

BRISTOL CITY COUNCIL
PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE
REPORT FOR INFORMATION

13 July 2015

Report of: Surveying Authority

Title: The Deregulation Act 2015

Ward: Citywide

Officer Presenting Report: Christine Pouncett, Senior Public Rights of Way Officer, Traffic Services

Contact Telephone Number: 0117 903 6841

RECOMMENDATION

To note the proposed amendments to rights of way provisions that will be brought into effect by the Deregulation Act 2015, which received Royal Assent on 26 March 2015. The changes to the rights of way provisions are expected to come into force in April 2016.

Summary

This report aims to brief committee members on the package of rights of way reforms contained in the Deregulation Act 2015, which will necessitate a review of charges and internal procedures on commencement of the change in legislation.

The significant issues in the report are:

As set out in the report.

Policy

1. The Council, as surveying authority and highway authority for Bristol unitary authority holds the Definitive Map and Statement ('DMS') for the area and is under a statutory duty, imposed by Section 53 of the Wildlife and Countryside Act 1981 to make such modification to the DMS as appear requisite and to keep the DMS under continuous review. The authority may make orders to create, divert or extinguish public rights of way where the grounds are satisfied.

Consultation

Internal

Not applicable

External

Not applicable

Background

2. The Countryside and Rights of Way Act 2000 introduced a cut-off date in 2026, whereby all public rights of way which were in existence in 1949 but not recorded on the definitive map would be extinguished.
3. The Department for Environment, Food and Rural Affairs (Defra) recognised that under current arrangements the completion of the definitive map was not feasible. Consequently, Defra endorsed Natural England's proposal to develop a consensus among stakeholders about the best way forward through the independently-chaired Stakeholder Working Group (SWG), which reported in March 2010.
4. The Government agreed to take forward most of the SWG's proposals and also to set out improvements in an additional two key areas – the legislative procedures for public path orders and landowners' 'right to apply' for orders to divert or extinguish rights of way crossing their land. The overall aim of the SWG was to cut the time taken to record rights of way, to help ensure that those routes which may be lost at the 2026 cut-off will be preserved and to provide some assurance for landowners about what rights exist across their land.
5. The Draft Deregulation Bill was published on 26 July 2013 and, following pre-legislative scrutiny and discussion by select committees in the House of Commons and House of Lords, the Deregulation Act 2015 received Royal Assent on 26 March 2015.
6. Sections 20 to 26 and Schedule 7 of the Deregulation Act 2015 will make changes affecting public rights of way in England only which are expected to come into force on a day to be appointed by the Secretary of State in a commencement order, most likely to be in April 2016.

Context

7. In accordance with its terms of reference, applications for orders to add routes or make changes to rights of way on the Definitive Map and Statement are brought to the Public Rights of Way and Greens Committee for determination. As the Committee's role is to act in an independent and quasi-judicial capacity when determining applications, a general understanding of the law and procedures are essential.

8. The procedures for making definitive map and public path orders are mainly set out in regulations and primary legislation dating back to the Highways Act 1980 and the Wildlife and Countryside Act 1981, with minor amendments as a result of subsequent Acts. A summary of the main changes introduced by the Deregulation Act is set out in the briefing note at Appendix A of this report.
9. The implementation of the Deregulation Act 2015 ('the Act') is the latest step in the Government's ongoing drive to remove unnecessary bureaucracy in order to save money and speed up processes. The package of rights of way provisions in the Act is aimed at simplifying and streamlining the processes for recording and making changes to the public rights of way network, and is intended to cut the time taken for recording a right of way and thereby reduce the authority's costs of processing orders.
10. These reforms will affect the Council's internal procedures and charges relating to the determination and making of orders. There are likely to be more applications made before the cut-off date in 2026 to avoid the loss of historic ways, and landowners 'right to apply' for orders have the potential to place a greater burden on the authority. Staff resources will be required to process extra number of applications and orders should they be forthcoming. However, the streamlining of processes and the potential income from charges and savings in advertising orders will be available to contribute towards any additional costs.

Proposals

Members to note the report for information.

Other Options Considered

None

Risk Assessment

To follow in a subsequent report.

Legal and Resources Implications

Legal

The report and Appendix 1 correctly summarise the proposed amending provisions contained in the Deregulation Act 2015 which are not expected to come into force until April 2016.

Legal advice provided by: Lynne Harvey, Legal Services

Financial

To follow in a subsequent report.

Land

There are no specific policy implications arising from this report.

Personnel

To follow in a subsequent report.

APPENDIX A

BRIEFING NOTE

The Deregulation Act 2015 includes a package of rights of way reforms, which aim to simplify and streamline the processes for recording and making changes to the public rights of way network.

The background context is that section 53 of the Countryside and Rights of Way Act 2000 introduced a “cut-off date” of 1 January 2026 whereby all public rights of way already in existence in 1949 but not recorded on the definitive map would be extinguished. This statutory provision is yet to come into force but is expected to do so when the relevant provisions of the Deregulation Act 2015 affecting public rights of way are commenced (pending the implementation of the accompanying regulations and guidance).

The amending provisions that will affect public rights of way are contained in sections 20 to 26 and Schedule 7 of the Deregulation Act 2015 and the main proposed changes are summarised as follows:-

Amendments to the Wildlife and Countryside Act 1981

- The removal of the words “or is reasonably alleged to subsist” from 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (“WCA”) the effect of which is that the surveying authority is required to modify the definitive map by Order only where it is satisfied on the ordinary civil standard of proof (i.e. a balance of probabilities) that a right of way subsists. This therefore raises the threshold at which an authority must make an order;
- Insertion of a new section 53ZA into the WCA which empowers the Secretary of State to make Regulations whereby administrative errors on the Definitive Map and Statement may be corrected. The new powers in this section will enable the Secretary of State to put in place a simpler and shorter Order making procedure via the new Schedules 13A and 14A in the WCA (more detail on these new schedules below) thereby removing the burden on an authority to follow lengthy and potentially contentious procedures where the need for modification arises because of an administrative error;
- The insertion of new sections 54B and 54C into the WCA which facilitate the making of a ‘modification consent order’ where documentary evidence shows the existence of a right of way before 1949. This measure is intended to reduce the burden on a landowner of the impact of a newly discovered public right of way that conflicts with current land usage and reduce the number of applications that are opposed by landowners. It is also intended to reduce the administrative burden on surveying authorities by providing a single procedure under which a change to a public right of way can be authorised as well as the recording of the right of way on the definitive map;
- A new Schedule 13A replaces Schedule 14 in the WCA and specifies that a preliminary assessment of applications should be done within 3 months, the aim of which is to reduce the administrative burden of investigating and determining applications for a modification order that are spurious or poorly founded. The applicant must state why they believe the Definitive Map should be modified and the application will not be registered unless it passes the preliminary assessment;

- If there is a 'reasonable basis' for the application, the authority must serve notice on every affected landowner/occupier;
- An opportunity for landowners to agree to the claimed route or an alternative provision, with the agreement of the applicant, via special 'modification consent orders';
- The requirement to advertise in a local newspaper is removed and notices can be published on website;
- If an application is not determined within twelve months, the application to determine is now through Magistrates Court and not the Secretary of State. This does not apply to an application where the authority has informed the applicant of their decision not to consider the application further;
- A new Schedule 14A will replace Schedule 15 of the WCA and provides that Orders can be severed, so only the part with relevant objections has to go to the Secretary of State. Paragraph 6 of the schedule specifies that both the authority and the Secretary of State may disregard irrelevant objections or representations;
- A Modification Consent Order can be confirmed by the local authority even if there are objections;
- N.B. The Secretary of State has powers to make regulations setting out how the new arrangements in Schedule 7 will apply to Definitive Map Modification Order applications made before the new arrangements come into force.

Amendments to the Highways Act 1980

- Insertion of new sections 118ZA and 119ZA into the Highways Act 1980 (HA) which enable landowners to apply for public path extinguishment or diversion orders in respect of land used for agriculture, forestry or the breeding of horses or of any land of a description prescribed by Regulations;
- Regulations will prescribe the procedure and the requirements to set up a register of applications under the right to apply;
- Part 4 of Schedule 7 will amend Schedule 6 of the Highways Act 1980 so as to make changes to the procedure for the making and confirmation of certain orders relating to public paths. One such amendment removes the need to publicise notice of confirmation in a local newspaper. Notices may be publicised on the authority's website;
- If the authority have not determined the application within four months of receiving it, the applicant may request the Secretary of State to make a direction requiring the authority to determine it within a period specified in the direction;
- Before determining an application for a public path extinguishment order under section 118ZA the authority may require the applicant to enter into an agreement

with the applicant to defray, or to make such contribution towards any compensation which may become payable;

- Authorities must publish orders on their website;

The Department for Environment, Food and Rural Affairs (Defra) have advised that all the elements of the reforms package will be brought into force on a common commencement date, in order to maintain the balance of interests between the various stakeholders. The regulations and accompanying guidance are therefore planned to be published on the same day as commencement of the above amending provisions of the Deregulation Act 2015 on 1st April 2016.

A copy of the public rights of way provision in the 2015 Act as summarised above can be found at <http://www.legislation.gov.uk/ukpga/2015/20/section/26/enacted> and <http://www.legislation.gov.uk/ukpga/2015/20/schedule/7/enacted>