



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.

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.

Long-Distance Routes

39 General provisions as to long-distance routes

- (1) Where it appears to the Commission that the public should be enabled to make extensive journeys on foot, on pedal cycles or on horseback along a particular route, being a route which for the whole or the greater part of its length does not pass along roads mainly used by vehicles, the Commission may prepare and submit to the Secretary of State a report under this section.
- (2) A report under this section shall contain a map showing the route, defining those parts thereof over which there exists a public right of way, and indicating in each case the nature of that right; and the report shall set out such proposals as the Commission may think fit for the provision, maintenance and enjoyment of the route, and without prejudice to that generality—
- (a) for the maintenance or improvement of any public path or road along which the route passes ;
 - (b) for the provision and maintenance of such new public paths as may be required for enabling the public to journey along the route ;
 - (c) for the provision and operation of ferries where they are needed for completing the route ; and
 - (d) for the provision of accommodation, toilet facilities, meals and refreshments along the route.
- (3) A report under this section may also include such recommendations as the Commission may think fit for the restriction of traffic on existing roads along which the route passes.
- (4) Before submitting a report under this section the Commission shall consult with every local planning authority through whose area the route passes; and it shall be the duty of every such authority to furnish to the Commission such information as the Commission may reasonably require for the purposes of the report.
- (5) A report under this section shall contain an estimate, in such form as the Secretary of State may require, of the capital outlay and annual expenditure likely to be incurred by

any authority in carrying out any such proposals contained therein as are mentioned in subsection (2) above; the report shall also contain any representations made by any authority consulted under subsection (4) above.

40 Approval of proposals relating to a long-distance route

- (1) On the submission to the Secretary of State of a report under the last foregoing section, he shall consider any proposals contained in the report under subsection (2) of that section, any recommendations made under subsection (3) thereof and any representations referred to in subsection (5) thereof, and may either approve the proposals, with or without modifications or subject to such conditions as he thinks fit, or reject the proposals:

Provided that where the Secretary of State does not propose to approve the proposals as set out in the report he shall, before coming to a determination as to what action to take under this subsection, consult with the Commission and such other authorities and persons as he may think fit.

- (2) As soon as may be after the Secretary of State determines under the last foregoing subsection either to approve any proposals, with or without modifications or conditions, or to reject them, he shall notify his determination to the Commission and to every local planning authority whose area is traversed by the route to which the report relates.
- (3) Proposals approved by the Secretary of State under subsection (1) above, either as originally set out in the report or as modified by the Secretary of State, are hereinafter referred to as " approved proposals relating to a long-distance route ", and such proposals shall be implemented by the local planning and other authorities concerned as soon as may be after their approval as aforesaid.

41 Ferries for purposes of long-distance routes

- (1) Where approved proposals relating to a long-distance route include proposals for the provision and operation of a ferry, the authority who are responsible for the maintenance of the roads or public paths to be connected by the ferry or, where there is more than one such authority, those authorities acting jointly or any such authority as may mutually be agreed—
- (a) shall have power to provide and operate the ferry and to carry out such work and do all such things as appear to them expedient for the purpose of operating the ferry;
 - (b) may with the approval of the Secretary of State agree with any person or body of persons for the provision and operation of the ferry by him or them and for the making by the authority of such contributions as may be specified in the agreement:

Provided that nothing in this subsection shall—

- (i) be construed as conferring on such an authority any exclusive right to operate a ferry;
- (ii) authorise the doing of anything which apart from this subsection would be actionable by any person by virtue of his having an exclusive right to operate a ferry, unless he consents to the doing thereof;
- (iii) authorise the doing of anything in relation to land in which any other person has an interest, if apart from this subsection the doing thereof would be

actionable at his instance by virtue of that interest and he does not consent to the doing thereof ;

and before carrying out any work in the exercise of powers conferred by this subsection, being work on the bank or bed of any waterway, the authority shall consult with every authority which under any enactment has functions relating to the waterway.

- (2) An authority may acquire land compulsorily for the purpose of any of their functions under paragraph (a) of the foregoing subsection.

42 Variation of approved proposals

- (1) Where proposals relating to a long-distance route have been approved by the Secretary of State under section 40 above, the Commission may from time to time prepare and submit to the Secretary of State a report proposing any such variation of the approved proposals as the Commission may think fit.
- (2) Where, as respects any proposals approved as aforesaid, it appears to the Secretary of State, after consultation with the Commission, expedient that the proposals should be varied in any respect and the Commission have not submitted to the Secretary of State a report proposing that variation, the Secretary of State may direct that the proposals shall be so varied.
- (3) Where an authority have found it impracticable to implement any part of any proposals approved as aforesaid, they shall so inform the Commission and shall submit to the Commission a report proposing such variations of the approved proposals as they may think fit.
- (4) Sections 39(4) and 40 above shall with the necessary modifications apply to a report or direction under this section; and section 39(5) above shall with the necessary modifications apply to any such report.
- (5) Where the Secretary of State approves, with or without modifications, any proposals contained in a report under subsection (1) above, or gives a direction under subsection (2) above, the proposals for the variation of which the report was made or direction given shall thereafter have effect subject to the provisions of the report or direction; and references in this Act to approved proposals relating to a long-distance route shall be construed accordingly.

Miscellaneous Provisions relating to Rights of Way

43 Ploughing of public rights of way

- (1) Where a public right of way crosses agricultural land or land which is being brought into use for agriculture, then, if—
- (a) it is proposed in accordance with the rules of good husbandry to plough the land, and
 - (b) it is convenient, in so ploughing the land, to plough the way together with the rest of the land,
- the right of way shall be subject to the condition that the occupier shall have the right, subject to the following provisions of this section, to plough the way as well as the rest of the land:

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Provided that, where the way is subject to a public path creation agreement, a public path creation order, or a public path diversion order, the agreement or order may exclude the right to plough the way or any part of it and may impose restrictions or conditions on the exercise of that right.

- (2) Within seven days after ploughing a public right of way in the exercise of the right conferred by the foregoing subsection the occupier shall give to the authority responsible under section 46(1) below for the protection of the right of way notice of that fact.
- (3) Where a public right of way is ploughed in the exercise of the said right the occupier of the land shall as soon as may be after the ploughing is completed reinstate the surface of the way.
- (4) A person who fails to comply with the foregoing provisions of this section shall be guilty of an offence and shall be liable on summary conviction—
 - (a) in the case of a failure to comply with the provisions of an agreement or order as mentioned in the proviso to subsection (1) above, to a fine not exceeding £50;
 - (b) in the case of a failure to comply with the provisions of subsection (2) above to a fine not exceeding £10 ;
 - (c) in the case of a failure to comply with the provisions of subsection (3) above, to a fine not exceeding £50;

and where a person is convicted of the offence of failing to comply with the provisions of subsection (3) above and the offence in respect of which he was convicted is continued after the conviction he shall be guilty of a further offence and shall be liable on summary conviction to a fine not exceeding twenty shillings for each day on which the offence is so continued.

- (5) If an occupier ploughs a public right of way and fails to reinstate the surface of the way, the local planning authority, after giving to the occupier not less than 14 days' notice of their intention, may take all necessary steps for carrying out the work, and may recover from the occupier the amount of any expenses reasonably incurred by them in relation thereto.
- (6) Nothing in the provisions of this section shall prejudice any limitation or condition having effect apart from those provisions.

44 Pasturing of bulls

- (1) No person shall, being the occupier of any field or enclosure through which there is a public right of way, permit any bull to be at large in such field or enclosure:

Provided that this section shall not apply to any bull which—

- (a) does not exceed the age of 10 months ; or
 - (b) is not of a recognised dairy breed and is at large in any field or enclosure in which cows or heifers are also at large.
- (2) A person who fails to comply with the foregoing subsection shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

45 Power to authorise erection of stiles, etc., on public rights of way

- (1) Where the owner, tenant or occupier of land which is used or being brought into use for agriculture or forestry represents to the authority responsible under section 46(1) below for the protection of a public right of way which crosses the land that, for securing that the use, or any particular use, of the land for agriculture or forestry shall be efficiently carried on, it is expedient that stiles, gates or other works for preventing the ingress or egress of animals should be erected on the way, the authority may, subject to such conditions as they may impose for maintenance and for enabling the right of way to be exercised without undue inconvenience to the public, authorise the erection of the stiles, gates or other works.
- (2) If, on a representation duly made under the foregoing subsection, the authority refuse to grant an authorisation thereunder, or grant such an authorisation subject to conditions, the person who made the representation may appeal to the Secretary of State against the refusal or against the imposition of the conditions, as the case may be; and if the Secretary of State, after giving to the appellant and to the authority an opportunity of being heard by a person appointed by him for the purpose and considering the report of that person, determines to allow the appeal, he shall—
 - (a) if the appeal was against a refusal, authorise the erection of the stiles, gates or other works in question, subject to such conditions as he may impose for maintenance and for enabling the right of way to be exercised without undue inconvenience to the public ;
 - (b) if the appeal was against the imposition of conditions, direct that the authorisation granted by the authority shall, as may be specified in the direction, have effect either unconditionally or subject to such modified conditions as may be so specified.
- (3) Where an authorisation is granted by an authority under subsection (1) above or by the Secretary of State under the last foregoing subsection, the right of way shall be deemed to be subject to a condition that the stiles, gates or works may be erected and maintained in accordance with the authorisation and so long as the conditions attached thereto are complied with.
- (4) Nothing in the provisions of this section shall prejudice any limitation or condition having effect apart from those provisions.

46 Protection and maintenance of rights of way

- (1) It shall be the duty of a local planning authority to assert, protect and keep open and free from obstruction or encroachment any public right of way which is wholly or partly within their area, and they may for these purposes institute and defend legal proceedings and generally take such steps as they may deem expedient.
- (2) Any local authority or local planning authority may repair and maintain any public right of way (not being a road or a footpath at the side of a road) within their area, but this power shall not relieve any other authority or person from any liability with respect to such repair or maintenance.
- (3) Any person may with the consent of the local planning authority erect and maintain guide posts and direction notices on any public right of way other than a road.
- (4) Section 42 of the Local Government (Scotland) Act 1894 is hereby repealed.

47 Interpretation of Part III

In this Part of this Act, unless the context otherwise requires—

"bridleway " means a way over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along that way;

"footpath " means a way over which the public have the following, but no other, rights of way, that is to say, a right of way on foot with or without a right of way on pedal cycles;

"horse " includes pony, ass and mule, and "horseback " shall be construed accordingly ;

"public path " has the meaning assigned to it in section 30 of this Act