

GENERAL SYNOD

LEGAL ADVISORY COMMISSION

Public rights of way over land forming part of a churchyard

1. The Commission has been asked whether it is possible for a public right of way across a churchyard to be created. The Commission is of the opinion that land forming part of a churchyard can, after 20 years use by the public as of right, be deemed to have been dedicated as a highway under section 31 of the Highways Act 1980, but that this will not always be the case.
2. **The first part of this opinion (paragraphs [4] to [36]) sets out how, as a matter of law, a highway may come into existence.** It is necessarily of a technical nature and is intended primarily for legal practitioners and others who are familiar with legal concepts.
3. **The second part (paragraphs [37] to [44]) is concerned with the practical steps that may be available to an incumbent and parochial church council should they wish to prevent a public right of way arising.**

PART 1: THE LEGAL BASIS FOR A HIGHWAY

Dedication as a highway at common law

4. As a matter of law, a highway is a way over which there exists a public right of passage. A public footpath is a highway, as is a bridleway or a way for vehicles.
5. At common law, a highway can arise in either of two ways:
 - (i) express dedication by the owner of the land in question as a highway, or
 - (ii) inferred dedication based on the fact of public user over a period of time (which need not be of any particular length) coupled with conduct on the part of the landowner such as to indicate that his intention was to dedicate the land in question as a highway.
6. At common law, only a fee simple owner (a person who owns land outright) can dedicate land as a highway because dedication is by nature dedication in *perpetuity*; a person with only a limited interest cannot act so as to bind land in perpetuity. So, at common law, a tenant for life could not expressly dedicate land as a highway; nor could it be inferred that he had done so.
7. Benefice and church property – including any churchyard – is vested in the incumbent in his corporate capacity. In that sense the incumbent is the ‘owner’ of the churchyard. But the incumbent is not an outright owner. An incumbent’s interest is less than that of a fee simple owner; the fee in respect of benefice and church property is permanently in abeyance.¹ An incumbent’s position is equivalent to that of a tenant for life.² An incumbent, therefore, does not have the legal capacity necessary to dedicate as a highway land forming part of a churchyard and it cannot be inferred that he has done so.

8. The position at common law, therefore, is that a right of way cannot be created over a churchyard. In a 2013 Inspector's decision letter concerning a proposed addition to the Definitive Map of a footpath over a churchyard, a claim of inferred dedication at common law was rejected.³ See, too, section 68(2) of the Mission and Pastoral Measure 2011 which provides (subject to exceptions that are not material here), "it shall not be lawful to sell, lease or otherwise dispose of ... any consecrated land belonging to or annexed to a church ...".
9. It is, however, possible for a faculty to authorise the use by a highway authority of part of a churchyard as if it were a highway (or part of a highway). This, it is suggested, was the rationale for the Consistory Court of London holding in *Vicar and One of the Churchwardens of St Botolph without Aldgate v Parishioners of the Same* [1892] P 161 that that the Court had jurisdiction to authorize by faculty the appropriation of a portion of the churchyard required for a proposed widening of the adjacent street.⁴ The power of the consistory court to grant a faculty "authorising a suitable use" of land belonging to or annexed to a church is expressly preserved by section 68(15) of the Mission and Pastoral Measure 2011.

Presumed dedication under the Highways Act 1980

10. Section 31 of the Highways Act 1980 provides for dedication of land as a highway to be presumed in certain circumstances. A copy of section 31 is annexed to this Opinion.
11. The facts that have to be made out in order to establish the presumption are that "a way over any land ... has been actually enjoyed by the public as of right and without interruption for a full period of 20 years". "As of right" has its usual legal meaning – namely that the use in question has not been by force, has not been clandestine, and has not been with the permission of the owner (*nec vi, nec clam, nec precario*).⁵
12. Under section 31(1), provided the requisite facts are made out, "the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period of 20 years to dedicate it."
13. There is therefore no need to infer a dedication by an owner: the way becomes a highway by operation of law. As Scott LJ said in *Jones v Bates* [1938] 2 All ER 237 at 246, "The change of the law brought about by statute is that, upon proof of such user for the requisite period, the conclusion of dedication follows as a presumption *juris et de jure*, instead of as an inference of fact to be drawn by the tribunal of fact. The phrase of the Act 'shall be deemed to have been dedicated' is merely an historical periphrasis for saying that the way thereupon by operation of law becomes a highway."
14. Dedication arises by virtue of the operation of the subsection: there is no requirement that the person in possession of the land in question has *power* to dedicate it. That this is the correct construction appears to be supported by a number of considerations.

Legislative history of section 31

15. First there is the legislative history of what is now section 31 of the 1980 Act. Its legislative predecessor, section 1 of the Rights of Way Act 1932, set out two bases upon which a statutory presumption of dedication would arise. The first required 20 years' uninterrupted user, with the proviso that the presumption would be defeated if "*during such period of 20 years there was not at any time any person in possession of such land capable of dedicating such a way.*" It is therefore clear that under the 1932 Act, a mere 20 years' uninterrupted user could not have resulted in a highway being established across a churchyard (or indeed over land subject to a strict settlement).
16. However, section 1 of the 1932 Act also provided a second basis whereby dedication would be deemed to have occurred. This required 40 years' uninterrupted user. If such user were made out, then a conclusive presumption of dedication arose irrespective of whether there was a person with capacity to dedicate.
17. A comparison may be made with section 2 of the Prescription Act 1832 and the two periods of user there. It was held in *Re St Martin Le Grand, York* [1990] Fam 63, that the provisions of the 1832 Act would not give rise to an easement over a churchyard. But section 2 of the 1832 Act is readily distinguishable from the relevant provisions in the 1932 and 1980 Acts. Section 2 of the 1832 Act prevents the defeat of a "claim which may be lawfully made at the Common Law etc. to any Way or other Easement" where the requisite period of user can be shown. The restriction to a "claim which may be lawfully made at the Common Law" would exclude an easement of way over a churchyard, as no such easement could be granted at common law. But the relevant provisions of neither the 1932 nor the 1980 Acts are restricted in this way to claims that can be made at common law. The decision in *St Martin Le Grand* is therefore not applicable to the present question.
18. Taking the legislative history of section 1 of the Highways Act 1980 further, its predecessor, section 1 of the Rights of Way Act 1932, was amended by the National Parks and Countryside Act 1949. The second of the two bases giving rise to a presumption of dedication (i.e. 40 years' user) was entirely repealed. The first basis (20 years' user) was amended so as to remove the proviso that a way would not be deemed to have been dedicated if "*during such period of 20 years there was not at any time any person in possession of such land capable of dedicating such a way*".
19. This followed a recommendation from the Hobson Report that the statutory machinery for establishing rights of way should be simplified. The relevant part of the report stated,

"We recommend that after 20 years' use of a way by the public 'as of right and without interruption', that way shall be deemed in all cases to have been dedicated as a highway. This will cover entailed estates and would do away with the existing requirement that in such cases proof of 40 years' public use must be adduced." (Cmnd 7208, para. 56).

Introducing the 1949 Act, the Minister said,

“...in future there is a presumption of dedication of a right of way after 20 years user in all cases” (Hansard HC Deb, vol 463, ser 5, col 1485).

20. The result of the amendments made to section 1 of the 1932 Act was that 20 years' public user as a highway was of itself enough to give rise to the statutory presumption of dedication, irrespective of whether a fee simple owner had been in possession of the land throughout that period.
21. Section 31(1) of the Highways Act 1980 is essentially a re-enactment of section 1 of the 1932 Act as so amended. That being so, one would expect its effect to be the same as its predecessor: namely that 20 year's uninterrupted user (absent positive evidence of there being no intention to dedicate) will give rise to a statutory presumption of dedication in all cases, irrespective of the legal capacity of the person in possession.

Provision for land in possession of tenant for life

22. Secondly, the specific provision made in section 33 of the 1980 Act in relation to land in the possession of a tenant for life casts light on the statutory intention behind section 31(1). It gives those with interests in remainder or reversion a statutory right to bring claims in trespass to prevent the acquisition of a public right of way over land as if they were in possession. Were it the case that the statutory presumption of dedication in section 31(1) only applied where there was a person with legal capacity to dedicate at common law (which a tenant for life generally lacks), then there would have been no need for section 33 (Protection of rights of reversioners).
23. The position therefore is that the (non)existence of a fee simple owner has no bearing on the question of whether section 31(1) is capable of applying. If that is so, then section 31(1) is in principle capable of applying in the case of land forming part of a churchyard vested in an incumbent (even though, at common law, he would not have the capacity to dedicate such land as a highway). In the 2013 Inspector's decision letter referred to in para 3 above, this was accepted to be the position.⁶
24. If that is so, one needs to consider whether any of the other provisions of section 31 have the effect of excluding land forming part of a churchyard from the statutory presumption of dedication after public use for 20 years.

Exclusionary provisions

25. Section 31(1) expressly excludes from its operation “a way of such character that use of it by the public could not give rise at common law to any presumption of dedication”.
26. It is suggested in *Newsom*⁷ that a path across land forming part of a churchyard would be excluded from the operation of section 31(1) by these words because, at common law, a presumption of dedication could not arise in respect of the way in question given the lack of legal capacity on the part of the owner of the land and

because dedication would be inconsistent with the sacred uses on which the land was held. But it does not seem that the exclusionary words in section 31(1) do in fact have that effect.

27. In *Attorney- General v Brotherton* [1992] AC 425, the House of Lords held that the equivalent provisions of the 1932 Act are concerned with the *physical* nature of the way in question; so that, for example, the statutory presumption of dedication could not arise in respect of a navigable river. The subsection is not concerned with the legal nature of the way but with whether its physical character is such that use of it by the public could give rise at common law to any presumption of dedication.⁸
28. Turning to subsection (7) of section 31, it is true that it provides a definition of “owner” for the purposes of the foregoing provisions of the section and that “owner” is defined as “the person who is for the time being entitled to dispose of the fee simple in the land”. An incumbent of a benefice would not, therefore, be within the meaning of “owner” for the purposes of the earlier provisions of the section⁹; and the wording of subsection (7) suggests that the parliamentary draftsman did not have in mind the particular position of incumbents.
29. But that does not take one very far. The provision of section 31 which operates so as to turn a way into a highway – subsection (1) – makes no reference to any owner. Where the requisite period of user is established (and unless there is sufficient evidence that there was no intention during the period to dedicate it), the way is simply deemed to have been dedicated as a highway. There does not even need to be a known owner.¹⁰ The definition of “owner” in subsection (7) is not material for the purpose of the operation of subsection (1).
30. Finally, consideration needs to be given to subsection (8):

“Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public or statutory purposes to dedicate a way over that land as a highway if the existence of a highway would be incompatible with those purposes.”

As expressed in the 2013 Inspector’s decision letter referred to above,

“subsection (8) provides a means whereby a specific class of landowner can defeat a claim for deemed dedication if they can demonstrate that the claimed right of way would be incompatible with the public or statutory purposes for which they hold the land over which it would pass”.¹¹

31. An incumbent in whom a churchyard is vested is a corporation in possession of land. Given that all who are resident in a parish have a right of burial in the churchyard of that parish and, more broadly, all consecrated land is held for sacred purposes and for the benefit of the parishioners at large, there would seem to be a good case of saying that an incumbent is in possession of such land for public purposes.
32. However, even assuming that subsection (8) applies to Church of England churchyards, this will only be relevant “*if the existence of a highway would be*

incompatible with those public or statutory purposes”. The test is a pragmatic one, to be applied on the facts of the particular case. As explained in the case of a railway undertaking, “...a public highway could not be dedicated if at the relevant time it was reasonably foreseeable that such dedication was incompatible with the object of the statutory undertaker”.¹²

33. Where a claimed footpath has been used by the public for more than for more than 20 years, there are likely to be (for both statutory undertakers and churches) evidential problems in proving such incompatibility, whether one looks to what was foreseeable at the start or end of the 20 year period. On the facts of the Inspector’s decision letter referred to above, it was “*not convincingly demonstrated to the Inspector that the public walking along the claimed path through Widford churchyard is incompatible with the purposes for which that land is held*”, so that the claim of deemed dedication under section 31 of the Highways Act 1980 was upheld.¹³
34. There could, however, be cases where continued use of the path by the public might impede further burials, or the proper functioning of the church and/or the churchyard. Even where the churchyard was closed by Order in Council, so that the public purpose of burial of bodies will have ceased and the existence of the highway could not be said to be inconsistent with future such burials, the footpath might be inconsistent with the future interment of ashes (which is permissible in a closed churchyard). The position in each case will need to be assessed on its own facts.

Conclusion

35. The conclusion therefore is that land forming part of a churchyard can after 20 years use by the public as of right be deemed to have been dedicated as a highway under section 31 of the Highways Act 1980, but that this will not always be the case: it will depend on the facts of the particular case.

Ancient paths

36. Where a public footpath or other highway existed over land before that land was consecrated as a churchyard, that highway will have continued in existence in spite of the fact that the land had become a churchyard. There may be a number of such ancient paths in existence.

PART 2: PRACTICAL GUIDANCE TO INCUMBENTS AND PCCs

The definitive map

37. If a footpath across a churchyard is already shown on the definitive map kept by the local authority under section 53 of the Wildlife and Countryside Act 1981, it is suggested that only in the rarest cases would it be sensible for the incumbent and parochial church council to challenge this. Where it is proposed to seek a modification of the definitive map, the incumbent and PCC should obtain legal advice before proceeding.

Steps incumbents and PCCs might take to prevent the deemed dedication of highways arising

38. Some parishes may understandably wish to resist the acquisition by the public of a right of passage across the churchyard.¹⁴ Of course if the path has already become a public footpath by use for 20 or more years, there may be nothing that can now be done to safeguard the position, and the taking of steps may positively encourage users to apply for a public path to be registered.
39. There are, however, three steps which parishes should consider taking, each of which should have the effect of preventing a public right of way being acquired.
40. Total prevention of access for a period of time each year should have the effect of preventing a public right of way arising. That is because it would amount to bringing the public's right to use the path 'into question' for the purposes of section 31(2) of the Highways Act 1980. Where there are gates, this can readily be done by the closure of all gates once a year.¹⁵
41. Putting up clear notices to the effect that use of the path by the public is permitted by the incumbent and PCC, but that such permission may be withdrawn at any time, would probably suffice to make the user permissive, and thus not "*as of right*", the latter being a requirement under subsection (1) of section 31.¹⁶
42. Putting up of clear notices prohibiting entry (save for access to the church) would also probably negative use "*as of right*" under subsection (1)¹⁷, although such a prohibitive notice can be expected to annoy users of the path, and could be counter-productive.
43. The effectiveness of putting up permissive or prohibitory notices to protect churchyards has not been tested in the courts.¹⁸

Other cases

44. Finally, there will be some parishes where the establishment of a public footpath through a churchyard is not seen as problematic. Indeed benefits may be perceived through securing highway authority funding for the maintenance of such a path.

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¹ Co Lit 341a: "the fee simple is in abeyance, as Littleton saith". See also *Re St Gabriel's, Fenchurch Street* [1896] P 96 per Tristram Ch at 101-102: "churchyards are by the law placed under the protection and control of the Ecclesiastical Courts and the freehold of the churchyard is in the rector, the fee being in abeyance; but the freehold is vested in him for the use (in so far as may be required) of the parishioners. Subject to that use, he is entitled to receive the profits arising from the churchyard; but he cannot by law make any appropriation of the soil of the churchyard. Such appropriation can only be made for limited purposes by a faculty issued from the Ecclesiastical Court." See also *Re St Paul's, Covent Garden* [1974] Fam 1, 4 and *Re Tonbridge School Chapel (No. 2)* [1993] 2 All ER 339, 342.

² Co Lit 341a: "... a parson or vicar, for the benefit of the church or his successor, is in some cases esteemed in law to have fee simple qualified; but to doe any thing to the prejudice of his successor in many cases, the law adjudgeth him to have in effect but an estate for life". In *Barker v. Richardson* (1821) 4 B & Ald 579 it was held that a presumption of a grant of an easement - in that case, an easement of light - could not be made because the grant, if it had been made, would have been made by a rector who was described as "a mere tenant for life" and who had no power to make such grant. Abbott C.J. said, at p. 582: "Admitting that 20 years' uninterrupted possession of an easement is generally sufficient to raise a presumption of a grant, in this case, the grant, if presumed, must have been made by a tenant for life, who had no power to bind his successor; the grant, therefore, would be invalid, and consequently, the present plaintiff could derive no benefit from it, against those to whom the glebe has been sold."

The reform of the law relating to real property brought about by the Law of Property Act 1925 has not changed the essential position in that regard. Before the 1925 Act came into force, it was possible for an interest less than a fee simple to exist as a legal estate. Under section 1 of the 1925 Act, that ceased to be the case and all estates, interests and charges in or over land other than an estate in fee simple absolute in possession, or a term of years absolute, took effect as equitable interests. The effect of the 1925 Act was to turn the incumbent's estate into an equitable interest; the Act did not have the effect of enlarging the incumbent's estate so that it became a fee simple. See *Re St Paul's, Covent Garden* [1974] Fam 1 at 4E, per Newsom Ch.

³ Ref: *FPS/M1900/7/66/M*, 24 May 2013, para 19 (concerning the churchyard of St John the Baptist, Widford, Hertfordshire). In paras 15-18 the Inspector referred to, and purported to limit the application of, dicta contained in *In re St Mary's, Longdon* (2011) 13 Ecc LJ 370, Worcester Consistory Court.

⁴ Per Tristram Ch at 169, referring to an earlier decision of his: "I therefore ordered the boundary fence of the churchyard to be placed back, and granted, by faculty, to the local authorities the use of a strip of the churchyard outside the new boundary fence for a public footpath, so long as it might be required for the public use; and in case of its not being so required, I ordered that it should revert to the use of the church.

I found, on inquiry in the registry, that my predecessor had granted one faculty of the kind; and, since the granting of the Kensington faculty, it has been the uniform practice of this Court, upon a proper case being made out by evidence, to grant by faculty to the local authorities the use of strips of the churchyard for enlarging adjoining thoroughfares upon similar terms, and this practice has been followed in several other Diocesan Courts."

For more recent decisions see *In re St. John's, Chelsea* [1962] 1WLR 706; *In re St. Mary the Virgin, Woodkirk* [1969] 1WLR 1867.

⁵ *Jones v Bates* at 245.

⁶ At para 23.

⁷ GH Newsom & GL Newsom, *Faculty Jurisdiction of the Church of England*, London 1993, p. 151-2.

⁸ In his speech, Lord Oliver said, "I cannot, for instance, think that any reader of Alfred Lord Tennyson would have regarded the Lady of Shalott, as she floated down to Camelot through the noises of the night, as exercising a right of way over the subjacent soil."

⁹ Given the absence of such an "owner", it is not possible to use the procedure for depositing a map under section 31(6) of the Highways Act 1980 in order to negative an intention to create a right of way over a churchyard.

¹⁰ "... the Act has got rid of all the trouble and difficulty inherent in the task of inducing the tribunal of fact to give a solemn finding of an act of dedication at some past date, which was, as a rule, wholly imaginary, and often by an imaginary owner", per Scott LJ in *Jones v Bates* at 246.

¹¹ At para 27.

¹² *British Transport Commission v Westmorland County Council* [1958] AC 126, at 152 and 156.

¹³ At para 33 and 46.

¹⁴ Sub-sections (3) to (6) of the Highways Act 1980 provide means by which the owner or reversioner may take steps to prevent the accrual of public rights over land. But “owner” bears the meaning given in subsection (7): the person who is entitled to dispose of the fee simple. In the case of a churchyard vested in an incumbent there is no such person, so that sub-sections (3), (5) and (6) have no application; nor is the incumbent’s interest that of “a tenant for a term of years, or from year to year”, nor is he (or anyone else) “a person for the time being entitled in reversion to the land”, so that sub-section (4) similarly has no application (perhaps another indication that the draftsman did not have in mind the position of churches).

¹⁵ “Occasional closure to all comers” was instanced as a way of defeating a claim to use “as of right” by Lord Walker in *R (Beresford) v City of Sunderland* [2003] UKHL 60 ; [2004] 1 AC 889, para 83. The annual closure of gates was specifically mentioned by Lord Hoffmann and Lord Neuberger in *R (Godmanchester Town Council) v Secretary of State for Environment, Food and Rural Affairs* [2007] UKHL 28; [2008] 1 AC 221 paras 37 and 89.

¹⁶ See the observations of Lord Walker in *Beresford*, above, para 72

¹⁷ See *Winterburn & anor v Bennett & anor* [2016] EWCA Civ 482

¹⁸ There is a counter-argument, to the effect that since sub-sections 31(3) to (5) make express provision for owners and reversioners to post or give notice “that the way is not dedicated as a highway”, such notice cannot be given in other ways. It is considered unlikely, that such a counter-argument would succeed before an Inspector or the courts. As to sub-section (6), it is the “owner” of land who may deposit a map and statement with the appropriate council such as to amount to sufficient evidence to negative an intention to dedicate. That sub-section is incapable of being resorted to in respect of churchyards, and it is unlikely that notice given to the appropriate council other than under sub-section (6) would be regarded as sufficiently drawn to the attention of users to prevent deemed dedication of a public footpath.

Highways Act 1980

31 Dedication of way as highway presumed after public use for 20 years

(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

(1A) Subsection (1)–

(a) is subject to section 66 of the Natural Environment and Rural Communities Act 2006 (dedication by virtue of use for mechanically propelled vehicles no longer possible), but

(b) applies in relation to the dedication of a restricted byway by virtue of use for non-mechanically propelled vehicles as it applies in relation to the dedication of any other description of highway which does not include a public right of way for mechanically propelled vehicles.

(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.

(3) Where the owner of the land over which any such way as aforesaid passes—

(a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway, and

(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,

the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

(4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so, however, that no injury is done thereby to the business or occupation of the tenant.

(5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as a highway is, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as a highway.

(6) An owner of land may at any time deposit with the appropriate council—

(a) a map of the land . . . , and

(b) a statement indicating what ways (if any) over the land he admits to have been dedicated as highways;

and, in any case in which such a deposit has been made, . . . declarations in valid form made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time--

(i) within the relevant number of years from the date of the deposit, or

(ii) within the relevant number of years from the date on which any previous declaration was last lodged under this section,

to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgment of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

(6A) Where the land is in England—

(a) a map deposited under subsection (6)(a) and a statement deposited under subsection (6)(b) must be in the prescribed form,

(b) a declaration is in valid form for the purposes of subsection (6) if it is in the prescribed form, and

(c) the relevant number of years for the purposes of sub-paragraphs (i) and (ii) of subsection (6) is 20 years.

(6B) Where the land is in Wales—

(a) a map deposited under subsection (6)(a) must be on a scale of not less than 6 inches to 1 mile,

(b) a declaration is in valid form for the purposes of subsection (6) if it is a statutory declaration, and

(c) the relevant number of years for the purposes of sub-paragraphs (i) and (ii) of subsection (6) is 10 years.

(6C) Where, under subsection (6), an owner of land in England deposits a map and statement or lodges a declaration, the appropriate council must take the prescribed steps in relation to the map and statement or (as the case may be) the declaration and do so in the prescribed manner and within the prescribed period (if any).

(7) For the purposes of the foregoing provisions of this section "owner", in relation to any land, means a person who is for the time being entitled to dispose of the fee simple in the land; and for the purposes of subsections (5), (6), (6C) and (13) "the appropriate council" means the council of the county, metropolitan district or London borough in which the way (in the case of subsection (5)) or the land (in the case of subsections (6), (6C) and (13)) is situated or, where the way or land is situated in the City, the Common Council.

(7A) Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications so as to show the right on the definitive map and statement.

(7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.

(8) Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public or statutory purposes to dedicate a way over that land as a highway if the existence of a highway would be incompatible with those purposes.

(9) Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years, or being presumed or proved in any circumstances in which it might have been presumed or proved immediately before the commencement of this Act.

(10) Nothing in this section or section 32 below affects section 56(1) of the Wildlife and Countryside Act 1981 (which provides that a definitive map and statement are conclusive evidence as to the existence of the highways shown on the map and as to certain particulars contained in the statement), . . .

(10A) Nothing in subsection (1A) affects the obligations of the highway authority, or of any other person, as respects the maintenance of a way.

(11) For the purposes of this section "land" includes land covered with water.

(12) For the purposes of subsection (1A) "mechanically propelled vehicle" does not include a vehicle falling within section 189(1)(c) of the Road Traffic Act 1988 (electrically assisted pedal cycle).

(13) The Secretary of State may make regulations for the purposes of the application of subsection (6) to land in England which make provision—

(a) for a statement or declaration required for the purposes of subsection (6) to be combined with a statement required for the purposes of section 15A of the Commons Act 2006;

(b) as to the fees payable in relation to the depositing of a map and statement or the lodging of a declaration (including provision for a fee payable under the regulations to be determined by the appropriate council).

(14) For the purposes of the application of this section to land in England "prescribed" means prescribed in regulations made by the Secretary of State.

(15) Regulations under this section made by the Secretary of State may make—

(a) such transitional or saving provision as the Secretary of State considers appropriate;

(b) different provision for different purposes or areas.