
STATUTORY INSTRUMENTS

1983 No. 1895

The Access to the Countryside (Northern Ireland) Order 1983

PART II

PUBLIC RIGHTS OF WAY AND PUBLIC PATHS, ETC.

Public paths

Creation by agreement

11.—(1) A district council may enter into an agreement (a “public path creation agreement”) with any person having the necessary power in that behalf for the creation by that person of a public path.

(2) A public path creation agreement shall be on such terms as to payment or otherwise as may be specified in the agreement and may, if it is so agreed, provide for the creation of the public path subject to conditions or limitations affecting the public right of way over it.

Compulsory powers for creation

12.—(1) Where—

- (a) it appears to a district council that there is need for a public path; and
- (b) the district council is satisfied that, having regard—
 - (i) to the extent to which the path would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons residing in the district, and
 - (ii) to the effect which the creation of the path would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in Article 17,

it is expedient that the path should be created; and

- (c) it appears to the district council impracticable to create the path by means of a public path creation agreement,

the district council may by order (a “public path creation”) made by the council and submitted to and confirmed by the Department, or confirmed by the council as an unopposed order, create a public path.

(2) A right of way created by a public path creation order may be either unconditional or subject to such conditions or limitations as may be specified in the order.

(3) A public path creation order shall be in such form as may be prescribed.

(4) Schedule 1 shall apply to a public path creation order.

Making up and maintenance

13. On the creation of a public path in pursuance of a public path creation agreement, or on the coming into operation of a public path creation order or public path diversion order, the district council shall carry out such work as appears to the council to be necessary to bring the path into a fit state for use by the public in conformity with the terms and conditions or limitations of the agreement or order, and shall maintain the path in that state.

Closure

14.—(1) Where it appears to a district council that it is expedient that a public path should be closed on the ground that the path is not needed for public use, the district council may by order (a “public path extinguishment order”) made by the district council and submitted to and confirmed by the Department, or confirmed by the district council as an unopposed order, extinguish the right of way over the path.

(2) The Department shall not confirm a public path extinguishment order, and a district council shall not confirm such an order as an unopposed order, unless the Department or the district council, as the case may be, is satisfied that it is expedient to do so, having regard—

- (a) to the extent to which the path would, apart from the order, be likely to be used by the public, and
- (b) to the effect which the extinguishment of the right of way would have as respects land served by the path,

account being taken of the provisions as to compensation contained in Article 17.

(3) A public path extinguishment order shall be in such form as may be prescribed.

(4) Schedule 1 shall apply to a public path extinguishment order.

(5) Proceedings preliminary to the confirmation of the public path extinguishment order may be taken concurrently with proceedings preliminary to the confirmation of a public path creation order or of a public path diversion order, but, in considering—

- (a) under paragraph (1) whether the path to which the public path extinguishment order relates is needed for public use, or
- (b) under paragraph (2) to what extent that path would, apart from the order, be likely to be used by the public,

the district council or the Department, as the case may be, may have regard to the extent to which the public path creation order or the public path diversion order would provide an alternative path.

(6) For the purposes of paragraphs (1) and (2), any temporary circumstances preventing or diminishing the use of a path by the public shall be disregarded.

Diversion

15.—(1) Where it appears to a district council as respects a public path, that, in the interests of the owner, lessee or occupier of land crossed by the path or otherwise, it is expedient that the line of the path, or part of that line, should be diverted (whether on to land of the same or on to land of another person) the district council may by order (a “public path diversion order”) made by the district council and submitted to and confirmed by the Department, or confirmed by the district council as an unopposed order,—

- (a) create, as from such date as may be specified in the order, any such new public path as appears to the district council to be requisite for effecting the diversion, and

- (b) extinguish, as from such date as may be so specified in accordance with paragraph (2), the right of way over so much of the path as appears to the district council to be requisite for effecting the diversion.

(2) Where it appears to the district council that work requires to be done to provide necessary facilities for the convenient use of any such new public path as is mentioned in paragraph (1) (a), the date specified under paragraph (1) (b) may be later than the date specified under paragraph (1) (a) in order to enable the district council to carry out that work.

(3) 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 conditions or limitations of any description) be subject to such conditions or limitations as may be specified in the order.

(4) Before determining to make a public path diversion order on the representation of an owner, lessee or occupier, the district council may require him to enter into an agreement with the district council to defray, or to make such contribution as may be specified in the agreement towards,—

- (a) any compensation which may become payable under Article 17; or
- (b) any expenses which the district council may incur in bringing the new site of the path into a fit condition for use by the public.

(5) The Department shall not confirm a public path diversion order, and a district council shall not confirm such an order as an unopposed order, unless the Department or the district council, as the case may be, is satisfied that the diversion to be effected by it is expedient as mentioned in paragraph (1), and further that the path will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—

- (a) the diversion would have on public enjoyment of the path as a whole or of any other public path,
- (b) the coming into operation of the order would have as respects other land served by the existing right of way, and
- (c) any new 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 that land,

so, however, that for the purposes of sub-paragraphs (b) and (c), the Department or, as the case may be, the district council, shall take into account the provisions as to compensation of Article 17.

- (6) A public path diversion order shall be in such form as may be prescribed.
- (7) Schedule 1 shall apply to a public path diversion order.

Closure or diversion by Department

16.—(1) The Department may make a public path extinguishment order or a public path diversion order where the Department is satisfied that it is necessary to do so to enable development to be carried out in accordance with planning permission or to be carried out by a government department.

(2) Articles 14 (3) to (5) and 15 (2) to (4), (6) and (7) apply respectively in relation to public path extinguishment orders and public path diversion orders under this Article; Article 15 (4) shall also apply (with the omission of sub-paragraph (b)) in relation to public path extinguishment orders under this Article; and for the purposes of this Article references in Article 15 (2) and (4) to the district council include references to the Department.

Compensation

17.—(1) Subject to paragraph (3), if on a claim made in writing in accordance with paragraph (2), it is shown that, in consequence of the coming into operation of a public path creation order, a public path diversion order or a public path extinguishment order,—

(a) the value of an interest of any person in land is depreciated, or
(b) any person has suffered damage by being disturbed in his enjoyment of land,
the district council or, if the order is made by the Department, the Department shall pay that person compensation equal to the amount of the depreciation or damage.

(2) A claim for compensation under paragraph (1) shall—

- (a) state the amount of compensation claimed;
- (b) be served on the district council or, as the case may be, the Department within six months after the date when the relevant order comes into operation;
- (c) be accompanied by particulars of the interest in land in respect of which the claim is made, being particulars sufficient to identify approximately the boundaries of the land, and of the nature of the claimant's title thereto.

(3) Nothing in this Article confers on any person, in respect of a right of way created by a public path creation order or a public path diversion order, a right to compensation for depreciation of the value of an interest in land, or for disturbance in his enjoyment of land, not being in either case land over which the right of way was created or land held therewith, unless the creation of the right of way would have been actionable at his suit if it had been effected otherwise than in the exercise of statutory powers.

Supplementary provisions as to creation, closure and diversion

18.—(1) Before making a public path creation agreement, a public path creation order, a public path extinguishment order or a public path diversion order, the district council shall consult the Department and any body appearing to the district council to be representative of persons likely to be affected by the agreement or order.

(2) The district council shall have the like power under Articles 11 and 12 to enter into a public path creation agreement or to make a public path creation order for the purpose of securing the widening of an existing public right of way as it has for the purpose of securing the creation of a public path, and references in those Articles to the creation of a public path shall be construed accordingly.

(3) Articles 14 to 16 and 19 shall apply in relation to all public rights of way whether created before or after the commencement of this Order as they apply to public paths.

(4) Articles 14 to 16 and 19 shall not prejudice any power conferred by any other statutory provision to close or divert a road and shall not otherwise affect the operation of any statutory provision relating to the extinguishment, suspension, diversion or variation of rights of way.

(5) A public path creation order, a public path extinguishment order or a public path diversion order affecting in any way the district of more than one district council may contain provisions requiring one of the councils to defray, or contribute towards, expenses incurred in consequence of the order by another district council.

(6) A public path diversion order diverting part of the line of a path from the district of one district council to another may provide that the first district council shall continue to be responsible for the maintenance of that part of the path after the diversion.

(7) A district council and the Department shall not make or confirm a public path creation order, a public path extinguishment order or a public path diversion order relating to a right of way over land under, in, upon, over, along or across which there is any apparatus belonging to or used by any statutory undertakers have consented to the making or confirmation of the order, as the case may be; and any such consent may be given subject to the condition that there are included in the order such provisions for the protection of the statutory undertakers as they may reasonably require.

(8) The consent of statutory undertakers required by paragraph (7) shall not be unreasonably withheld, and any question arising under that paragraph—

- (a) whether the withholding of a consent is unreasonable, or
- (b) whether any requirement is reasonable,

shall be determined by arbitration.

(9) Where in pursuance of a public path extinguishment order or a public path diversion order a public path is closed or diverted and, immediately before that order comes into force, there is under, in, upon, over, along or across the path any telegraphic line belonging to or used by British Telecommunications, British Telecommunications shall have the same powers in respect of that land as if the order had not come into force; but if any person entitled to land over which the path subsisted requires that the telegraphic line shall be altered, paragraphs (1) to (8) of section 7 of the Telegraph Act 1878 shall apply to the alteration, and accordingly shall have effect, subject to any necessary modifications, as if references in those paragraphs to undertakers included references to the person so requiring the line to be altered.

Temporary closure or diversion

19.—(1) If, on the application of the occupier of land over which there is a public path or any other person, the district council is satisfied that it is expedient in the interests of good farming or forestry or otherwise temporarily to close or divert the path, the district council may order the closure or diversion of the path for such period, not exceeding three months, as may be specified in the order.

(2) In deciding whether to make an order under paragraph (1) the district council shall take into account the interests of users of the path.

(3) Before refusing to make an order under paragraph (1) the district council shall consult the Department.

(4) On the making of an order under paragraph (1) the district council shall forthwith cause a copy of the order to be placed in a prominent position at the ends of the path close or diverted and maintained there throughout the period of closure or diversion.

(5) An order under paragraph (1) diverting a public path shall not be made unless written consent to the making of the order has been given by the occupier of the land on to which the path is diverted and by any person whose consent is needed to obtain access to the land.

(6) An order under paragraph (1) diverting a public path may, if the applicant is the occupier of land over which the public path passes, require as a condition of the taking effect of the order the provision of any necessary facilities for the convenient use of the diversion and the district council may enter into an agreement with the applicant for the provision of any such facilities by the district council as the expense of the applicant.

Cycling

20.—(1) Any member of the public shall have, as a right of way, the right to ride a pedal cycle on any public path, but in exercising that right cyclists shall give way to pedestrians and persons on horseback.

(2) Paragraph (1) has effect subject to any orders made by a district council and to any bye-laws.

(3) Paragraph (1) shall not create any obligation to do anything to facilitate the use of the public path by cyclists.

Changes to legislation:

There are currently no known outstanding effects for the The Access to the Countryside (Northern Ireland) Order 1983, Cross Heading: Public paths.