



Highways Act 1980

1980 CHAPTER 66

PART III

CREATION OF HIGHWAYS

24 Construction of new highways and provision of road-ferries

- (1) The Minister may, with the approval of the Treasury, construct new highways; but where he proposes to construct a new highway other than—
- (a) a trunk road,
 - (b) a special road,
 - (c) a highway the construction of which is authorised by an order relating to a trunk road under section 14 above or an order under section 18 above, or
 - (d) a highway to be constructed for purposes connected with any function exercisable by him under an agreement made under section 4 above,

he shall give notice of his proposals to, and consider any representations by, every council through whose area the highway will pass.

- (2) A local highway authority may construct new highways; but—
- (a) where a new highway to be constructed by such an authority will communicate with a highway for which the Minister is the highway authority; or
 - (b) where a new highway to be constructed by a London borough council or the Common Council will communicate with a metropolitan road,

the communication shall not be made unless the manner in which it is to be made has been approved by the Minister (in a case falling within paragraph (a) above) or the Greater London Council (in a case falling within paragraph (b) above), as the case may be.

- (3) The power of the Greater London Council to construct new highways under subsection (2) above shall be exercisable by them for the purpose of constructing a new highway communicating with a metropolitan road notwithstanding that the new highway will not itself be such a road; but before exercising that power that Council shall give notice of their proposals for the construction of the new highway to, and

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consider any representations by, the council who will be the highway authority for the new highway.

- (4) The Minister or a local highway authority may provide and maintain new road-ferries.

25 Creation of footpath or bridleway by agreement

- (1) A local authority may enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a footpath or bridleway over land in their area.

An agreement under this section is referred to in this Act as a " public path creation agreement".

- (2) For the purposes of this section " local authority "—
- (a) in relation to land outside Greater London means a county council, a district council or a joint planning board within the meaning of the Town and Country Planning Act 1971, being a board for an area which comprises any part of a National Park; and
 - (b) in relation to land in Greater London means the Greater London Council, a London borough council or the Common Council.
- (3) Before entering into an agreement under this section a local authority shall consult any other local authority or authorities in whose area the land concerned is situated.
- (4) An agreement under this section 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 dedication of the footpath or bridleway subject to limitations or conditions affecting the public right of way over it.
- (5) Where a public path creation agreement has been made it shall be the duty of the local authority who are a party to it to take all necessary steps for securing that the footpath or bridleway is dedicated in accordance with it

26 Compulsory powers for creation of footpaths and bridleways

- (1) Where it appears to a local authority that there is need for a footpath or bridleway over land in their area and they are satisfied that, having regard to—
- (a) the extent to which the path or way 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 or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 28 below,

it is expedient that the path or way should be created, the authority may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order, create a footpath or bridleway over the land.

An order under this section is referred to in this Act as a " public path creation order "; and for the purposes of this section " local authority " has the same meaning as in section 25 above.

- (2) Where it appears to the Secretary of State in a particular case that there is need for a footpath or bridleway as mentioned in subsection (1) above, and he is satisfied as

mentioned in that subsection, he may, after consultation with each body which is a local authority for the purposes of this section in relation to the land concerned, make a public path creation order creating the footpath or bridleway.

- (3) A local authority shall, before exercising any power under this section, consult any other local authority or authorities in whose area the land concerned is situated.
- (4) 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.
- (5) A public path creation order shall be in such form as may be prescribed by regulations made by the Secretary of State, and shall contain a map, on such scale as may be so prescribed, defining the land over which a footpath or bridleway is thereby created.
- (6) Schedule 6 to this Act shall have effect as to the making, confirmation, validity and date of operation of public path creation orders.

27 Making up of new footpaths and bridleways

- (1) On the dedication of a footpath or bridleway in pursuance of a public path creation agreement, or on the coming into operation of a public path creation order, being—
 - (a) an agreement or order made by a local authority who are not the highway authority for the path in question, or
 - (b) an order made by the Secretary of State under section 26(2) above in relation to which he directs that this subsection shall apply,the highway authority shall survey the path or way and shall certify what work (if any) appears to them to be necessary to bring it into a fit condition for use by the public as a footpath or bridleway, as the case may be, and shall serve a copy of the certificate on the local authority mentioned in paragraph (a) above or, where paragraph (b) applies, on such local authority as the Secretary of State may direct.
- (2) It shall be the duty of the highway authority to carry out any works specified in a certificate under subsection (1) above, and where the authority have carried out the work they may recover from the authority on whom a copy of the certificate was served any expenses reasonably incurred by them in carrying out that work, including any expenses so incurred in the discharge of any liability for compensation in respect of the carrying out thereof.
- (3) Notwithstanding anything in the preceding provisions of this section, where an agreement or order is made as mentioned in subsection (1)(a) above, the local authority making the agreement or order may—
 - (a) with the consent of the highway authority carry out (in place of the highway authority) the duties imposed by that subsection on the highway authority; and
 - (b) carry out any works which, apart from this subsection, it would be the duty of the highway authority to carry out under subsection (2) above.
- (4) Where the Secretary of State makes a public path creation order under section 26(2) above, he may direct that subsection (5) below shall apply.
- (5) Where the Secretary of State gives such a direction—
 - (a) the local authority who, on the coming into force of the order, became the highway authority for the path or way in question shall survey the path or way and shall certify what work (if any) appears to them to be necessary to bring it

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into a fit condition for use by the public as a footpath or bridleway, as the case may be, and shall furnish the Secretary of State with a copy of the certificate;

- (b) if the Secretary of State is not satisfied with a certificate made under the foregoing paragraph, he shall either cause a local inquiry to be held or shall give to the local 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 so appointed as aforesaid, shall make such order either confirming or varying the certificate as he may think fit; and
 - (c) subject to the provisions of the last foregoing paragraphs, it shall be the duty of the highway authority to carry out the work specified in a certificate made by them under paragraph (a) above.
- (6) In this section " local authority" means any council or any such joint planning board as is mentioned in section 25(2)(a) above.

28 Compensation for loss caused by public path creation order

- (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 a person in land is depreciated, or that a 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, 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 by regulations made by the Secretary of State, 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 26(2) above, references in this section to the authority by whom the order was made are to be construed as references to such one of the authorities referred to in that subsection as may be nominated by the Secretary of State for the purposes of this subsection.
- (4) Nothing in this section confers on any person, in respect of a footpath or bridleway created by a public path creation order, a right to compensation for depreciation of the value of an interest in the land, or for disturbance in his enjoyment of land, not being in either case land over which the path or way was created or land held therewith, unless the creation of the path or way would have been actionable at his suit if it had been effected otherwise than in the exercise of statutory powers.
- (5) In this section " interest", in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an interest in land or by virtue of a licence or agreement, and in particular includes sporting rights.

29 Protection for agriculture and forestry

In the exercise of their functions under this Part of this Act relating to the making of public path creation agreements and public path creation orders it shall be the duty of councils and joint planning boards to have due regard to the needs of agriculture and forestry.

30 Dedication of highway by agreement with parish or community council

- (1) The council of a parish or community may enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a highway over land in the parish or community or an adjoining parish or community in any case where such a dedication would in the opinion of the council be beneficial to the inhabitants of the parish or community or any part thereof.
- (2) Where the council of a parish or community have entered into an agreement under subsection (1) above for the dedication of a highway they may carry out any works (including works of maintenance or improvement) incidental to or consequential on the making of the agreement or contribute towards the expense of carrying out such works, and may agree or combine with the council of any other parish or community to carry out such works or to make such a contribution.

31 Dedication of way as highway presumed after public use for 20 years

- (1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
- (2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.
- (3) Where the owner of the land over which any such way as aforesaid passes—
 - (a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway, and
 - (b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.
- (4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so, however, that no injury is done thereby to the business or occupation of the tenant.
- (5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as a highway is, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as a highway.
- (6) An owner of land may at any time deposit with the appropriate council—
 - (a) a map of the land on a scale of not less than 6 inches to 1 mile, and
 - (b) a statement indicating what ways (if any) over the land he admits to have been dedicated as highways;

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and, in any case in which such a deposit has been made, statutory declarations made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time—

- (i) within six years from the date of the deposit, or
- (ii) within six years from the date on which any previous declaration was last lodged under this section,

to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgment of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

- (7) For the purposes of the foregoing provisions of this section "owner", in relation to any land, means a person who is for the time being entitled to dispose of the fee simple in the land ; and for the purposes of subsections (5) and (6) above "the appropriate council" means the council of the county or London borough in which the way (in the case of subsection (5)) or the land (in the case of subsection (6)) is situated or, where the way or land is situated in the City, the Common Council.
- (8) Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public or statutory purposes to dedicate a way over that land as a highway if the existence of a highway would be incompatible with those purposes.
- (9) Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years, or being presumed or proved in any circumstances in which it might have been presumed or proved immediately before the commencement of this Act.
- (10) Nothing in this section or section 32 below affects subsection (4) of section 32 of the National Parks and Access to the Countryside Act 1949 (which provides that a map and statement prepared under that section are conclusive evidence as to the existence of the highways shown on the map and as to certain particulars contained in the statement), or of that subsection as applied by section 34(1) of that Act.
- (11) For the purposes of this section "land" includes land covered with water.

32 Evidence of dedication of way as highway

A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

33 Protection of rights of reversioners

The person entitled to the remainder or reversion immediately expectant upon the determination of a tenancy for life, or pour autre vie, in land shall have the like

remedies by action for trespass or an injunction to prevent the acquisition by the public of a right of way over that land as if he were in possession thereof.

34 Conversion of private street into highway

Without prejudice to the foregoing provisions of this Part of this Act, a street which is not a highway and land to which section 232 below applies may become a highway by virtue of a declaration made by a county council, a London borough council or the Common Council in accordance with the provisions in that behalf contained in Part XI of this Act.

35 Creation of walkways by agreement

- (1) An agreement under this section may be entered into—
 - (a) by a local highway authority, after consultation with the council of any district in which the land concerned is situated;
 - (b) by a district council, either alone or jointly with the local highway authority, after consultation with the local highway authority.
- (2) An agreement under this section is an agreement with any person having an interest in any land on which a building is, or is proposed to be, situated, being a person who by virtue of that interest has the necessary power in that behalf,—
 - (a) for the provision of ways over, through or under parts of the building, or the building when constructed, as the case may be, or parts of any structure attached, or to be attached, to the building; and
 - (b) for the dedication by that person of those ways as foot paths subject to such limitations and conditions, if any, affecting the public right of way thereover as may be specified in the agreement and to any rights reserved by the agreement to that person and any person deriving title to the land under him.

A footpath created in pursuance of an agreement under this section is referred to below as a "walkway".

- (3) An agreement under this section may make provision for—
 - (a) the maintenance, cleansing and drainage of any walkway to which the agreement relates ;
 - (b) the lighting of such walkway and of that part of the building or structure which will be over or above it;
 - (c) the provision and maintenance of support for such walkway;
 - (d) entitling the authority entering into the agreement or, where the agreement is entered into jointly by a district council and a local highway authority, either of those authorities to enter on any building or structure in which such walkway will be situated and to execute any works necessary to secure the performance of any obligation which any person is for the time being liable to perform by virtue of the agreement or of subsection (4) below;
 - (e) the making of payments by the authority entering into the agreement or, where the agreement is entered into jointly by a district council and a local highway authority, either of those authorities to any person having an interest in the land or building affected by the agreement;
 - (f) the termination, in such manner and subject to such conditions as may be specified in the agreement, of the right of the public to use such walkway;
 - (g) any incidental and consequential matters.

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- (4) Any covenant (whether positive or restrictive) contained in an agreement under this section and entered into by a person having an interest in any land affected by the agreement shall be binding upon persons deriving title to the land under the covenant to the same extent as it is binding upon the covenantor notwithstanding that it would not have been binding upon those persons apart from the provisions of this subsection, and shall be enforceable against those persons by the local highway authority.
- (5) A covenant contained in an agreement under this section and entered into by a person having an interest in any land affected by the agreement is a local land charge.
- (6) Where an agreement has been entered into under this section the appropriate authority may make byelaws regulating—
- (a) the conduct of persons using any walkway to which the agreement relates;
 - (b) the times at which any such walkway may be closed to the public;
 - (c) the placing or retention of anything (including any structure or projection) in, on or over any such walkway.
- (7) For the purposes of subsection (6) above, " the appropriate authority " means—
- (a) where the agreement was entered into by a local highway authority, that authority;
 - (b) where the agreement was entered into by a district council alone, that council;
 - (c) where the agreement was entered into by a district council jointly with the local highway authority, the local highway authority;
- but in cases falling within paragraph (c) above the local highway authority shall before making any byelaw consult the district council, and in exercising his power of confirmation the Minister shall have regard to any dispute between the local highway authority and the district council.
- (8) Not less than 2 months before an authority propose to make byelaws under subsection (6) above they shall display in a conspicuous position on or adjacent to the walkway in question notice of their intention to make such byelaws.
- (9) A notice under subsection (8) above shall specify the place where a copy of the proposed byelaws may be inspected and the period, which shall not be less than 6 weeks from the date on which the notice was first displayed as aforesaid, within which representations may be made to the authority, and the authority shall consider any representations made to them within that period.
- (10) The Minister of the Crown having power by virtue of section 236 of the Local Government Act 1972 to confirm byelaws made under subsection (6) above may confirm them with or without modifications; and if he proposes to confirm them with modifications he may, before confirming them, direct the authority by whom they were made to give notice of the proposed modifications to such persons and in such manner as may be specified in the direction.
- (11) Subject to subsection (12) below, the Minister, after consulting such representative organisations as he thinks fit, may make regulations—
- (a) for preventing any enactment or instrument relating to highways or to things done on or in connection with highways from applying to walkways which have been, or are to be, created in pursuance of agreements under this section or to things done on or in connection with such walkways;
 - (b) for amending, modifying or adapting any such enactment or instrument in its application to such walkways;

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- (c) without prejudice to the generality of paragraphs (a) and (b) above, for excluding, restricting or regulating the rights of statutory undertakers, sewerage authorities and the Post Office to place and maintain apparatus in, under, over, along or across such walkways;
 - (d) without prejudice as aforesaid, for defining the circumstances and manner in which such walkways may be closed periodically or temporarily or stopped up and for prescribing the procedure to be followed before such a walkway is stopped up.
- (12) Regulations under this section shall not exclude the rights of statutory undertakers, sewerage authorities or the Post Office to place and maintain apparatus in, under, along or across any part of a walkway, being a part which is not supported by any structure.
- (13) Without prejudice to subsection (11) above, regulations under this section may make different provisions for different classes of walkways and may include such incidental, supplemental and consequential provisions (and, in particular, provisions relating to walkways provided in pursuance of agreements made before the coming into operation of the regulations) as appear to the Minister to be expedient for the purposes of the regulations.
- (14) Nothing in this section is to be taken as affecting any other provision of this Act, or any other enactment, by virtue of which highways may be created.