out that highway authorities are not to be obliged to provide metalled or similar surfaces on former RUPPs merely because they have been re-designated as restricted byways or BOATs.

87. Section 50 ensures that the conditions or limitations to which a RUPP was dedicated, such as a right to erect a gate on it or plough its surface, shall continue to be exercisable. It also provides a vehicular right of access to certain owners of property adjoining or adjacent to former RUPPs.

88. Section 51 introduces Schedule 5, which contains amendments relating to definitive maps and statements and restricted byways. Paragraph 1 makes consequential amendments to section 53 of the Wildlife and Countryside Act 1981. It also allows for evidence of full vehicular rights over a way shown as a restricted byway which has already been considered by a surveying authority to constitute the basis of an application to have such a way shown as a byway open to all traffic. Paragraph 2 makes an amendment of a procedural nature relating to the circumstances in which the definitive map and statement can be modified when a legal event has occurred. The new section 53A inserted in the 1981 Act makes it possible for surveying authorities to include in those orders which are prescribed by regulation provision to modify the definitive map and statement. Regulation making powers are provided, for example, to set out how the relevant date is to be determined in the case of such orders and to regulate the procedure governing the new power.

89. Paragraph 2 also inserts a new section 53B into the 1981 Act requiring surveying authorities to keep a register of applications made under section 53(5) of that Act. Paragraph 3 provides for transitional arrangements for modifying the definitive map between enactment and the commencement of section 47 of the Countryside and Rights of Way Act 2000.

90. Paragraph 4 of Schedule 5 inserts a new section 54A into the Wildlife and Countryside Act 1981. The new section prevents any order being made after the cut-off date (1 January 2026) to record a BOAT on a definitive map except in the place of any other way already recorded in the definitive map. The new section also empowers the Secretary of State or the National Assembly for Wales to make regulations containing transitional provisions and for extending the cut-off date.

91. Paragraph 5 amends section 55 of the Wildlife and Countryside Act 1981 to provide that certain roads used as public paths that had been reclassified under the provisions of the National Parks and Access to the Countryside Act 1949 become maintainable at the public expense.

92. Paragraph 7 widens the power of the Secretary of State or the National Assembly for Wales to make regulations prescribing the scale of definitive maps to cover all maps made under Part III of the Wildlife and Countryside 1981. In addition, paragraph 7 amends section 57 of the 1981 Act to empower the Secretary of State or the National Assembly for Wales to make regulations requiring surveying authorities to keep, and make available to the public and other local authorities, documents relating to the status of rights of way.

93. Paragraph 8 empowers surveying authorities to consolidate their definitive maps, incorporating any parts of maps inherited from other authorities following local government boundary changes. Maps may not be consolidated if any orders required to record changes made to an authority's rights of way are outstanding. Surveying authorities are required to keep, and make available to the public, copies of all maps which are superseded by a consolidated map.

94. Paragraph 10 of Schedule 5 amends Schedule 14 to the Wildlife and Countryside Act 1981 to enable the Secretary of State or the National Assembly for Wales, when directing an authority to make an order on appeal, to set a deadline by which the order should be made.

95. Paragraph 11 of Schedule 5 amends Schedule 15 to the Wildlife and Countryside Act 1981. It inserts a new paragraph 7(2A) into the Schedule to give the Secretary of State or the National Assembly for Wales discretion as to whether to hold an inquiry or hearing into a definitive map modification order if the only objection(s) relate to an issue which would not be relevant in determining whether or not to confirm an order. A new paragraph 10A applies to hearings into disputed orders certain provisions in section 250 of the Local Government Act 1972 relating to the summoning of witnesses and the award of costs which currently apply only to public inquiries under Schedule 15. It also enables the Inspector holding a hearing or inquiry to award costs and enables costs to be awarded when a hearing or inquiry does not take place.

96. Schedule 5 also contains, in Part II, amendments relating to the provisions in sections 47 to 50 creating the new category of public right of way, “restricted byway”, in place of ways presently recorded on definitive maps as RUPPs. The amendments mainly provide for legislation which applies to RUPPs to apply instead to restricted byways.

97. Section 52 enables the Secretary of State to make regulations providing for any existing legislation applying to highways, or to highways of a particular kind (such as footpaths or bridleways) to apply, or to be excluded from applying, to restricted byways or ways shown in a definitive map and statement as restricted byways. This power could, for example, be used to enable new restricted byways to be created. There is also power to make consequential amendments. When making these regulations, the Secretary of State is required to consult the National Assembly for Wales before making provision which affects Wales and to obtain the Assembly's consent before expressly amending or revoking secondary legislation made by the Assembly. Section 52 also empowers the National Assembly for Wales to make regulations amending certain classes of legislation relating to Wales to take account of restricted byways. These classes are: any local or private Act passed before or in the same session as this Act and relating only to Wales; and, any secondary legislation made before enactment of this Act which the Assembly has the power to amend or revoke as respects Wales. The Assembly may also submit to the Secretary of State proposals for amendments or repeals to be made by him using his own regulation-making powers.

Notes

¹ Published by the DETR, September 1998. Available free of charge from: DETR Free Literature, PO Box 236, Wetherby LS23 7NB. Tel. 0870 1226236, Fax. 0870 1226237

² Published by DETR March 2000 (Full Report): Price £12 product code 99WACD1034. Available from DETR Publication Sale Centre, Goldthorpe Industrial Estate, Goldthorpe, Rotherham, S63 9DL. Tel. 01709 891318, Fax. 01709 881673. A summary document is available free of charge from: DETR Free literature, PO Box 236, Wetherby LS23 7NB. Tel. 0870 1226236, Fax. 0870 1226237. Published on the internet at: <http://www.wildlife-countryside.detr.gov.uk/cl/index.htm>

Sections 53 to 56: Cut-off date for recording certain rights of way on definitive maps and extinguishment of those not so recorded

98. These sections prescribe a cut-off date (1 January 2026) for the recording on definitive maps of footpaths and bridleways created before 1949. The provisions also provide for the extinguishment

of certain rights of way which have not been claimed by the deadline. The cut-off date may be extended by regulations made by the Secretary of State or the National Assembly for Wales.

99. Section 53 provides that public rights of way over a footpath or bridleway which was created before 1 January 1949, is still a footpath or bridleway on the cut-off date and is not shown on a definitive map on the cut-off date, are to be extinguished immediately after the cut-off date. The section also provides that any unrecorded higher rights of way created before 1 January 1949 over a highway shown on a definitive map on the cut-off date as a footpath, bridleway or restricted byway and which is eligible for recording on a definitive map, will be extinguished immediately after the cut-off date.

100. Section 54 sets out exceptions to section 53. In respect of pre-1949 footpaths and bridleways which are not shown on a definitive map on the cut-off date, the following are not to be extinguished:

- as much of a footpath or bridleway as, after 1 January 1949, has been diverted, widened, extended or stopped up as respects only its width, provided it connects with another highway directly or indirectly. If it connects indirectly then as much of the rest of the path as is necessary to connect with the other highway is also saved.
- a bridleway which became a footpath after 1949 following the stopping up of bridleway rights, or a footpath which became a bridleway after 1949 by the creation of bridleway rights over it, provided in either case the way connects with another highway as above.
- as much of a footpath or bridleway as passes over a bridge or through a tunnel and connects with a highway as above.
- a footpath or bridleway any part of which is in inner London.
- a footpath or bridleway which runs at the side of a carriageway or between two carriageways.
- a footpath or bridleway of any other description specified in regulations made by the Secretary of State or the National Assembly for Wales.
- a particular footpath or bridleway specified in regulations.

101. In respect of unrecorded higher rights over ways shown on a definitive map on the cut-off date as footpaths, bridleways or restricted byways the following are not to be extinguished:

- higher rights of way (eg bridleway rights over what is shown as a footpath) created after 1 January 1949.
- rights of way over a highway any part of which is in inner London.
- rights of way specified or of such description as may be specified in regulations made by the Secretary of State or the National Assembly for Wales.

102. Section 55 provides that where a highway which was immediately before 1949 a footpath or bridleway and is a footpath on the cut-off date, but is wrongly recorded on a definitive map as a bridleway on commencement of the provisions and remains so recorded at the cut-off date, bridleway rights are created over it. It will not be possible after the cut off date to apply for the bridleway to be downgraded to a footpath but section 56 provides for the making of savings, for example, for applications for modifications made before the cut-off date.

103. Section 56 provides that the cut-off date for the purposes of extinguishing rights of way is to be 1 January 2026. The section empowers the Secretary of State or the National Assembly for Wales to make regulations substituting as the cut-off date a date later than 1 January 2026. Different dates may be specified for different areas but, in relation to areas in which rights of way have been recorded on definitive maps since the National Parks and Access to the Countryside Act 1949 took effect, the date may not be postponed beyond 1 January 2031. There is no upper limit on the period

for extending the deadline in relation to other areas. These are the Isles of Scilly; the areas of former county boroughs for which definitive maps were not required until the Wildlife and Countryside Act 1981 took effect; and built-up areas which county councils were able to exclude from the requirements of the 1949 Act by resolution. Where a highway crosses the boundary between two areas with different cut-off dates, then the later date applies to that highway.

104. Regulations made under section 56 may also make transitional provisions and savings, in particular for cases where (a) definitive map modification orders have been made but not confirmed before the cut-off date; (b) applications for definitive map orders have been submitted before the cut-off date; or (c) orders have been quashed because of a legal error.

Section 57 and Schedule 6: **Creation, stopping up and diversion of highways**

105. Section 57 introduces Schedule 6. The Schedule contains a number of amendments to the Highways Act 1980 relating to the creation, stopping up and diversion of footpaths, bridleways and certain other highways. The main changes produced by the Schedule include:

- the conferring on owners and occupiers of land used for agriculture, forestry or the breeding or keeping of horses of a right to apply to a local authority for the making of a public path extinguishment order or a public path diversion order,
- a new power for local authorities to make orders stopping up or diverting footpaths, bridleways (and certain other highways) for the purpose of preventing crime,
- a similar power for local authorities to stop up or divert footpaths, bridleways (and certain other highways) in cases where they cross school premises for the purpose of protecting pupils and staff at the school, and a right for the proprietor of a school to apply for such an order.
- a new power for local authorities to make orders stopping up or diverting footpaths, bridleways (and certain other highways) for the purpose of protecting SSSIs, and
- a new power for the occupier of any land crossed by a footpath or bridleway to divert it temporarily for up to fourteen days a year in a case where dangerous works are being carried out.

106. Paragraphs 1, 6 and 9(5) of Schedule 6 relate to orders made under sections 26, 118, and 119 of the Highways Act 1980 creating, extinguishing or diverting footpaths and bridleways. They require:

- (a) the Secretary of State or the National Assembly for Wales, when deciding to confirm or make such an order; and
- (b) a local authority, when deciding whether to confirm such an order,

to have regard to any material provision of a rights of way improvement plan for the area which includes land over which a footpath or bridleway would be created or extinguished.

107. Paragraph 2 of Schedule 6 substitutes a new section 29 in the Highways Act 1980. Under the existing section 29, councils are required to have due regard to the needs of agriculture and forestry in the exercise of certain functions in respect of the creation, stopping up and diversion of footpaths and bridleways. New section 29 preserves that requirement but the definition of “agriculture” is extended to encompass the breeding or keeping of horses and an additional duty to have due regard to the desirability of conserving flora, fauna and geological and physiographical features is introduced.

108. Paragraph 3 relates to section 31 of the Highways Act 1980. Under section 31 highways may be created through deemed dedication on the basis that public use, as of right, of a way for 20 years

and without interruption creates a presumption that the owner dedicated the way as a highway. Section 31(6) provides a method for an owner of land to negate, in advance, the presumption of dedication which arises after 20 years' use. A landowner may deposit, with the relevant local authority, a map and statement showing all the ways which he admits are dedicated as highways on his land and thereafter lodge a declaration within six years of that date that no additional ways have been dedicated over his land. He may deposit further declarations every six years or fewer years thereafter. The effect of the deposit is, in the absence of evidence to the contrary, to negate for the period between declarations being lodged the presumption to dedicate new highways which may arise from long user under section 31. Paragraph 3 of Schedule 6 extends the period for making declarations from six years to ten years.

109. Paragraph 4 of Schedule 6 provides for a register of deposited maps and statements and lodged declarations to be kept by local authorities and made available for public inspection free of charge.

110. Paragraph 5 of Schedule 6 amends the Highways Act 1980 to ensure that highways created in consequence of special diversion orders and SSSI diversion orders become maintainable at the public expense.

111. Paragraphs 7, 9(4) and 10 of Schedule 6 amend the Highways Act 1980 to allow an owner, lessee, or occupier of agricultural and other types of land to apply to a council for the making of an order under section 118 or 119 of the 1980 Act closing or diverting a footpath or bridleway which crosses their land. Land managers currently wishing to secure the diversion or extinguishment of a footpath or bridleway across their land may request a council to make orders under section 118 or 119. If the authority declines, the Secretary of State may be requested to use his reserve powers, but in practice these powers are rarely used.

112. *New* sections 118ZA(2) and (3) and 119ZA(4) and (5) allow for regulations to be made prescribing the form in which an application should be made and what charges may be payable. Subsection (6) of section 118ZA enables a council to require an applicant to enter into an agreement to make a contribution towards any compensation that may become payable as a result of a closure of a footpath or bridleway. This parallels current provisions in section 119 of the 1980 Act. Sections 118ZA(8) and 119ZA(9) require a council to give the applicant notice of its decision in writing and set out its reasons. There is provision (*in* sections 118ZA(7) and 119ZA(8)*respectively*) to enable an applicant to request the Secretary of State or the National Assembly for Wales to direct a council to decide an application if the council has not done so within four months of receiving it. Sections 118 and 119 (which confer power to make the orders concerned) are not substantively altered and so the criteria for the making and confirmation of the orders remain unchanged.

113. Paragraphs 8 and 12 of the Schedule insert new sections 118B, 118C, 119B, 119C, 119D and 119E into the Highways Act 1980.

114. *New* sections 118B, 118C, 119B and 119C empower local highway authorities to make special extinguishment and special diversion orders for closing or diverting footpaths, bridleways, restricted byways and byways open to all traffic. In areas which have been designated by the Secretary of State or the National Assembly for Wales by order, the new powers may be exercised for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community. An extinguishment or diversion order may only be made for this purpose if premises near a right of way are affected by high levels of crime and the existence of the highway is facilitating the persistent commission of offences. The special diversion and extinguishment order powers are also available to protect staff and pupils where rights of way cross school grounds. The local highway authority is required to consult the police authority for the area before making a special extinguishment order

or special diversion order for either purpose. These powers are not confined to areas designated by the Secretary of State or the National Assembly for Wales.

115. Subsection (7) of section 119B prevents a diversion from creating a cul-de-sac. Subsection (8) provides for the extinguishment of the existing way, under a special diversion order, to be delayed until the local highway authority certifies that any necessary work to the new way has been carried out. Subsection (9) allows conditions to be attached to a right of way created by a diversion. Subsection (14) applies the provisions of section 27 of the Highways Act 1980, which relate to the making up of new rights of way, to a diversion made under section 119B.

116. Sections 118B(9) and 119B(12) provide for the form of orders to be prescribed by regulations. Sections 118B(10) and 119B(13) apply the provisions of Schedule 6 to the Highways Act 1980 which sets out the procedure to be followed for making and confirming closure and diversion orders.

117. The confirming authority (that is, the local highway authority in the case of unopposed orders, otherwise the Secretary of State or the National Assembly for Wales) must be satisfied as to certain matters, in particular whether a diversion or extinguishment order would be expedient, and including, for proposed extinguishments, the availability of an alternative route or the practicability of diverting the existing way instead. In addition, the confirming authority is to consider whether an order in respect of a designated area is consistent with any statutory crime and disorder strategy for that area. In the case of an order relating to a school, the authority is to consider what other security measures have been or could be taken and whether it is likely that the coming into operation of the order would result in a substantial improvement in the security of the school in question. Account is also to be taken of the effect which closure would have on any land served by the right of way in question.

118. *New* sections 118C and 119C give a right to school proprietors to apply to a local highway authority for orders to divert or close footpaths, bridleways, restricted byways and byways open to all traffic where these cross school grounds. (The term “proprietor”, in relation to a school, has the same meaning as in the Education Act 1996: see paragraph 15(b) of the Schedule.)

119. *New* sections 119D and 119E empower highway authorities, following an application from English Nature (EN) or the Countryside Council for Wales (CCW), to make SSSI diversion orders diverting footpaths, bridleways, restricted byways and byways open to all traffic for the protection of sites of special scientific interest (SSSIs) designated under the Wildlife and Countryside Act 1981 if public use of the highway is causing or is likely to cause significant damage to the SSSI in question. EN or CCW must give fourteen days' advance notice of their application to any owner, occupier or lessee of land where the existing right of way or the diverted right of way is or would be sited. The Secretary of State and the National Assembly for Wales are given powers to make regulations prescribing the form of applications and other requirements for notice. Before making an SSSI diversion order, the highway authority must consider whether the damage could be prevented by the making of a traffic regulation order and whether such an order would cause less inconvenience to the public than a diversion. Diversion orders under these new sections may not be confirmed until the confirming authority has considered the effects of the diversion on public enjoyment of the right of way and the effects on the land affected by the diversion. Subsection (6) of 119D provides for the extinguishment of the existing way to be delayed until the local highway authority certifies that any necessary work to the new way has been carried out. The Secretary of State is given powers to make regulations prescribing the form of applications and requirements for notice.

120. Paragraphs 9(1) and 11 of the Schedule amend the Highways Act 1980 so that where a diversion order is made under section 119 or section 119A of that Act, the coming into force of that part of

the order which extinguishes a section of a public right of way can be delayed until the local highway authority certifies that any necessary work on the new way has been carried out.

121. Paragraph 13 of Schedule 6 amends section 120 of the 1980 Act inserting references to special extinguishment orders, special diversion orders and SSSI diversion orders. It empowers the Secretary of State or the National Assembly for Wales to make such orders and to require applicants for orders to enter into agreements with the relevant highway authority relating to compensation and expenses.

122. Paragraph 14 of Schedule 6 makes consequential amendments to section 121 of the 1980 Act. It also makes a further amendment enabling the “appropriate Minister” to appoint any person to determine whether a statutory undertaker has unreasonably withheld consent to the extinguishment of a right of way over land where their apparatus is located or which is used by statutory undertakers for their undertaking.

123. Paragraph 15 of Schedule 6 inserts new sections 121A, 121B, 121C, 121D and 121E into the Highways Act 1980. These new sections relate to applications under the new sections 118ZA, 118C, 119ZA and 119C. Section 121A enables regulations to be made, for example requiring the applicant to certify certain matters and to give notice of their application. It creates offences relating to false or misleading certificates. Section 121B relates to councils keeping a register of the applications made under the new sections 118ZA, 118C, 119ZA and 119C. It specifies that such registers must be available for inspection by the public free of charge at all reasonable hours, and allows for regulations to be made about the form and content of registers and when information may be removed from them. Section 121C allows councils to refuse to determine applications when appeals regarding similar applications have been refused or where the Secretary of State or the National Assembly for Wales has otherwise refused to confirm a similar order. Section 121D sets out the types of decisions which applicants may appeal to the Secretary of State or the Assembly against and the circumstances where rights of appeal do not apply. Section 121E sets out the powers and duties of the Secretary of State and the Assembly in relation to appeals against local authorities' decisions on applications under the foregoing provisions. It ensures that diversion orders made on appeal do not come into effect where any consents required have not been obtained for works to make up the new way or to provide any necessary facilities. It also gives the Secretary of State and the Assembly powers to make regulations governing appeals procedures, compensation and charges. The provisions of Schedule 6 to the 1980 Act relating to objections, hearings and public inquiries apply in these appeal cases.

124. Paragraph 16 of Schedule 6 inserts two new sections, 135A and 135B, into the Highways Act 1980.

125. *New* section 135A enables the occupier of any land to temporarily divert a footpath or bridleway which passes over that land where works, which are to be prescribed in regulations made by the Secretary of State or the National Assembly for Wales, are likely to cause danger to users of the right of way. Subsection (1) prevents a temporary diversion from affecting the line of a footpath or bridleway on another's land, so that an occupier of other land does not become landlocked by a diversion. Subsection (2) limits the period during which an occupier may divert a right of way under this new section to no more than 14 days in any one calendar year per footpath or bridleway located on that person's land. Subsection (3) requires the occupier to ensure that the diversion is reasonably convenient for the exercise of the right of way and that the line of the diversion is indicated on the ground to not less than the path's or way's minimum width. These widths are to be ascertained in accordance with Schedule 12A of the 1980 Act. Subsection (4) prevents a person

from being able to divert a right of way on to land occupied by another person without that person's consent. It also prevents the diversion of a footpath on to a highway other than a footpath or bridleway and the diversion of a bridleway on to highway other than a bridleway. Subsections (5) and (6) require the occupier to give the local highway authority at least 14 days notice of a diversion; to publish a notice of the diversion in a local newspaper at least 7 days before it takes effect; and to display such notices at such times and in such places as may be prescribed in regulations. If the footpath or bridleway passes over or is contiguous with land to which the public have access under Part I of the Bill, the occupier is required to give 14 days notice to the Countryside Agency or the Countryside Council for Wales, as the case may be. Subsection (7) provides that notices under subsection (5) are to be in such form, and contain such information, as may be prescribed in regulations made by the Secretary of State or the National Assembly for Wales. Subsection (8) creates offences of making a false statement in a notice; of displaying a notice on or near a footpath or bridleway falsely purporting that the diversion is authorised under section 135A; or of diverting a right of way without complying with the requirements in subsection (3).

126. *New* section 135B requires a person diverting a footpath or bridleway to make good, before the diversion ceases to be authorised, any damage caused by the prescribed works to the right of way and also requires that person to remove any obstruction which may have been caused by the works. Subsection (2) creates an offence of failing to comply with these requirements. Subsection (3) empowers the highway authority to make good any damage or remove any obstruction, if the person concerned fails to do so. This subsection also entitles the highway authority to recover, from that person, the reasonable expenses they may have incurred in carrying out the works. Subsection (4) applies paragraphs 7 and 8 of Schedule 12A to the Highways Act 1980. These provide powers for a person duly authorised by the highway authority to enter on to land for the purpose of carrying out any works under subsection (3) and contain provisions in respect of service of a notice on the occupier. Subsection (5) provides that a person's liability for doing anything to a footpath or bridleway other than for the purpose authorised by the new section 135A shall not be affected. It also prohibits a person diverting a right of way under section 135A from interfering with the apparatus or works of any statutory undertakers. Subsection (6) places a duty on the highway authority for the footpath or bridleway to enforce the provisions of the two new sections. This is without prejudice to the authority's general duty under section 130 of the Highways Act 1980 to prevent, as far as possible, a highway from being obstructed.

127. Paragraphs 17 to 21 of Schedule 6 make amendments to the Highways Act 1980 which are consequential on the new provisions about special extinguishment orders, special diversion orders and SSSI diversion orders.

128. Paragraph 22 amends section 344 of the Highways Act 1980 so as to prevent new sections 135A and 135B from taking effect in the Isles of Scilly except by order made by the Secretary of State after consultation with the Council of the Isles.

129. Paragraph 23 of Schedule 6 makes related amendments to Schedule 6 to the Highways Act 1980. *New* paragraph 2A of that Schedule requires the Secretary of State or the National Assembly for Wales to arrange a public inquiry or hearing if requested to do so by an authority or appellant before making or confirming an order on an appeal. *New* paragraph 2ZA of that Schedule requires a council which has made an order following an application under new section 118ZA or 119ZA to give the applicant written notice of their decision to confirm the order (if unopposed) or submit it to the Secretary of State or the Assembly for confirmation (if opposed). If the council has not

made a decision within 2 months of the end of the period for representations on the order, the Secretary of State or the Assembly may, on request from the applicant, direct them to do so.

130. Paragraph 24 of Schedule 6 adds new Schedule 12ZA to the Highways Act 1980, which sets out the procedures relating to the determination of disputes under section 121 on the issue of whether a statutory undertaker has unreasonably withheld its consent to an order.

131. Paragraphs 25 and 26 make consequential amendments to legislation relating to the functions of the Broads Authority and National Park authorities.

Sections 58 and 59: Effect of Part I of the Bill on powers to create, stop up or divert highways

132. Section 58 gives the Countryside Agency and the Countryside Council for Wales powers to apply to the Secretary of State or National Assembly for Wales to make public path creation orders to provide access to access land (such as “inaccessible islands” to which there is no other practicable means of access). The countryside bodies must have regard to any rights of way improvement plan prepared by the local highway authority before applying for an order. The Secretary of State or National Assembly for Wales will consider such applications in deciding whether to exercise their powers under section 26 of the Highways Act 1980 (and, by virtue of subsection (2) of that section, must consult with local authorities before making an order).

133. Section 59 prevents an authority, when exercising powers to stop up or divert highways, from regarding the existence of the new right of access to open countryside as, for example, reducing the need for the highway, the need for an alternative highway or the need to reserve a public right of way.

Sections 60 to 62: Rights of way improvement plans

134. Section 60 requires every local highway authority (except inner London boroughs and the Common Council of the City of London) to prepare and publish a rights of way improvement plan within 5 years of the commencement of the section. It sets out what the plan should cover and what matters the authority should consider. It also provides for reviews of such plans at 10 yearly intervals. Subsection (5) defines rights of way for the purposes of section 60 as including cycle tracks other than those at the side of, or in, a made up carriageway. Subsection (6) provides for the transitional period until the reclassification of RUPPs comes into effect. It provides that the definition of local rights of way includes RUPPs until they are re-designated as restricted byways under section 47.

135. Section 61 sets out who should be consulted by the local highway authority in preparing the plans, the process of publishing and consulting on a plan, how the plan should be made available to the public, and that the authority should have regard to guidance produced for the purpose. Finally, it enables local highway authorities to make plans in conjunction with district councils or National Park authorities in their area.

136. Section 62 relates to the application of sections 60 and 61 to Inner London. The section allows inner London boroughs and the City of London to adopt the provisions. If they choose to adopt these provisions, subsection (2)(b) provides for the due date of the first review to be changed accordingly.

Sections 63 to 65: Interferences with Highways and the Provision of Stiles

137. Section 63 inserts four new sections into the Highways Act 1980 relating to the obstruction of rights of way. *New* section 130A enables any person to serve notice on a local highway authority requesting it to secure the removal of certain types of obstruction from a footpath, bridleway, restricted byway, or highway recorded as a restricted byway or byway open to all traffic on a

definitive map, and for which it is the highway authority. The request may lead to an order requiring the removal of the obstruction being imposed by a magistrates' court (section 130B below).

138. Subsection (3) of 130A applies the new provisions to obstructions which are structures, things deposited on the highway which are a nuisance, and overhanging vegetation. It also gives a power to prescribe by regulation other types of obstruction to which the provisions should apply.

139. Subsection (4) of 130A excludes certain types of obstructions from the provisions. These include those types of obstructions for which an order under section 56 of the Highways Act 1980 can be obtained (in effect those obstructions that consist of disrepair) and those obstructions that are buildings.

140. Subsection (5) of 130A requires a complainant, when serving a notice of the obstruction on the highway authority, to include the name and address of the person responsible for the obstruction if they know who this is. Subsection (6) of 130A requires a highway authority on which a notice has been served to respond stating what action it intends to take over the obstruction. It also contains provisions requiring the highway authority to inform all persons who may be responsible for the obstruction that it has received a complaint and to inform the complainant of the names and addresses of such persons.

141. *New* section 130B allows the person who served the notice on the highway authority to seek a magistrates' court order if they are not satisfied that the obstruction has been removed. Subsection (4) of 130B empowers a magistrates' court to make an order requiring the highway authority to take action to secure removal of the obstruction. Subsection (5) provides a defence for the authority if the authority: (a) shows that the status of the way as a highway is seriously disputed or that it falls outside the categories listed in section 130A(2), or (b) shows that there is no duty to remove the obstruction under section 130(3) of the Highways Act 1980, or (c) shows that it has any necessary arrangements in hand to secure the removal of the obstruction within a reasonable time.

142. Section 130B(6) requires a highway authority against whom a magistrates' order has been made to display notice of the order, and the right to appeal against it, on the highway concerned.

143. *New* section 130C makes provisions relating to a complainant's right to seek an order from the magistrates' court. These include an obligation on the complainant, when applying to the court for an order, to supply the court with the details of the persons who have been identified as possibly being responsible for the obstruction. This is so that the court may notify them of the hearing. The complainant must give the highway authority 5 days notice of their intention to apply to the court, but may not serve such notice until at least 2 months after serving the original notice under new section 130A. An application for an order must be made within six months of serving that original notice.

144. *New* section 130D requires a court, when determining whether to award costs against an applicant where an application is dismissed, and where the highway authority has relied upon any of the defences in subsection (5) of new section 130B, to have particular regard to whether and the extent to which the highway authority had disclosed their defence.

145. Section 63 also amends section 317 of the Highways Act 1980 to give a right of appeal to the Crown Court to any person who is responsible for the obstruction or was such a person when the application was heard by the court and was, or claimed to be, heard on the application.

146. Section 64 inserts *new* section 137ZA into the Highways Act 1980. The new section empowers a magistrates' court on conviction of a person for the offence under section 137 of that Act (wilful

obstruction of a highway) to order that person to remove the obstruction. This may be additional to, or instead of, a fine. Under *new* section 137ZA(3), failure to comply with an order (without reasonable excuse) is an offence punishable by a fine not exceeding level 5 on the standard scale (currently £5000). Further fines, not exceeding 1/20th of level 5, may be imposed for each day the offence continues after conviction.

147. Section 137ZA(4) empowers a highway authority, when a person has been convicted of failing to comply with an order under section 137ZA, to recover from that person the costs of removing the obstruction if the authority decides to use its powers to remove it.

148. A person who has been ordered to remove an obstruction may not be prosecuted again under section 137 of the Highways Act 1980 in respect of that obstruction during the period set by the court under section 137ZA for removing it or during any period set under section 311(1) of the Highways Act 1980 for complying with directions of the court.

149. Section 65 amends section 154 of the Highways Act 1980 so as to enable local authorities to require owners and occupiers of land whose trees, shrubs or hedges overhang highways to the inconvenience or danger of horse riders, to remove the offending vegetation or cut it back to a suitable height for horse riders.

Sections 66 to 72: Miscellaneous, including road traffic, vehicular access across common land and stiles.

150. Section 66 amends the provisions in the Road Traffic Regulation Act 1984 (“the 1984 Act”) governing the circumstances in which traffic authorities may make traffic regulation orders.

151. Section 22 of the 1984 Act gives traffic authorities a power to regulate traffic for the purpose of conserving or enhancing the natural beauty of the area, or of affording better opportunities for the public to enjoy the amenities of the area. The power is restricted to roads in England and Wales which are both outside Greater London and in or near certain designated areas, for example National Parks and Areas of Outstanding Natural Beauty. Section 66 ensures that the power will apply similarly in respect of areas designated as Sites of Special Scientific Interest, and brings Greater London within the scope of the provision.

152. Section 66 also inserts a *new* section 22A into the 1984 Act. The new section enables traffic authorities to make orders to control vehicular traffic on unclassified roads and byways throughout England and Wales for the purposes of conserving or enhancing the natural beauty of the area. It is made explicit that “conservation of natural beauty” in the context of both section 22 and the new section 22A, includes the conservation of flora, fauna and physical features of the landscape.

153. Section 67 introduces Schedule 7. Paragraph 5 of Schedule 7 substitutes a new section 34 in the Road Traffic Act 1988. Section 34 currently prohibits the driving of motor vehicles, without lawful authority, elsewhere than on roads. The offence in section 34 is extended to cover mechanically propelled vehicles which currently may not fall within the definition of “motor vehicle”, to which the current offence relates, because they may not be intended or adapted for use on roads. The offence does not apply to invalid carriages, mechanically propelled vehicles controlled by pedestrians used for cutting grass and electrically assisted pedal cycles.

154. Under section 34(1)(b) it is an offence to drive a mechanically propelled vehicle on a footpath or bridleway. This offence is extended to the new category of right of way, restricted byways. The recording of a way on a definitive map as a footpath, bridleway, or restricted byway does not mean

that higher rights might not exist over the way in question. Subsection (2) of the new section 34 provides that where a way is shown on a definitive map as a footpath, bridleway, or restricted byway, then it is presumed to carry only the rights attaching to ways of that kind unless the contrary is proved (but this is subject to section 34A).

155. Paragraph 6 of Schedule 7 inserts a new section 34A into the Road Traffic Act 1988. By making the presumption in section 34(2) rebuttable only in certain circumstances, this new section means that, except where those circumstances apply or the defences in section 34 are made out, the offence under section 34(1)(b) is committed where the way being driven on is shown in a definitive map as a footpath, bridleway or restricted byway. The circumstances set out in section 34A are where the defendant proves to the satisfaction of the court that he was a person with an interest in any land or was a lawful visitor to any land and that the driving was reasonably necessary for him to obtain access to that land; or that it was reasonably necessary for him to drive the vehicle for the purposes of any business, trade or profession. The Secretary of State may make regulations prescribing other circumstances where the presumption under section 34(2) can be rebutted.

156. Section 68 provides that where a person has used an access to property across land on which it is an offence to drive, regulations may provide for the creation of a statutory easement, providing certain qualifying criteria are met. The regulations would deal with issues such as the criteria to be met in order to apply; the compensation to be paid by the property owner; how the application for the easement must be made; the conditions to which the easement will be subject; dispute resolution procedures and how the easement will be recorded by the Land Registry.

157. Section 69 amends section 147 of the Highways Act 1980 so that local authorities, when authorising the erection of new stiles, gates or other works on footpaths or bridleways, must have regard to the needs of people with mobility problems. It provides for the Secretary of State and the National Assembly for Wales to issue guidance on how the powers to authorise works are to be exercised. It also inserts new section 147ZA into the 1980 Act.

158. *New* section 147ZA enables local authorities and certain other councils to enter into agreements with owners, lessees or occupiers of land to replace or alter existing gates and other stockproof structures on footpaths and bridleways to make them safer or more convenient for people with mobility problems.

159. Subsection (1) allows for agreements to provide for the owner, lessee, or occupier to carry out the work with the authority paying part or all of the costs, or for the authority to do the work with the owner etc contributing to or meeting the costs.

160. Subsection (5) provides that where an agreement has been entered into it replaces, and thereby extinguishes, the previous authorisations on a date to be specified in the agreement or failing that 12 months from the date of the agreement.

161. Subsection (9) requires the relevant authority, when exercising their powers under new section 147ZA, to have regard to guidance issued by the Secretary of State or the National Assembly for Wales.

162. Section 70 amends section 66(3) of the Highways Act 1980 which enables highway authorities to provide and maintain barriers, rails and fences in footpaths to safeguard the public. The amendment to section 66(3) allows authorities to provide posts as well, and extends section 66(3) to apply to bridleways that are maintainable at the public expense. Section 70 also amends section 134 of the 1980 Act, to enable any person to bring a prosecution for the offence under section 134(4) of failing to restore a ploughed footpath or bridleway.

163. In addition, section 70 amends section 300 of the Highways Act 1980 and section 21(2)(b) of the Road Traffic Act 1988. Sections 300 and 21(2)(b) provide protection to highway authorities when exercising certain highways functions against prohibitions relating to the use of mechanically propelled vehicles on footpaths, bridleways and cycle tracks. Section 70 clarifies that this protection extends to the functions of preventing or removing obstructions from highways and the prevention or abatement of other interferences.

164. Section 71 empowers the Secretary of State and the National Assembly for Wales to make regulations requiring local highway authorities to publish reports on the performance of their functions relating to rights of way. An example might be a report on the implementation of its rights of way improvement plans. The regulations may prescribe what the reports should cover and how they should be published.

165. Section 72 defines various terms used in Part II of the Act.

PART III: NATURE CONSERVATION AND WILDLIFE PROTECTION

Summary

166. Part III of the Act gives greater protection to wildlife and natural features by making provision for the conservation of biological diversity, and by improving protection for Sites of Special Scientific Interest (SSSIs) in England and Wales and the enforcement of wildlife legislation.

167. SSSIs are areas of land notified by the conservation agencies (English Nature and the Countryside Council for Wales) because they are of special interest arising from their flora, fauna or geological or physiographical features. The provisions enable the conservation agencies to impose permanent restrictions in place of the present temporary 4 month restrictions to prevent damaging operations on SSSIs in England and Wales. There is also a power for the conservation agencies to secure the management of a SSSI. The Act improves procedures for notification and denotification of SSSIs, and gives various rights of appeal to owners and occupiers of land who are affected by its provisions.

168. The Act increases the conservation agencies' powers of entry to land and extends powers of compulsory purchase. There are increased penalties for damage to a SSSI by owners and occupiers and by other persons. There is also a new power for the conservation agencies to make byelaws to protect SSSIs.

169. The Act places new duties on statutory undertakers and public bodies in respect of SSSIs and imposes restrictions on them when carrying out or authorising activities which affect a SSSI.

Background

170. Sites of Special Scientific Interest were first introduced in legislation by section 23 of the National Parks and Access to the Countryside Act 1949, which required them to be notified to the local planning authority. A system of controls was introduced by the current Wildlife and Countryside Act 1981 ("the 1981 Act").

171. Under section 28 of the 1981 Act, SSSIs are established by notification by the conservation agencies. Owners and occupiers are then required to notify the agency if they intend to carry out an operation on a site which is likely to damage the features of special interest (these operations are listed by the agency when notifying the site). The agency may consent to the work, or has 4 months to negotiate a management agreement for the land (including financial payments). If agreement is not reached at the end of the 4 month period (and if this period is not extended by agreement or by a nature conservation order, where appropriate, under section 29), the owner or

occupier may undertake the proposed operation. The 1981 Act does not enable the conservation agencies to require owners and occupiers to manage a SSSI for its nature conservation interest.

172. Proposals for strengthening the legislation were published in *Sites of Special Scientific Interest — Better protection and management*¹. Over 550 responses were received, generally in support of the proposals. Following consideration of the responses to consultation, a framework document was published setting out proposals for legislation². This Act gives effect to those proposals.

173. The Government is a signatory to the UN Convention on Biological Diversity 1992 and, as part of its response to the Convention, has been committed to the development and implementation of the UK Biodiversity Action Plan³ by working in partnership with others in the public and non-public sectors. The Action Plan identified certain habitats and species which were priorities for conservation, enhancement or restoration wherever they occurred.

Commentary on sections

Sections 73 to 80 And Schedule 8

174. Section 73 changes the name of the Nature Conservancy Council for England to English Nature. Schedule 8 sets out the necessary consequential amendments to other legislation.

Section 74: Conservation of biological diversity

175. Section 74 has three main elements: a general duty on Government to have regard to biodiversity conservation; a duty to list the most important species and habitat types for biodiversity conservation; and a specific duty to further their conservation.

176. Section 74(1) places a duty on any Minister, Government Department and the National Assembly for Wales in the exercise of their functions to have regard to the purpose of conserving biological diversity in accordance with the UN Convention on Biological Diversity 1992. For the purposes of this section, conservation is defined (section 74(7)) as including restoration and enhancement.

177. Section 74(2) requires the Secretary of State and the National Assembly respectively for England and Wales to publish lists of habitat types and species which they consider to be of principal importance for the conservation of biological diversity under the Convention. They are required under section 74(4) and (5) to consult English Nature or the Countryside Council for Wales as appropriate in preparing the lists and to keep the lists under review and published.

178. Section 74(3) places a further duty on the Secretary of State and the National Assembly for Wales (the listing authorities) to take steps that are reasonably practicable to further the conservation of the listed habitat types and species and to promote the taking of such steps by others.

179. Section 75(1) introduces Schedule 9, which amends Part II of the 1981 Act to improve the protection of sites of special scientific interest (SSSIs). Schedule 9 is explained in more detail below.

180. Section 75(2) relates to SSSI notifications given under the National Parks and Access to the Countryside Act 1949. The majority of those sites have been re-notified under the 1981 Act and this subsection cancels any existing old notifications.

181. Section 75(3) relates to section 15(2) of the Countryside Act 1968, which enables the conservation agencies to enter into agreements with owners and occupiers of SSSIs and of other land adjacent to a SSSI for the purposes of conserving the special features of the SSSI. This section extends the agencies' power so that they can enter into agreements with owners or occupiers of

other land (not necessarily within or adjacent to a SSSI), for those purposes. An example would be for the protection of a water supply some way from the SSSI.

182. Section 75(4) inserts a new section 15A into the Countryside Act 1968. The new section gives the conservation agencies power to compulsorily purchase the land referred to in the above paragraph for the purposes of conserving the special features. There are safeguards for the owner of the land being compulsorily acquired. The compulsory purchase cannot take place unless the conservation agency are satisfied they cannot reach an agreement for the conservation of the SSSI or unless there has been a breach of an agreement for its conservation. The new section also provides that, having compulsorily acquired the land, the conservation agencies can manage it themselves or dispose of it on terms providing that another person will conserve the features of the SSSI.

183. Section 76(1). The 1981 Act provisions relating to SSSIs apply to England, Wales and Scotland while the amendments made to those provisions by this Act will apply only to England and Wales (SSSIs are a devolved matter). This section introduces Schedule 10, Part I of which makes the necessary consequential amendments in relation to provisions which will in future apply only in Scotland. Part II of Schedule 10 makes various amendments in relation to other legislation, mainly to introduce the term “site of special scientific interest” (a definition of which is inserted into the 1981 Act by paragraph 5(2) of Schedule 9 to the Act).

184. Section 76(2) introduces Schedule 11 which sets out the transitional provisions and savings for the purpose of applying the new provisions of the Act to existing SSSIs (notified under s28 of the 1981 Act).

185. Section 77 imposes on the Secretary of State a duty to notify the conservation agencies of sites designated under the 1971 Ramsar Convention on Wetlands of International Importance. Under this Convention, adopted at Ramsar in Iran, the United Kingdom is required to designate wetlands of international importance especially in relation to waterfowl, and generally to promote the wise use of wetlands. The conservation agencies are also required to notify owners and occupiers, and certain statutory bodies of the designation.

186. Section 78. Limestone pavements are rare and exceptional areas of fissured limestone. They are protected under section 34 of the 1981 Act which enables orders to be made to prevent the limestone from being disturbed or removed. This section amends the fines for removing or disturbing limestone, to match increased penalties (of up to £20,000) that may be imposed for damaging SSSIs.

187. Section 79 amends s50 of the 1981 Act, which relates to the making of payments under management agreements. It expands the scope of section 50 by deleting references to particular persons and substituting a reference to any person.

188. Section 80 amends section 51 of the 1981 Act which provides for powers of entry for giving proper effect to the nature conservation provisions in the Act. This section extends the conservation agencies' powers of entry onto land (which is not limited to the potential or actual SSSI) for a range of specified purposes. These include assessing whether land should be notified as a SSSI; formulating a scheme for the management of a SSSI in order to conserve its special features; assessing the condition of the features on the site, and ascertaining whether an offence under Section 28P or under byelaws made by virtue of Section 28R of the 1981 Act has been committed. Entry to the land may be by vehicle or boat, and the person entering the land may take equipment or materials with him. The person entering the land must leave it as effectively secured as he found it and the agency will be liable to pay compensation for any damage caused by the exercise of the power of entry.

Schedule 8: English Nature Name Change

189. Schedule 8 effects the consequential amendments for the change of name of the Nature Conservancy Council for England to English Nature.

Schedule 9— Sites of Special Scientific Interest

190. Paragraph 1 of Schedule 9 replaces section 28 of the 1981 Act with new sections 28 to 28R inclusive.

191. *New* section 28 revises procedures for notifying SSSIs. The measures include: affirming the duty of the conservation agencies to notify land of special interest; requiring notification (which must specify the features by reason of which the site is of special interest, and include a list of the operations likely to damage those features) to be given to owners and occupiers, the local planning authority, and the Secretary of State; publishing the notification in a local newspaper; and setting out the procedures and timetables to be followed (including the opportunity for representations to be made to and considered by the agencies) before a notification can be confirmed with or without modification;. The notification should also include a statement of the conservation agencies' views about the appropriate management of the land. Paragraph 5(4) of Schedule 9 amends section 52 of the 1981 Act to provide that “occupier” includes commoners, defined in the section as persons with rights of common.

192. Section 28A enables the conservation agencies to vary the matters specified in the notification, other than the area of land concerned, at any time after confirmation. The agency must give notice to the owners and occupiers of the land affected, who may make representations. The amended notification may then be withdrawn or confirmed (with or without modifications).

193. Sections 28B and 28C enable the conservation agency to increase the area of a SSSI. Under s28C amendments may also be made to the notification of the original SSSI as respects the features of special interest, the operations likely to damage those features, and the statement of views about the management of the SSSI.

194. Section 28D provides a power for conservation agencies to denotify all or any part of a SSSI which is no longer of special interest. Where the power is to be exercised the agency must notify, amongst others, owners and occupiers and advertise the fact in a local newspaper. Representations may be made to the conservation agency and the agency may then withdraw or confirm (with or without modifications) the denotification. If they do neither, the proposal to de-notify will lapse after nine months. The land will continue to be protected until the de-notification has been confirmed.

195. Section 28E provides that the owner or occupier of a SSSI shall not carry out any operation listed in the section 28 notification as likely to damage the site unless notice is given to the conservation agency of a proposal to carry out the operations, and the agency give their consent or the works are carried out under the terms of an agreement with the agency, or under a management scheme or notice.

196. Consent may be granted subject to conditions and consent may be withdrawn or modified; however the agencies must give reasons for their decision. This section does not apply where the owner or occupier is a public body (defined under section 28G) carrying out its functions. The reason is that in these circumstances section 28H (see below) will apply.

197. Failure by an owner or occupier to follow the procedures in (1) and (2) above will be an offence under section 28P(1) but it is a defence if the operation is authorised by a planning permission granted on an application or by a permission or consent from a public body, where the procedures

in section 28I below have been followed (section 28P(4)). It is also a defence where the operation was an emergency.

198. Section 28F enables a person to appeal where he has been refused consent to carry out works on a SSSI (this includes a deemed refusal where after 4 months the agency has neither granted nor refused consent), where he has been granted consent subject to conditions or where he is aggrieved by the modification or withdrawal of a consent. The appeal must be made within 2 months (or such longer period as is agreed in writing) of the decision or failure to decide, to the Secretary of State or the National Assembly for Wales in Wales, who may cause a hearing or local inquiry to be held into the appeal. The Secretary of State and National Assembly for Wales may make regulations specifying the procedures for appeals. There is power to award costs of the proceedings.

199. Section 28G imposes a duty on “public bodies” in exercising their functions to take reasonable steps, consistent with the proper exercise of those functions, to further conservation and enhancement of the special features on a SSSI. This applies where the public body is exercising its statutory functions on a SSSI or on land outside the SSSI where those functions affect a SSSI. “Public bodies”, referred to in the Act as section 28G *authorities*, are defined in subsection (3) to include Ministers, Government Departments, local authorities and statutory undertakers (whether in the public sector, or a privatised utility) and other public bodies.

200. Section 28H requires the public body to notify the conservation agency when they propose to carry out operations in the exercise of their functions, which are likely to damage the features of special interest of a SSSI. This applies equally to works outside a SSSI, which may affect that SSSI. The conservation agency may refuse its assent, or assent to the operation (with or without conditions). Where assent is refused, or the conditions are not acceptable, the public body may proceed with the works, providing that they give the agency not less than 28 days notice of the start of the operation. That notice must state how the body has taken into account any advice which the agency has given. It is a requirement that any such operations are carried out so as to cause as little damage as is reasonably practicable, and that the body restore the site to its former condition, again, so far as is reasonably practical, if damage does occur.

201. Section 28I applies where the authority has power to grant permissions, including authorisations or consents, for other parties to carry out operations (whether on or outside a SSSI) which are likely to damage the special features of a SSSI. Before granting any such permission they must give the conservation agency not less than 28 days notice. Before making any decision the authority must take into account the advice of the conservation agency, which may include advice on conditions to be attached to the permission (section 28I(5)(b)). If the authority intends to grant permission against the advice of the agency, they must notify the agency and the permission must allow 21 days before operations may commence. This would for example give the agency an opportunity to contact the applicant to discuss ways of mitigating any effects, or to offer a management agreement.

202. Section 28J sets out provisions for Management Schemes, which may be formulated by the conservation agencies. A management scheme will set out measures for conserving or restoring the special interest of the land. The conservation agency must consult the owners or occupiers of the land about a proposed management scheme. The agency may then serve notice of the proposed scheme on owners and occupiers who may make representations. Within 9 months, the agency must confirm (with or without modifications) or withdraw the scheme. The agency may cancel or propose modifications to a scheme at any time.

203. The management scheme is a new concept and is designed to provide a detailed statement of the measures required for positive management of the SSSI, which is available to owners and

occupiers. It should provide greater detail than the statement of views about the management of the land served with the notification of a SSSI, and is designed to help secure that SSSIs remain in favourable condition. It may specify activities for which consent is given. It is also designed to help ensure that all parties are aware of the recommended management regime for conservation and restoration of the special features.

204. Section 28K enables a conservation agency to serve a management notice on the owner or occupier where (1) the agency has formulated a management scheme which is not being implemented, and as a result the features which make the land of special interest are being inadequately conserved or restored, and (2) the agency has been unable to conclude a management agreement, on reasonable terms, with the owner or occupier. A management notice is a notice requiring specified works (which it is reasonable to require to ensure the land is managed in accordance with a management scheme) to be carried out on the site. Section 28M(2) provides that the conservation agency may make payments for the costs of this work. They may also enter the land and carry out the works themselves, if the notice is not complied with, and may charge the costs to the owner or occupier.

205. Section 28L enables any person who has been served with a management notice, to appeal against it to the Secretary of State or the National Assembly for Wales as appropriate. Notices may be quashed, varied or confirmed. Procedures for appeals will be set out in regulations. There are provisions for hearings or local inquiries as in section 28F above.

206. Section 28M provides that the conservation agencies may make payments to an owner or occupier of land in relation to which a management scheme is in force. If they withdraw or modify an existing consent to carry out operations, they must offer a payment to an owner or occupier if he suffers loss as a result. The amount of the payment is to be determined by the conservation agencies in accordance with guidance given and published by Ministers (the Secretary of State, as respects England, and the National Assembly for Wales as respects Wales).

207. Section 28N gives the conservation agencies a compulsory purchase power in relation to land notified as a SSSI. This power is additional to that in section 17 of the National Parks and Access to the Countryside Act 1949 relating to nature reserves and additional also to that in the new section 15A of the Countryside Act 1968 inserted by section 75(4) of the Act. This new power may only be exercised where the agencies cannot secure an agreement for the management of a SSSI or where the terms of such an agreement have been breached in such a way that the land is not being managed satisfactorily. The agency may then either manage the land or dispose of it to ensure its future management.

208. Section 28P provides for offences. Subsection (1) makes it an offence for an owner or occupier to cause or permit damaging operations contrary to section 28E(1) without reasonable excuse. The penalty is a fine not exceeding £20,000 in the magistrate's court or, on indictment, an unlimited fine. Subsection (2) makes it an offence for a public body, as defined in section 28G, to carry out operations in contravention of section 28H, without reasonable excuse. The penalty is the same. It will be a reasonable excuse in any event that a planning permission (granted on an application) has been granted for the operations, or that they were necessary as an emergency measure, or that a permission or consent for the operations has been granted in accordance with section 28I. Subsection (6) makes it an offence (carrying the same penalty) for any person intentionally or recklessly to damage or destroy the features which make a site of special interest or intentionally or recklessly to disturb fauna for which the site is notified, provided he knew that what was damaged, destroyed or disturbed lay within the SSSI. Subsection (7) provides for a similar defence of reasonable excuse.

Failure to comply with a management notice is an offence under subsection (8) and attracts the statutory maximum fine (£5,000) or on indictment an unlimited fine. Proceedings for an offence under this section may only be taken by the conservation agency, unless the Director of Public Prosecutions consents otherwise.

209. Section 28Q requires the owner of an SSSI who disposes of any interest in the land, or who becomes aware that the occupation of the land has changed, to tell the conservation agency within 28 days. This will enable the agency to take steps to ensure the new owner or occupier is aware of the SSSI and the associated rights and requirements.

210. Section 28R gives a power to the conservation agencies to make byelaws on any SSSI and applies, with modifications, the provisions in section 20 of the 1949 Act (which relate to byelaws for nature reserves).

211. Paragraph 2 of Schedule 9 repeals section 29 and section 30 of the 1981 Act which enable the conservation agencies to make a Nature Conservation Order and provide for associated compensation. These powers are no longer required as the provisions in the Act (section 28 to section 28R) give full protection to SSSIs. Paragraphs 15 to 19 of Schedule 11 set out the transitional provisions in relation to these cases.

212. Paragraph 3 of Schedule 9 amends section 31 of the 1981 Act so as to enable the court to order restoration of a SSSI where a person has been convicted of damaging or destroying it under section 28P(1) or (6). The court may also order restoration of a SSSI where a public body (as defined by section 28G) has been convicted of an offence under section 28P(2) or (3), this applies whether the operation which damaged the special features took place on, or off, the SSSI.

213. Paragraph 7 of Schedule 9 provides for a new Schedule 10A to be inserted in the 1981 Act. The Schedule contains provisions relating to the appointment and powers of persons appointed under sections 28F(8) and 28L(10) to determine appeals in respect of consents and management notices.

Notes

¹ Published by the Department of the Environment, Transport and the Regions, September 1998. Available free of charge from: DETR Room 9/22 Tollgate House, Bristol BS2 9DJ. Tel. 0117 987 6170, Fax. 0117 987 8119

² Sites of Special Scientific Interest: better protection and management. The Government's Framework for Action. Published by the Department of the Environment, Transport and the Regions, August 1999. Available free of charge from: DETR Room 9/22 Tollgate House, Bristol, BS2 9DJ. Tel. 0117 987 6170, Fax. 0117 987 8119

³ Biodiversity: The UK Action Plan Cm 2428 London HMSO January 1994

Schedules 10 and 11: Consequential and Transitional provisions

214. Schedule 10 contains consequential amendments. Schedule 11 sets out the transitional provisions and savings for SSSIs. These ensure that all existing SSSIs, notified under the 1981 Act, are taken forward into the new provisions (paragraph 2); and that, for existing SSSIs, the conservation agencies will, within 5 years of commencement of these provisions, give owners and occupiers a statement of views about the management of the land. The owners and occupiers will be given the opportunity to make representations (paragraph 6).

215. Paragraph 8 provides that if a consent to carry out operations on an SSSI has been given under the old legislation, this will still be valid (paragraph 8(1)(b)). However, the conservation agency

will have power to withdraw or modify that consent (section 28E(6)); in this event, the owner or occupier will have a right of appeal (section 28F) and a right to payment for loss suffered (section 28M).

216. Under paragraph 9 of Schedule 11, an owner or occupier of an SSSI existing when the new legislation comes into force has the right to continue with an operation where no consent or management agreement exists, but four months have elapsed from giving notice of intent to carry out the operation. In these cases, the agency has been given power to serve a stop notice, to prevent or modify the operation. The owner or occupier, on whom the stop notice has been served, has a right of appeal (paragraph 11) to the Secretary of State, and a right to payment if he suffers loss because of it. Paragraph 9(11) of the Schedule provides that these provisions of paragraph 9 (as mentioned above) do not apply where the operations have not begun within 3 years (in most cases) from this legislation coming into force.

217. Section 29 of the 1981 Act has been repealed, but there are transitional provisions in paragraphs 15–17 of Schedule 11 to preserve the conservation protection for those sites and to maintain the benefit of any consent given to owners and occupiers for operations on those sites. Where an offence takes place on a SSSI before the new provisions come into force, paragraph 20 of Schedule 11 provides that the offences and penalties in force at that time will apply. The requirements on public bodies to carry out operations giving rise to as little damage as possible and to restore any damage will similarly not apply where operations have already started before the new provisions come into force (paragraph 14).

PART III: PROVISIONS FOR THE ENFORCEMENT OF WILDLIFE LEGISLATION

Summary

218. Section 81 and Schedule 12 introduces new provisions for the enforcement of wildlife legislation.

Background

219. In response to concern about the enforcement of the provisions of Part I of the Wildlife and Countryside Act 1981, the then Secretary of State established in 1994 a working group to consider the scope for improvements in the enforcement of wildlife species controls. The working group reported in 1995. Further to this report the Secretary of State established a further group to consider changes to wildlife enforcement legislation. The group submitted its recommendations in 1997. Following consultations, the majority of the recommendations were accepted and form the basis of the changes in the Act.

220. All wild birds, some animals and some plants are protected by the 1981 Act. Some controls protect specimens in their natural habitat, for example it is an offence to injure, kill or take such specimens from the wild. Further controls ban the sale (and related activities) of these specimens unless a licence has been obtained. Another layer of protection is provided for certain bird species, which must be ringed and registered with the DETR if held in captivity.

221. The Act does not affect these controls significantly or change the species to which they apply.

222. The measures in the Act will increase the enforcement powers under the 1981 Act, and will increase the sentencing options available to the Courts.

Commentary on sections

Section 81: Enforcement of Wildlife Legislation

223. Section 81, subsection (1) introduces Schedule 12. Subsections (2) and (3) provide that in future Regulations made to implement the EU Habitats Directive (Council Directive 92/43/EEC) or the EU Wildlife Trade Regulation (Council Regulation 338/97 which amongst other things implements the Convention on International Trade in Endangered Species of Wild Fauna and Flora) will be able to create offences, which on summary conviction will attract a custodial sentence of up to six months. This overrides paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972, (which would otherwise prevent the regulations from imposing more than three months' imprisonment). It will mean that the penalties for wildlife offences across these pieces of legislation can be consistent with those now being introduced into the Wildlife and Countryside Act 1981.

Schedule 12: Amendments relating to Part 1 of Wildlife and Countryside Act 1981

224. Paragraph 1 provides further protection for certain birds. It is already an offence to intentionally disturb birds listed on Schedule 1 (mainly the more rare breeding birds). It has proved difficult to prosecute the offence, mainly because of the need to prove that the defendant went with the objective of causing disturbance. By adding the lesser test of reckless disturbance, a prosecutor will have to show that a person either deliberately took an unacceptable risk or failed to notice an obvious risk and thereby caused disturbance. (This is consistent with the fact that reckless disturbance in the context of interfering with a badger sett is an offence under section 3 of the Protection of Badgers Act 1992.)

225. Paragraph 2 replaces the reference to special penalty offences from section 3 of the 1981 Act, (see commentary below on paragraph 10).

226. Paragraph 3 removes the reference to 'persons registered with the Secretary of State' from section 6. This and the repeal of related sections will remove the statutory framework for the now discontinued Registered Sellers of Dead Birds Scheme. On 20 July 1994 Ministers announced their intention to replace the scheme with a general licence (which is issued under section 16 of the 1981 Act and allows actions which would otherwise be unlawful under various sections of that Act) and following a period of consultation, such a licence was issued on 21 December 1994.

227. Paragraph 4 lists the offences in the 1981 Act which attracted a special penalty (see commentary below on paragraph 10). It preserves the provisions which enable the Courts to ban people found guilty of such offences from keeping specimens of bird species listed in Schedule 4 of the Act for up to five years.

228. Paragraph 5 extends the offence in section 9(4) of the 1981 Act of intentionally damaging any structure or place which a wild animal listed in Schedule 5 to the Act uses for shelter or protection or intentionally disturbing any such animal while in such a structure or place, so that the offence also covers reckless damage or disturbance. However, due to their ecology certain Schedule 5 marine species, namely cetaceans and basking sharks, do not have such places of shelter or protection and it would be difficult to apply section 9(4) to them. These species are considered vulnerable to reckless disturbance, for example due to inappropriate use of motorised personal watercraft. Therefore an offence of intentionally or recklessly disturbing a cetacean or basking shark in any place has been added as section 9(4A). Paragraph 6 is consequential on these changes.

229. Paragraph 7 provides that for all offences under Part I of the Act, justices of the peace will be able to grant police officers search warrants to enter premises, where they are satisfied that there are reasonable grounds for suspecting that an offence has been committed, and that evidence will be found on those premises.

230. This extends the provisions in the Act, which do not provide for search warrants to be issued for offences which would not attract a 'special penalty' and certain other offences. As an example, the Act provides for a search warrant for offences against a redwing (listed on Schedule 1), but not a mistle thrush (not so listed).

231. Paragraph 8 inserts two new sections into the 1981 Act. Section 19ZA relates to the powers and role of wildlife inspectors; section 19ZB sets out the powers to take samples for DNA analysis.

232. At present sections 6, 7 and 14 provide powers of entry for wildlife inspectors (newly defined as a person authorised by the Secretary of State in section 19ZA(1)). The first two include a power to enter dwellings but the latter only relates to "land". Section 19ZA replaces those powers and broadens them.

233. Inspectors will be empowered to enter premises in order to ascertain whether an offence related to a sale, bird registration or release into the wild has been or is being committed. In general this power will not extend to dwellings. However inspectors will be able to enter dwellings which are occupied by people who have:

- submitted applications or obtained licences to sell controlled birds, animals and plants (alive or dead);
- submitted applications or obtained licences to release specimens to the wild (section 14);
- applied for or been granted registration documents (section 7) for Schedule 4 birds.

234. This power of entry will be subject to safeguards provided in a non-statutory Code of Practice, copies of which are available from the Department of the Environment, Transport and the Regions, Tollgate House, Houlton Street, Bristol, BS2 9DJ.

235. If the specimen which is the subject of the application or registration is not kept at the applicant's address, the inspector can require it to be presented for inspection — wherever it is held. People who have live specimens in their possession or control will be required to assist the inspector so that he can examine the specimen.

236. It will be an offence to obstruct an inspector when he is exercising these powers, or to fail to assist him without reasonable cause, and a penalty of up to £5,000 (Level 5 on the standard scale) will apply.

237. Section 19ZB introduces powers for wildlife inspectors or constables to require blood or tissue samples for DNA analysis. The powers in subsections (1) and (2) of the section will be exercisable by constables, and those in subsections (3) and (4) by wildlife inspectors in certain circumstances.

238. Samples may be taken to determine the identity or ancestry of a specimen so long as it will cause no lasting harm to that specimen. For birds and animals, the sample will always be taken by a veterinary surgeon.

239. To prove ancestry, it will be necessary to take samples from specimens other than the specimens subject to the licence or registration or connected with the reason for the issue of a search warrant. Subsection (2) of the section provides for inspectors (and subsection (4) for constables) to require any person (including the applicant) to make other specimens available for sampling where that is likely to confirm or disprove the identity or ancestry of the subject specimen, as well as from the subject specimen itself.

240. The Control of Trade in Endangered Species (Enforcement) Regulations 1997 already contain powers for inspectors to take samples from species listed in the Annexes to the EC Wildlife Trade Regulation (No. 338/97) in certain circumstances.

241. It will be an offence to obstruct an inspector who is exercising his power to require a sample; or refuse to make a specimen available or assist an inspector or constable without reasonable cause, and a penalty of up to £5,000 (Level 5 on the standard scale) will apply.

242. Paragraph 9 provides that for all offences under Part I of the 1981 Act, prosecutions are able to be brought within a period of six months from the date on which sufficient evidence of the offence became available to the prosecutor, subject to a limit of two years from commission of the offence.

243. The current legislation already provides for some offences to be subject to this time limit, but for others, prosecution must take place within six months of the commission of the offence. These different time limits cause anomalies, for example the time limit for a prosecution for killing a bird is different to that for injuring it. In cases where the results of DNA analysis are important, the longer time period will be useful because the results often take some weeks to obtain.

244. Paragraph 10 introduces custodial sentences into Part I of the 1981 Act. At present fines ranging from level 3 (£1,000) to level 5 (£5,000) on the standard scale can be imposed. The change is that fines of up to Level 5 and/or the possibility of a custodial sentence of up to six months will be available for all Part I offences with the exception of releases into the wild and obstruction of wildlife Inspectors which are discussed in paragraphs 28 and 29 below. For that reason the references to “special penalties” have been removed from the Act, but their effect has been preserved in relation to sections 3(1)(c) and 7(3)(a) of the 1981 Act.

245. For releases to the wild, at present a fine up to the statutory maximum (£5,000) in the magistrates' court and an unlimited fine in the Crown Court, is available. The change is that magistrates will have the possibility of imposing a custodial sentence of up to six months, and in the Crown Court, a custodial sentence of up to two years will be possible in addition to the possibility of imposing the fines referred to above.

246. The offence of obstructing a wildlife inspector will be subject to a fine only, of up to Level 5, except where the obstruction is in relation to releases to the wild where a fine of up to the statutory maximum (£5,000) can be imposed in the magistrates' court, and an unlimited fine in the Crown Court.

247. Most other wildlife legislation, including the Protection of Animals Act 1911, the Protection of Badgers Act 1992, the Wild Mammals (Protection) Act 1996 and the Control of Trade in Endangered Species (Enforcement) Regulations 1997 already provides the possibility of a custodial sentence.

248. Paragraphs 11 and 12 contain consequential amendments.

249. Paragraph 13 makes certain offences in Part I of the 1981 Act ‘arrestable’. A police officer can arrest without a warrant anyone whom he believes may be guilty of an offence or whom is about to commit an offence. Additionally, any person may, in certain circumstances, make an arrest without a warrant for an arrestable offence. ‘Arrestable’ offences also attract stronger search and seizure powers for the police. The offences to which this applies relate mainly to those involving species of conservation concern listed for protection in Schedules 1, 5, and 8 to the 1981 Act.

250. The wildlife provisions will come into force two months after Royal Assent with the exception of section 81(2) and (3) (which allows regulations implementing certain EU legislation to impose custodial sentences of up to six months) which will come into force on Royal Assent.

PART IV: AREAS OF OUTSTANDING NATURAL BEAUTY

Summary

251. Part IV of the Act introduces provisions to allow the better management and protection of Areas of Outstanding Natural Beauty (AONBs). It provides for the creation of conservation boards for individual AONBs by means of an establishment order made by the Secretary of State in England, or by the National Assembly in Wales. It requires the preparation and publication of a management plan for every AONB by the appropriate local authorities, or by an AONB conservation board where one is established. It places a duty on ‘relevant authorities’ when exercising or performing any functions in relation to, or so as to affect, land in an AONB, to have regard to the purpose of conserving and enhancing the natural beauty of the AONB. It also consolidates the provisions on AONBs previously contained in the National Parks and Access to the Countryside Act 1949 (“the 1949 Act”).

Background

252. The 1949 Act gave the then National Parks Commission (now the Countryside Agency in England, the Countryside Council for Wales in Wales) the power to designate AONBs, subject to confirmation of a designation order by the Secretary of State (now the National Assembly, in Wales). The only criteria were that the areas designated should be outside National Parks, and should appear to the designating agency to be of such outstanding natural beauty that the provisions of the 1949 Act should apply to them. Thirty seven AONBs were designated in England between 1957 and 1995, and five in Wales between 1956 and 1985 (the Wye Valley AONB straddles the border and is included in both totals).

253. The 1949 Act gave local planning authorities whose area includes all or part of an AONB the power (subject to certain restrictions) to take all such action as appears to them expedient to accomplish the purpose of conserving and enhancing the natural beauty of the AONB. AONBs have been accorded a high degree of protection in the planning system. But no statutory duties were placed on local authorities to manage AONBs in a particular way.

254. Although many local authorities, supported by the countryside agencies, have made considerable progress in the sympathetic management of AONBs, standards of management have varied. Following a number of earlier reports and extensive consultation, the then Countryside Commission (now the Countryside Agency) in 1998 produced a report entitled ‘Protecting our Finest Countryside: Advice to Government’ (CCP 532). It contained a number of proposals for ensuring that AONBs were better and more consistently managed. Some of the proposals were taken up by Lord Renton of Mount Harry in a private member's bill introduced in the House of Lords in 1999, but which failed to become law.

255. There was considerable support for the addition to the Bill of provisions relating to Areas of Outstanding Natural Beauty and the Government included provisions during the passage of the Bill.

Commentary on sections

Sections 82–91, Schedules 13 and 14

256. Sections 82–84 generally re-enact sections 87 and 88 of the 1949 Act.

257. Section 82(1) states explicitly that the purpose of designating AONBs is conserving and enhancing the natural beauty of the area. The 1949 Act had referred to the original version of this purpose (‘preserving and enhancing’, which was changed to ‘conserving and enhancing’ by the

Environment Act 1995) only by reference (1949 section 11 as applied in respect of AONBs by 1949 section 88) to the powers of local planning authorities.

258. Section 85 places a duty on any relevant authority, in exercising or performing any functions in relation to, or so as to affect, land in an AONB, to have regard to the purpose of conserving and enhancing the natural beauty of the AONB. 'Relevant authority' is defined as any Minister of the Crown, any public body, any statutory undertaker or any person holding public office. The section is modelled on provisions in section 11A of the 1949 Act, inserted by section 62(1) of the Environment Act 1995, relating to the duties of similar bodies towards National Park purposes. The requirement to have regard to conserving and enhancing natural beauty will not override particular considerations which have to be taken into account by relevant authorities in carrying out any function.

259. Section 86 enables the Secretary of State or National Assembly to establish conservation boards for individual AONBs by means of establishment orders. The Secretary of State or NAW must consult the Agency or Council and any affected local authorities before proceeding. A majority of the consulted local authorities must consent before an order may be made establishing a conservation board. Powers may be transferred from local authorities to the conservation board or, where appropriate, may be shared between the two. The powers of individual conservation boards will be specified in their particular Establishment Orders. The transfer or sharing of the principal development plan and development control functions contained in Parts II, III, VII and XIII of the Town and Country Planning Act 1990 is excluded.

260. Schedule 13 is introduced by section 86(2) and relates to the constitution of conservation boards, including membership, election of chairman and deputy chairman and audit arrangements. Further provision can be made in individual establishment orders, as detailed in section 86(5).

261. Section 87 describes the general purposes and powers of conservation boards. In the exercise of its functions a conservation board is to have regard to two purposes, ie (a) to conserve and enhance the natural beauty of the AONB and (b) to increase public understanding and enjoyment of the special qualities of the AONB. If there is conflict between the two then greater weight is attached to (a) (under the Sandford principle which already operates in the National Parks). In having regard to its two purposes a conservation board will also have to seek to foster the economic and social well-being of local communities within the AONB, but without incurring significant expenditure in doing so. The boards would be expected to co-operate with others to fulfil this requirement, which is based on the similar provision applying to National Park Authorities.

262. Schedule 14, which is introduced by section 87(6), deals with the powers of conservation boards with regard to land and charges.

263. Section 88 lays down the procedure for making orders under section 86, and makes provision for their content. It specifies that orders establishing AONB conservation boards in England should be subject to the affirmative resolution procedure; this takes into account the relatively wide scope left open to such orders by the Act.

264. Section 89 requires a management plan to be prepared and published for each AONB. Where a conservation board has been established, responsibility for the management plan will rest with the board. Elsewhere, management plans will be the responsibility of the local authority containing the AONB; where there is more than one such local authority, they should act jointly. The clause also sets out the requirements for reviewing management plans.

265. Where a conservation board is set up, it must publish an AONB management plan within two years. For AONBs without a conservation board, the local authority must publish a plan within three years of this legislation coming into force (or date of designation in the case of any new AONB) although this ceases to apply if an AONB conservation board is set up within that period.

266. Management plans are to set out the managing body's (local authority or conservation board) policy for the management of the AONB and the carrying out of their functions in relation to it. This formula follows the provision in the Environment Act 1995 which requires National Park Authorities to prepare management plans on a similar basis. The Countryside Agency is preparing guidelines for the content of plans, in consultation with AONB managers and DETR.

267. Many AONBs already have in place a non-statutory management plan. Such plans, if prepared by a local authority or joint committee, can be reviewed and adopted as the statutory plan by either a conservation board or a local authority, and published within the same timescale as above. Where a local authority has published a statutory plan, a conservation board set up subsequently may adopt the plan within six months of the board's establishment.

268. Once adopted and published, management plans are to be reviewed at intervals not exceeding five years. The exception is where a conservation board has adopted a local authority statutory plan, in which case the first review must be within 3 years.

269. Section 91 allows the Secretary of State and National Assembly to make grants to conservation boards. Before determining the amount to be paid, the Secretary of State must consult the Agency and the National Assembly must consult the Council.

270. The existence of this provision does not prevent grants going directly to conservation boards from the Agency or Council.

PART V: MISCELLANEOUS AND SUPPLEMENTARY

271. Section 94 places a duty on highway authorities and national park authorities to establish local access forums, and provides for the functions of such forums. This section, and relevant provisions in Parts I and II of the Act, will require relevant decision-making authorities to have regard to forums' views in reaching decisions, for example in relation to draft maps, the imposition of byelaws, and proposals for long term closures of access land (under Part I), as well as on wider access issues contained in new rights of way improvement plans (under Part II). In providing their views, local access forums will need to take into account relevant guidance issued by the Secretary of State, or the National Assembly. Subsection (7) excludes the application of the duty in subsection (1) in respect of the council of London boroughs. However, any such council will have the power to set up a forum if it wishes to do so. Subsection (8) allows the Secretary of State (or the National Assembly for Wales), by direction, to exclude the application of the duty in subsection (1) in respect of any other local authority or part of the authority's area.

272. Section 95 enables supplementary and incidental matters to be addressed in regulations, including the prescription of additional functions, the detailed arrangements for membership of forums, and the application of local government legislation (such as provisions relating to access to information, the admission of the public to meetings, *etc.*). Subsection (2) requires that forums should include a balanced representation of both users of access land and rights of way generally, of landowners and occupiers of such land, and other interests especially relevant to the area.

273. Section 39 of the Wildlife and Countryside Act 1981 enables local authorities to enter into management agreements with the owner of land in the countryside for its conservation (and for

other related purposes). Section 96 amends section 39 in order that the Countryside Agency, the Countryside Council for Wales, and conservation boards in areas of outstanding natural beauty, may also enter into such agreements, and to enable agreements to be made in respect of any land, whether or not it is in the countryside. These amendments will allow these bodies, for example, to make agreements with the owner of land both for its dedication to access under section 16, and its long term conservation (including agreement to ensure that the land does not become converted to excepted status by reason of any of the activities listed in Schedule 1), and to secure the long term future of “Millennium Greens” in towns and villages.

274. Section 98 amends the definition of town and village green contained in section 22 of the Commons Registration Act 1965. It introduces reference to a neighbourhood and provides that use of the land for lawful sports and pastimes must be by a significant number of people from the locality or neighbourhood (rather than simply by “the inhabitants”). Finally, it provides for regulations to be made regarding the details of procedures to be followed in the event that a time limit for lodging applications is introduced.

275. The remaining sections of the Act relate to a broad range of matters including the application of certain provisions to the Isles of Scilly, commencement and the extent of the Act.

276. Section 99 relates to Wales. Ministerial functions under the Highways Act 1980 and the Wildlife and Countryside Act 1981 relating to Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The section provides that in Schedule 1 to that Order the reference to each of those Acts is to be taken to be a reference to those Acts as amended by this Act. The effect of the section is that the new functions conferred on the Secretary of State by provisions inserted by this Act into the 1980 Act or the 1981 Act will be exercisable by the Assembly in relation to Wales.

277. The section makes similar provision in relation to Schedule 11 to the Act so that the transitional provisions and savings relating to Sites of Special Scientific Interest apply both to the Secretary of State and the National Assembly for Wales.

278. Section 103 deals with the commencement of the Act. Section 103(1) provides for section 81(2)–(3) to come into force on Royal Assent. These provisions relate to the imposition of custodial sentences for summary offences, relating to the protection of wildlife, by regulations under section 2(2) of the European Communities Act 1972.

279. Under section 103 (2) a number of provisions come into force 2 months after Royal Assent. They include:

- Provisions in Part I for the mapping of open country, for the making of byelaws, for the exclusion and restriction of access and the securing of means of access;
- Provisions in Part II to make regulations amending legislation in relation to restricted byways, the magistrates' court power to order persons convicted under section 137 of the Highways Act 1980 to remove obstructions; the power for local authorities to require that overhanging vegetation is cut back to a suitable height for horse riders; powers to make traffic regulation orders on certain highways for purposes of conserving natural beauty, etc; and the prohibition on driving mechanically propelled vehicles elsewhere than on roads.
- The majority of Part III (Nature Conservation and Wildlife Protection); and
- The provisions enabling the establishment of local access forums and relating to the registration of town and village greens.

280. Section 103(3) provides for the remaining provisions to be brought into force by commencement order made by the Secretary of State as respects England and, as respects Wales, by the National Assembly for Wales.

Passage of the Countryside and Rights of Way Act through Parliament

Stage	Date	Hansard Ref
House of Commons		
Introduction	3-Mar	Vol 345 Col 664
Second Reading	20-Mar	Vol 346 Col 720–820
Committee	28-Mar	Hansard Standing Committee B
	30-Mar	
	4-Apr	
	6-Apr	
	11-Apr	
	13-Apr	
	18-Apr	
	2-May	
	9-May	
	11-May	
	16-May	
	18-May	
	23-May	
Report	13–14 June	Vol 351 Col 794–1061
Third Reading	14-Jun	Vol 351 Col 1061–1075
House of Lords		
Introduction	16-Jun	Vol 613 Col 1910
Second Reading	26-Jun	Vol 614 Col 629–756
Committee	27-Sep	Vol 616 Col 791–847 + 865–934
	3-Oct	Vol 616 Col 1271–1404 + 1405–1508
	5-Oct	Vol 616 Col 1691–1755 + 1772–1814
	9-Oct	Vol 617 Col 10–86 + 101–148
	11-Oct	Vol 617 Col 337–405 + 422–496
	16-Oct	Vol 617 Col 673–744 + 760–872
Report	1-Nov	Vol 618 Col 949–1017
	2-Nov	Vol 618 Col 1085–1108
	7-Nov	Vol 619 Col 367–391
Third Reading	23-Nov	Vol 619 Col 951–1066
Commons Consideration of Lords Amendments	28-Nov	Vol 357 Col 837–911
Royal Assent	30-Nov	Vol 357 Col 1232

Modifications

Provision	Modification	Notes	Further Information
Pt I c. I s. 16(2)	Access to the Countryside (Dedication of Land) (England) Regulations 2003/2004, reg. 7(2)		
Pt I c. I s. 16(2A)	Access to the Countryside (Dedication of Land) (England) Regulations 2003/2004, reg. 7(2)		
Pt I c. I s. 16(2B)	Access to the Countryside (Dedication of Land) (England) Regulations 2003/2004, reg. 7(2)		
Pt I c. I s. 16(2C)	Access to the Countryside (Dedication of Land) (England) Regulations 2003/2004, reg. 7(2)		
Pt I c. I s. 16(3)	Access to the Countryside (Dedication of Land) (England) Regulations 2003/2004, reg. 7(2)		
Pt I c. I s. 16(4)	Access to the Countryside (Dedication of Land) (England) Regulations 2003/2004, reg. 7(2)		
Pt I c. IV s. 41	Marine and Coastal Access Act 2009 c. 23, Sch. 20 para. 9(4)		Pt 9 s. 304
Pt IV s. 82	Housing Act 1985 c. 68, Pt II s. 37	Modified where a conveyance, grant or assignment executed under 1985 c.68 s.32 is of a house situated in a National Park, an area designated under 2000 c.37 s.82 as an area of outstanding natural beauty, or an area designated as a rural area by order under 1985 c.68 s.157	
Sch. 11 para. 9(3)	Countryside and Rights of Way Act 2000 c. 37, Sch. 11 para. 17(3)		Pt III s. 76(2)
Sch. 11 para. 9(4)	Countryside and Rights of Way Act 2000 c. 37, Sch. 11 para. 17(3)		Pt III s. 76(2)
Sch. 11 para. 9(5)	Countryside and Rights of Way Act 2000 c. 37, Sch. 11 para. 17(3)		Pt III s. 76(2)
Sch. 11 para. 9(6)	Countryside and Rights of Way Act 2000 c. 37, Sch. 11 para. 17(3)		Pt III s. 76(2)
Sch. 11 para. 9(7)	Countryside and Rights of Way Act 2000 c. 37, Sch. 11 para. 17(3)		Pt III s. 76(2)
Sch. 11 para. 9(8)	Countryside and Rights of Way Act 2000 c. 37, Sch. 11 para. 17(3)		Pt III s. 76(2)
Sch. 11 para. 9(9)	Countryside and Rights of Way Act 2000 c. 37, Sch. 11 para. 17(3)		Pt III s. 76(2)
Sch. 11 para. 9(10)	Countryside and Rights of Way Act 2000 c. 37, Sch. 11 para. 17(3)		Pt III s. 76(2)
Sch. 11 para. 9(11)	Countryside and Rights of Way Act 2000 c. 37, Sch. 11 para. 17(3)		Pt III s. 76(2)

Sch. 11 para. 11	Countryside and Rights of Way Act 2000 c. 37, Sch. 11 para. 17(3)		Pt III s. 76(2)
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