duty as simple as possible and that he was "a little wary about being boxed off into too tight a definition and qualifying it … I want to stick to growth, pure and simple".[184]

119. **We welcome the Government's reasons for proposing a duty on regulators to have regard in broad terms to "economic growth".**

Measurement of the effect of the duty

120. The Government told us that they did not intend to impose any additional reporting and monitoring requirements on regulators in regard to the operation of the growth duty.[185] However, we were also told that there would be "a clear expectation that regulators will be transparent and make clear in public the steps they are taking to respond to the growth duty through existing mechanisms".[186]

121. The Gambling Commission thought that there was an argument against an external compliance function as compliance "ought to be visible and apparent anyway in the actions of the regulator".[187]

122. We were concerned that the Government had not made clear how they intended to measure the effectiveness of the duty. In response to our concerns, Mr Fallon confirmed that the Government would "monitor" the duty, and suggested that this would be done through the annual reports of regulators.[188] He went on to admit, however, that the impact of the duty would be hard to measure:

> It is going to operate probably in a fairly difficult way to measure, in that we will never know the decisions they might have taken or the burdens they might not have lifted if the growth duty had not been there in the statute. I accept that it is going to be hard to measure arithmetically.[189]

In regard to the difficulty in measuring the effect of the duty, the Minister confirmed that he would be "happy to reflect further on that".[190]

123. **We recommend that the Government consider by what criteria the impact of the duty could be demonstrated. We welcome the Minister's commitment to reflect further on the matter.**

184 Q 508

185 Written evidence from the Cabinet Office, p 24.

186 Written evidence from the Cabinet Office, p 24.

187 Q 112 [Matthew Hill]

188 QQ 496 and 498

189 Q 496

190 Q498

4 Use of Land Provisions

Introduction

124. Of all the issues in the draft Bill, those associated with the rights of way provisions in clauses 12 to 18 and Schedule 6 ("the rights of way clauses") attracted the most interest and the most passion in response to our Call for Evidence. Of the over 300 responses received, around half were either about the rights of way clauses or about issues related to them.

Background

125. The National Parks and Access to Countryside Act 1949 introduced the concept of "definitive maps and statements", setting out recorded public rights of way. Local authorities in England and Wales ("surveying authorities") are required, under the Wildlife and Countryside Act 1981 ("the 1981 Act"), to maintain and keep under review maps and statements showing public rights of way in their area. Some rights of way are not recorded on a definitive map and statement, and some are recorded with the wrong status. Originally, it was anticipated that completing the definitive map and statement would take about five years. 50 years later it was still not complete. As a result, a cut-off date was introduced. Under the Countryside and Rights of Way Act 2000 ("the 2000 Act"), unrecorded public rights of way created before 1949 are to be extinguished immediately after 1 January 2026 (the "cut-off date"), save for certain exceptions.[191]

Stakeholder Working Group

126. In 2008, Natural England and the Department for Environment, Food and Rural Affairs (Defra) concluded that the procedures in relation to this policy area were so complex that the addition of pre-1949 unrecorded rights of way to the definitive map and statement by the cut-off date could not be achieved. As a result, Natural England formed the Stakeholder Working Group (SWG). Membership included: representatives of the farming, land management and business interests; representatives of local authority interests; and representatives of rights of way users. The purpose of the SWG was to develop an agreed package of reforms which would improve the procedures for recording pre-1949 rights of way from the perspective of all interested parties.

127. The SWG met between October 2008 and January 2010. In March 2010, it published a report entitled *Stepping Forward: the Stakeholder Working Group on Unrecorded Public Rights of Way: Report to Natural England* ("the SWG Report"). The SWG Report included 32 recommendations aimed at "improving the processes for identifying and recording historical public rights of way".[192]

Consultation

128. From May until August 2012, the Government conducted a formal consultation on a document entitled *Improvements to the policy and legal framework for pubic rights of way*

191 The statutory provision has yet to be commenced.

192 The SWG Report, p 3.

which included the Government's response to the SWG Report. According to the Government's summary of responses, published in July 2013, "most respondents supported the Stakeholder Working Group proposals as a whole. There was also broad acceptance of the Group's basic tenet that the proposals needed to be implemented as a package, because of the importance of maintaining consensus reached between access, environmental, land owner and local authority representatives".[193] The summary, however, also stated that "there was some feeling that the opportunity to make more radical changes had been missed".[194]

Importance of the "package" remaining as a whole

129. The purpose of clauses 12 to 18 is, according to the Impact Assessment (IA), to "streamline and simplify the legal and procedural processes and reduce other barriers to recording rights of way on the definitive map and statement ...".[195] The SWG emphasised that its proposals were a carefully developed package which met the needs of a range of relevant stakeholders and it was important, therefore, that the integrity of the package be maintained: "the Group feels strongly that the changes it advocates are a cohesive package and that it should be accepted as a whole and not cherry picked. Any partial implementation of its recommendations would unbalance the position, and damage the consensus behind the proposals".[196] The National Farmers Union (NFU), a member of the SWG, also referred to the importance of the "cohesive package", saying "any partial implementation ... would unbalance the position and damage the consensus behind the proposals".[197] Other witnesses made a similar point.[198]

130. **We are aware that the law governing rights of way is highly contentious and commend the SWG for its achievement in reaching a consensus on the issue of recording unrecorded historic rights of way. We acknowledge also that maintaining that consensus requires the package of reforms contained in the draft Bill to be accepted as a whole.**

Provisions in the draft Bill

131. The clauses and Schedule in the draft Bill are based on the SWG proposals.[199] The provisions form two related but separate rafts of measures aimed at mitigating the possible consequences of section 53 of the 2000 Act which provides (subject to certain exceptions) for the extinguishment, immediately after 1 January 2026 (the "cut-off date"), of unrecorded rights of way created before 1949. Where a right of way created before 1949 has not been included on a definitive map or statement by the cut-off date, the right will be extinguished. Clauses 12 to 14 provide a range of measures which disapply the principle of extinguishment in certain instances.

193 Summary of consultation responses, July 2013, p 9.

194 Ibid.

195 Impact Assessment, 23 April 2013, summary.

196 Written evidence from SWG, summary, p 1.

197 Written evidence from the NFU.

198 Written evidence from, for example, Essex Bridleways Association, the Institute of Public Rights of Way (IPROW), para 6, Ramblers, para 5, the Association of Directors of Environment, Economy, Planning and Transport (ADEPT),

199 Written evidence from SWG, summary, p 1.

132. Clause 12 seeks to provide additional protection for rights of way after the cut-off date. After that date the surveying authority may not make a modification to a definitive map or statement (using its powers under the 1981 Act) if this might affect the exercise of a protected right of way and the only basis for the authority to consider modification is the discovery of evidence that the right of way did not exist before 1949. Clause 13 inserts a new section 56A into the 2000 Act enabling the Secretary of State to make regulations to enable surveying authorities, during a period of one year from the cut-off date, to designate public rights of way in their area that were extinguished immediately after the cut-off date. The regulations may further make provision for a designated right of way to cease to be regarded as extinguished. Further provisions provide for the possibility to amend the definitive map and statement and other provisions to preserve the existence of the right of way.

133. Clause 14 provides for a new section 56B of the 2000 Act which will apply where a public right of way would be extinguished at the cut-off date but is reasonably necessary to enable a person with interest in land to gain access to it or to part of it. In such instances the public right of way becomes a private one; and Clauses 15 to 17 deal with certain processes under the Highways Act 1980 and with matters outside the context of section 53 of the 2000 Act.

134. The provisions of Schedule 6 are aimed at streamlining the procedures and processes designed for the maintenance and keeping under review of definitive maps and statements and dealing with applications for their modification. Provisions of particular note include:

- Paragraph 2 amends section 53 of the 1981 Act, removing the requirement that a surveying authority makes a modification to a definitive map and statement when it is reasonably alleged that a right of way exists over land to which the map and statement relate. The requirement to make the modification will instead be limited to cases where on the ordinary civil standard of proof the right of way still exists. (It should be noted, however, that not all parties within the SWG have approved this provision and discussions are on-going);[200]

- Paragraph 3 enables the Secretary of State to introduce simplified and shortened procedures dealing with modifications which are needed to correct an administrative error;

- Paragraph 5 provides for sections 54B and C of the 1981 Act which make provision for the modification of a definitive map and statement by agreement.

135. The remainder of Schedule 6 deals with amendments to Schedules to the 1981 Act and the Highways Act 1980 and addresses the detail of processes. However, one issue has raised some criticism: paragraph 6(3) of the Schedule amends Schedule 14 to the 1981 Act and inserts a new paragraph 1B enabling application to a magistrates' court should the authority fail to assess an application for an order to modify the definitive map and statement within 3 months of receipt of the application. It has been suggested that this is a shift in burdens and does not amount to a deregulatory provision.

200 Q 294 [Kate Ashbrook]

136. The clauses form part of the law of England and Wales but the amendments made by them affect public rights of way in England only.[201]

Ongoing discussions

137. According to the SWG Report, the clauses in the draft Bill are not final: "Because of the complexity of the legislation that we are seeking to amend and the importance of getting it right, the clauses, as they appear in the draft Bill, are still subject to refinement through discussion".[202] The same point was made during oral evidence. We asked a question about a change in detail to Part 3 of the 1981 Act[203] which had attracted some criticism in the evidence we received. Kate Ashbrook, General Secretary of the Open Spaces Society, representing the users interests on behalf of the SWG, said that the group had discussed the issue but "we have not quite reached any conclusion yet ...".[204] Mr Anderson, Chairman of the SWG, explained that the draft Bill went beyond the SWG recommendation and that the SWG was still discussing issues.[205]

138. A number of other witnesses who supported the SWG proposals also acknowledged that aspects were still under discussion. The Association of Directors of Environment, Economy, Planning and Transport (ADEPT), for example, referred to the fact that there would be "further discussions ... with the aim of making minor improvements", although they urged care: "... we would not wish to see such hard-won progress towards legislative reform undone by changes that alter the balance of the proposals so that they no longer command across the board support."[206] The Ramblers said: "The legislation is complex and work continues on the drafting of individual clauses and the Schedule to ensure that it properly represents the views of the SWG".[207] The Broads Authority and the Broads Local Access Forum expressed support for the rights of way clauses "in general" but proposed an amendment to a provision in respect of section 147 of the Highways Act 1980.[208]

139. **Whilst the SWG has managed to forge a consensus in support of the package, aspects of the new provisions are still under discussion both within the SWG and more widely. We expect the Government to show leadership and balance to take this vital part of our Report to a successful conclusion.**

Costs and backlog

140. One issue drawn to our attention by a number of witnesses concerned the practical consequences of the reforms, particularly for local authorities.. The purpose of the rights of way clauses is to facilitate the completion of the definitive map and statement in the face of insufficient progress so far. There is, we were told, currently a backlog of over 4,000

201 Explanatory Notes, para 62.

202 The SWG Report, p 4.

203 Part 1 of Schedule 6 to the draft Bill.

204 Q 294 [Kate Ashbrook]

205 Q 294 [Ray Anderson]

206 Written evidence from ADEPT.

207 Written evidence from the Ramblers, para 6.

208 Written evidence from the Broads Authority and the Broads Local Access Forum,

applications.[209] The Open Spaces Society said: "Backlogs, in some cases of decades, are building up"; and, as a result, they supported the proposals in the draft Bill because "it would make a significant difference to progress".[210] The South Somerset Bridleways Association told us that there was a backlog of applications in Somerset, noting, in particular, that 185 applications for DMMO [Definitive Map Modification Orders] were submitted between May 2008 and August 2010, none of which had been processed."[211]

141. The evidence we heard suggested that the introduction of the 2026 cut-off will compound the problem of the backlog. Mrs Emrys-Roberts, of the SWG, said that she would expect further applications once the cut-off had been announced.[212] John Trevelyan, a rights of way consultant, referred to Defra's estimate in the IA that the cut-off provisions would lead to an additional 20,000 applications,[213] and warned of the consequent increased costs for local authorities caused by the "very substantial increase in the numbers of applications to local authorities".[214] Jane Hanney, a solicitor who has specialised in public rights of way matters and who made a submission on behalf of the Alternative Stakeholders' Working Group, referring to the problem of backlogs, queried how local authority rights of way departments, which were, she said, "currently understaffed, underfunded and inadequately qualified/trained", would be able to cope with an increase in workload without additional funding and training.[215]

142. Given the size of the backlog and the anticipated increase in the number of applications after the announcement of the cut-off, we asked the Government about local authority resourcing to enable them to meet these twin pressures. We were told by one official: "There is no doubt that the resources of local authorities are a problem. ... What we would argue is that simplifying and streamlining the system is bound to make things better at least".[216] Ms Ashbrook said: "We are concerned about the backlog, of course. We are concerned that local authorities are cutting rights of way staff and that we are losing expertise"; but, she argued, the Bill provided "a real opportunity to do something. ... If we did nothing, it would just get worse".[217]

143. That the capacity of local authorities is an issue is confirmed by the IA. According to the IA, the key monetised benefits will be from savings to central government and local authorities as a result of the streamlined processes. There will also be some savings to central and local government which are not quantifiable.[218] The IA acknowledges however that "resource constraints in local authorities could reduce the number of cases considered and so undermine/negate the non-monetised benefits of the [SWG] proposals"; and further, the IA states that "the data and assumptions were tested through the consultation

209 Q 299 [Kate Ashbrook]

210 Written evidence from the Open Spaces Society, para 5.

211 Written evidence from South Somerset Bridleways Association.

212 Q 297

213 Q 370 and IA, p 8.

214 Q 369.

215 Written evidence from Jane Hanney, paras 2 and 3.

216 Q 377. See also written evidence from the Byways and Bridleways Trust.

217 Q 299

218 IA, p 2.

and suggest that the capacity of authorities to process applications is declining and may be overstated in [the IA]".[219] This point is repeated later in the IA: "cuts in spending on rights of way in local authorities' finance as a result of the spending review could undermine or negate the non-monetised benefits of the [SWG]."[220]

144. The South Pennine Packhorse Trails Trust and the National Federation of Bridleway Associations pick up on this point.[221] They describe how, when the concept of the cut-off date was suggested by the Countryside Commission in 1999, the Commission was "careful to include" a number of caveats such as "adequate long-term funding". They also mention how the issue was similarly raised in Natural England's 2008 report, *Discovering Lost Ways*, and in a 2012 Ramblers' report on the reduction of funding for rights of way in England.[222] The Ramblers' report found that nearly 70% of councils had cut their rights of way budgets over the previous three years and that "rights of way, and the teams which look after them, are being disproportionately affected by council funding cuts".[223] The South Pennine Packhorse Trails Trust and the National Federation of Bridleway Associations concluded that, as a result, there had been a "loss of staff and expertise, to the extent that some local authorities are unable to process modification orders". They did not believe that the issue had been given "sufficient weight".[224]

145. **We have some concerns about the current backlog of rights of way applications and the likely additional pressures caused by the reforms and the imposition of the cut-off date. We question whether the implications for local authorities, in particular, have been fully assessed by the Government. Against this background, if these clauses are to go forward in this Bill, the Government will need to address the impact on local authorities.**

Calls for wider reform

Proposals for additional reform

146. Some witnesses supported the SWG proposals but called for wider reforms as well. The Country Land and Business Association (CLA), for example, is a member of SWG but commented that, because the SWG "only considered one small aspect of rights of way" (the recording of unrecorded historic rights of way), "even if implemented in full, the SWG reforms will not redress the present imbalance in rights of way legislation".[225] The CLA therefore asked for additional reforms to be included in the draft Bill and they set them out in detail in their submission. The NFU, also called for wider reforms, overlapping in part with the CLA.[226] National Parks England (NPE) indicated their support for the package of

219 IA, p 2.

220 IA, p 15, para 8.

221 Written evidence from the South Pennine Packhorse Trails Trust and the National Federation of Bridleway Associations.

222 Written evidence from the South Pennine Packhorse Trails Trust and the National Federation of Bridleway Associations, p 4.

223 Ramblers report on the reduction of funding for rights of way in England, October 2012, summary.

224 Written evidence from the South Pennine Packhorse Trails Trust and the National Federation of Bridleway Associations, p 4.

225 Written evidence from the CLA.

226 Written evidence from the NFU.

proposals (albeit with some suggestions for amendments). Their principal concern was however to "provide evidence in relation to the question whether there are other changes to the deregulatory powers, procedures and parliamentary oversight which should be included in the draft Bill".[227] The NPE propose a number of amendments to the Road Traffic Regulation Act 1984 (RTRA 1984) and related secondary legislation.

BOATS and UCRs

147. The additional provision which elicited by far the greatest number of responses was that Byways Open to All Traffic (BOATs) and unsealed Unclassified County Roads (UCRs) should be re-classified as Restricted Byways and closed to vehicular traffic. Over one third of responses to our Call for Evidence urged support for this reform..

148. The Peak District Green Lanes Alliance (PDGLA) explained the argument:

> The minor rights of way network consists predominantly of unsealed highways. ... Such lanes do not form part of the normal transport network but (apart from agricultural and land management use) mainly serve recreational purposes for both vehicle and non-vehicle users. In the early days of motoring this dual use could be accommodated. However the growing number of heavily powered off-road vehicles, many equipped with deep treads, is now causing unacceptable problems. ... The problems caused are of two types. Firstly, there is physical damage both to the lanes themselves and the wider environment. ... Secondly, there is increasing conflict with non-vehicle users and local communities.[228]

149. Patricia Stubbs, of the PDGLA, elaborated on the deregulatory nature of the proposal in oral evidence and also said that it would save "a large amount of public money" because it would reduce the need for repair work.[229]

150. The Green Lanes Environmental Action Movement (GLEAM), which supports the PDGLA proposals, also proposed that a right of appeal against inaction or unreasonable refusal by highways authorities in respect of requests for Traffic Regulation Orders under the RTRA 1984 should be created, as a further mechanism for protecting unsealed BOATs and unclassified UCRs against damage by recreational off-road motor vehicles .[230]

151. We asked the SWG panel about the issue. Mrs Emrys-Roberts said that it was an issue which had been brought to the attention of Defra by the SWG and that it was "something that needs to be dealt with".[231]

Objections to additional reform

152. The Open Spaces Society argued that not only was the "package" a cohesive whole which should be not implemented piecemeal, but that bolting on policies to the package

227 Written evidence from NPE, para 5.

228 Written evidence from the PDGLA, paras 9 to 12.

229 Q 408 [Patricia Stubbs]

230 Written evidence from GLEAM, paras 3, 5 and 15.

231 Q 278

would undermine the consensus underpinning it[232] The Motoring Organisations' Land Access and Recreation Association (LARA) expressed support for the rights of way clauses (although stated that its members were not directly affected by them) and also called for us to resist calls for additional provisions, in particular provisions to change the status of BOATS and UCRs to Restricted Byway status:

> These issues have not been before the [SWG], have not been through any process of public consultation, and are not objectively evidence-based. Far from being deregulatory, these proposals will operate to increase local authority and police burdens.[233]

Root and branch reform?

153. We received a number of accounts from members of a group called the Alternative Stakeholder Working Group who have personal and traumatic experience of the current rights of way legislation and are, as a result, very critical of it. We also heard oral evidence from Richard Connaughton and Marlene Masters of the Alternative Stakeholder Working Group. Mrs Masters argued that "there is nothing in this deregulatory Bill that could simplify what is already complicated legislation. There needs to be a complete reform".[234] We asked the SWG panel about the Group and their complaints. Ms Slade of the CLA said: "They feel they have been let down by the system, but I think to a certain extent I would agree with that. Some of them are CLA members and I am aware of their stories. It is pretty heart-rending stuff ...".[235]

154. **We took the view at the outset that we would focus our attention on the clauses in the draft Bill and that we would not consider proposals for additional provisions. Given the level of public interest in rights of way, however, we drawn to the attention of the Government the wider rights of way concerns raised in the course of this inquiry and urge them to take action to meet them.**

232 Written evidence from the Open Spaces Society, summary.

233 Written evidence from LARA, summary of key issues.

234 Q 408 [Marlene Masters]

235 Q 285 [Sarah Slade]