

Presentation notes

**National LAF Conference (South) 23rd February 2016, Bristol
National LAF Conference (North) 1st March 2016, Leeds**

Updates and reforms

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Deregulation Act 2015: Rights of Way Reform Package – Notes

Slide 1 – Introduction

- Deregulation Act introduced March last year.
- secondary legislation to introduce.
- 12 sets of regulations to be produced.
- To revise and produce new guidance.
- Working with stakeholder working group.
- Aim April 2016 – target date missed – now asap afterwards.

Slide 3

Modification consent order – new concept – negotiation between LA and landowner.

Bullet 2 – Currently Sec of state, now apply to magistrates court.

Slide 4

Bullet 1 – Significant change – currently v costly to LA and websites can serve the same function.

Bullet 3 – Saving that an application could go to Sec of state twice – streamlining of the process.

Q: That means the order is preapproved by the sec of state? A: Not preapproved – considers the appeal and whether an order should be made.

Q: Does he then approve it later? A: Within the same process if he decides an order should have been made then he'll confirm the order.

Q: so it's automatically confirmed already? A: Yes.

Slide 5

Bullet 1 – some debate previously on right to be heard – clarified within the act.

Bullet 2 – significant change – authority still give notice of the order – people can make representations to LA but objections don't have to go to Sec of state, LA to take account of them.

Bullet 3 – statutory appeal to high court, only provision is to quash the whole order so it has to start again rather than a review of the decision – saves time and money.

Slide 6

Bullet 1 – debate about what is admin error, stakeholder working group looking at.

Bullet 2 – Impact of 2026 cut-off date.

Bullet 3 – By 2026, may be RoW that still aren't on definitive map – Power to LAs to designate those routes and protect them for set period.

Q: What are the limitations on that period, could it be 100 years? A: it's a prescribed period, will have to prescribe it in regulation – something for the stakeholder working group to consider – possibly a year period.

Q: Will there be a renewal? No, likely just a year – will be set within the regulations.

Bullet 4 – Similarly introduced within NERC .

Q&A (Bristol)

Q: You mentioned the preliminary assessment, is there any appeal against that? A: No statutory right of appeal in the regulations, in theory would be able to take to judicial review. Maybe more sense to gather more evidence and resubmit application.

Q (Phil Wadey): with the magistrates court business, will the regulations subscribe a fee to going to magistrates as more expensive than going to sec of state. A: Quite prohibitive, would agree. Ministry of Justice sets rates for Magistrates courts. No power to put anything in registration re costs.

Q: Am I right, an application must be dealt with within 12 months? A: Application must be determined. LA must say whether it will or won't make an order.

Q: LAs have huge backlog, is this possible? A: These provisions apply to new applications, old ones held under old system – this is still being looked at.

Q: Backdated to April 2015 or when regulations start A: From when the regulations commence this year

Q: If you go to Magistrates court, who pays? A: Applicant has to pay.

Q: If the landowner and the LA agree to a DMMO, can the applicant raise an objections but it doesn't have to be taken into account by the highway authority? A: If it goes through the modification consent process, yes. It won't be ignored, LA would have to show they've taken account of any representation.

LAs can be challenged on their response if not adequate either by complaint or through Judicial Review

Q: This is out of the financial reach of the user groups? A: This is balanced package of reforms agreed by all the stakeholders, some parts favour landowners, some user groups.

Q: Historically, LAFs have been consulted on secondary legislation and guidance, will LAFs be consulted? A: No, using stakeholder working group as advisory body.

Q: (Peter McKay): Proposal 25, routes shown on street gazetteer are made safe from extinguishment, is that going to be in the regulations? A: yes, anything on list of streets or street gazetteer will have a saving provision.

Q: Have the public got the right to view the street gazetteer? A: Not part of the legislation as DfT but understand they do have a right to see it.

Q: Are applications to correct errors in the street gazetteer in the same way as DMMOs? A: No.

Q (Pippa Langford, Natural England): Is it helpful to explain that there will be guidance around the preliminary assessment, it won't be determined by the LA A: preliminary assessment which determines whether the LA will take application forward, statutory guidance will be drafted which the LA will have to comply with, again worked on with stakeholder working group.

Q: You said there was a balance between landowner and users, can you tell us more? A: 32 proposals within the package, can be looked up online.

Q: Does something Secretary of state defined process apply to administrative errors – difficult to have reassessed unless there's discovered evidence? How can you judge Which LA has done an error and do you need to discover evidence for this? A: LAs would have to investigate and make an assessment using guidance provided.

Q: Barrister will no doubt make money out of it, balance of probabilities within civil law, will it be stated in the act? A: No, not within the regulations.

Q: Backlogs for LAs A: Process is being streamlined to help LAs process orders.

Q: LAs to put applications on websites, will there be details of how long they appear and where etc.? A: You can register with an LA to be consulted on orders.

Q: Stakeholder working group composition, fed back amendments to membership but no changes made? A: Have had lobbying, aware of – membership has changed but balance the same: 5 people representing LAs, 5 users and 5 landowners.