



New Forest Act 1964

1964 CHAPTER 83

3 Fencing, etc.

- (1) In this section “the hatched areas” means the lands shown hatched black on the deposited plans and described in the deposited book of reference.
- (2) Notwithstanding anything in any other enactment or any right of the commoners, the verderers may on a presentment and with the consent of the [^{F1}Secretary of State for Environment, Food and Rural Affairs] (hereinafter referred to as “the Minister”) erect a fence or fences along or adjacent to the perambulation of the New Forest as altered by this Act for the purpose of containing animals within the perambulation of the New Forest as so altered and regulating access by animals thereto:

Provided that:—

- (a) the powers conferred upon the verderers by this subsection shall only be exercisable on land forming part of the open waste lands of the Forest or on land within the hatched areas;
 - (b) the verderers shall exercise their powers under this subsection with due regard to the interests of amenity;
 - (c) the verderers shall not exercise their powers under this subsection within the prescribed distance from the centre line of any highway which consists of or comprises a made-up carriageway as defined by [^{F2}the Highways Act 1980] without the consent of the highway authority and otherwise than in accordance with such conditions as they may impose.
 - (d) in exercising their powers under this subsection the verderers shall provide to the satisfaction of the Minister sufficient gates to permit reasonable access by animals to land within the perambulation of the New Forest as so altered and sufficient gates or stiles to permit reasonable public access thereto on foot.
- (3) The verderers may with the consent of the Minister enter into such agreement with a highway authority as may be requisite for the purpose of securing the provision, alteration, improvement and maintenance of cattle-grids by that authority under the powers conferred by Part V of [^{F2}the Highways Act 1980].
 - (4) Notwithstanding anything in any other enactment or any right of the commoners, the verderers may with the consent of the Minister erect drift fencing at such places within

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the open waste lands of the Forest and at such other places within the hatched areas as they consider expedient for reducing danger to animals from vehicular traffic and danger to such traffic from animals:

Provided that:—

- (a) the verderers shall exercise their powers under this subsection with due regard to the interests of amenity;
 - (b) the verderers shall not erect drift fencing within the prescribed distance from the centre line of any highway which consists of or comprises a made-up carriageway as defined by [^{F2}the Highways Act 1980] without the consent of the highway authority and otherwise than in accordance with such conditions as they may impose.
- (5) For the purposes of subsections (2) and (4) of this section the prescribed distance shall be [^{F3}10.70 metres] in the case of a trunk road and [^{F3}7.60 metres] in the case of any other highway.

- (6) Notwithstanding anything in any other enactment or any right of the commoners, where the verderers are satisfied that there is within the perambulation of the New Forest as altered by this Act an unfenced or inadequately fenced source of danger to persons or animals they may with the consent of the Minister erect such fencing as will obviate the danger:

Provided that nothing in this subsection shall prejudice or derogate from the powers of a local authority [^{F4}or highway authority] under [^{F5}section 165 of the Highways Act 1980].

- (7) (a) In any case in which, under the powers conferred on them by the foregoing subsection, the verderers propose to erect fencing on or adjacent to any land they shall, before applying to the Minister for his consent, serve notice on the owner and occupier of such land (unless, in either case, his identity cannot after reasonable enquiry be ascertained) specifying their proposals and the period, which shall not be less than twenty-eight days, within which notice of objection to the proposals may be sent in writing to the verderers, and including notice of the right of appeal under paragraph (b) of this subsection.
- (b) (i) A person on whom notice is served under the foregoing paragraph may, within twenty-eight days after receiving the notice thereof, appeal to the Minister against the proposals to which the notice relates.
- (ii) An appeal under this paragraph shall be made by notice in writing to the Minister, which shall indicate the grounds of the objection; and on any such appeal the Minister shall, if either the appellant or the verderers so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.
- (8) The highway authority shall not unreasonably withhold their consent under the provisions of subsections (2) and (4) of this section and if any dispute arises as to whether their consent has been unreasonably withheld or as to the reasonableness of any conditions they have imposed the matter shall be referred to arbitration in the manner provided by section 17(8) of the Act of 1949.

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- (9) Nothing in this section shall affect the powers and duties of any drainage authority as defined by the ^{M1}Land Drainage Act 1930 or the operation of any byelaw made by any such authority.

Textual Amendments

- F1** Words in s. 3(2) substituted (27.3.2002) by S.I. 2002/794, art. 5(1), **Sch. 1 para. 11** (with arts. 5(3), 6)
- F2** Words substituted by **Highways Act 1980** (c. 66, SIF 59), **Sch. 24 para. 13(a)**
- F3** “10.70 metres” and “7.60 metres” substituted for “thirty-five feet” and “twenty-five feet” respectively by S.I. 1979/836, **Sch. para. 6**
- F4** Words inserted by **Highways Act 1971** (c. 41), s. **34(2)**
- F5** Words substituted by **Highways Act 1980** (c. 66, SIF 59), **Sch. 24 para. 13(b)**
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Marginal Citations

- M1** 1930 c. 44.

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