

NORTH YORKSHIRE
LOCAL ACCESS FORUM

WEDNESDAY 20 NOVEMBER 2013

DRAFT DEREGULATION BILL 2013
Summary of provisions relating to public rights of way

1.0 PURPOSE OF REPORT

- 1.1 To provide a summary for Members of the proposed provisions of the Draft Deregulation Bill.

2.0 DRAFT DEREGULATION BILL 2013

- 2.1 The Draft Deregulation Bill, issued in July 2013, is undergoing pre-legislative scrutiny by select committees and joint committees of the Houses of Commons and Lords, who are advised by the Natural England Stakeholder Working Group after their consultation with the public rights of way stakeholder community.
- 2.2 Following a discussion at its August meeting, the North Yorkshire LAF expressed a wish to better understand the implications of the draft bill in respect of public rights of way in order that a decision could be made in respect of whether to submit a response to any further call for evidence from the relevant national committees. This paper sets out a brief explanation of the relevant provisions.
- 2.3 The full draft Bill can be found online at <http://www.parliament.uk/documents/joint-committees/draft-deregulation-bill/CM-8642-Draft-Deregulation-Bill.pdf>

3.0 RELEVANT PROVISIONS

- 3.1 The Bill proposes modifications to be made to CROW Act 2000. The provisions relating to public rights of way can be found at Sections 12 – 18 under Use of Land, and in Schedule 6:

Use of land

- 12 Recorded rights of way: additional protection
13 Unrecorded rights of way: protection from extinguishment
14 Conversion of public rights of way to private rights of way
15 Applications by owners etc for public path orders
16 Extension of powers to authorise erection of stiles at request of owner etc
17 Applications for certain orders under Highways Act 1980: cost recovery
18 Ascertainment of public rights of way: procedure

3.2 Background. Provisions 12 - 14 of the Draft Bill, as listed below, relate to sections of the Countryside & Rights of Way Act 2000 which introduced the proposed 2026 cut-off date at which all public rights will cease to exist over any unrecorded highway. The 2026 cut off date has not been enacted and there is no indication yet as to when it might be enacted.

12 Recorded rights of way: additional protection

This provision would offer greater protection to rights of way already recorded on the Definitive Map and Statement, preventing deletion of a route if the only basis for deleting it was evidence that it did not exist prior to 1949.

The intention is to reduce the burden on local authorities that arises from having to consider in detail applications, for modifications to delete routes recorded on the Definitive Map and Statement, which require an investigation of historical evidence.

13 Unrecorded Rights: Protection from extinguishment

This would allow the making of regulations to protect unrecorded rights. Although no draft regulations are detailed, this provision would permit surveying authorities to save certain rights from extinguishment at 2026 by “designating” those rights within a year of the cut-off date.

The intention is to give time to surveying authorities *after* the cut-off date, in which they can consider the applications and evidence submitted to them by the public, and to enable the authority to save routes they believe carry public rights but are not subject to an application, from extinguishment, to be investigated after the cut-off date.

14 Conversion of public rights of way to private rights of way

Provides for the protection of rights for landowners should a public right of way upon which they rely to access land be extinguished under section 53 of the 2000 Act immediately after the cut-off date. If the exercise of such a right of way is reasonably necessary to enable a person with an interest in land to obtain access to the land, it would become a private right of way.

15 Applications by owners etc. for public path orders

Would amend Highways Act 1980 (which makes provision for owners, lessees or occupiers of certain land to be able to apply for a public path order) to potentially widen the type of land to which the provision is applicable by introducing ‘of any land in England of a prescribed description’ although does not yet suggest what might be prescribed.

16 Extension of powers to authorise erection of stiles at request of owner etc

Currently the Highways Act 1980 only permits new furniture to be authorised on footpaths and bridleways, this provision would allow authorisation of new “stiles etc” e.g. gates (not stiles despite them being in the title) on BOATs and Restricted Byways.

17 Applications for certain orders under Highways Act 1980: cost recovery

This would allow the recovery of full costs of public path orders.

18 Ascertainment of public rights of way : procedure

Schedule 6 proposes to make changes to the procedure for ascertainment of rights of way in England. Whilst there are a number of provisions, as with many of the other sections, reference is made to draft guidance, which has not been published.

The intention is to pass some responsibility from the Secretary of State to local authorities, and to increase the flexibility in dealing with applications.

There are a number of changes proposed that are intended to simplify processes and remove duplication of work. These include:

- i) Removing the different test relating to the standards of proof which currently exist at different stages of the process.
- ii) Allowing simpler and shorter order-making procedure for modifications to the definitive map and statement arising from administrative errors.
- iii) Provision of a new “preliminary assessment procedure” which applications must pass if they are to be registered by a surveying authority. Provision of a three month deadline to decide whether there is a reasonable basis for the applicant’s belief that the definitive map should be modified. If the deadline is not met, the applicant can apply to the Magistrate’s Court, who can order the authority to take specified steps in relation to the application. This is intended to reduce the administrative burden on, and cost to local authorities and landowners, of investigating and determining applications that are spurious or poorly founded.
- iv) The introduction of “modification consent orders”, where an application is made to modify the definitive map based only on evidence relating to the existence of the right of way before 1949, but where the landowner consents to that modification. Where the landowner objects, it would be open to the authority to liaise with the landowner to amend the route to secure the landowner’s consent.
- v) Amendments to Appeal procedures:

- The applicant's right of appeal to the Secretary of State where an authority has failed to determine an application within twelve months would be replaced with a right of application to the Magistrates' Court.
 - The applicant's right of appeal to the Secretary of State where an authority decides not to make a modification order is replaced by a right to notify the authority of an intention to appeal, giving grounds. The authority would be given the power to decide whether the grounds have any merit, and can decide not to submit the appeal to the Secretary of State. Further guidance is to be issued in this regard.
- vi) Schedule 14 would be modified to allow 'ownership' of applications to be transferred from one applicant to another.
- vii) Schedule 15 would be modified :
- To replace the requirement to advertise modification orders in newspapers to publicise on the authority's website.
 - To allow the authority to decide not to submit opposed orders to the Secretary of State if the authority considers the objections to be irrelevant. Further guidance is to be issued in this regard.
 - To allow the Secretary of State to "sever" opposed orders submitted to him into opposed and unopposed parts, and deal only with the opposed part, returning the unopposed part back to the authority to confirm.
 - To enable the High Court, where the validity of an order is questioned, to quash the Secretary of State's decision rather than then order, so that the order-making process need not start again from scratch.

4.0 OFFICER COMMENT

- 4.1 The provisions are a reasonable attempt to remove some of the bureaucracy that shrouds Definitive Map processes. The provisions are welcome.

5.0 RECOMMENDATION

- 5.1 To receive the report for information.

Contact Officer:

Penny Noake

Definitive Map Team Leader - 01609 532245