



Countryside (Scotland) Act 1967

1967 CHAPTER 86

PART III

PUBLIC PATHS AND LONG-DISTANCE ROUTES

Creation of public paths

30 Creation of public paths by agreement

- (1) A local planning authority shall have power to enter into an agreement with any person having the necessary power in that behalf for the creation by that person of a public path over land in their area.
- (2) An agreement made under the foregoing subsection (in this Act referred to as 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 limitations or conditions affecting any public right of way thereover.
- (3) In this Part of this Act " public path " means a way which is a footpath or bridleway or a combination of those.

31 Compulsory powers for creation of public paths

- (1) Where it appears to a local planning authority that there is need for a public path over land in their area and they are satisfied that, having regard to—
 - (a) 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 resident in the area, and
 - (b) 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 section 37 below,

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it is expedient that the path should be created, the authority, if it appears to them impracticable to create the path by means of a public path creation agreement, may by order (in this Act referred to as a " public path creation order ") made by them and submitted to and confirmed by the Secretary of State create a public path.

- (2) A right of way created by a public path creation order may be either unconditional or subject to such limitations or conditions as may be specified in the order, and the Secretary of State may confirm such an order subject to such modifications or conditions as he thinks fit.
- (3) A public path creation order shall be in such form as may be prescribed and shall contain a map, on such scale as may be prescribed, defining the land over which a public path is thereby created.
- (4) The provisions in that behalf of Schedule 3 to this Act shall apply to the making, confirmation, validity and date of operation of public path creation orders.

32 Exercise of powers under ss. 30 and 31

- (1) Before exercising any of the powers conferred by the two last foregoing sections, a local planning authority shall consult with the Commission where the proposed exercise relates to an area of special planning control.
- (2) Where a proposed public path lies partly within and partly outside the area of a local planning authority, the powers conferred by the two last foregoing sections on the authority shall extend to the whole of the path as if it lay wholly within their area:

Provided that, in relation to so much of the path as lies outside the area of the authority, the said powers shall not be exercisable as respects any part thereof in the area of any other local planning authority, except with the consent of that authority.

- (3) Where it appears to the Secretary of State in any particular case that there is need for a public path as mentioned in section 31(1) above, and he is satisfied as mentioned in that subsection, the Secretary of State after consultation with every local planning authority in whose area the proposed public path will lie and with the Commission where any part of the proposed public path will lie within an area of special planning control, may direct any such authority to make and submit to him a public path creation order creating the public path or may himself make the order, and in relation to any order made in accordance with the provisions of this subsection, the proviso to the last preceding subsection shall not apply.

33 Making up and maintenance of public paths

- (1) 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 local planning authority shall carry out such work as appears to them to be necessary to bring it into a fit condition for use by the public as a public path in conformity with the terms and conditions of the said agreement or order, as the case may be, and shall maintain it in such condition.
- (2) If the Secretary of State is not satisfied that the local planning authority have carried out such work as is necessary to bring a public path referred to in subsection (1) above into a fit condition for use by the public as a public path or to maintain it in that condition, he may certify what work appears to him to be necessary for this purpose.

- (3) If the local planning authority are not satisfied with a certificate made under subsection (2) above, the Secretary of State shall either cause a local inquiry to be held or shall give to the local planning authority an opportunity of being heard by a person appointed by him for the purpose, and, after considering the report of the person appointed to hold the inquiry or the person appointed as aforesaid, shall make such order either confirming or varying the certificate as he may think fit.
- (4) Subject to the provisions of subsection (3) above, it shall be the duty of the local planning authority to carry out the work specified in a certificate made under subsection (2) above.

34 Closure of public paths

- (1) Where it appears to a local planning authority as respects a public path in their area that it is expedient that the path should be closed on the ground that the path is not needed for public use, the authority may by order (in this Act referred to as a " public path extinguishment order ") made by them and submitted to and confirmed by the Secretary of State extinguish the right of way over the path.
- (2) The Secretary of State shall not confirm a public path extinguishment order unless he is satisfied that it is expedient so to do having regard to the extent to which it appears to him 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, account being taken of the provisions as to compensation contained in section 37 below.
- (3) A public path extinguishment order shall be in such form as may be prescribed and shall contain a map, on such scale as may be prescribed, defining the land over which the right of way is thereby extinguished.
- (4) Schedule 3 to this Act shall have effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.
- (5) Where in accordance with regulations made under paragraph 3 of the said Schedule proceedings preliminary to the confirmation of a public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order or of a public path diversion order made under the next following section then, in considering—
 - (a) under subsection (1) above whether the path to which the public path extinguishment order relates is needed for public use, or
 - (b) under subsection (2) above to what extent that path would apart from the order be likely to be used by the public,the local planning authority or the Secretary of State, 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 subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path by the public shall be disregarded.

35 Diversion of public paths

- (1) Where an owner, tenant or occupier of land crossed by a public path satisfies the local planning authority in whose area the land is situated that for securing the efficient use

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of the land or of other land held therewith or providing a shorter or more convenient path across his land, it is expedient that the line of the path across his land, or part of that line, should be diverted (whether on to other land of his or on to land of another owner, tenant or occupier), the authority may by order (in this Act referred to as a "public path diversion order ") made by them and submitted to and confirmed by the Secretary of State—

- (a) create, as from such date as may be specified in the order, any such new public path as appears to the authority requisite for effecting the diversion, and
 - (b) extinguish, as from such date as may be so specified in accordance with the provisions of the next following subsection, the right of way over so much of the path as appears to the authority requisite as aforesaid.
- (2) Where it appears to the authority that work requires to be done to provide necessary facilities for the convenient use of any such new public path as is mentioned in subsection (1)(a) above, the date specified under subsection (1)(b) above shall be later than the date specified under subsection (1)(a) above by such time as appears to the authority requisite for enabling the work to be carried out.
- (3) A right of way created by a public path diversion order may either be unconditional or may (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) be subject to such limitations or conditions as may be specified in the order, and the Secretary of State may confirm the order subject to such modifications or conditions as he thinks fit.
- (4) Before determining to make a public path diversion order on the representation of an owner, tenant or occupier, the authority may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards—
- (a) any compensation which may become payable under section 37 below;
 - (b) any expenses which any local planning authority may incur in bringing the new site of the path into a fit condition for use by the public.
- (5) The Secretary of State shall not confirm a public path diversion order unless he is satisfied that the diversion to be effected thereby is expedient as mentioned in subsection (1) above, 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,
 - (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 therewith,
- so, however, that for the purposes of paragraphs (b) and (c) of this subsection the Secretary of State shall take into account the provisions as to compensation of section 37 below.
- (6) A public path diversion order shall be in such form as may be prescribed and shall contain a map, on such scale as may be prescribed, showing the existing site of so much of the line of the path as is to be diverted by the order and the new site to which it is to be diverted, and indicating whether a new right of way is created by the order over the whole of the new site or whether some part thereof is already comprised in a public path and, in the latter case, defining the part thereof so comprised.

- (7) Schedule 3 to this Act shall have effect as to the making, confirmation, validity and date of operation of public path diversion orders.

36 Exercise of powers under ss. 34 and 35

- (1) Subject to the provisions of this section, section 32(1) and (2) above shall apply in the exercise of the powers conferred by the two last foregoing sections in relation to any public path as they apply in the exercise of the powers referred to in the said subsections.
- (2) Where it appears to the Secretary of State as respects a public path that it is expedient as mentioned in section 34(1) above that the path should be closed, or where an owner, tenant or occupier of land crossed by a public path satisfies the Secretary of State that a diversion thereof is expedient as mentioned in section 35(1) above, then if—
- (a) no local planning authority in whose area the public path lies have made or submitted to him a public path extinguishment order or a public path diversion order, as the case may be, and
 - (b) the Secretary of State is satisfied that, if such an order were made and submitted to him, he would have power to confirm the order in accordance with the provisions in that behalf of the two last foregoing sections,
- the Secretary of State, after consultation with every such authority, may direct any such authority to make and submit to him a public path extinguishment order or a public path diversion order, as the case may be, or may himself make the order and, in relation to any order made in accordance with the provisions of this subsection, the proviso to section 32(2) above shall not apply.
- (3) In relation to a public path diversion order made in accordance with the provisions of the last foregoing subsection, the Secretary of State or the authority, as the case may be, shall have the power conferred by section 35(4) above.
- (4) An authority proposing to make a public path diversion order such that the authority who will be responsible for a part of the path after the diversion will be a different body from the authority who before the diversion are so responsible shall, before making the order, consult the authority who will be responsible for that part.

37 Compensation for creation, diversion and closure of public paths

- (1) Subject to the following provisions of this section, if, on a claim made in accordance with this section, it is shown that the value of an interest of any person in land is depreciated, or that any person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of a public path creation order, a public path diversion order or a public path extinguishment order, the authority by whom the order was made shall pay to that person compensation equal to the amount of the depreciation or damage.
- (2) A claim for compensation under this section shall be made within such time and in such manner as may be prescribed and shall be made to the authority by whom the order was made.
- (3) For the purposes of the application of this section to an order made by the Secretary of State under section 32(3) or section 36(2) above, references in this section to the authority by whom the order was made shall be construed as references to the authority who, immediately before the making of the order, were, for the purposes of the said

section 32(3) or 36(2) the appropriate authority in relation to the making of an order for the creation, diversion or closure of the public path or part of a public path to which the order relates.

- (4) Nothing in this section shall confer 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 instance if it had been effected otherwise than in the exercise of statutory powers.

38 Supplementary provisions as to creation, closure and diversion of public paths

- (1) Sections 34 to 36 above shall apply in relation to all public rights of way, whether created before or after the commencement of this Act.
- (2) The provisions of sections 34 to 36 above shall not prejudice any power conferred by any other enactment to close or divert a road, and shall not otherwise affect the operation of any enactment relating to the extinguishment, suspension, diversion or variation of rights of way.
- (3) A public path creation order, a public path extinguishment order or a public path diversion order affecting in any way the area of more than one local planning authority may contain provisions requiring one of the authorities to defray, or contribute towards, expenses incurred in consequence of the order by another of the authorities; and a public path diversion order diverting a part of the line of a path from a site in the area of one local planning authority to a site in the area of another may provide that the first mentioned authority shall continue to be responsible for the maintenance of that part of the path after the diversion.
- (4) Every public path creation agreement, public path creation order, public path extinguishment order and public path diversion order shall contain a particular description of the lands affected or a description by reference of those lands in the manner provided by section 61 of the Conveyancing (Scotland) Act 1874.
- (5) As soon as may be after any such agreement as is referred to in the last foregoing subsection is made, or after any such order is confirmed, the local planning authority shall cause it to be recorded in the Register of Sasines, and when so recorded, it shall be enforceable at the instance of the local planning authority against persons deriving title to the land from the person so entitled when the agreement or order was made:

Provided that any such agreement or order shall not be so enforceable against a third party who shall have in good faith and for value acquired right (whether completed by infestment or not) to the land prior to the agreement or order being recorded as aforesaid, or against any person deriving title from such third party.

- (6) The Secretary of State 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 for the purpose of their undertaking unless the 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 undertakers as they may reasonably require.

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The consent of statutory undertakers to any such order shall not be unreasonably withheld, and any question arising under this subsection whether the withholding of a consent is unreasonable or whether any requirement is reasonable shall be determined by the appropriate Minister within the meaning of section 113(1) of the Act of 1947.

- (7) 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 the date on which the order comes into force, there was under, in, upon, over, along or across the path any telegraphic line belonging to or used by the Postmaster General, the Postmaster General shall have the same powers in respect of that line as if the order had not come into force:

Provided that 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 therein to undertakers included references to the person so requiring the line to be altered.