



Countryside (Scotland) Act 1967

1967 CHAPTER 86

PART III

PUBLIC PATHS AND LONG-DISTANCE ROUTES

Creation of public paths

[^{F1}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 [^{F2}one general or district 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 [^{F3}such] 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 ^{M1}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

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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 ^{F4}title has been completed] 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 reasonably 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 ^{F5}Scottish Ministers].

- (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 ^{F6}any ^{F7}electronic communications apparatus] kept installed for the purposes of ^{F8}an electronic communications code network], the operator of ^{F9}that network] shall have the same powers in respect of the ^{F7}electronic communications apparatus] as if the order had not come into force; but any person entitled to land over which the path subsisted shall be entitled to require the alteration of the apparatus].
- ^{F10}(8) Paragraph 1(2) of ^{F11}the electronic communications code] (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this section as it applies for the purposes of that code.
- (9) Paragraph 21 of ^{F11}the electronic communications code] (restriction on removal of apparatus) shall apply in relation to any entitlement conferred by this section to require the alteration, moving or replacement of any ^{F7}electronic communications apparatus] as it applies in relation to an entitlement to require the removal of any such apparatus.]]

Textual Amendments

- F1** S. 38 repealed (9.2.2005) by [Land Reform \(Scotland\) Act 2003 \(asp 2\)](#), s. 100(3), [Sch. 2 para. 4\(b\)](#) (with s. 100(2) and subject to savings in Sch. 2 para. 7); S.S.I. 2005/17, art. 2(b)
- F2** Words substituted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), s. 9, [Sch. 1 Pt. I, Pt. II para. 16\(a\)](#)
- F3** Word inserted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), s. 9, [Sch. 1 Pt. I, Pt. II para. 16\(b\)](#)
- F4** Words in s. 38(5) substituted (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), [Sch. 12 para. 28\(5\)](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F5** Words in s. 38(6) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, [Sch. 2 Pt. 1 para. 44](#); S.I. 1998/3178, [art. 3](#)
- F6** Word substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), [Sch. 4 para. 46\(2\)\(3\)](#)
- F7** Words in s. 38(7)(8)(9) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), [Sch. 1 para. 5\(3\)\(a\)](#)

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- F8** Words in s. 38(7)(8)(9) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 5(3)(c)**
- F9** Words in s. 38(7)(8)(9) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 5(3)(d)**
- F10** S. 38(8)(9) inserted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), **Sch. 4 para. 46(2)**
- F11** Words in s. 38(7)(8)(9) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 5(3)(b)**

Modifications etc. (not altering text)

- C1** S. 38 extended by [Gas Act 1986 \(c. 44, SIF 44:2\)](#), s. 67(1)(3), Sch. 7 para. 2(1)(xx), **Sch. 8 para. 33**
- C2** S. 38 extended by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1)(3), Sch. 16 para. 1(1)(xix), Sch. 17 paras. 33, **35(1)**
- C3** S. 38 extended (1.3.1996) by [1995 c. 45](#), s. 16(1), **Sch. 4 para. 2(1)(xv)**; [S.I. 1996/218](#), **art. 2**

Marginal Citations

- M1** [1874 c. 94](#).

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