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SCHEDULES

SCHEDULE 5

DEFINITIVE MAPS AND STATEMENTS AND RESTRICTED BYWAYS

PART I

AMENDMENTS OF PART III OF WILDLIFE AND COUNTRYSIDE ACT 1981

- 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 Information

II Sch. 5 para. 1 in force at 2.5.2006 for E. by S.I. 2006/1172, art. 2(g)(i)

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“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.

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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 Information

- I2** Sch. 5 para. 2 in force at 27.9.2005 for specified purposes for E. by S.I. 2005/2459, art. 2(1)(b)
I3 Sch. 5 para. 2 in force at 21.11.2005 for W. by S.I. 2005/1314, art. 4(a)

PROSPECTIVE

- 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

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(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.”

PROSPECTIVE

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—

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- (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.”

5 In section 55 of that Act (no further surveys or reviews under the National Parks and Access to the ^{M1}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 Information

I4 Sch. 5 para. 5 in force at 27.9.2005 for E. by S.I. 2005/2459, art. 2(1)(c)

Marginal Citations

M1 1949 c. 97.

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—

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“(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 ^{M2}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 Information

I5 Sch. 5 para. 6 in force at 2.5.2006 for E. by S.I. 2006/1172, art. 2(g)(ii)

Marginal Citations

M2 1988 c. 52.

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 ”.

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(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 Information

I6 Sch. 5 para. 7 in force at 2.5.2006 for E. by S.I. 2006/1172, art. 2(g)(ii)

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

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- (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 Information

- I7** Sch. 5 para. 8 in force at 13.2.2004 for E. by S.I. 2004/292, art. 2(d)(i)
I8 Sch. 5 para. 8 in force at 31.5.2005 for W. by S.I. 2005/1314, art. 2(a)(i)
I9 Sch. 5 para. 8 in force at 27.9.2005 for E. in so far as not already in force by S.I. 2005/2459, art. 2(2)(b)(i)

- 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 Information

- I10** Sch. 5 para. 9 in force at 2.5.2006 for E. by S.I. 2006/1172, art. 2(g)(iii)

- 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 Information

- I11** Sch. 5 para. 10 in force at 13.2.2004 for E. by S.I. 2004/292, art. 2(d)(ii)
I12 Sch. 5 para. 10 in force at 31.5.2005 for W. by S.I. 2005/1314, art. 2(a)(ii)

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113 Sch. 5 para. 10 in force at 27.9.2005 for E. in so far as not already in force by S.I. 2005/2459, art. 2(2)(b)(ii)

- 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—

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“ Hearings and local inquiries

- 10A(1) Subject to sub-paragraph (2), subsections (2) to (5) of section 250 of the ^{M3}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 ^{M4}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 Information

I14 Sch. 5 para. 11 in force at 13.2.2004 for E. by S.I. 2004/292, art. 2(d)(iii) (with art. 3(1))

I15 Sch. 5 para. 11 in force at 31.5.2005 for W. by S.I. 2005/1314, art. 2(a)(iii)

I16 Sch. 5 para. 11 in force at 27.9.2005 for E. in so far as not already in force by S.I. 2005/2459, art. 2(2)(b)(iii)

Marginal Citations

M3 1970 c. 70.

M4 1990 c. 8.

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