

COUNTRYSIDE AND RIGHTS OF WAY ACT 2000

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.

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>

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

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>

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.

⁸ Halsbury’s Laws of England (4th ed.), vol 6, page 197.

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.

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*⁹, was published in July 1999. The responses are summarised in a report: *Improving Rights of Way in England and Wales: Analysis of Responses*¹⁰.

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.

⁹ 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

¹⁰ 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>

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.

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*¹¹. 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 legislation¹². This Act gives effect to those proposals.

¹¹ 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

¹² *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

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 Plan¹³ 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.

1999. Available free of charge from: DETR Room 9/22 Tollgate House, Bristol, BS2 9DJ. Tel. 0117 987 6170, Fax. 0117 987 8119

¹³ Biodiversity: The UK Action Plan Cm 2428 London HMSO January 1994

Biodiversity: The UK Steering Group Report, Vol 1 Meeting the Rio Challenge, Vol 2 The Action Plans London HMSO 1995.

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.

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