



Order Decision

Hearing opened on 12 May 2015

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 7 October 2015

Order Ref: FPS/Q9495/4/46

referred to as 'Order A'

- This Order is made under Section 119 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Lake District National Park Authority (Fix the Fells path 243030/407026, Scale Beck to Red Pike, Parishes of Loweswater and Ennerdale & Kinniside.) Public Path Diversion and Definitive Map and Statement Modification Order 2013.
- The Order is dated 7 May 2013 and proposes to divert a footpath from the western side of Scale Beck to the east and the continuation towards Red Pike onto a more north-easterly alignment in the vicinity of Lingcomb Edge, as shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modifications set out in the Formal Decision.

Order Ref: FPS/Q9495/4/47

referred to as 'Order B'

- This Order is made under Section 119 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Lake District National Park Authority (Fix the Fells paths, Burtness to Red Pike summit, parishes of Buttermere & Brackenthwaite and Loweswater) Public Path Diversion and Definitive Map and Statement Modification Order 2013.
- The Order is dated 7 May 2013 and proposes to divert a bridleway running generally north-east from Red Pike onto an alternative alignment in the same general vicinity. It also proposes to divert part of a joining footpath lying between Red Pike and Dodd for connectivity. The proposals are shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modifications set out in the Formal Decision.

Order Ref: FPS/Q9495/4/48

referred to as 'Order C'

- This Order is made under Section 119 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Lake District National Park Authority (Footpaths 419028 & 419030, Fix the Fells paths on the west slope of Great Gable, Wasdale Parish) Public Path Diversion and Definitive Map and Statement Modification Order 2013.

- The Order is dated 12 August 2013 and proposes to divert part of the path known as Moses Trod onto a line generally to the east. On the northern-most sections the footpaths are proposed to be diverted generally to the north-west of the existing lines. The proposals are shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modifications set out in the Formal Decision.

Order Ref: FPS/Q9495/4/49

referred to as 'Order D'

- This Order is made under Section 119 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Lake District National Park Authority (Bridleway 419044¹, Fix the Fells paths, Lingmell Beck to Sty Head, Wasdale Parish) Public Path Diversion and Definitive Map and Statement Modification Order 2013.
- The Order is dated 12 August 2013 and proposes to divert part of the bridleway running generally north-east from Lingmell Beck onto an alternative alignment in the same general vicinity. The proposal is shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is proposed for confirmation subject to modifications set out in the Formal Decision.

Order Ref: FPS/Q9495/4/50

referred to as 'Order E'

- This Order is made under Section 119 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Lake District National Park Authority (Bridleway 419001, Fix the Fells path at Black Sail Pass, Wasdale Parish) Public Path Diversion and Definitive Map and Statement Modification Order 2013.
- The Order is dated 12 August 2013 and proposes to divert parts of the bridleway running generally north-east from Mosedale onto alternative alignments in the same general vicinity. The proposals are shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modifications set out in the Formal Decision.

Order Ref: FPS/Q9495/4/51

referred to as 'Order F'

- This Order is made under Section 119 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Lake District National Park Authority (Fix the Fells paths around Scafell Pike, Wasdale and Eskdale Parishes) Public

¹ Subject to modification

Path Diversion and Definitive Map and Statement Modification Order 2013.

- The Order is dated 17 September 2013 and proposes to divert parts of a number of footpaths in this area onto alternative alignments in the same general vicinity. The proposals are shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modifications set out in the Formal Decision.

Order Ref: FPS/Q9495/6/13

referred to as 'Order F1'

- This Order is made under Section 26 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Lake District National Park Authority (Fix the Fells paths around Scafell Pike, Wasdale and Eskdale Parish²) Public Path Creation and Definitive Map and Statement Modification Order 2013.
- The Order is dated 17 September 2013 and proposes to create three sections of footpaths linking diverted footpaths under Order F, above. The proposals are shown in the Order plan and described in the Order Schedule.
- There were no objections outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Order Ref: FPS/Q9495/3/4

referred to as 'Order F2'

- This Order is made under Section 118 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Lake District National Park Authority (Fix the Fells paths around Scafell Pike, Wasdale and Eskdale Parishes) Public Path Extinguishment and Definitive Map and Statement Modification Order 2013.
- The Order is dated 19 August 2013 and proposes to extinguish two sections of footpaths relating to diverted footpaths under Order F, above. The proposals are shown in the Order plan and described in the Order Schedule.
- There were no objections outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modifications set out in the Formal Decision.

Order Ref: FPS/Q9495/4/52

referred to as 'Order G'

- This Order is made under Section 119 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Lake District National Park Authority (Fix the Fells footpath 419048, Greathall Gill, Wasdale Parish) Public Path Diversion Order 2013³.

² Subject to modification

³ Subject to modification

- The Order is dated 15 April 2013 and proposes to divert the footpath running generally north-south onto an alternative alignment in the same general vicinity. The proposal is shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modifications set out in the Formal Decision.

Order Ref: FPS/Q9495/4/53

referred to as 'Order H'

- This Order is made under Section 119 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Lake District National Park Authority (Diversion of Fix the Fells paths 408052, 408057, 212087 & 408077 at Esk Hause and Calf Cove, Eskdale, Wasdale and Borrowdale Parishes) Public Path Diversion and Definitive Map and Statement Modification Order 2013.
- The Order is dated 4 November 2013 and proposes to divert parts of footpaths onto alternative alignments in the same general vicinity. The proposals are shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modifications set out in the Formal Decision.

Order Ref: FPS/Q9495/6/14

referred to as 'Order H1'

- This Order is made under Section 26 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Lake District National Park Authority (creation of Fix the Fells path 212086 at Esk Hause, Borrowdale Parish) Public Path Creation and Definitive Map and Statement Modification Order 2013.
- The Order is dated 4 November 2013 and proposes to create a footpath in connection with Order H, above. The proposal is shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modifications set out in the Formal Decision.

Order Ref: FPS/Q9495/6/15

referred to as 'Order J'

- This Order is made under Section 26 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Lake District National Park Authority Fix the Fells paths on south side of Buttermere, Buttermere & Brackenthwaite Parish, Public Path Creation and Definitive Map and Statement Modification Order 2013.

- The Order is dated 16 December 2013 and proposes to create a bridleway and footpath to the south-west of Buttermere. The proposals are shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is proposed for confirmation subject to modifications set out in the Formal Decision.

Order Ref: FPS/Q9495/4/54

referred to as 'Order K'

- This Order is made under Section 119 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Lake District National Park Authority Fix the Fells bridleway 407001 at Scarth Gap, footpath 407047, footpath 407048⁴ and footpath 220034 at Haystacks, Ennerdale & Kinniside and Buttermere & Brackenthwaite parishes. Public Path Diversion and Definitive Map and Statement Modification Order 2013.
- The Order is dated 16 December 2013 and proposes to divert parts of a bridleway and footpaths onto alternative alignments in the same general vicinity. The proposals are shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modifications set out in the Formal Decision.

Order Ref: FPS/Q9495/4/55

referred to as 'Order L'

- This Order is made under Section 119 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Lake District National Park Authority Fix the Fells and associated paths between Haystacks, Great Round How, Loft Beck, and Brandreth, Ennerdale & Kinniside and Buttermere & Brackenthwaite parishes Public Path Diversion and Definitive Map and Statement Modification Order 2013.
- The Order is dated 16 December 2013 and proposes to divert parts of footpaths onto alternative alignments in the same general vicinity. The proposals are shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modifications set out in the Formal Decision.

Order Ref: FPS/Q9495/6/16

referred to as 'Order L1'

- This Order is made under Section 26 of the Highways Act 1980 and Section 53A(2) of the

⁴ Subject to modification

Wildlife and Countryside Act 1981. It is known as The Lake District National Park Authority Fix the Fells path 407064⁵, northwest slope of Brandreth, Ennerdale & Kinniside Parish, Public Path Creation and Definitive Map and Statement Modification Order 2013.

- The Order is dated 16 December 2013 and proposes to create a footpath to the south of Great Round How. The proposal is shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modifications set out in the Formal Decision.

⁵ Subject to modification

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Procedural Matters

Advertisement of Orders

1. The procedural requirements in relation to public path orders such as this are set out in Schedule 6 to the Highways Act 1980 ("the 1980 Act"). The statutory objector raised queries regarding the advertisement of some Orders. For Orders A and B the objection stated "*Public Path Orders made on 7 May 2013 affecting routes in the Scale Beck – Red Pike area...The Order affecting a public right of way in Copeland has not been advertised in Copeland as is required by the legislation...*". This objection was sent by e-mail on 2 June 2013, within the advertised statutory objection period of 7 May – 15 June.

2. Schedule 6 to the 1980 Act sets out that:

"1(1) Before a public path...order is submitted to the Secretary of State for confirmation or confirmed as an unopposed order, the authority by whom the order was made shall give notice in the prescribed form—

(a) stating the general effect of the order and that it has been made and is about to be submitted for confirmation or to be confirmed as an unopposed order,

(b) naming a place in the area in which the land to which the order relates is situated where a copy of the order and of the map referred to therein may be inspected free of charge and copies thereof may be obtained at a reasonable charge at all reasonable hours, and

(c) specifying the time (which shall not be less than 28 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the order may be made...

(3)The notices to be given under sub-paragraph (1) or (2) above shall be given—

(a) by publication in at least one local newspaper circulating in the area in which the land to which the order relates is situated;

(b) by serving a like notice on—

(i) every owner, occupier and lessee...of any of that land;...and

(c) by causing a copy of the notice to be displayed in a prominent position—

(i) at the ends of so much of any footpath or bridleway as is created, stopped up or diverted by the order;

(ii) at council offices in the locality of the land to which the order relates; and

(iii) at such other places as the authority or, as the case may be, the Secretary of State may consider appropriate.

(3A) Any person may, on payment of such reasonable charge as the authority may consider appropriate, require an authority to give him notice of all such public path...orders as are made by the authority during a specified period, are of a specified description and relate to land comprised in a specified area; and in this sub-paragraph "specified" means specified in the requirement...

(4A) Sub-paragraph (3)(b) and (c)...shall be complied with not less than 28 days before the expiration of the time specified in the notice.

(4B) A notice required to be served by sub-paragraph (3)(b)(i), (ii) or (iv) above shall be accompanied by a copy of the order.

(4C) A notice required to be displayed by sub-paragraph (3)(c)(i) above at the ends of so much of any way as is affected by the order shall be accompanied by a plan showing the general effect of the order so far as it relates to that way.

(4D) In sub-paragraph (3)(c)(ii) above "council offices" means offices or buildings acquired or provided by a council or by the council of a parish or community or the parish meeting of a parish not having a separate parish council."

3. The Lake District National Park Authority, the order-making authority ("the OMA"), argued that the 1980 Act only requires that the notice be available, which in this instance it was, as the objection was made in response to it. They argue that there is no legal requirement for the orders to be available for public scrutiny. However, paragraph 1(1)(b) refers to the fact that the notice must name a place in the area in which the land to which the order relates is situated where a copy of the order and the map may be inspected free of charge.
4. Whilst the OMA argue that Schedule 6 would allow for the order to be made available only at their own offices the notice, which they drafted in line with the requirements of the 1980 Act, stated that "*A copy of both orders and plans may be seen during office hours at...and for order a) at Copeland Borough Council...*". As the notice says that a copy of the Order would be available at the Copeland Borough Council ("the CBC") offices it was not unreasonable for the objector to expect this to be the case.
5. Similar concerns were raised by the objector in relation to Orders C, D, E and H. The OMA say that two copies of each Order and notice were sent to the appropriate District and Borough Councils. The question before me is whether the objector, or any other party, was prejudiced by not being able to immediately access a copy of the Order in the offices. In this case, the OMA sent copies of relevant Orders to the objector when they were made aware that they had not been available to his representative⁶ at the CBC offices. I have not been made aware that any other party sought the information and, if they had, then I would assume that copies would also be sent to them. The objector accepted that Order E had been available at the local Council offices. I agree with the OMA that Order E was not 'conjoined' with Order G and the lack of availability of Order G at the same offices is irrelevant.
6. Orders A, B and G were readvertised in the newspaper on 23 January 2014 due to the Planning Inspectorate raising concerns that the descriptions in the newspaper advertisements were inadequate. Although this advertisement was erroneously dated 2013 the closing date for representations is correctly given as 21 February 2014. The objector was concerned that this second advertisement in the newspaper had not also been carried out on site and that copies of the Orders were not available locally. Again the question arises as to whether there is any prejudice as a result of the procedures.
7. The objector had already made objections to these Orders in 2013, in response to the first advertisements. His objections were carried forward and he was given the opportunity to present evidence to the hearing. Notices were placed

⁶ I understand that the objector is banned from the CBC offices

on site, with the Orders available in local offices⁷ named in the initial newspaper advertisements dated 7 May 2013 and 15 April 2013. The second advertisement indicated that copies could be obtained from the OMA offices, which may be "...a place in the area in which the land to which the order relates is situated..." although I consider that the OMA should take account that the point of the procedures is to ensure that the public are aware of the proposed changes and have the opportunity to comment; the OMA offices are some distance from the land affected by the Orders.

8. Another issue was whether the requirement had been met of "...publication in at least one local newspaper circulating in the area in which the land to which the order relates is situated...". Parts of Orders A and B are not wholly within Allerdale, extending into the CBC area and so the objector felt that a different newspaper should have been used for the advertisement, or for an additional advertisement. The OMA confirmed that the newspaper used, The Cumberland Times and Star, can be purchased in Whitehaven and is stocked by the Whitehaven library, which is within the CBC area. On balance, I am satisfied that the newspaper advertisement met the requirements of the 1980 Act.
9. In relation to Orders L and L1 the objector noted in his statement of case that the National Trust were not the landowners but the Forestry Commission ("the FC"). The OMA had served notice on the National Trust ("the NT") but had not been informed by them that they were not the only relevant body. The OMA contacted the FC on the matter and received the response that there were no real concerns and FC was content with the proposed changes. To ensure compliance with the legislation I asked the OMA to serve formal notice on the FC, which they did on 28 April 2015. The OMA confirmed that no further response was received within the statutory 28 day notice period.
10. It was said that it was not reasonable of the OMA to make so many orders in mid-December, although in fact, only four Orders were made at this time, Orders J, K, L and L1. The OMA said that more than 28 days had been given in the notice to allow for the Christmas break; however, as the LDNPA Offices were closed for an entire week I suggest that in future greater account should be taken of possible difficulties that could arise. In this instance, despite the apparent 'massive inconvenience', the objector has made comments upon the Orders he wished to and presented information to the hearing. I would note that the hearing was some eighteen months after the last of the Orders was made, which would give anyone reasonable opportunity to look at and comment upon any matters they wished.
11. With regard to Order J a late pre-Order consultation period meant that the response from Natural England ("NE") was actually received during the statutory notice period, 16 December 2013 – 17 January 2014. As a result I considered that NE were statutory parties to the Order and ensured that they were notified of the hearing and given the opportunity to comment on the OMA statement of case, should they wish. No further response was received but the OMA provided relevant comments on the matters raised.
12. The objector was of the view that such 'irregularities' would mean that Orders were 'not legally made' and should be rejected by the Planning Inspectorate. I consider that if a failure to comply with the procedural requirements of the relevant sections of the 1980 Act is brought to light before the determination of

⁷ Subject to issues arising as referred to with respect to Order A above

an order, then the appropriate parties should seek to remedy this. Prejudice to the interests of a party to the order may thus be avoided before the order is determined by, for example, serving the appropriate notices. Only in those cases where prejudice cannot be avoided, should the order be considered as flawed and incapable of confirmation.

13. In relation to all the matters raised I have considered whether there has been a failure to comply with the procedural requirements of Schedule 6 to the 1980 Act such that prejudice has arisen and the Order should either be readvertised or found to be incapable of confirmation. Where I have considered it necessary I have sought to remedy the potential prejudice before the determination, e.g., Orders L and L1, as set out above.
14. I agree with the objector that the full advertisement procedure was not carried out in 2014 in relation to Orders A, B and G. However, I am satisfied that these Orders were advertised in line with the 1980 Act requirements, both on site and in the newspaper, and that such advertisement occurred "*Before a public path...order is submitted to the Secretary of State for confirmation...*", albeit that neither of the advertisements on their own might have been found sufficient. On balance, I am satisfied that the advertisement procedures as a whole achieved their purpose in allowing anyone who wished to the appropriate opportunity to object to the Orders and that no-one has been prejudiced by the perceived irregularities.

Advertisement of Hearing

15. The procedural requirements in relation to hearings are set out by The Rights of Way (Hearings and Inquiries Procedure) (England) Rules 2007 ("the 2007 Rules"). The objector was concerned that the advertisement of the hearing might not have been carried out correctly in relation to some of the Orders.
16. In relation to notification of the hearing the 2007 Rules say that:
- "5(3) Not less than four weeks before the date fixed for the hearing, the authority—*
- (a) shall cause a notice of the hearing to be displayed in a prominent position at each end of so much of any way or proposed way as is affected by the order and in such other places in the locality as the authority may consider appropriate;*
 - (b) shall publish a notice of the hearing in one or more newspapers circulating in the locality in which the land to which the order relates is situated; and*
 - (c) may publish notice of the hearing by any additional means they consider appropriate.*
- (4) Every notice referred to in paragraph (3) shall contain—*
- (a) the date, time and place of the hearing;*
 - (b) a brief description of—*
 - (i) the land to which the order that is the subject of the hearing relates; and*
 - (ii) the effect of the order; and*

(c) details of where and when copies of the order and documents relating to the hearing may be inspected and copied.

17. The OMA agreed that they had not erected notices at each end of the affected routes, saying that the selection of the notice locations was aimed at encircling the area encompassed by the orders so that anyone entering into the area on a right of way would pass a notice. Additional notices marked significant junctions. During my site inspections, some 4 – 5 weeks after notices would have been erected, I found a number of notices in each area. Although questioning the lack of notices at some locations, the objector confirmed having seen some which were not present by the time I went to site; in this locality the loss of notices to the weather, or other factors, over such a period of time is not surprising.
18. The OMA argued that the paths affected by the orders were interlinked, so that identifying the 'ends of the path' was a judgement. The 2007 Rules clearly refer to "...each end of so much of any way or proposed way as is affected by the order...". So, for example on Order G notices would be required at points A, B and E. I have given careful consideration whether to require further advertisement of the hearing procedures prior to the closing of the hearing. On balance, I am satisfied that the notice locations would mean that a user would have to pass a notice relating to affected paths. As a result, I do not consider that anyone has been prejudiced by the failure of the OMA to be in strict compliance with the 2007 Rules, however, the OMA should take account that such matters can result in further expense and delay if there is evidence that a failure to comply with the requirements has, or could, result in prejudice.

Modifications

19. Errors were noted by the Planning Inspectorate in relation to the drafting of some of the Orders. The OMA requested modifications with respect to these and other matters. When asking for modifications to correct errors, authorities should bear in mind that an order is published to allow the public to consider the reasons for, and effect of, the order, and to raise representations or objections if they wish. The prescribed form of an order ensures that the public has sufficient information to enable an informed decision to be made about whether or not to object.
20. In relation to the requested modifications I need to consider whether the errors identified are substantive, in which case it would not be appropriate for me to modify the order. If I am satisfied that the error does not prejudice the interests of any person; render the order misleading in its purpose; or, appear to result in incorrect information being recorded on the Definitive Map and Statement ("the DMS"), then that error may be disregarded or I may propose modifications.

Integrated Legal Event Modification Orders

21. The Orders have been drafted as 'combined orders' with integrated legal event modification orders ("ILEMO"), which seek to modify the Definitive Statement under section 53(A) of the 1981 Act⁸, in the relevant part of the Order Schedules. In making any proposal to modify the public path order itself I may consequently need to modify the ILEMO.

⁸ The Public Rights of Way (Combined Orders)(England) Regulations 2008, S.I. 2008 No. 442 & The Public Rights of Way (Combined Orders)(England) (Amendment) Regulations 2010, S.I. 2010 No. 2127

22. Where a mistake is identified in an ILEMO after a combined order has been made, there are no powers available to the Secretary of State to modify the ILEMO. The OMA can withdraw the order and substitute a replacement order without the ILEMO at any time, including after confirmation by the Secretary of State, as long as the order has not come into operation. Issues regarding mistakes in the ILEMO have been noted at the hearing in relation to some of the Orders and I am satisfied that I can modify them by deleting the ILEMO, where necessary. The OMA can then address the required modification by making a separate LEMO at a later date.
23. I shall consider the issues regarding modifications in relation to each of the orders as necessary.

Status of objections

24. I consider that it is for the OMA to decide whether objections are 'duly made'. If there are no duly made objections, or such as are made are withdrawn, the OMA can confirm an Order itself. As the OMA have submitted the above Orders to the Secretary of State for confirmation, I consider that they have determined there to be duly made objections and I shall deal with the Orders accordingly.

Hearing

25. I held a Public Hearing into the Orders at the Lake District National Park Authority Offices, Murley Moss, Oxenholme Road, Kendal, on 12 May 2015. As it was not possible to conclude matters relating to costs applications arising on 12 May I adjourned the hearing with the intention of resuming at the OMA offices on Tuesday 19 May. Unfortunately, due to a scheduled operation, the interested party to the Order, Mr R McConnell, was not able to be present and the statutory objector, Mr D McConnell, indicated on 15 May that he would not be present on 19 May. As a result I did not resume the hearing as planned.
26. There were exchanges of correspondence to ensure that all parties had the appropriate opportunity to comment on the relevant matters, and that such responses did not contravene the Planning Inspectorate requirements in relation to defamation.
27. Once all exchanges were complete I closed the hearing in writing on 12 September 2015.

Site Inspections

28. Due to the extent of the routes affected by the Orders, I was not able to make a pre-hearing inspection of all the routes, as would be my usual practice. However, from 9 – 11 May I was able to carry out unaccompanied site inspections in relation to Orders A, B, C, D, E, G and J. I was then able to make unaccompanied site inspections in relation to Orders F, F1, F2, H, H1, K, L and L1 in the period 13 – 15 May.
29. Following the close of the hearing, the statutory objector expressed his view that accompanied site inspections should be made with respect to any Orders that were to be confirmed, which he did not believe would be many. The OMA were asked for their views on the request to reopen the hearing and/or make such accompanied site visits and set out that they saw no real need for any further site visits and would not be keen to attend.

30. Having considered this, in light of all the matters raised, I was satisfied that, following the hearing and my own site inspections, I had all the information necessary to reach decisions on the Orders. There would be no benefit, in my view, in making any further site inspections and I was satisfied that no prejudice would arise from not doing so.

Costs applications

31. Prior to the hearing an application for a full award of costs was made by the OMA against the objector.

32. At the hearing an application for an award of costs was made by the objector against the OMA.

33. As I am proposing modifications to two of the Orders that will require advertisement, the costs applications will be dealt with as reports to the Secretary of State.

Main Issues

34. The relevant tests for public path diversion orders ("diversion orders") are set out by section 119 of the 1980 Act. A diversion order shall not alter a point of termination of the path if that point is not on a highway or (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public. A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.

35. In considering confirmation of a diversion order, I must be satisfied that the diversion is expedient with respect to the party in whose interests it is made. The path must not be substantially less convenient to the public in consequence of the diversion. I also need to consider whether it is expedient to confirm the order having regard to the effect which (a) the diversion would have on public enjoyment of the path or way as a whole, (b) the coming into operation of the order would have as respects other land served by the existing public right of way, and (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.

36. Where it appears to the OMA that work requires to be done to bring the new footpath or bridleway into a fit condition for use by the public, they shall specify a date for creation, providing that that part of the order which extinguishes the right of way does not come into force until the highway authority for the new path certify that the work has been carried out.

37. Section 118 of the 1980 Act relates to the stopping up of footpaths and bridleways, such orders being referred to as public path extinguishment orders ("extinguishment orders"). In considering confirmation I must be satisfied that it is expedient so to do having regard to the extent (if any) to which it appears that the path would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path.

38. Sub-section 118(5) of the 1980 Act sets out that where an extinguishment order is taken concurrently to either a public path creation order under section 26 of the 1980 Act, or a diversion order under section 119, then, in considering

confirmation of the extinguishment order, the Secretary of State may have regard to the extent to which either a creation or diversion order would provide an alternative path or way. These are referred to as 'concurrent orders' and this is relevant to the Orders F, F1 and F2. I consider it appropriate to consider the extinguishment order, Order F2, once I have determined Orders F and F1.

39. Sub-section 6 of section 118 of the 1980 Act states that "*...any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.*" Although section 119 of the 1980 Act, under which the Order is made, does not contain such wording, Circular 1/09⁹ indicates that in forming an opinion on whether the replacement route is not substantially less convenient to the public, a fair determination can only be made on the assumption that the existing route is available to the public to its full legal extent. In considering the potential effect of the proposals upon use of the routes by the public I have considered the existing rights of way as if they were all open and available for use.
40. Section 26 of the 1980 Act sets out the powers for the creation of footpaths and bridleways. I must be satisfied that there is need for a footpath or bridleway over the land and that it is expedient to create it, having regard to (a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area, and (b) the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 28 of the 1980 Act.
41. Section 26 of the 1980 Act does not relate to section 119, diversion, in the same way as extinguishment orders. Therefore in relation to Orders H and H1 and L and L1 there is no particular sequence for consideration of the relevant tests. In both cases I shall consider the diversion orders, Orders H and L, initially, and then I will go on to consider whether or not a case has been made for confirmation of the creation orders, Order H1 and L1.
42. I am required to have regard to the material provision of a rights of way improvement plan ("ROWIP") prepared by any local highway authority whose area includes land over which an Order would create or extinguish a public right of way. The ROWIP was not submitted as the OMA indicated that it raised no matters relevant my decisions. No matters were raised in objection in this respect.
43. The objector raised a number of matters relating to the legislative requirements of the advertisement processes, which I have dealt with under 'Procedural Matters' above. General concerns were raised relating to the aims of the Fix the Fells ("FTF") project; whether or not the proposed routes had been surveyed; whether the routes were fit for use, in particular in relation to the pitched paths; whether the widths had been properly set out by the Orders; and, that the proposals confined users. Specific concerns were raised in relation to some Orders with regard to the relevant tests under the 1980 Act.
44. In reaching my decisions on these Orders I shall also take account of the purpose for which the National Park was created¹⁰; the needs of agriculture and

⁹ Department for Environment, Food and Rural Affairs, version 2, October 2009

¹⁰ Section 5 of the National Parks and Access to the Countryside Act 1949

forestry and the desirability of conserving flora, fauna and geological and physiographical features¹¹; and, the conservation of biodiversity¹².

Reasons

Status of Order routes

45. Both parties were of the view that certain routes, or parts of routes, were historic routes. The objector felt that they had not been maintained and should have been whilst the OMA felt that the definitive map had incorrectly recorded the existing line. Until revised, the DMS provides conclusive evidence in rights of way disputes. I have not been informed of any claims made to modify the DMS with regard to any of the routes. As a result, I am satisfied that it is appropriate for me to deal with the Orders on the basis of the routes as currently recorded.

Scale of Order maps

46. The objector raised the issue of the way in which the Order maps scales were shown, noted as "*Approximately 1:2500 at A1*" or similar. *The Public Path Order Regulations 1993*¹³ (the 1993 Regulations) set out that "*The map required to be contained in an order shall be on a scale of not less than 1:2500 or, if no such map is available, on the largest scale readily available.*"

47. I agree with the OMA that copying of maps can distort scales and so it is not unreasonable to use the term "approximately". The original sealed maps, which are prints rather than copies, are at 1:2,500. To ensure that the scale can be properly determined a scale bar, which remains consistent, is included. I am satisfied that the Order maps meet the requirements of the 1993 Regulations.

Recording of widths in Orders

48. The Orders sought to record widths of 1.8 metres for footpaths and 2.5 metres for bridleways. The objector argued that the routes on the ground were not the widths specified in many of the Orders, saying that these widths were just a paper exercise. It seems that the description of widths in Orders is a long-standing matter of disagreement between the parties, with the OMA referring to other cases where the matter has been a thrust of argument.

49. I consider that the question for me is what should be recorded in an Order. The legal authority for the recording of widths in public path orders is set out in the 1993 Regulations with each of the forms of order showing that the order schedule should "*Describe position, length and width of path...*". The effective management of the rights of way network and of the land over which the rights of way pass requires that widths of routes are recorded accurately, although the extent to which this is feasible may vary.

50. Diversion and creation orders involve the express creation of new rights of way and the width of the new route should be determined as part of the order making process. The relevant regulations do not prescribe the manner in which the width of the path should be described and there are no standard widths for ways which are created or diverted under the 1980 Act. Local circumstances affecting the widths that are appropriate or achievable will vary and in some cases, the width of the path may vary frequently along its length making a

¹¹ Section 29 of the Highways Act 1980

¹² Section 40 of the Natural Environment and Rural Communities Act 2006

¹³ SI 1993 No.11

simple written description difficult. In such cases a suitable form of wording may be required to identify any variation.

51. In relation to a number of the Orders the objector argues that the 'usable width' has not been identified. He referred to the judgement in *Herrick v Kidner & Somerset County Council (2010)*¹⁴ ("*Herrick v Kidner*"), relying on the finding of Mr Justice Cranston that "...the public is entitled to use and enjoy everything which is in law part of a footpath...The public are not to be confined to a particular part or parts of a footpath."
52. *Herrick v Kidner* was dealing with a situation where a notice had been served under section 130A of the 1980 Act to remove an obstruction, gates and associated structures across the line of the route, from a recorded public right of way. This differs from the matter before me, however, I agree with the objector that the public are entitled to use the full width of the right of way to be recorded by an order. However, the point of disagreement between the parties seems to be whether the full width should be pitched and, therefore, 'usable' or whether land adjacent to the pitching was available to users and could be recorded within the width of the route.
53. The objector refers to being 'confined' to the pitched path, which are surfaced with large, locally-sourced stones placed to create 'steps'. These are not regular but generally blend into the surrounding landscape. The OMA indicate that they need minimal maintenance and so are ideal for both remote and more popular routes. He also referred to recording the 'trod' path width.
54. I understand the point of the pitching is to concentrate use onto a maintainable route, removing the landscape scarring that may otherwise occur, see below in relation to the public interest. Generally I did not find that the pitching, or any other trod path, prevented use of the adjacent land, for example to allow other users to pass. By reference to *Kind v Newcastle-upon-Tyne Council, 2001*¹⁵, I agree with the OMA that this is similar to what may occur on public vehicular roads, with a metalled carriageway and an unmetalled, and perhaps unmaintained, verge alongside. The public are entitled to use the full width of the highway as recorded and the highway authority remains responsible for the maintenance and protection of the public rights.
55. The requirement in the 1993 Regulations to specify a width also relates to extinguishment orders, where a phrase such as "the whole width" may be appropriate. If an order is received without a width, for example, Order F2, then I may, should I consider it appropriate, use my power of modification to add one.
56. Section 328 (2) of the 1980 Act sets out that a bridge forms part of the highway. Guidance on the recording of the widths of bridges is provided in '*Authorising structures (gaps, gates and stiles) on rights of way*'¹⁶. The guidance states "an order or creation agreement should define the route as intended, and therefore all bridges should be identified in the statement describing the way. Where a bridge is narrower than the full width of the way, this should not be expressed as a change in the width of the highway, nor as a limitation. The full legal width of the highway continues to exist either side of a narrower bridge, just as, at, for example, a gate or stile".

¹⁴ [2010] EWHC 269 (Admin)

¹⁵ CO/2255/2001

¹⁶ Defra, version 1 October 2010

57. Although I will deal with specific points in relation to the individual orders, in general I am satisfied that the width need not be assumed to describe simply the pitched, surfaced or walked path. There is no requirement for an Order to record a bridge as having a narrower width than the remainder of the highway. I need to decide whether the descriptions in each Order are reasonable in all the circumstances of the case.

Fitness for use and certification of Orders

58. A main issue raised by the objector related to whether the routes to be created by the diversion orders were fit for use by the public. The OMA indicated that they were satisfied that no further works needed to be carried out and so they had not drafted them in line with subsection 119 (3) of the 1980 Act. This sets out that *"Where it appears to the council that work requires to be done to bring the new site of the footpath or bridleway into a fit condition for use by the public, the council shall—*

(a) specify a date [at which the route shall be created] under subsection (1)(a) above, and

(b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out."

59. This ensures that an OMA have the opportunity to require works to bring the way in to a fit condition for public use. The existing right of way remains legally available to the public until such time as the new route is available. Only once the new replacement section of the diversion has been certified does the extinguishment element of the diversion come in to force.

60. In relation to Orders A, B and G the Order specifies that the OMA have certified that the routes are in a fit condition for public use. I asked for a copy of the certification at the hearing and was informed that there was no separate record of certification; the Orders themselves formed the certificates. In relation to the rest of the diversion orders the OMA stated that they were satisfied that no works were required.

61. I note that these Orders were made in 2013, up to two years before my site visits, and it may be that the proposed routes were in suitable condition at that time. Bearing in mind that these are, generally, high fell routes likely to be more used by experienced walkers, I found no significant problems in using the proposed routes, subject to matters in relation to specific Orders as set out in the appropriate sections below. However, I do not consider it appropriate to use the Order itself as certification; this effectively leaves the Inspector as the certifying body, which I do not consider to be my role. The OMA have indicated that it may be appropriate to remove that part from the Orders.

62. The OMA remain of the view that no work is required to the paths to bring them into fit condition but have stated that if the modifications required them to certify that the paths are in a fit condition for use then they would be happy to organise such certification. In the circumstances where the objector is concerned as to the condition of the proposed routes I consider that certification by the OMA would be the appropriate way forward and so I intend to modify the Orders in this respect.

Diversion Orders: the public interest

63. These Orders have been made in the interests of the public. The OMA set out that around 15 million visitors are attracted to the Lake District each year, with many saying that walking was their main or secondary aim. This has resulted in erosion scars in the landscape in well used locations. Many of these followed desire lines rather than the legal definitive lines and the FTF project sought to carry out physical works on these desire lines, or sometimes on other routes chosen as sustainable or achievable by experienced upland management staff.
64. The overall aims of FTF was for pitching and surfacing to repair the landscape scars, improving visual amenity; put the public rights of way onto these sustainable paths to protect the surrounding habitat; protect the public asset by ensuring ongoing maintenance liability in relation to those routes; to more accurately map paths, increasing user confidence and enjoyment; and a minimal landowner benefit in limiting damage to the surrounding land. As such, the OMA argue that the diversion orders are in the public interest.
65. It is clear that the objector is unhappy about FTF, which he believes restricts and curtails the legal rights, actively confining people to a specific line. Both objectors¹⁷ referred to the pitched paths as being hard unforgiving routes, expressing a preference for remaining on a natural surface. They also felt that the edges of the pitched paths effectively narrowed the available widths, restricting and confining users.
66. I understand the concerns of the objectors with regard to pitched paths, which are a wholly different surface from grass, where such a surface exists. I can understand that some people may prefer not to use such routes. However, I do not consider that I can ignore the wider context of the orders with regard to the protection of the local environment and dealing with scarring of the landscape, which remains visible on some parts of formerly used routes, for example on Brown Tongue, leading towards Scafell Pike¹⁸. I found the pitched paths provided a clear route to follow in heavy cloud cover when crossing Great Gable from Order D to Order C during my site visits.
67. Although the objector suggested that the pitched paths could be created as new routes, leaving the original routes in place, I agree with the OMA that it would be confusing to the public to have two routes in close proximity. This also would not deal with the issue of landscape amenity and would place an additional maintenance liability on the highway authority and, therefore, the public purse.
68. The land crossed by the majority of the Order routes is access land under the Countryside and Rights of Way Act 2000 and, therefore, subject to restrictions or exclusions, users can walk wherever they wish. There is nothing to legally confine members of the public to the recorded public rights of way and I consider this relevant as users can choose to walk on grass, should they wish, although clearly the intention of the FTF alignment project is to reduce such use and potential environmental impact, which meets the duties under the Natural Environment and Rural Communities Act 2006, referred to earlier. Such considerations do not arise in relation to horse riders or cyclists using the bridleway routes, Orders B, D, E and K, or parts thereof.

¹⁷ Where I refer to 'objectors' this relates both the statutory objector and the interested party in objection

¹⁸ Order F

69. On balance, I consider that the diversion orders are in the public interest in terms of the environmental improvements sought under FTF. Whether each Order meets that test overall is a separate matter, to be dealt with individually.
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Order A

70. Procedural matters relating to this Order have been dealt with in the initial overview of this decision, above.

Whether it is expedient, in the interests of the public, that the footpath in question should be diverted

71. The northern section of this route, A – D¹⁹, is proposed to run on the eastern side of Scale Beck and the waterfall, Scale Force. The section D – E runs further to the north-east than the definitive line and then E – J runs southerly close to Lingcomb Edge.
72. I agree with the OMA that there is a clear desire line here and the photographs helpfully provided by the objector in relation to Orders A and B show that there are good views from Lingcomb Edge, section E – J, on a clear day, which unfortunately was not the case for my site visit. Taking account of the matters discussed in relation to the public interest, and particularly bearing in mind that having a recorded line to the west of Lingcomb Edge itself, which people can follow using a global positioning system (“GPS”) without being dangerously close to the edge of this steep face, I am satisfied that the diversion is expedient in the public interest.

Whether the new route will be substantially less convenient to the public

73. The northern section of the definitive route is on the western side of Scale Beck and the objectors noted that there was a pitched path on this side, which they felt was better than the proposed route. There was some confusion as to whether this pitched path was the definitive line. Although the objectors argued that the width of the line on the definitive map meant that it could be, I am satisfied that the OMA have correctly identified the existing line on the Order map; the path referred to by the objectors lies further to the west.
74. The objector suggested that it was my duty to walk the definitive route. I do not consider I am under any duty to place myself at risk; the definitive line lies close to Scale Beck and follows an alignment which would be very difficult to walk due to the steep terrain on the valley to the Beck. There was no obvious physical feature on the ground in this location. I have, as required and referred to by the objector, considered the definitive route as if it were open and available for public use, see paragraph 39.
75. There are some difficult sections to use in the central area of A – D, where the route narrows significantly, such that users are placed on the edge of the valley above the Beck. However, taking account of the location and condition of the existing route, I do not consider that the proposed route is substantially less convenient. There is a clear desire on the part of users to follow an alignment close to the Beck and waterfall.

¹⁹ The letters used in relation to each Order decision are those which identify points on the relevant Order map

76. As discussed in relation to widths generally, from paragraph 48, I am satisfied that the width recorded may not be only the width of a visible walked track on the ground. However, despite arguments by the OMA that there was a need to keep the land to the east of the currently available alignment in this area, I agree with the objectors that there is no obvious way in which use of such an area could be achieved, due to the topography and rock formations alongside the Beck. I also agree that there is an awkward section, referred to as a 'step' by the objector, which some people may find difficult to use.
77. I consider that the Order requires modification to record the fact that there are pinch points to as little as 0.5 metres in this section, although there is insufficient information for me to be able to specify the precise location, in line with current best practice.
78. The objector was particularly unhappy about the surface of the proposed route D – E, on which he felt that boulders had been dumped. Whilst the OMA argued that stones had been 'placed' here, I agree with the objector that the surface does not make for ease of use. However, I found that the existing alignment, to the south-west, was over boggy ground in places, particularly close to point D, such that neither route was preferable in my mind. I would note that, as with section A – D, the route in use close to the definitive line was not in fact on the legal line. Care needs to be taken in comparing the 'existing' and proposed routes in such circumstances.
79. In relation to distance I agree that the southern end of the proposed route is a little longer than the existing, however, I did not find it significantly so. In relation to the argument regarding users wishing to traverse to Starling Dodd, to the west of the routes, I agree that they may find it inconvenient to travel to point J and then back west along the footpath. However, I do not consider the overall distances and change in direction to pose a substantial problem to use, even in the relatively challenging conditions during my site visit.
80. The objector felt that walkers could already access Red Pike along Lingcomb Edge. I disagree that point J involves a 'swing inland' from this route, which is not a public right of way. It provides a link to FP407026, which is the route onto which the existing footpath joins at point G.
81. Whilst it was argued that the proposed route became icy in winter, and photographs were provided of those conditions, I agree with the OMA that the same conditions would be likely to prevail on the existing route in such circumstances. I do not consider that the proposed route is less convenient in this respect.
82. The objector was concerned that the route E – J was unstable and I agree that on the very edge there are issues with the surfacing. However, the OMA indicate that the proposed route lies sufficiently to the west of the edge that safety is not an issue. As noted, see from paragraph 58, I intend to modify the Order to remove the automatic 'certification'. It will be for the highway authority to determine that the proposed route is fit for public use, before the existing route will be extinguished by this Order.
83. I note the view of the objector that the existing route is 'intrinsically safe' and certainly from the point of view of being near Lingcomb Edge or not I understand his position. Nonetheless, it is clear that users wish to use the Lingcomb Edge route and if it is part of a maintained public right of way his is

likely to be safer than the current situation. Arguments that the 'existing' route provides the quickest way off the fells do not take account of the fact that the definitive route, if available, would cross difficult terrain, particularly at the northern end.

84. Taking account of all matters raised, I consider that the proposed route may be thought to be less convenient to some users due to the distance, direction and, perhaps, surfacing. However, I do not consider that it would be substantially so, which is the test I must apply.

The effect of the diversion on public enjoyment of the path as a whole

85. I do not consider that the changes to the northern section would make the route less enjoyable; the enjoyment of walking alongside the route of the Beck, with the associated views and sounds, remains. Although unable to enjoy clear views throughout the day of my site visit, I was assisted by the photographs submitted by the objector, which confirm my assessment that the Lingcomb Edge route is more enjoyable in this respect than the existing inland route to the south-west.

The effect the coming into operation of the Order would have with respect to the land served by the existing path and the land over which the new path is created together with any land held with it, account being taken of the provisions as to compensation

86. The routes remain in the same ownership. There was no indication of any matters of concern in this respect.

Whether the point of termination of the new footpath will be on the same highway or a highway connected with them, and will be substantially as convenient to the public

87. The proposed termination point A remains unaltered. Point G moves to point J, south-east on the same highway, FP407026. I am satisfied that these points will be substantially as convenient to the public.

Other matters

88. As noted from paragraph 56 it is considered that where a bridge is narrower than the full width of the way this should not be expressed as a change in the width of the highway, nor as a limitation as the full legal width of the highway continues to exist either side of a narrower bridge. The Order as drafted refers to the bridge over Scale Beck, just east of point A, as a reduced width in Part 2 of the Order, as well as Part 4, relating to the modification of the Definitive Statement under section 53(A) of the 1981 Act.

89. I consider that the bridge should be recorded at the full width of the highway and so will modify the Order in this respect. A change to the ILEMO is necessary as a consequence of this modification to the public path order.

Modifications

90. A modification was requested to correct the grid reference given for point C in Part 1 of the Schedule. It was also noted that FP243030 is mistakenly referred to with the number 243000 in Part 2 of the Order Schedule. I am satisfied that these are minor typographical errors and anyone reading the Order as a whole, would not be misled. However, to ensure that incorrect information is not recorded on the DMS, I will modify the Order.

Conclusions regarding Order A

91. I consider that the diversion has been shown to be in the interests of the public and will not be substantially less convenient. Whilst some users might prefer to walk the existing route, others are likely to prefer the proposed. I do not consider the public enjoyment of the route to be negatively affected.
92. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that Order A should be confirmed, subject to the modification to the width in relation to the northern section, altering the grid reference, correcting the number of an affected footpath and removing the reference to existing certification, requiring the highway authority to certify the proposed route is fit for use. I am satisfied that these modifications do not require advertisement.
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Order B

93. Procedural matters relating to this Order have been dealt with in the initial overview of this decision, above.

Whether it is expedient, in the interests of the public, that the paths in question should be diverted

94. The route, A – L is recorded on the DMS as a bridleway, running generally west – east from the summit of Red Pike, past Bleaberry Tarn, nearly to Buttermere. Section C – C1 is a footpath running north from the bridleway, west of Dodd.
95. I agree with the OMA that there is a clear desire line in relation to the proposed route **FP220056/243020**²⁰. With due regard to the matters already discussed in relation to the public interest I am satisfied that the diversion of the footpath is expedient.
96. A matter of real concern is the expediency of the diversion in relation to all legal users of the route of **BW220007**, which includes horse-riders and cyclists. The OMA carried out a site visit with a local representative of horse riders to give advice on the proposed route. The site visit notes record the view that the existing route may never have been a bridleway and that the steepness and general terrain would deter all but the hardiest of users, with or without pitching. Nonetheless, it was felt that those who might attempt it as a 'challenge' would lead, rather than ride, with a pony²¹ being able to pick a way alongside the route although up to 10 metres from the alignment in places. It was noted that mountain-bikers might enjoy this challenge and be likely to object to any removal of their higher rights.
97. The OMA noted that there were some options, one being to increase the width up to 20 metres, to encompass ponies being led on either side. I consider there is insufficient room on much of the land to provide a route of this width and I do not consider it would be appropriate to create such a route in this area. Another option would be to extinguish the route as a bridleway and create a footpath, however, the route links to the bridleway running south-east from Red Pike on the top of the fell. I consider that mountain-bikers, at least, would be likely to find this a challenging but usable route and would be

²⁰ Where there are two route numbers used in this way it indicates that the route crosses parish boundaries

²¹ I agree with the OMA that this would not be a route for a thoroughbred and it would only be likely that hardy fell-type ponies would even attempt to use a route in this area, with this gradient

disadvantaged by such a change. Whilst it is suggested this may never have been a bridleway, I agree with the OMA that evidence in relation to making a Definitive Map Modification Order would be difficult at this point in time and I have dealt with the route as it is recorded.

98. The term expedient indicates that the diversion must be something suitable and appropriate to the circumstances. The OMA suggest that it should be accepted that although it is a bridleway it is not really usable by horses, due to the terrain, and regardless of pitching the usability would remain low. I would be reluctant to confirm an Order that led to a route entirely unusable for the intended users except that I am satisfied that particularly hardy ponies and/or cyclists could make use of the route, albeit that ponies may be on adjacent land in some areas. I consider there is nothing to prevent use of adjacent land in the same ownership where a public right of way is unsuitable for use.
99. Taking account of the natural constraints caused by the terrain I agree that the existing and proposed routes are equally as likely, or unlikely, to be suitable for higher rights users. I consider that there will be an advantage for walkers, in line with the matters already discussed. I only saw a group of walkers, a single walker and a fell runner on the route during my site visit, suggesting that the OMA are correct in their assessment that most use will be on foot.
100. On balance, taking account of all the matters raised, I am satisfied that it is expedient in the public interest to divert the bridleway.

Whether the new routes will be substantially less convenient to the public

101. The objector argues that the changes to **FP220056/243020** will mean that users wanting to visit Red Pike and Dodd will be 'massively inconvenienced', however, it seems there has been some confusion regarding the route, as there is no need to descend to Bleaberry Tarn in order to reach this route. Having walked both the existing and proposed lines, I consider the change minimal in terms of distance, direction and gradient. I also note that the existing footpath does not lead directly to Dodd but runs a little to the east; an alternative unrecorded desire line²² leads to the Dodd summit from Red Pike and is unaffected by this Order. I am satisfied that the proposed route would not be substantially less convenient to the public than the existing.
102. In terms of direction and gradient I do not consider that the proposed route of **BW220007** is substantially less convenient for public use. The main issue raised related to the pitching on several sections of the route. It was made very clear that the objector does not like using pitched paths; however, I did not find the route to be less convenient to walkers as a result of the pitching.
103. I agree with the objector that horses in general are unlikely to find the pitched path an easy route. I note that the objectors said they had met some people on the route who were riders and said that they would not use the route themselves. However, on the basis of the reported site visit and my observations, I agree with the OMA that it would be possible for some intrepid users. The question I need to address is whether the proposed route is actually less convenient. I found the existing alignment west of point J, wet in places, such that I do not consider that it would be convenient for any users. Similarly, the apparent alignment north of point E seems to follow the wall, which I understand also marks the parish boundary. Even considering the matter as if

²² A physical route created by users usually on the shortest or most easily used route between two points

a route was available on the definitive line I do not consider that the proposed route is substantially less convenient.

104. With regard to the length and direction of the route I am satisfied that the proposed diversions make negligible alterations. Whilst the objector felt that the proposed width of 2.5 metres was 'dishonest' I am of the view that the width to be recorded is not necessarily only the pitched route on the ground, see section from page 17. I take account of the view given to the OMA by a representative of local riders that ponies could be led alongside the pitched sections. Considering all the matters in relation to this Order, as set out in relation to the expediency, I am satisfied that a recorded width of 2.5 metres is reasonable here.

105. I do not consider that there are matters which make the proposed routes substantially less convenient to the public than the existing routes, whether on foot, bike or horse.

The effect of the diversion on public enjoyment of the paths as a whole

106. Whilst the objector indicated that the routes were not as enjoyable no specific matters were raised. Even taking account of the clear unhappiness of the objectors about using pitched paths I do not consider general public enjoyment of the paths as a whole would be affected by the proposed alterations.

The effect the coming into operation of the Order would have with respect to the land served by the existing paths and the land over which the new paths are created together with any land held with it, account being taken of the provisions as to compensation

107. The land crossed by the routes remains in the same ownership and there was no indication of any issues arising with regard to the proposed changes.

Whether the point of termination of the new footpaths will be on the same highway or a highway connected with them, and will be substantially as convenient to the public

108. The proposed termination points A, C(1) and L are unaltered. Point C moves to point B on the same highway, BW220007, which is also diverted by the Order. I am satisfied that these points will be substantially as convenient to the public.

Limitations

109. The Lake District National Park Structure Standards Approved – 2011 ("the LDNPSS"), which is based upon the British Standard, sets out that the minimum width for a field & bridle gate is 1.525 metres; should preferably be openable on horseback; should try to have at least 1 metre clearance from the adjacent hedging or fence; and, should have no barbed wire within 1 metre of the gate and its manoeuvring spaces. The existing gate in the fence line on the south-west boundary of Burtness Wood, south of point L, does not meet the requirements of the LDNPSS on a bridleway and no limitation has been recorded in Part 3 of the Schedule to the Order.

110. If the landowner demonstrates a need for a structure at this point then it is open to the highway authority to authorise it under section 147 of the 1980 Act. Such authorisation can ensure that it meets the appropriate standards.

111. As there is currently a non-compliant gate on the proposed bridleway route, I am not satisfied that it can be said that the route is in a condition fit for use, as

set out in the preamble to the Order. As a result, I shall remove the reference to existing certification, requiring the highway authority to certify the proposed route is fit for use, prior to the extinguishment of the existing route.

Modifications

112. Whilst the text of Part 2 of the Schedule to the Order correctly identifies that **FP243020/220056** runs between points B – B(1) – C(1) the identification box only refers to section B – B(1). I am satisfied that the Order is not misleading as a result of this minor typographical error; the objectors were clear as to the proposed changes. As I need to modify the Order in any case I shall ensure that incorrect information is not recorded on the DMS, by modifying the Order with regard to this point.

Conclusions regarding Order B

113. I consider that the diversion has been shown to be in the interests of the public and will not be substantially less convenient. Whilst some people might prefer not to use the proposed routes I am satisfied that the public enjoyment of the routes as a whole is not negatively affected.
114. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that Order B should be confirmed, subject to the modification to the references of the footpath; removing the reference to existing certification; and, requiring the highway authority to certify the proposed route is fit for use. These modifications do not require advertisement.

Order C

115. Procedural matters relating to this Order have been dealt with in the initial overview of this decision, above.

Whether it is expedient, in the interests of the public, that the footpaths in question should be diverted

116. The objector raised no specific issues regarding the route being in the public interest, commenting on **FP419028** that "*the proposals would be acceptable if what was claimed on the Order were true.*" In relation to section A – C he was satisfied that the route was acceptable as the pitched path can be avoided whilst retaining a firm footing. Taking account of the matters discussed in relation to the public interest in general, see section starting on page 20 above, I am satisfied that the diversion of FP419028, A(i) – B – E to route A – C – E is expedient in the interests of the public.
117. It was claimed by the objector that **FP419030**, C – D, appeared to have been drawn simply as a straight line, with no actual path on the ground at this point. Clearly moving point B in connection with FP419028 has an effect upon this linked route. The OMA said that they were not aware that walkers used any different route in this vicinity and the objector did not provide evidence of any other route he felt should be recorded.
118. I am satisfied that it is expedient to divert the route of **FP419030** in connection with the changes to **FP419028**; it would not be in the public interest to divert one footpath without the other. Whilst the objector felt that further changes could be made to FP419030, to correct it, I agree with the OMA

that it is not necessary for them to do so in connection with this diversion, which deals primarily with FP419028, known as Moses Trod.

119. Overall, I am satisfied that it is expedient in the public interest to divert these footpaths to meet the overall improvements sought by the FTF alignment project.

Whether the new routes will be substantially less convenient to the public

120. In terms of length and direction I consider that there is negligible change as a result of the proposed diversion. The objector was of the view that the width of 1.8 metres was not a reasonable claim for the route currently on the ground. As discussed earlier, see the section on widths starting on page 17 above, I consider that the width to be recorded is not necessarily only the physical route on the ground. In relation to both these footpaths I am satisfied that a recorded width of 1.8 metres is not unreasonable.

121. Taking all relevant points into account, I am satisfied that the proposed routes will not be substantially less convenient to the public.

The effect of the diversion on public enjoyment of the paths as a whole

122. Although noting that the objectors do not like walking on pitched paths, in this instance they were satisfied that they could avoid doing so if they wished. The diverted routes are in very close proximity to the existing lines and, therefore, I am satisfied that there will be no negative effect on public enjoyment of the paths as a whole.

The effect the coming into operation of the Order would have with respect to the land served by the existing paths and the land over which the new paths are created together with any land held with it, account being taken of the provisions as to compensation

123. The routes would remain within the same landownership; the owners have been consulted and raise no issues. There was no evidence that there is land served by the existing routes that would not be adequately served by the proposed.

Whether the point of termination of the new footpaths will be on the same highway or a highway connected with them, and will be substantially as convenient to the public

124. The proposed termination points E and D remain unaltered whilst point B moves slightly north-west on the same highway. Point A is a small distance to the east on the same bridleway. I am satisfied that the termination points meet the requirements and will be substantially as convenient to the public.
125. There is an error in relation to the description of FP419030 in Part 2 of the Schedule to the Order, where it is described as a bridleway. This is the only place where this description is used and it was not raised as an issue by the objector, who is clearly aware that it is the diversion of a footpath which is under consideration. In the circumstances I am satisfied that this is a minor typographical error but, to ensure that incorrect information is not recorded on the DMS, I shall modify the Order in this respect.

Conclusions regarding Order C

126. I consider that the diversions have been shown to be in the interests of the public and will not be substantially less convenient. Whilst some users might prefer to walk on the grass, others may prefer the certainty of a clearly defined

route over Gavel Neese. Overall, I do not consider that the public enjoyment of the routes would be negatively affected.

127. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that Order C should be confirmed, subject to the modification to refer to a footpath rather than a bridleway and requiring the highway authority to certify the route as fit for public use. I am satisfied that these modifications do not require advertisement.
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Order D

128. Procedural matters relating to this Order have been dealt with in the initial overview of this decision, above.

Whether it is expedient, in the interests of the public, that the bridleway in question should be diverted

129. The objector said that "*the proposals would be acceptable if what was claimed on the Order were true.*" The route A – B – C alters to a line in reasonable proximity, A – B – D. Taking account of the matters discussed in relation to the public interest in general, see section starting on page 20 above, I am satisfied that the diversion of the bridleway is expedient in the interests of the public, to meet the overall improvements sought by the FTF alignment project.

Whether the new route will be substantially less convenient to the public

130. I agree with the objector that for a significant portion of the route the surface is a reasonable grassy route. Whilst I agree with the objector that there are areas on the proposed alignment B – D which are a little boggy, I found similar problems on parts of the existing alignment B – C, close to Spout Head Gill.
131. The objector felt that the proposed width of 2.5 metres was not available on the ground on sections of the route. As discussed, see the section on widths starting on page 17, I consider that the width to be recorded is not simply the physical route visible on the ground. I am satisfied that a width of 2.5 metres is available, and could be maintained as necessary.
132. It was argued that the crossing of Spouthead Gill, south-west of point B, was 'positively dangerous' and that a bridge should be put in this location. The OMA indicated that they had no intention to put a bridge in this location and, despite the view of the objector, I agree that the Ordnance Survey ("OS") mapping identifies a ford in this locality.
133. I found it relatively easy to cross the Gill, nonetheless, as discussed at the hearing, I was not satisfied that the route identified in this location by the Order was usable or the route actually being used. I accept the argument of the OMA that, subject to limitations to their GPS, the proposed route was that identified during their survey. I also agree that the current visibly used route on the ground differs from the line shown as a path by OS, pointing to the fact that a number of options are available to the public crossing the Gill, whether on foot, horse or bicycle.
134. Some agreement appeared to be met that it would be sensible to define the width of the crossing point at a width of 15 metres, which would allow users to choose a crossing point suitable to their needs. I do not consider it necessary to alter the alignment on the Order map, simply to record the width at this

point within the Order Schedule, although clearly this will require certification by the OMA. Walkers remain free to cross at any point as the land is open access, see paragraph 68. Due to the proposal to modify the public path order, I consequently need to also propose a modification of the ILEMO.

135. Taking all matters into account, I am satisfied that the proposed route will not be substantially less convenient to the public but that a modification to the width at the crossing of Spout Head Gill would be appropriate.

The effect of the diversion on public enjoyment of the path as a whole

136. No matters were raised with regard to enjoyment of the path and I do not consider that the proposed changes would negatively affect enjoyment.

The effect the coming into operation of the Order would have with respect to the land served by the existing path and the land over which the new path is created together with any land held with it, account being taken of the provisions as to compensation

137. The route would remain within the same landownership; the owners have been consulted and raise no issues. There was no evidence that there is land served by the existing route that would not be adequately served by the proposed.

Whether the point of termination of the new bridleway will be on the same highway or a highway connected with them, and will be substantially as convenient to the public

138. Point A remains unaltered whilst point D lies approximately 70 metres north-east of point C, terminating on the same bridleway. I am satisfied that the termination points will be substantially as convenient to the public.

Other matters

139. The Order title referred to the incorrect bridleway number, BW419004 instead of **BW419044**. The map, Order Schedule and most of the Order refers to the correct number, as does the advertisement for the Order and the objectors were clear as to the route under discussion. As a result, I am satisfied that this is a minor typographical error and anyone reading the Order as a whole, would not be misled. To ensure that incorrect information is not recorded on the DMS, I will modify the Order in respect of this title.

Conclusions regarding Order D

140. I consider that the diversion has been shown to be in the interests of the public and will not be substantially less convenient, although I intend to modify the width in relation to the crossing of Spout Head Gill. I do not consider that the public enjoyment of the route would be negatively affected.
141. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that Order D should be confirmed, subject to the correction of the title; the proposed modification to the width of the crossing; and, requiring the highway authority to certify the route as fit for public use. I consider that the modification to the width will require advertisement and so other matters will also be advertised.

Order E

142. Procedural matters relating to this Order have been dealt with in the initial overview of this decision, above.

Whether it is expedient, in the interests of the public, that the bridleway in question should be diverted

143. I found this to be a well-used route, providing multi-use access between Wasdale and Gatesgarth. The use has led to erosion which remains visible to the north of the proposed route C – D and east of A - B despite the FTF project having provided a pitched route on the proposed alignment. The objectors argued that the definitive line, in particular in relation to the longer section C – D, was preferable. Whilst there is a visible route higher up the fell to the north of the proposed route, I consider that this formerly used route is not the definitive route, which lies generally closer to the proposed route.
144. The argument is made that bridleway users would prefer an unsurfaced route, although I note that neither the British Horse Society nor the Cyclists Touring Club, who represent such users and are statutory consultees, have objected to the Order. Whilst I accept that some users, whether on foot, horse or bicycle, might prefer to be on an unsurfaced route, by reference to the general public interest matters set out from page 20, I am satisfied that diversion of this bridleway is expedient in the interests of the public, to meet the overall improvements sought by the FTF alignment project.

Whether the new route will be substantially less convenient to the public

145. Whilst the objector felt that it was 'dishonest' to say that the proposed route was 2.5 metres wide, I am satisfied that the width to be recorded is necessarily only the pitched path, see section on widths starting on page 17. Furthermore, I agree with the OMA that there is room for a pony, or a pedestrian, alongside the proposed route; a recorded width of 2.5 metres is not unreasonable.
146. Whilst the objector claimed that the path is abysmal and subject to freezing in winter, I agree with the OMA that this is a high level fell path, which only properly equipped users should attempt in winter conditions. The definitive line would be similarly affected in such conditions.
147. The proposed route runs in close proximity to the existing line and I do not consider that it could possibly be said to be 'totally inconvenient' as claimed.
148. Considering all these issues, I am satisfied that the proposed line is not substantially less convenient to the public with regard to the relevant matters.

The effect of the diversion on public enjoyment of the path as a whole

149. Whilst it is clear that the objectors do not like to use pitched paths, as on the proposed alignment, I consider that others will prefer the certainty of such routes. Although some people would prefer the existing route, or the formerly used route which is on a different alignment, others would prefer that proposed. I do not consider that the effect on public enjoyment is such as to outweigh the other advantages of the Order in line with the FTF environmental advantages.

The effect the coming into operation of the Order would have with respect to the land served by the existing path and the land over which the new path is created together with any land held with it, account being taken of the provisions as to compensation

150. The route remains within the same landownership. There was no evidence that there is land served by the existing route that would not be adequately served by the proposed.

Whether the point of termination of the new bridleway will be on the same highway or a highway connected with it, and will be substantially as convenient to the public

151. I am satisfied that the points of termination are unaltered and so will be substantially as convenient to the public.

Other matters

152. From the evidence given to the hearing I understood that the OMA felt that the proposed route was fit for public use, with no further works required. The objector subsequently submitted a comment apparently from the "*Paths to be Fixed – 2015 Work Programme*" referring to this route, Black Sail Pass. This sets out that "*There are now sections that need realignment, and above the beck there are a number of zig-zags that need to be stabilised...A number of the stone box drains on this route, built a number of years ago, are quite unsuitable for a bridleway and it is planned to either cap them or remove them and replace with waths.*"

153. I did note when on site the bags of stones in the area north-west of the crossing of Gatherstone Beck, which the OMA confirmed were associated with intended works²³. The comments made regarding required works do not appear relate to the sections affected by this Order, however, to ensure that the Order route is in a fit condition for public use, I consider it appropriate to require certification of the proposed route prior to extinguishment of the existing route.

Conclusions regarding Order E

154. I consider that the diversion is in the interests of the public and will not be substantially less convenient. I do not consider that the overall public enjoyment of the route would be negatively affected by the Order.

155. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that Order E should be confirmed, subject to the modification to requiring the highway authority to certify the route as fit for public use. I am satisfied that this modification does not require advertisement.

Order F

156. The objection to this Order referred only to changes proposed to the western end of **FP408051**, M to Hollow Stones, although this also relates to the connecting route **FP408011**, K south-east towards N. The area of concern is the ridge on the western slopes of Scafell Pike known as Brown Tongue.

157. The objector claimed not to have had time to look at the alterations to all the routes on Scafell Pike, Orders F, F1 and F2. These Orders were made and

²³ I mistakenly referred to this as Order D at the hearing, having visited both routes on the same day and muddled the letters but I am clear that this was on Order E

advertised in September 2013 with the hearing not being held until May 2015. It is for the objector to decide on which matters he wishes to comment and I have taken account of all the issues put before me, so far as they are relevant to the tests within the 1980 Act. The comments at paragraph 10 are relevant to matters raised in relation to this Order.

Whether it is expedient, in the interests of the public, that the footpaths in question should be diverted

158. No specific matters were raised in relation to the proposed diversions relating to FPs **419042 & 408078**²⁴, the eastern sections of **FP408051**, the south-eastern end of **FP408011, 408079** or **408080**.
159. It is clear that the routes over Brown Tongue are very well used routes to Scafell Pike summit; the OMA counted over 80,000 users in the period January – September²⁵. The Three Peaks Challenge, which involves ascent and descent of Scafell Pike, Ben Nevis and Snowdon within a 24 hour period, apparently makes use of this route.
160. Such heavy use has led to extensive erosion which remains visible to the north of the proposed route despite the FTF project having provided a pitched route on the proposed line some years previously, the objectors suggesting this has been in place since the early 1990s. The objectors argued that the definitive lines were preferable, however, I am satisfied that the routes to which they referred were not the definitive lines, which lie further north again, generally on the other side of the ridge of Brown Tongue.
161. Scarring remains visible on the grass routes chosen by users over the years in preference to the definitive lines. Taking account of this, I agree with the OMA that the pitched route at the western end provides a suitable way to allow such extensive use to continue without damage to the landscape through which the rights of way pass.
162. By reference to the general public interest matters set out from page 20, I am satisfied that these diversions are expedient in the interests of the public, to meet the overall improvements sought by the FTF alignment project.

Whether the new routes will be substantially less convenient to the public

163. There is nothing before me to suggest that the proposed routes of FPs **419042 & 408078**, the eastern sections of **FP408051**, the south-eastern end of **FP408011, 408079** or **408080** would be substantially less convenient.
164. There were a large number of users on these routes during my site visit and none on either the actual definitive line or the formerly used route lying between the definitive and proposed routes. The objectors argued that rapid descent from the fells was impossible, saying that mountain rescue chose to use the former route to the north. I do not consider that whether there could or could not be 'rapid descent' is relevant to the tests under the 1980 Act. There is no legal impediment to use of an alternative in this location and no objection to the Order has been made by any representative of the local mountain rescue team.

²⁴ Referred to as the Corridor Route

²⁵ This was alternately given as 2011 or 2013 within the statement of case

165. The objector submitted a comment apparently from the "*Paths to be Fixed – 2015 Work Programme*" referring to Brown Tongue, "*This path will be a constant appearance on the maintenance sheet. It is one of the fastest eroding repaired paths in the Lake District due to the number and nature of its users. Ideally the whole route would be re-pitched to the best modern standard and widened to easily accommodate two people side by side as so many of its users do. For 2015 the section just above the beck crossing will be brought up to standard and it is envisaged that this process will continue upwards in future years.*"
166. Whilst the objector felt that it was 'dishonest' to say that the proposed routes were 1.8 metres wide, I do not consider that the width to be recorded is necessarily only the pitched or gravel path, see section on widths starting on page 17. In this instance there was nowhere that it was not possible to use the land to the side of the proposed line to allow, large numbers of, people to pass. As noted by the OMA in their work programme, many users walk side by side.
167. I am satisfied that a recorded width of 1.8 metres is not unreasonable. Although it is clear that the objectors do not like using surfaced paths, I am satisfied that the proposed diversions of **FP408051** and **FP408011**, are not substantially less convenient to the public due to surfacing, distance, width or any other matter.
168. Given that I found pitching works being carried out on the proposed route of **FP408051**, section L – M, during my site visit I am not satisfied that the Order can be said not to require certification prior to extinguishment of the existing route. The additional information from the objector may relate to other works on the proposed route. I shall modify the Order in this respect.

The effect of the diversion on public enjoyment of the paths as a whole

169. There is nothing to suggest that the proposed routes of FPs **419042** & **408078**, the eastern sections of **FP408051**, the south-eastern end of **FP408011**, **408079** or **408080** would be less enjoyable for public use.
170. The objectors argued that the views from Brown Tongue were more expansive, although they were in fact referring to the former used route, rather than the definitive line. I do agree that there are more expansive views, towards Wast Water to the west, on the definitive route although I am satisfied that there still are good views from the proposed route. I do not consider that the views of Scafell Pike when travelling east are any less impressive than those seen from the definitive line.
171. Overall, I do not consider that the effect on enjoyment for users in relation to the matters raised are such that the Order should not be confirmed.

The effect the coming into operation of the Order would have with respect to the land served by the existing path and the land over which the new path is created together with any land held with it, account being taken of the provisions as to compensation

172. The routes would remain within the same landownership. There was no evidence that there is land served by the existing routes that would not be adequately served by those proposed.

Whether the point of termination of the new footpath will be on the same highway or a highway connected with them, and will be substantially as

convenient to the public

173. I am satisfied that the points of termination are either unaltered or are on the same or connected highways such that they will be substantially as convenient to the public.

Modifications

174. Unfortunately the OMA have annotated part of the Corridor Route, **FP419042** as 'BW' on Map 1 to the Order. The route is correctly referred to as 'FP' throughout the rest of the Order and, therefore, anyone reading the Order as a whole would not have been misled. I am satisfied that this is a minor typographical error and, to ensure that incorrect information is not recorded on the DMS, I will modify the Order in respect of this.

Conclusions regarding Order F

175. I consider that the diversions are in the interests of the public and will not be substantially less convenient. I do not consider that the public enjoyment of the routes would be negatively affected by the Order.

176. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that Order F should be confirmed, subject to the modification to show **FP419042** correctly on the Order map; and, requiring the highway authority to certify the route as fit for public use. I am satisfied that these modifications do not require advertisement.

Order F1

177. No objection was made to this Order during the statutory period. Comments at paragraph 10 and 24 are relevant to the matters raised by the parties.

Whether there is a need for a footpath and whether it is expedient to create the footpaths having regard to the extent to which their creation would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area

178. The Order seeks to create three footpaths to the north and south-west of Scafell Pike. As this is a very popular area for visitors to the Lake District, I consider that improvements in connectivity in this area would add to the convenience or enjoyment of a substantial section of the public and, therefore, it is expedient to create the routes.

The effect which the creation of the footpaths would have on the rights of persons interested in the land, taking account of the provisions as to compensation in Section 28 of the 1980 Act

179. No matters have been raised in this respect and there is no indication that the confirmation would have an effect on the interests of the landowners.

Conclusions regarding Order F1

180. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that Order F1 should be confirmed.

Order F2

181. No objection was made to this Order during the statutory period. Comments at paragraph 10 and 24 are relevant to the matters raised by the parties.

The extent to which it appears that the footpaths in question would, apart from the Order, be likely to be used by the public

182. The diversion of **FP408011** under Order F leaves these routes as cul-de-sacs. Therefore, I do not consider that they would be likely to be used by the public once Order F is confirmed.

The extent to which Orders F and/or F1 would provide alternative paths

183. The diversion of this part of FP408011 under Order F provides alternative access in this vicinity.

The effect which the extinguishment of the rights of way would have as respects land served by the footpaths, account being taken of the provisions as to compensation

184. There is no evidence that the extinguishment would affect land served by the existing routes.

Modifications

185. As noted at paragraph 55 the 1993 Regulations require a width to be specified in relation to extinguishment orders, which has not been done here. I consider that it is appropriate to use the phrase "the whole width" in this case. Whilst I consider the Order should be clarified, I am not changing anything in relation to the Order as made, which I am satisfied any reasonable person would understand to relate to the entirety of those sections. Therefore, I do not consider that further advertisement is required. Due to the proposal to modify the public path order, I consider that I should also modify the ILEMO, Part 2 of the Order Schedule.
186. I note that one of the Order titles mistakenly refers to 'Parishes'. This is a minor typographical error, which I generally would not consider modifying. However, as a modification is required for this Order in any case, I will also correct this title.

Conclusions regarding Order F2

187. I consider that the sections of footpaths proposed to be extinguished by this Order would be unlikely to be used by the public to any great extent, particularly given the confirmation of Order F. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that Order F2 should be confirmed, subject to minor modifications to correct the title; and, specify that the whole width will be extinguished.
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Order G

188. Procedural matters relating to this Order have been dealt with in the initial overview of this decision, above. Additionally, the objector noted that there had been an intention to remake this Order due to issues arising between the date of survey and the making of the Order. However, the location of a ring-feeder, which had caused issues with poaching of the surface of the proposed line, was resolved and temporary fencing and a field gate removed. As a result, the OMA did not alter the proposed line and so this Order remains to be determined.
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189. On my site visit I found that one of the notices of the hearing was placed some distance from where it appeared to me that point B was located. It was the view of the objector, who had also noticed this, that the problem had arisen due to the notices being put on site by NT, on behalf of the OMA, relying upon grid references, which he believed were incorrect.
190. The OMA confirmed that they were satisfied that the Order, including the grid references, was correct. I am satisfied that there was a notice of the hearing, which was visible from the used route. Whilst the location of the notice appears to have been a little misleading, I note that no new party contacted either the OMA or the Planning Inspectorate, or attended the hearing, to query the matter. I am satisfied with regard to the notices of the hearing in relation to this Order.

Whether it is expedient, in the interests of the public, that the footpath in question should be diverted

191. The northern section of this route passes through a field, which was being grazed by cattle at the time of my site visit. There is no access available through or over the wall on the existing line A – E, to the north-east of point C, and no obvious sign that there has formerly been an access point here. There is a pedestrian gate at point C, of the type the LDNPSS refers to as a wicket gate. It would clearly be advantageous for the public route to be recorded passing here. The route across the field is a slightly more obvious line to the gate, crossing the northern part of Greathall Gill, at point D.
192. Whilst the objector provided a photograph of someone using the recorded line, claiming that this showed the preferred route, this fails to take account of the fact that some people might choose to follow the recorded route, which is the legal route until confirmation of the Order. It was clear on the ground that a number of people choose the proposed route.
193. The central section of the route follows a pitched path to the south of the wall. Given the rising ground at this point I consider that the proposed line is preferable, allowing users to switch back and forth across the rise, rather than walk straight up or down.
194. The southernmost section moves users away from the edge of the gully around Greathall Gill. I consider that this improves safety in this area. I agree with the objector that there is a walked line north-east of point B, used by those travelling towards Whin Rigg to the north-east, rather than Irton Fell to the south-west.
195. The objector felt that the used route at the southern end was some distance from the line proposed by the Order. The OMA indicated that they were satisfied that the Order was correct; even if a used line existed elsewhere there was no physical obstacle to prevent the establishment of the proposed line. I agree with this assessment but would note the difficulty in defining particular lines on open areas such as this, where the public may choose any number of different routes and defining them may be a never-ending task.
196. Taking account of the matters raised, I am satisfied that it is expedient in the public interest to divert this footpath.

Whether the new route will be substantially less convenient to the public

197. The proposed route runs in the general vicinity of the existing route. Whilst the southern end is slightly more towards Whin Rigg I consider the distance insignificant. I consider the overall gradient slightly better. I agree with the objector that the ground to the north-west of point B is wetter than the comparable ground on the existing route, north of point A, although whether it could be characterised as a bog is a matter of opinion.
198. Whilst accepting that the open areas north and south could be recorded at 1.8 metres width, the objector felt that this did not reflect the width on the ground over the central section, south of point C. I am satisfied that the width to be recorded is not necessarily only the physical route on the ground, as discussed in the section on widths starting on page 17. I consider that a recorded width of 1.8 metres is not unreasonable in relation to this Order.
199. Considering all relevant matters I am satisfied that the proposed route would not be substantially less convenient to the public.

The effect of the diversion on public enjoyment of the path as a whole

200. No matters have been raised to lead me to conclude that the public enjoyment of this route would be negatively affected by this Order.

The effect the coming into operation of the Order would have with respect to the land served by the existing path and the land over which the new path is created together with any land held with it, account being taken of the provisions as to compensation

201. The routes would remain within the same landownership; the owners have been consulted and raise no issues. There was no evidence that there is land served by the existing route that would not be adequately served by that proposed.

Whether the point of termination of the new footpath will be on the same highway or a highway connected with them, and will be substantially as convenient to the public

202. Point E is unaltered. Point B takes users a little north-east of point A, however, it is on the same highway. Although those going to Irton Fell will travel a little further the proposed route is slightly better for those going to Whin Rigg; the overall change in distance along FP408055 is minimal. I am satisfied that the termination points will be substantially as convenient to the public.

Other matters

203. I found that the wicket gate at point C was not in easily usable condition as the latch mechanism was not properly aligned. Whilst I agree with the OMA that this is likely to have been due to some movement of the posts since they were put in place, this demonstrates the difficulty with lack of certification at the appropriate time.

Modifications

204. The original objection, dated 14 May 2013, indicated that the limitations were incorrect. The OMA appear to have believed this to relate to the additional gate which was formerly on-site without looking at other matters. The objector's statement of case pointed out that the grid references for the field gate at point E and the wicket gate at point C had been transposed in the Order Schedule.

The OMA agreed and requested a modification in this respect, which also affects Part 4 of the Schedule to the Order.

205. Although the Order was sealed and dated 15 April 2013, article 5 of the Order refers incorrectly to 9 April. I do not consider this significant, although leaving that reference could be confusing when looking back at the Order in years to come, potentially suggesting another Order relating to the route, and so I shall modify the Order in this respect.
206. The OMA also requested a modification with regard to the grid reference given for point A in Part 1 of the Schedule. Additionally, they agreed that the reference to the footpath in Part 2 of the Schedule was incorrect and required modification due to a parish boundary revision. I consider that these are minor typographical errors but, to ensure that incorrect information is not recorded on the DMS, I shall modify the Order in respect of these points.
207. Parts 1 and 2 of the Order incorrectly refer to the general alignment as running north-northeastwards when it is north-north-westwards. Although this is clear from the Order map, I shall modify the Order to ensure incorrect information is not recorded as a result of this typographical error.
208. Part 4 of the Order, which relates to the modification of the Definitive Statement under section 53(A) of the 1981 Act, refers to **FP408055** as 'BW' in relation to the changes to **FP419048** and then refers to the structures on FP408055 instead of FP419048. This is the ILEMO and, as noted at paragraph 22 there are no powers available to me to modify this after a combined order has been made, except in consequence of modifications to the public path order itself. I shall modify the Order to remove the ILEMO relating to these footpaths and it will be for the OMA to address the matter of a LEMO.

Conclusions regarding Order G

209. I consider that the diversion is in the interests of the public and will not be substantially less convenient. I do not consider that the public enjoyment of the route would be negatively affected by the Order.
210. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that Order G should be confirmed, subject to the modifications to refer to the correct date; refer to the footpath by the appropriate number; correct the grid references; remove the ILEMO and reference to it in the title to the Order; refer to the correct alignment; and, require the highway authority to certify the route as fit for public use. I am satisfied that these modifications do not require advertisement.

Order H

211. Procedural matters relating to this Order have been dealt with in the initial overview of this decision, above.

Whether it is expedient, in the interests of the public, that the footpaths in question should be diverted

212. The objector argued that the western end of **FP408052**, running south-east from point G, had been drawn as a straight line, with no actual path on the ground. I agree that the used route on the western side of Broad Crag appears to be further to the south. However, I agree with the OMA that there is nothing

on the ground to physically prevent use of the proposed line. This provides an end point to this particular diversion and, whilst the OMA may need to look at whether further legal changes are required in this area, they need not carry them all out at once, provided the chosen alignment is usable on confirmation of the Order.

213. In relation to **FP408077**, I agree with the objector that there is a used route to the west of the proposed line, although I consider that there is some evidence of use of the proposed path. The western alignment, which I believe coincides in part with the existing alignment, is clearly preferred. I understand the view of the objector that the FTF alignment project refers to recording used alignments, however, the point of a diversion Order is to divert and create rights. If the OMA wish to create those rights on a new alignment then this is not unreasonable. In this instance, due to the location of point L with no legal continuation to the north, any proposed route must terminate at this point.
214. The objector raised concerns that a cairn, formerly sited at or near point K, had been removed. It may be that this has altered use in the area since the survey to determine the proposed route, however, arguments regarding the appropriateness of keeping, moving, removing or 'rationalising' cairns are a separate issue. The objector felt that there were obstructions to the proposed route, suggesting that a mistake had been made in identifying the intended route on the Order map and that the wrong route had been mapped. Some care needs to be taken in trying to overlay Order routes onto aerial photographs to determine alignments due to the topography in this area and difficulties in scaling maps and photographs.
215. The OMA were satisfied that the Order map reflected the route they wished to record and, given that the point of the Order is create new routes I am satisfied that it is open to them seek to create them where they see fit. I will be modifying the Order so that the existing route is not extinguished before certification of the proposed route in any event. I am satisfied that the Order route, generally to the north of the existing alignment, is not substantially less convenient to the public than the existing route.
216. The objector felt that the eastern end of **FP212087/408057**, H - O - M, had been drawn as a straight line, with no path on the ground. Moving point H to connect with FP212032 on a walked alignment has an effect upon the continuation to the south-east. The OMA agreed with the objector that further changes were likely to be required in this area, however, I agree with them that if there is no requirement to make all changes at one time.
217. However, given that this is a discrete diversion, it is incumbent on the OMA to ensure that a public footpath is provided on the alignment chosen. This need not be a physical path, for example pitched, but the OMA in their role as the highway authority need to be satisfied that a route exists. In this instance, I found no obvious route on the ground; the route generally followed was further to the south-west, almost on the alignment E - M.
218. Neither the OMA nor the objector requested that I alter the Order in respect of this matter and I have given careful consideration as to whether I should propose an alternative diversion here. Whilst the proposed line runs close to the small tarn in this area I am satisfied that there is no physical obstruction to the proposed line. I would have some difficulty in proposing an alternative

alignment working from the mapping and aerial photography and so do not consider it would be sensible to do so at this time.

219. I agree with the objector that the public benefit in terms of the FTF alignment project are less clear in relation to the diversion of FP408077, however, I am satisfied that, despite the 'straight line' endings, the case has been made in relation to the main diverted route from Broad Crag, through Calf Cove to Esk Hause. Altering this route means that there must be an alteration to the route north to Great End and, on balance, I am satisfied that the diversion as a whole is in the public interest.

Whether the new routes will be substantially less convenient to the public

220. The main issue raised in objection related to maintenance of the route overall and, in particular, the pitching on Calf Cove, east of point K. A diversion order creates new routes, which may, or may not, require works to make them fit for public use. It is clear that the objector does not like using pitched paths, however, I bear in mind that the route is not yet subject to legal maintenance responsibility. It was also argued that it was not reasonable to say that the proposed routes were 1.8 metres wide, however, I am satisfied that the width to be recorded is not necessarily only the physical route on the ground, see section on widths starting on page 17. I am satisfied that a recorded width of 1.8 metres is not unreasonable in relation to this Order.

221. I am satisfied that the proposed diversions are not substantially less convenient to the public due to surfacing, distance, direction, width or any other matter.

The effect of the diversion on public enjoyment of the paths as a whole

222. No matters have been raised to lead me to conclude that the public enjoyment of this route would be negatively affected by this Order.

The effect the coming into operation of the Order would have with respect to the land served by the existing path and the land over which the new path is created together with any land held with it, account being taken of the provisions as to compensation

223. The routes would remain within the same landownership; the owners have been consulted and raise no issues. There was no evidence that there is land served by the existing route that would not be adequately served by that proposed.

Whether the point of termination of the new footpath will be on the same highway or a highway connected with them, and will be substantially as convenient to the public

224. The proposed termination points, G, L and M, remain unaltered and so I am satisfied that they will be substantially as convenient to the public. Points E and F move to points H and K respectively, on the same highways and no great distance from the current terminations. I consider that they will be substantially as convenient to the public as the existing terminations.

Modifications

225. As raised at the hearing, I noted that Part 4 of the Order, the ILEMO, appeared to be incorrect with regard to the description of **FP408057**, due to the route crossing back and forth over the Parish boundary. The OMA agreed that the description was incorrect and the objector indicated that all he sought was for the Order to record the correct information. However, as noted at paragraph

22 there are no powers available to me to modify an ILEMO in these circumstances and, therefore, I will simply modify the Order to remove the ILEMO relating to this footpath. It will be for the OMA to address the matter of a LEMO separately.

Conclusions regarding Order H

226. I consider that the diversions are in the interests of the public and will not be substantially less convenient. I do not consider that the public enjoyment of the routes would be negatively affected by the Order.

227. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that Order H should be confirmed, subject to the modification to remove ILEMO relating to FP408057; and, requiring the highway authority to certify the route as fit for public use. I am satisfied that these modifications do not require advertisement.

Order H1

228. Procedural matters relating to this Order have been dealt with in the initial overview of this decision, above.

Whether there is a need for a footpath and whether it is expedient to create a footpath having regard to the extent to which its creation would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area

229. The objector raised no matters in relation to the principle of creating this route, although concerned with regard to the condition on the ground. I consider that the route would add to the convenience or enjoyment of the public, adding a link to the north in this location. I agree with the OMA that the use in this area indicates a desire line and that legally recording it will increase public confidence in relation to what is already a well-used link.

The effect which the creation of the footpath would have on the rights of persons interested in the land, taking account of the provisions as to compensation in Section 28 of the 1980 Act

230. No specific matters have been raised in this respect; the owners and occupiers have been consulted and raised no concerns.

Modifications

231. I note that Article 3 to the Order refers to the date of the Order incorrectly. I am satisfied that the Order was properly sealed and dated the fourth day of November 2013 and will simply modify the Order to show the date correctly in the relevant Article to rectify this typographical error.

Conclusions regarding Order H1

232. I consider that the footpath proposed to be created would add to the convenience and enjoyment of persons resident in and visiting the area. Taking account of all relevant matters, I am satisfied that I should confirm the Order subject to the modification to show the correct date for the making of it. I am satisfied that this modification does not require advertisement.

Order J***Whether there is a need for a bridleway and/or footpath and whether it is expedient to create the routes having regard to the extent to which their creation would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area***

233. The original objection raised no matters in relation to the principle of these creations, although concerned regarding the widths to be recorded. I noted users on both routes during my site visit. I consider that these routes would add to the convenience or enjoyment of the public in having the link **FP220057** from the junction with the bridleway on the corner of the copse. Whilst the objector points out that there is a bridleway running almost parallel to the proposed route between points C1 and close to point A1, I agree with the OMA that the lower route proposed by this Order provides a level surface, suitable for a wider range of users, with close views of Buttermere itself. I see no reason why a bridleway of this width, in this location, should be re raised of potential conflict between different users and no evidence was provided of any historical issues. I consider that the creation of these routes would add to the convenience or enjoyment of a substantial section of the public, as well as the convenience of persons resident in the area.
234. The objector noted in his statement of case that the route on the ground alongside Buttermere splits at Burtness Wood, to the north-west of point B1. The route indicated by the Order follows the narrower alignment closest to Buttermere but the OMA confirmed that their intention had been to record the alignment to the south-west. It seems that the error arose due to the intended route having been closed due to logging works at the time of the GPS survey; the walked route nearer the shore was then mistakenly transferred onto the Order map. I am satisfied that it is reasonable to propose a modification to the Order in this respect, which will require advertisement under Schedule 6 to the 1980 Act, as it affects land not affected by the Order as made.
235. As these routes do not currently exist it is open to the OMA to create them at the widths stated, although they agreed that the southerly-most section was currently around 1.8 metres, narrowing to 1.5 metres. Despite their stated intention to secure removal of trees, and so widen the route at a later date, it seems to me that the Order should reflect what is to be achieved in a reasonable timescale, which does not appear to be the case here. It is open to the OMA to legally create additional width at a later date should they wish and, as a result, I intend to record this route by reference to the identified widths.
236. The objector asked why the route on either side of the bridge, north-west of point C1, was not open for public use. I have set out relevant points relating to the recording of bridges at paragraphs 55 and 56. A bridge is an aid to users of a route, usually, as in this case, assisting with crossing water. There is nothing to prevent the objector walking alongside the bridge if that is what he wishes to do. However, unless a bridge is situated alongside a ford, which forms part of the highway, I do not consider that there is any requirement for a highway authority to make good the full width at such a crossing point. The current guidance sets out that bridges should not be recorded as a limitation, however, they should be identified in the statement describing the way, which has not been done here. I am satisfied that I should modify the Order in this respect.

237. In relation to **FP220057**, I am satisfied that it is reasonable to record the width at 1.8 metres; it is a route across open ground and whilst the land on either side rises and falls, such that the visible route runs on a 'shelf', it is possible to use the adjacent land to a full width of 1.8 metres.

The effect which the creation of the routes would have on the rights of persons interested in the land, taking account of the provisions as to compensation in Section 28 of the 1980 Act

238. The owners and occupiers have been consulted and raised no concerns with regard to the Order. The route running alongside Buttermere, **BW220058**, is already signed as a permissive route and I understand this to have been the case for at least twenty years. No issues have been raised to indicate any effects on those with interests in the land arising from the public use.

Other matters

239. NE raised the point that **BW220058** would run alongside Buttermere, which is a Site of Special Scientific Interest and part of the River Derwent and Tributaries Special Area of Conservation. NE indicated that, as a result, the OMA should consider the potential effect of the creation under the Conservation of Habitats and Species Regulations 2010²⁶, as amended, often referred to simply as the 'Habitats Regulations'. The OMA were asked to take account of whether there could be sedimentation of the lake, damage to existing lakeshore vegetation or a need for works arising from increased use.

240. The OMA were satisfied that there was unlikely to be any impact as the route was constructed around twenty years ago and has been maintained since that time. Whilst on my site visit I found that part of the north-western end of the route, near point A1, was covered with water over most of the width. This appeared to be in association with the outlet of Sourmilk Gill into Buttermere. There is no mechanism for certification of works in relation to creation orders; if the route is recorded as a public right of way, it will be for the highway authority to ensure that the route is in a fit condition for public use, taking account of the Habitat Regulations.

241. I agree that the route is already well-used as part of a promoted route under '*Miles Without Stiles*' as well as, no doubt, from local knowledge of the relative ease of use. As such, I agree that the actual recording of it is unlikely to lead to a level of additional use and that the current surface of semi-bound aggregate is likely to withstand such increased higher-rights users as may take to it. I am satisfied that the OMA have taken sufficient account of this matter.

Modifications

242. In addition to the modifications in relation to the alignment, width and recording of the bridge, I raised the issue at the hearing regarding the use of the term 'footpaths' in the Order, when it should refer to a footpath and a bridleway. It is clear that the objector understood that the intention of part of the Order was to create a bridleway and I am satisfied that anyone reading the Order as a whole, and looking at the map, would not have been misled by these errors. However, as I need to propose modifications to the Order, as set out above, I will modify the Order in respect of these minor typographical errors to ensure that incorrect information is not recorded on the DMS.

²⁶ SI 2010/490

243. There is an issue with the ILEMO in relation to **BW220058** as Part 3 of the Schedule to the Order refers to it as 'Footpath 220058'. As noted at paragraph 22 there are no powers available to me to modify an ILEMO after a combined order has been made. I shall modify the Order to remove the ILEMO relating to the bridleway and it will be for the OMA to address the matter of a LEMO.

Conclusions regarding Order J

244. I consider that the bridleway and footpath proposed to be created would add to the convenience and enjoyment of persons resident and visiting the area. Taking account of all relevant matters, I am satisfied that I should confirm the Order subject to the modifications to show the requested alignment of the bridleway; refer to the bridge on that route; record appropriate widths; ensure reference to the bridleway within the Order as a whole; and remove the ILEMO relating to the bridleway.

245. Whilst most of these modifications do not require advertisement that relating to the alignment does, as it affects land not affected by the Order as made. As a result, all the modifications will be advertised.

Order K

Whether it is expedient, in the interests of the public, that the routes in question should be diverted

246. No specific matters were raised in relation to the route running generally north – south, **BW407001**, diverting west from the current alignment A - B. Taking account of the general public interest matters, see section starting on page 20 above, I am satisfied that this diversion is expedient in the interests of the public, to meet the overall improvements sought by the FTF alignment project.

247. **FP407047/407048/220034** is diverted between points C and E, on the southern side of Haystacks. Although I agree with the objector that the proposed route is a slight scramble in places this is a high fell route. It is also very popular, as I saw a number of individuals, couples and groups using it when I was on site and I understand it to be part of a promoted route due to its association with A. Wainwright. For the reasons set out in relation to the project as a whole, see from page 20, I consider that the diversion is expedient in the public interest.

248. The objector argued that the diversion of **FP220027/407047**, points F – H, was not in the public interest, due to surface conditions, pitching and views. I do not consider that the surface conditions, including the pitching, are such that it can be reasonably argued that the proposed route is not in the public interest. The definitive line to the south is on lower ground near the tarns and, although on grass which the objector says he prefers, I found it to be wet underfoot in places to the extent that I consider the proposed route preferable. Therefore, I am satisfied that it is expedient in the public interest to divert the route onto the generally higher ground to the north.

249. Taking account of all relevant matters, I am satisfied that it is expedient in the public interest to divert these public rights of way.

Whether the new routes will be substantially less convenient to the public

250. I am satisfied that the increased distance on **FP407047/407048/220034** is not such that it makes the route substantially less convenient. The surface

conditions of the proposed route are no worse than the existing and, in most places better in my view. The objector felt that there were obstructions to the proposed route, suggesting that a mistake had been made in identifying the intended route on the Order map and that the wrong route had been mapped in relation to **FP220034**.

251. Some care needs to be taken in trying to overlay Order routes onto aerial photographs to determine alignments due to the topography in this area and difficulties in scaling maps and photographs. The OMA were satisfied that the Order map reflected the route they wished to record and, given that the point of the Order is create new routes, I am satisfied that it is open to them seek to create them where they see fit. I will be modifying the Order so that the existing route is not extinguished before certification of the proposed route in any event. I am satisfied that the Order route, generally to the north of the existing alignment, is not substantially less convenient to the public than the existing route.
252. Although understanding that the objector does not like using pitched paths I am satisfied that the proposed diversion of **FP220027/407047** is not substantially less convenient to the public due to surfacing, distance or any other matter. Given the wetness noted even in May on the definitive line, I do not consider that it has been shown that the old line would be safer in winter conditions.
253. Whilst the objector argued that it was not reasonable to say that the proposed routes were 1.8 metres wide, I do not consider that the width to be recorded is necessarily only the physical route on the ground, see section on widths starting on page 17. I am satisfied that a recorded width of 1.8 metres is not unreasonable in relation to this Order.
254. No matters were raised in relation to **BW407001** and I saw nothing on my site visit to suggest that the proposed route would be any less convenient.
255. Taking all relevant matters into account, I am satisfied that the proposed routes would not be substantially less convenient to the public.

The effect of the diversion on public enjoyment of the paths as a whole

256. In relation to **FP220027/407047**, the objector argued that the diverted route took users away from views of Blackbeck and Innominate Tarn, among others. Whilst I agree that the proposed route is further from the tarns lying generally to the south of the Order route, the higher elevation means that they remain in view. Taking account of the wetter ground on the definitive line, I am satisfied that the diversion will not have an overall negative effect upon public enjoyment.
257. No matters were raised in relation to **FP407047/407048/220034** or **BW407001** and I saw nothing on my site visit to suggest that public enjoyment of these routes would be affected by the changes proposed.
258. I am satisfied with regard to the effect on public enjoyment of the paths as a whole.

The effect the coming into operation of the Order would have with respect to the land served by the existing paths and the land over which the new paths are created together with any land held with it, account being taken of the provisions as to compensation

259. The routes would remain within the same landownership; the owners have been consulted and raise no issues. There was no evidence that there is land served by the existing route that would not be adequately served by that proposed.

Whether the point of termination of the new routes will be on the same highway or a highway connected with them, and will be substantially as convenient to the public

260. The termination points remain unaltered and therefore I am satisfied that they will remain as convenient to the public.

Modifications

261. The OMA requested a modification with regard to the grid reference given for point F in the Order Schedules. It was noted that no mention had been made of **FPs 407047** or **407048** in the Order title. In addition, a limitation was erroneously included in Part 3 of the Order.

262. I am satisfied that these are minor typographical errors and anyone reading the Order as a whole, and looking at the map, would not have been misled. However, to ensure that incorrect information is not recorded on the DMS, I will modify the Order in respect of these points.

263. I shall also insert the requirement for the highway authority to certify the proposed routes are fit for use, prior to the extinguishment of the existing route, which will ensure that the alignment of **FP220034** is available.

Conclusions regarding Order K

264. I consider that the diversion is in the interests of the public and will not be substantially less convenient. I do not consider that the public enjoyment of the route would be negatively affected by the Order.

265. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that Order K should be confirmed, subject to the modifications to correct the grid reference; remove the reference to a limitation; refer to the routes affected by the Order in the title; and, requiring the highway authority to certify the route is fit for public use. I am satisfied that these modifications do not require advertisement.

Order L

266. Procedural matters relating to this Order have been dealt with in the initial overview of this decision, see particularly paragraph 9.

Whether it is expedient, in the interests of the public, that the footpaths in question should be diverted

267. This Order affects a number of routes over a fairly large area. No specific matters were raised in relation to routes in the area south-east of Great Round How, FPs **220004**, **407002** and **220099**, diverting from alignment S - T - U - V - W to S - R - X - Y - P - W and Q - T to Q - R. Taking account of the general public interest matters, see section starting on page 20 above, I am

satisfied that these diversions are expedient in the interests of the public, to meet the overall improvements sought by the FTF alignment project.

268. **FP220027** is diverted between points K and L at the crossing of Warnscale Beck, south-west of Dubs Quarry. The objector says that this is no more than a washed out channel and although I found that there was a physical route on the ground it was not as clear on the section just north-east of the beck as elsewhere. The advantages to the public of diverting this route are less clear than in other cases. However, I do consider that there is advantage in terms of crossing the beck at the proposed point, due to the stones in the channel, forming a better crossing point, in my view, than the existing route.
269. The objector argued that the changes to **FP220037** were not in the public interest, as people still needed to get to Brandreth, south-east of Great Round How on the route J – X. He said that the route was still used and whilst I agree that there was some evidence of use at the south-eastern end, from point X, this soon petered out, in my view indicating, as the OMA argue, that the route is not chosen by walkers. There are some signs of other routes that have been used in the vicinity, but not the definitive line. This lack of use seems to be due to the very wet boggy land, identified in a guide book as blanket peat, through which the existing route passes south of point J. I understand that ‘dubs’ means dark, or a pool of water, and from my observations it seems that Dubs Bottom is well-named. I consider that the route to the west of Great Round How, I – Z – P, is preferable in order to avoid this area and that it is expedient in the public interest to divert the footpath in this respect.
270. In relation to **FP407037** there was agreement between the parties that a group of walkers needed rescuing from this area in 2010, having become stranded to the south-east of Loft Beck, apparently on the proposed route. The objector argued that maintenance of the existing route would have avoided this problem, although agreeing with the OMA, as do I, that the terrain north-west of Loft Beck, with scree in places, is dangerous and may in itself cause users to slide towards the beck in hazardous conditions. It is clear that the proposed route has been used, and also promoted, for example as part of the Wainwright Coast to Coast path (“the WCCP”), in preference to the recorded line. I consider that it would be expedient in the public interest to formalise that route.
271. There were discussions as to whether a bridge was required at the crossing of Loft Beck south-east of point M, where the crossing point is currently marked by stones which are likely to be less visible and less usable in times of spate. The OMA indicated that this was not currently planned. Despite the need to cross the beck twice, if not three times depending on direction of travel, I agree with the OMA that the proposed line is better for users than the existing for the reasons discussed above regarding terrain.
272. Taking account of all relevant matters, I am satisfied that it is expedient in the public interest to divert these footpaths.

Whether the new routes will be substantially less convenient to the public

273. There is nothing before me to suggest that the proposed routes of FP’s **220004**, **407002** or **220099** would be substantially less convenient to the public.
274. I do not consider that the proposed route of **FP220027**, merely mirroring the existing route, would be substantially less convenient to the public.

275. I agree with the objector that the distance travelled on **FP220059**, and connecting footpaths, is longer than **FP220037**, requiring a journey from J – I – Z – P – Y – X, rather than J – X. The OMA indicated that the overall distance was approximately 230 metres further. Whilst this is a circuitous route for those travelling to and from Brandreth I do not consider the distance to be excessive. Taking account of this, and the improvement in ground conditions on the proposed route, I do not consider that the route is substantially less convenient. Whilst not of great weight in my determination, I note that anyone wishing to follow an alternative route in this location would not be prevented from doing so due to the access rights under the 2000 Act.
276. In relation to **FP407037** the objector argued that 1.8 metres was not available. As discussed in the section on widths starting on page 17, I do not consider that the width to be recorded is necessarily only the physical route on the ground. Despite the arguments of the objector I am satisfied that there are no parts of the proposed route where a width of 1.8 metres is not available to users and so I consider that this width is not unreasonable in this Order.
277. There was formerly a stile in the fence crossed near the northern end of **FP407037**, which had been mistakenly missed from Part 3 of the Order Schedule, although included in Part 4. I understand that the current box style kissing gate was erected recently by the occupier under a Higher Level Stewardship Scheme (“HLSS”).
278. The OMA have followed good practice in developing an approved policy on structures on rights of way, which includes a standard for such structures. The LDNPSS is based upon the British Standards BS 5709:2006 and I agree that it is not necessary to adhere to the BS itself when an alternative local policy is in place. The OMA note that the gate does not meet the LDNPSS and asked that the limitation be recorded as at present with a width clearance of 800mm, rather than the LDNPSS specified standard of 1,000mm.
279. I agree with the OMA that the gate is an improvement over the stile. Also the location of this gate means that walkers are likely to be relatively fit, and perhaps able to cope with more challenging environments, whether natural or manmade. However, whilst I accept that local authorities should take account of local factors when considering the appropriate structure, I am not satisfied that it is reasonable for the OMA not to implement their own policy in relation to a route to be newly created by a diversion specified to be in the public interest. The LDNPSS has been approved, presumably taking account of the possible local variations, and makes no mention of such discretion; the minimum standard [*my emphasis*] of such structures is 1,000mm.
280. The standards of design of proposed structures, and working to such standards, are a major part of showing compliance by an authority with the Equality Act 2010. As a result, I consider that whilst it is appropriate to modify the Order to record the limitation at this point, due to it clearly being required by the occupier for stock management purposes, the structure should comply with the LDNPSS, not a lesser standard. As such, there are works in relation to this Order which will require certification by the highway authority.
281. Overall, I am satisfied that the proposed routes would not be substantially less convenient to the public.

The effect of the diversion on public enjoyment of the paths as a whole

282. No matters have been raised to lead me to conclude that the public enjoyment of these routes would be negatively affected by this Order.

The effect the coming into operation of the Order would have with respect to the land served by the existing paths and the land over which the new paths are created together with any land held with it, account being taken of the provisions as to compensation

283. The routes would remain within the same landownership; the owners have been consulted and raise no issues. There was no evidence that there is land served by the existing routes that would not be adequately served by that proposed.

Whether the point of termination of the new footpaths will be on the same highway or a highway connected with them, and will be substantially as convenient to the public

284. I agree with the OMA that the number of routes makes the termination points hard to determine, however, I am satisfied that the connectivity of the routes remains. The terminations are on the same highways, or connected highways, and will be substantially as convenient to the public.

Other matters

285. Whether the OMA had an alternative view of the necessity to divert **FP407037** in the past is not a matter that is relevant to my decision. I am considering the Order as now made, taking account of the current situation and evidence.

Modifications

286. I have noted the need to modify the Order with respect to limitations on **FP407037** which also affects the ILEMO. The OMA also requested a modification with regard to the grid reference given for point Q in Part 1 of the Schedule in relation to **FP220099** and the direction of **FP220004**, which was described as southeastwards and eastwards rather than southwestwards and westwards in Part 2 of the Order. I also note that Part 2 refers incorrectly to the creation of rights on **FP220037** instead of **FP220059** on alignment I – Z.

287. I am satisfied that these are minor typographical errors and anyone reading the Order as a whole, and looking at the map, would not have been misled. However, to ensure that incorrect information is not recorded on the DMS, I will modify the Order in respect of these points.

288. Unfortunately, Part 4 of the Order, the ILEMO, appeared to be incorrect with regard to the description of **FP220059**, failing to refer to **FP407065**. As noted at paragraph 22, there are no powers available to me to modify an ILEMO in these circumstances and, therefore, I will simply modify the Order to remove the ILEMO relating to this footpath. It will be for the OMA to address the matter of a LEMO separately.

Conclusions regarding Order L

289. I am satisfied that the diversions are in the interests of the public and will not be substantially less convenient. I do not consider that the public enjoyment of the routes would be negatively affected by the Order.

290. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that Order L should be confirmed, subject to

the modifications to record a limitation; correct the reference to the direction of one footpath; ensure that the grid references are correct; ensure numbering is correct; remove the ILEMO relating to one footpath; and, require the highway authority to certify the route as fit for public use. I am satisfied that these modifications do not require advertisement.

Order L1

291. Procedural matters relating to this Order have been dealt with in the initial overview of this decision, above.

Whether there is a need for a footpath and whether it is expedient to create a footpath having regard to the extent to which its creation would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area

292. I agree with the OMA that the objector's comment regarding an alternative route apparently having formerly existed some distance to the north of the proposed route, north of the Brandreth Fence, is not relevant; I need to determine the Order as made. Furthermore, I believe that the objector is mistaken with regard to the route shown as part of the WCCP, which I believe shows the proposed route, crossing the Brandreth Fence at point P.

293. I found this to be a particularly well-used route in comparison to some others dealt with in this decision, which is not surprising as it is part of the promoted WCCP. I agree with the OMA that legally recording this route would provide a mapped and maintained link, adding to the convenience or enjoyment of a substantial section of the public, using the long distance WCCP and to the convenience of persons resident in the area by adding connectivity to and from Loft Beck to the west.

The effect which the creation of the footpath would have on the rights of persons interested in the land, taking account of the provisions as to compensation in Section 28 of the 1980 Act

294. The owners and occupiers have been consulted and raised no concerns with regard to the Order. This link is already in use as a permissive route, although I do not know for how long this has been the case. I consider that the fact that the owners and occupiers are satisfied that the permissive rights should become permanent provides a strong indication that there is no negative effect on their interests in the land arising from the public use.

Modifications

295. There was formerly a stile in the fence line at point P, as shown in Part 2 of the Order Schedule. However, since the making of the Order this has been altered to a gate. As with Order L, I understand that the current box style kissing gate was erected under a HLSS and does not comply with the LDNPSS. My comments in relation to the need for the OMA to implement their own policy in circumstances such as this, where a new route is being created, also apply here. I am satisfied that whilst it is appropriate to modify the Order to record the limitation, the structure should comply with the LDNPSS. This will also require modification of the ILEMO.

296. The OMA also requested a modification with regard to the number given to the route within the Order. The map, Order Schedule and most of the Order clearly relates to **FP407064**, however, one of the Order titles mistakenly refers to

FP407037. I am satisfied that this is a typographical error and anyone reading the Order as a whole, would not be misled. However, to ensure that incorrect information is not recorded on the DMS, I will modify the Order in respect of this title.

Conclusions regarding Order L1

297. I consider that the footpath proposed to be created would add to the convenience and enjoyment of persons resident and visiting the area. Taking account of all relevant matters, I am satisfied that I should confirm the Order subject to the modifications to show the limitation of a gate, rather than a stile; and, to ensure reference to the correct footpath number throughout the Order. I am satisfied that these modifications do not require advertisement.

Other matters

298. Discussions as to whether the pitching of routes is development requiring planning permission is not a matter relevant to my decision. It is a matter to be raised with the planning authority, who in this instance are the OMA.
299. Claims of lack of maintenance, 'wilful neglect', unauthorised obstruction, on these, or other routes, are not relevant to my decision; in considering diversion orders I have considered the definitive lines as if they are open and available for public use. The objector agreed that he understood that there were ways to deal with such issues. Arguments that the OMA did not deal with such matters in relation to other matters are not something I am able to deal with.
300. Arguments as to whether the OMA were entitled to download information from the objector's website are not matters for me.
301. Issues around requests made under the Freedom of Information Act 2000, and information provided in response to them, are not relevant to my decision.
302. Comments on findings on unrelated routes arising from eleven years previously do not assist with my decisions on the Orders before me.
303. The methodology of the OMA in setting out their proposed routes and producing the Orders is a matter for them. I do not consider that it is reasonable for the objector to continue to claim that officers have never been to site, with Orders made from aerial photographs and Ordnance Survey maps and never checked or verified on the ground. I am satisfied by the evidence provided to the hearing from an OMA officer of the methodology he followed in surveying the routes using a GPS. Mistakes may have been made, for example on Order J, however, this does not demonstrate that the OMA have behaved improperly in identifying the proposed routes.
304. Whilst the objector may have preferred creation rather than diversion in relation to some routes, I need to consider the orders as they have been made against the relevant parts of the Acts.
305. Whether there are other, 'faster, safer', routes off the fells that should alternatively, or also, be recorded is not relevant to the Orders before me.
306. The way in which statutory consultees choose to respond, or not, to the notice of an Order are matters for those bodies. Unfounded allegations and rudeness with regard to individuals or organisations are not relevant to my decision.

Formal Decisions

Order A

307. The Order is confirmed subject to the following modifications:

- In preamble to the Order:
 - delete text *"The Authority has certified that the footpaths are in a fit condition for use."*;
- Within the article 1 of the Order:
 - replace text *"...on the date of first publication of confirmation of this order."* with text *"...when the terms of article 3 have been met."*;
- Within the article 3 of the Order:
 - replace text *"There shall be from the date of first publication of confirmation of this order..."* with *"From the date of certification by the highway authority that the proposed route is in fit condition for public use there shall be..."*;
- Within Part 1 of the Schedule:
 - after text *"...point C (NY 1494..."* replace text *"...1653..."* with text *"...1649..."*;
- Within Part 2 of the Schedule, in relation to FP243030:
 - under *'Description...'*, after text *"Footpath..."* replace text *"...243000..."* with text *"...243030..."*;
 - under *'Width'*, after text *"...1.8 metres..."* replace text *"...- reduced to 1.2 metres for about 6 metres at footbridge..."* with text *"...subject to pinchpoints to 0.5 metres on section B – D. Footbridge..."*;
- Within Part 4 of the Schedule, in relation to FP243030:
 - under *'Remarks'*, after text *"...1.8 metres..."* replace text *"...- reduced to 1.2 metres for about 6 metres at footbridge..."* with text *"...subject to pinchpoints to 0.5 metres on section B – D. Footbridge..."*.

Order B

308. The Order is confirmed subject to the following modifications:

- In preamble to the Order:
 - delete text *"The Authority has certified that the bridleway and footpaths are in a fit condition for use."*;
- Within the article 1 of the Order:
 - replace text *"...on the date of first publication of confirmation of this order."* With text *"...when the terms of article 3 have been met."*;
- Within the article 3 of the Order:
 - replace text *"There shall be from the date of first publication of confirmation of this order..."* with *"From the date of certification by the*

highway authority that the proposed routes are in fit condition for public use there shall be...".

- Within Part 2 of the Schedule, in relation to FP243020/220056:
 - under 'Section...', after text "...B – B(1)..." add text "... - C(1)...".

Order C

309. The Order is confirmed subject to the following modifications:

- Within the article 1 of the Order:
 - replace text "...on the date of first publication of confirmation of this order." With text "...when the terms of article 3 have been met."
- Within the article 3 of the Order:
 - replace text "There shall be from the date of first publication of confirmation of this order..." with "From the date of certification by the highway authority that the proposed routes are in fit condition for public use there shall be...";
- Within Part 2 of the Schedule, relating to FP419030:
 - replace text "Bridleway..." with text "Footpath...".

Order D

310. The Order is proposed for confirmation subject to the following modifications:

- In the title to the Order:
 - after text "BRIDLEWAY..." replace text "...419004..." with text "...419044...";
- Within the article 1 of the Order:
 - replace text "...on the date of first publication of confirmation of this order." With text "...when the terms of article 3 have been met."
- Within the article 3 of the Order:
 - replace text "There shall be from the date of first publication of confirmation of this order..." with "From the date of certification by the highway authority that the proposed routes are in fit condition for public use there shall be...";
- Within Part 2 of the Schedule, under 'Width':
 - add text "15 metres at crossing of Spout Head Gill";
- Within Part 4 of the Schedule, under 'Remarks':
 - add text "(width 15 metres at crossing of Spout Head Gill)".

311. Since the confirmed Order would affect land not affected by the Order as submitted I am required by virtue of paragraph 2(3) to Schedule 6 of the 1980 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Order E

312. The Order is confirmed subject to the following modifications:

- Within the article 1 of the Order:
 - replace text “...on the date of first publication of confirmation of this order.” With text “...when the terms of article 3 have been met.”
- Within the article 3 of the Order:
 - replace text “There shall be from the date of first publication of confirmation of this order...” with “On the date of certification by the highway authority that the proposed routes are in fit condition for public use there shall be...”.

Order F

313. The Order is confirmed subject to the following modifications:

- Within the article 1 of the Order:
 - replace text “...on the date of first publication of confirmation of this order.” With text “...when the terms of article 3 have been met.”
- Within the article 3 of the Order:
 - replace text “There shall be from the date of first publication of confirmation of this order...” with “From the date of certification by the highway authority that the proposed routes are in fit condition for public use there shall be...”.
- On Order map, *MAP 1. BATCH 1412. FTF 29. CREATION, DIVERSION AND EXTINGUISHMENT OF FIX THE FELLE PATHS AROUND SCAFELL PIKE, WASDALE AND ESKDALE PARISHES:*
 - in relation to the 419042 replace text “BW...” with text “FP...”.

Order F1

314. The Order is confirmed.

Order F2

315. The Order is confirmed subject to the following modifications:

- In the title to the Order:
 - after text “...ESKDALE...” replace text “...PARISHES...” with text “...PARISH...”;
- Within Part 1 of the Schedule:
 - in relation to FP408050 before text “About 90 metres...” add text “The whole width of...”;
 - in relation to FP408084 before text “About 60 metres...” add text “The whole width of...”;
- Within Part 2 of the Schedule:
 - in relation to FP408050, Remarks, before text “90 metres...” add text “The whole width of...”;

- in relation to FP408084, Remarks, before text "60 metres..." add text "The whole width of..".

Order G

316. The Order is confirmed subject to the following modifications:

- In the title to the Order:
 - after text "PUBLIC PATH DIVERSION..." remove text "...AND DEFINITIVE MAP & STATEMENT MODIFICATION..";
- In preamble to the Order:
 - delete second paragraph beginning, "This order is also made..";
 - delete text "The Authority has certified that the footpath is in a fit condition for use..";
- Within the article 1 of the Order:
 - replace text "...on the date of first publication of confirmation of this order." with text "...when the terms of article 3 have been met..";
- Within the article 3 of the Order:
 - replace text "There shall be from the date of first publication of confirmation of this order..." with "From the date of certification by the highway authority that the proposed route is in fit condition for public use there shall be...";
- Delete article 4 of the Order.
- Within the article 5 of the Order:
 - after text "...Public Path Diversion..." delete text "...and Definitive Map and Statement Modification..";
 - after text "...is dated..." replace text "...9..." with text "...15..";
- Within Part 1 of the Schedule:
 - after text "...point A (NY 1460..." replace text "...2277..." with text "...0277..";
 - after text "...Greathall Gill generally..." replace text "...north-northeastwards..." with text "...north-north-westwards..";
- Within Part 2 of the Schedule:
 - after text "Footpath..." replace text "...408054..." with text "...419048..";
 - after text "...generally..." replace text "...north-northeastwards..." with text "...north-north-westwards..";
- Within Part 3 of the Schedule:
 - in relation to the wicket gate, after text "...LDNP Structures Standards 2011 at NY..." replace text "...1427 0372..." with text "...1423 0346..";
 - in relation to the field gate, after text "...LDNP Structures Standards 2011 at NY..." replace text "...1423 0346..." with text "...1427 0372..";

- Delete Part 4 of the Schedule.

Order H

317. The Order is confirmed subject to the following modifications:

- Within the article 1 to the Order:
 - replace text "*...on the date of first publication of confirmation of this order.*" with text "*...when the terms of article 3 have been met.*";
- Within the article 3 to the Order:
 - replace text "*There shall be from the date of first publication of confirmation of this order...*" with "*From the date of certification by the highway authority that the proposed route is in fit condition for public use there shall be...*";
- Within Part 4 of the Schedule:
 - delete all text referring to the modification of the definitive statement for 'FP408057'.

Order H1

318. The Order is confirmed subject to the following modifications:

- Within Article 3:
 - after text "*...and is dated...*" replace text "*...41582.*" with text "*...4 November 2013.*".

Order J

319. The Order is proposed for confirmation subject to the following modifications:

- In the preamble to the Order:
 - paragraph 1, after text "*...a need for...*" replace text "*...public footpaths...*" with text "*...a public footpath and public bridleway...*";
 - paragraph 1, after text "*...it is expedient that...*" replace text "*...the...*" with text "*...they...*";
 - paragraph 2, after text "*...this order) of...*" replace text "*...new public footpaths...*" with text "*...a new public footpath and new public bridleway...*";
- Within article 1 to the Order:
 - after text "*...there shall be...*" replace text "*...public footpaths...*" with text "*...a public footpath and public bridleway...*";
- Within Part 1 of the Schedule, in relation to BW220058:
 - under 'Description...', after text "*...point B1 (NY 1830 1543)...*" add text "*..., crossing a bridge and continuing...*";
 - under 'Width', after text "*...2.5 metres...*" add text "*...varying to 1.5 – 1.8 metres over the southerly 430 metres...*";
- Within Part 3 of the Schedule:

- delete all text referring to the modification of the definitive statement for 'FP/BW220058'.
- On Order map, *MAP 1: BATCH REF. 1412. FTF 32. CREATION OF FIX THE FELLOWS PATHS, BUTTERMERE SOUTH WEST SHORE BETWEEN LOW CRAG, HORSE CLOSE, AND BURTNESSE WOOD, PARISH OF BUTTERMERE & BRACKENTHWAITE:*
 - modify part of alignment of BW220058.

320. Since the confirmed Order would affect land not affected by the Order as submitted I am required by virtue of paragraph 2(3) to Schedule 6 of the 1980 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Order K

321. The Order is confirmed subject to the following modifications:

- In the title to the Order:
 - after text "...SCARTH GAP,..." add text "...FOOTPATH 407047, FOOTPATH 407048...";
- Within the article 1 of the Order:
 - replace text "...on the date of first publication of confirmation of this order." With text "...when the terms of article 3 have been met."
- Within the article 3 of the Order:
 - replace text "There shall be from the date of first publication of confirmation of this order..." with "From the date of certification by the highway authority that the proposed routes are in fit condition for public use there shall be...";
- Within the article 5 of the Order:
 - after text "...Scarth Gap,..." add text "...footpath 407047, footpath 407048...";
- Within Part 1 of the Schedule:
 - after text "...point F (NY 1978..." replace text "...1317..." with text "...1298...";
- Within Part 2 of the Schedule:
 - after text "...point F (NY 1978..." replace text "...1317..." with text "...1298...";
- Within Part 3 of the Schedule:
 - replace text "Wooden step-stile to LDNP Structures Standards 2011 at NY 2048 1240" with text "None".

Order L

322. The Order is confirmed subject to the following modifications:

- Within the article 1 of the Order:
 - replace text “...on the date of first publication of confirmation of this order.” With text “...when the terms of article 3 have been met.”
- Within the article 3 of the Order:
 - replace text “There shall be from the date of first publication of confirmation of this order...” with “From the date of certification by the highway authority that the proposed routes are in fit condition for public use there shall be...”;
- Within Part 1 of the Schedule:
 - after text “...point Q (NY...” replace text “...217...” with text “...2117...”;
- Within Part 2 of the Schedule:
 - after text “...point S (NY 2154 1281)...” replace text “...southeastwards and eastwards...” with text “...south-westwards and westwards...”;
 - in relation to the route I – Z – P, after text “Footpath...” replace text “...220037...” with text “...220059...”;
- Within Part 3 of the Schedule:
 - replace text “None” with text “...Box style kissing gate at NY 2048 1240 to LDNP Structures Standards 2011”;
- Within Part 4 of the Schedule in relation to FP407037, Limitations & conditions:
 - replace text “Wooden step-stile...” with text “Box style kissing gate to LDNP Structures Standards 2011...”;
 - delete all text referring to the modification of the definitive statement for ‘FP220059’.

Order L1

323. The Order is confirmed subject to the following modifications:

- In the title to the Order:
 - after text “FIX THE FELLS FOOTPATH...” replace text “...407037...” with text “...407064...”;
- Within Part 2 of the Schedule:
 - replace text “Wooden step-stile...” with text “...Box style kissing gate...”;
- Within Part 3 of the Schedule in relation to FP407064, Limitations & conditions:
 - replace text “Wooden step-stile...” with text “Box style kissing gate to LDNP Structures Standards 2011...”.

Heidi Cruickshank
Inspector

APPEARANCES

For the Order Making Authority:

Mr N Thorne

Mr R Fox Lake District National Park Authority Ranger

Mr G Wilson Fix the Fells Realignment Project Officer

In Objection:

Mr D McConnell Statutory party

Mr R McConnell Interested party

HEARING DOCUMENTS

- 1 The Orders
- 2 Lake District National Park Structures Standards Approved 2011
- 3 Aerial photographs and mapping
- 4 Matters relating to Order J, including map of proposed modified route
- 5 Caselaw
- 6 Application for costs and Response to application, Lake District National Park Authority
- 7 Application for costs and Response to application, Mr McConnell