

Information

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for County Councillors

From:	Pete Hobley, Rights of Way Service Manager
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Date:	03/08/16
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To:	All County Councillors
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Deregulation Act 2015

Introduction

The purpose of this note is to present a summary of the expected effects of the, as yet uncommenced, rights of way sections in the Deregulation Act 2015 (the 2015 Act). Much of the detail of those provisions is due to be confirmed by regulations and guidance which have yet to be published. However it is clear that, rather than reducing the regulatory burden, it will in fact create more work for many local authorities in the short term.

Summary of the Deregulation Act 2015

Some of the key rights of way provisions within the 2015 Act are as follows:

- Applications to modify the legal record of rights of way (i.e. the Definitive Map and Statement or 'DMS') will need to include an explanation as to why the modification is needed.
- Ability to transfer an application from its original 'owner' to a third party.
- A new 'preliminary assessment' will be introduced allowing applications which have little or no chance of succeeding to be rejected at an early stage*.
- It will continue to be necessary to serve notice of an application on affected landowners. However, that burden will fall on the County Council rather than the applicant*.
- Notice of the making and confirmation of an order to modify the DMS will no longer need to be publicised in a local newspaper. They will instead need to be published on the County Council's website. A similar provision is also introduced in relation to orders to divert, extinguish and create public rights of way*.
- Applicants will have a right of appeal to the Magistrates' Court where the County Council fails to undertake a preliminary assessment within three months of the application being received (or six months in relation to those applications within our backlog)*.
- Similarly, both the landowner and applicant will be able to appeal to the courts where an application remains undetermined after 12 months of receipt*.
- A new appeal mechanism will also be introduced where applications for creation, diversion and extinguishment orders have not been determined after four months.

- A new 'fast track' procedure will be available for those applications which seek to add a new right to the DMS and which have the support of all affected landowners*.
- The County Council will have powers to disregard irrelevant objections to legal orders. In such cases we will be able to confirm the order ourselves rather than referring it to the Planning Inspectorate*.
- A new 'stream-lined' procedure will be available for correcting obvious administrative errors in the DMS.

(* expected to apply retrospectively; i.e. to those applications which we have already received but which have not yet been determined)

Impacts

The provisions summarised above will need to be implemented by all surveying authorities (county council's and unitary authorities), including Somerset County Council. Some of the changes will have the desired effect of reducing the regulatory burden. For example, removing the need to publicise orders in a local newspaper is expected to result in a small annual saving for the County Council.

However, in the short term, the 2015 Act is likely to increase pressure on the Rights of Way Service's resources. Even if the preliminary assessment is only intended to be a 'quick sift' of applications, applying it to the backlog of applications is expected to take many weeks to complete. Similarly, the requirement to serve notice on all affected landowners will be a considerable burden on the County Council particularly as, in many cases, there will be a need to investigate exactly who those landowners are.

Finally, the impact of a number of the above mentioned provisions is still unknown. To date there has been no indication as to the approach that the Magistrates' Court will take to the various appeals that they will be able to hear. Furthermore, the regulations and guidance which support many of the provisions, such as those relating to irrelevant objections and administrative errors, have yet to be published.

Next Steps

The above is no more than a summary of some of the rights of way provisions within the 2015 Act; none of which have yet been commenced. That said, the Rights of Way Service will continue to undertake as much preparation as possible while awaiting further guidance and regulations from the Secretary of State.

It is likely that, when further detail is available, there will be a need to update the County Council's policies relating to the prioritisation of applications to modify the DMS. At present a number of those applications are waiting to be 'scored' and the result of that exercise will determine the priority that they are given. It is proposed to delay undertaking this scoring until the likely effects of the 2015 Act, and its implications for our policy, are clearer. This will be communicated to the affected applicants later in the year when it is hoped that more detail on the new provisions will have been released.

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