



Rights of Way Act 1990

1990 CHAPTER 24

An Act to amend the law relating to rights of way and the disturbance and restoration of the surface of land over which rights of way pass; to keep the line of rights of way clear of crops; to enable local authorities to act in connection therewith; and for connected purposes. [13th July 1990]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) Part IX of the Highways Act 1980 (lawful and unlawful interference with highways and streets) is amended as follows.

Amendment of
Part IX of
Highways Act
1980.

(2) After section 131 insert the following—

1980 c. 66.

“Disturbance of
surface of
certain highways.

131A.—(1) A person who, without lawful authority or excuse, so disturbs the surface of—

- (a) a footpath,
- (b) a bridleway, or
- (c) any other highway which consists of or comprises a carriageway other than a made-up carriageway,

as to render it inconvenient for the exercise of the public right of way is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(2) Proceedings for an offence under this section shall be brought only by the highway authority or the council of the non-metropolitan district, parish or community in which the offence is committed; and, without prejudice to section 130 (protection of public rights) above, it is the duty of the highway authority to ensure that where desirable in the public interest such proceedings are brought.”

(3) For section 134 (ploughing of footpath or bridleway) substitute—

“Ploughing etc.
of footpath or
bridleway.

134.—(1) Where in the case of any footpath or bridleway (other than a field-edge path) which passes over a field or enclosure consisting of agricultural land, or land which is being brought into use for agriculture—

- (a) the occupier of the field or enclosure desires in accordance with the rules of good husbandry to plough, or otherwise disturb the surface of, all or part of the land comprised in the field or enclosure, and
- (b) it is not reasonably convenient in ploughing, or otherwise disturbing the surface of, the land to avoid disturbing the surface of the path or way so as to render it inconvenient for the exercise of the public right of way,

the public right of way shall be subject to the condition that the occupier has the right so to plough or otherwise disturb the surface of the path or way.

(2) Subsection (1) above does not apply in relation to any excavation or any engineering operation.

(3) Where the occupier has disturbed the surface of a footpath or bridleway under the right conferred by subsection (1) above he shall within the relevant period, or within an extension of that period granted under subsection (8) below,—

- (a) so make good the surface of the path or way to not less than its minimum width as to make it reasonably convenient for the exercise of the right of way; and
- (b) so indicate the line of the path or way on the ground to not less than its minimum width that it is apparent to members of the public wishing to use it.

(4) If the occupier fails to comply with the duty imposed by subsection (3) above he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(5) Proceedings for an offence under this section in relation to a footpath or bridleway shall be brought only by the highway authority or the council of the non-metropolitan district, parish or community in which the offence is committed.

(6) Without prejudice to section 130 (protection of public rights) above, it is the duty of the highway authority to enforce the provisions of this section.

(7) For the purposes of this section “the relevant period”,—

- (a) where the disturbance of the surface of the path or way is the first disturbance for the purposes of the sowing of a particular agricultural crop,

means fourteen days beginning with the day on which the surface of the path or way was first disturbed for those purposes; or

(b) in any other case, means twenty-four hours beginning with the time when it was disturbed.

(8) On an application made to the highway authority before the disturbance or during the relevant period, the authority may grant an extension of that period for an additional period not exceeding twenty-eight days.

(9) In this section “minimum width”, in relation to a highway, has the same meaning as in Schedule 12A to this Act.”

(4) For section 135 (temporary diversion of path or way ploughed under section 134) substitute—

“Authorisation of other works disturbing footpath or bridleway.

135.—(1) Where the occupier of any agricultural land, or land which is being brought into use for agriculture, desires to carry out in relation to that land an excavation or engineering operation, and the excavation or operation—

(a) is reasonably necessary for the purposes of agriculture, but

(b) will so disturb the surface of a footpath or bridleway which passes over that land as to render it inconvenient for the exercise of the public right of way,

he may apply to the highway authority for an order that the public right of way shall be subject to the condition that he has the right to disturb the surface by that excavation or operation during such period, not exceeding three months, as is specified in the order (“the authorisation period”).

(2) The highway authority shall make an order under subsection (1) above if they are satisfied either—

(a) that it is practicable temporarily to divert the path or way in a manner reasonably convenient to users; or

(b) that it is practicable to take adequate steps to ensure that the path or way remains sufficiently convenient, having regard to the need for the excavation or operation, for temporary use while it is being carried out.

(3) An order made by a highway authority under subsection (1) above—

(a) may provide for the temporary diversion of the path or way during the authorisation period, but shall not divert it on to land not occupied by the applicant unless written consent to the making of the order has been given by the occupier of that land, and by any other person whose consent is needed to obtain access to it;

(b) may include such conditions as the authority reasonably think fit for the provision, either by the applicant or by the authority at the expense of the applicant, of facilities for the convenient use of any such diversion, including signposts and other notices, stiles, bridges, and gates;

(c) shall not affect the line of a footpath or bridleway on land not occupied by the applicant;

and the authority shall cause notices of any such diversion, together with a plan showing the effect of the diversion and the line of the alternative route provided, to be prominently displayed throughout the authorisation period at each end of the diversion.

(4) An order made by a highway authority under subsection (1) above may include such conditions as the authority reasonably think fit—

(a) for the protection and convenience during the authorisation period of users of the path or way;

(b) for making good the surface of the path or way to not more than its minimum width before the expiration of the authorisation period;

(c) for the recovery from the applicant of expenses incurred by the authority in connection with the order.

(5) An order under this section shall not authorise any interference with the apparatus or works of any statutory undertakers.

(6) If the applicant fails to comply with a condition imposed under subsection (3)(b) or (4)(a) or (b) above he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(7) Proceedings for an offence under this section in relation to a footpath or bridleway shall be brought only by the highway authority or (with the consent of the highway authority) the council of the non-metropolitan district, parish or community in which the offence is committed.

(8) Without prejudice to section 130 (protection of public rights) above, it is the duty of the highway authority to enforce the provisions of this section.

(9) In this section “minimum width”, in relation to a highway, has the same meaning as in Schedule 12A to this Act.”

(5) After section 137 insert the following—

“Interference by
crops.

137A.—(1) Where a crop other than grass has been sown or planted on any agricultural land the occupier of the land shall from time to time take such steps as may be necessary—

- (a) to ensure that the line on the ground of any relevant highway on the land is so indicated to not less than its minimum width as to be apparent to members of the public wishing to use the highway; and
- (b) to prevent the crop from so encroaching on any relevant highway, whether passing over that or adjoining land, as to render it inconvenient for the exercise of the public right of way.

(2) For the purposes of subsection (1) above, a crop shall be treated as encroaching on a highway if, and only if, any part of the crop grows on, or otherwise extends onto or over, the highway in such a way as to reduce the apparent width of the highway to less than its minimum width.

(3) For the purposes of the application of subsection (1) above in the case of a particular crop, the crop shall be treated as grass if, and only if—

- (a) it is of a variety or mixture commonly used for pasture, silage or haymaking, whether or not it is intended for such a use in that case; and
- (b) it is not a cereal crop.

(4) If the occupier fails to comply with the duty imposed by subsection (1) above he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(5) Without prejudice to section 130 (protection of public rights) above, it is the duty of the highway authority to enforce the provisions of this section.

(6) In this section—

“minimum width”, in relation to a highway, has the same meaning as in Schedule 12A to this Act; and

“relevant highway” means—

- (a) a footpath,
- (b) a bridleway, or
- (c) any other highway which consists of or comprises a carriageway other than a made-up carriageway.”

(6) After section 160 insert the following—

“Further powers of highway authorities and district councils in relation to highways. 160A. Schedule 12A to this Act shall have effect.”

Amendment of s.329(1) of Highways Act 1980.
1980 c. 66.

2. In section 329(1) (further provision as to interpretation) of the Highways Act 1980 insert immediately before the definition of “financial year”—

“‘field-edge path’ means a footpath or bridleway that follows the sides or headlands of a field or enclosure;”.

Amendment of s.333 of Highways Act 1980.

3. In section 333 (saving for rights and liabilities as to interference with highways) of the Highways Act 1980, number the existing provision as subsection (1) and insert at the end—

“(2) Nothing in section 134 or 135 above relating to disturbance of the surface of a highway in any manner is to be taken as affecting any right existing apart from this Act to disturb its surface in that manner.”

Insertion of new Schedule 12A to Highways Act 1980.

4. After Schedule 12 to the Highways Act 1980 insert—

“SCHEDULE 12A

FURTHER POWERS OF HIGHWAY AUTHORITIES AND COUNCILS IN RELATION TO INTERFERENCE WITH HIGHWAYS

Interpretation

1.—(1) For the purposes of this Schedule the “minimum width” and “maximum width” of a highway shall be determined in accordance with sub-paragraphs (2) and (3) below.

(2) In any case where the width of the highway is proved, that width is both the “minimum width” and the “maximum width”.

(3) In any other case—

(a) the “minimum width” is—

(i) as respects a footpath which is not a field-edge path, 1 metre,

(ii) as respects a footpath which is a field-edge path, 1.5 metres,

(iii) as respects a bridleway which is not a field-edge path, 2 metres, or

(iv) as respects any other highway, 3 metres; and

(b) the “maximum width” is—

(i) as respects a footpath, 1.8 metres,

(ii) as respects a bridleway, 3 metres, or

(iii) as respects any other highway, 5 metres.

Competent authorities

2. For the purposes of this Schedule each of the following shall be a competent authority in relation to a highway—

- (a) the highway authority; and
- (b) in the case of a highway maintained by a district council under section 42 or 50 of this Act, that council.

Power to carry out works

3.—(1) Where the surface of—

- (a) a footpath,
- (b) a bridleway, or
- (c) any other highway which consists of or comprises a carriageway other than a made-up carriageway,

has been so disturbed as to render it inconvenient for the exercise of the public right of way, a competent authority may make good the surface to an extent not less than the minimum width nor greater than the maximum width.

(2) Where the surface of a footpath or bridleway was disturbed under the right conferred by section 134(1) of this Act, the power conferred by sub-paragraph (1) above shall not become exercisable until the expiration of the period which is the relevant period for the purposes of section 134 or an extension of that period granted under subsection (8) of that section.

(3) Where the surface of a footpath or bridleway was disturbed under an order made by virtue of section 135 of this Act, the power conferred by sub-paragraph (1) above shall not become exercisable until the expiration of the period which is the authorisation period for the purposes of section 135.

4.—(1) Where the occupier of any land fails to carry out the duty imposed on him by section 134(3)(b) or 137A(1) of this Act in relation to a highway, a competent authority may carry out such works as may be necessary or expedient for the purpose of rectifying the default.

(2) Sub-paragraph (1) above does not authorise the carrying out of works to an extent greater than the maximum width of the highway.

(3) Where the surface of a footpath or bridleway was disturbed under the right conferred by section 134(1) of this Act, the power conferred by sub-paragraph (1) above shall not become exercisable until the expiration of the period which is the relevant period for the purposes of section 134, or an extension of that period granted under subsection (8) of that section.

5. If the applicant fails to comply with a condition imposed under section 135(3)(b) or (4)(a) or (b) of this Act, a competent authority may carry out such works as may be necessary or expedient for the purpose of rectifying the default.

6. Paragraphs 7 to 9 below have effect in relation to the carrying out by a competent authority of work under paragraphs 3 to 5 above in relation to a highway which passes over any land (“the relevant land”).

Entry on land

7. Subject to paragraph 8 below, any person duly authorised in writing by the authority may enter on the relevant land, or any other land the authority reasonably believe to be in the same occupation, for any purpose connected with the carrying out of the work; and may take with him on to the land such vehicles, machinery and other equipment as may be requisite.

8.—(1) Except in the case of entry, solely for the purpose of obtaining information, on land other than a building or structure, before entering on any land the authority shall give the occupier not less than twenty-four hours' notice of their intention to do so; and the notice shall—

- (a) identify the highway to which it relates; and
- (b) specify the work to be carried out and the equipment to be used for that purpose; and
- (c) identify the line or lines of passage over the land in question, if any, that may need to be used for access to the site of the work; and
- (d) state the date and time when the power to enter on the land becomes exercisable.

(2) Without prejudice to section 322 (service of notices etc.) of this Act, if after reasonable enquiry the authority are satisfied that it is not practicable to ascertain the name and address of the occupier, a notice under this paragraph may be given by addressing it to him as "The Occupier" of the land (describing it) and affixing copies of the notice to some conspicuous object—

- (a) at each end of so much of the highway as is referred to in the notice; and
- (b) at such other points in the vicinity of that highway as the authority may consider suitable; and
- (c) if appropriate, at a point adjacent to a highway comprising a made-up carriageway from which access is required for equipment.

(3) A notice shall not be given under this paragraph before the power referred to in paragraph 3, 4 or 5 above has become exercisable.

Financial

9.—(1) Subject to sub-paragraph (2) below, a competent authority may recover the amount of any expenses reasonably incurred by the authority in, or in connection with, the carrying out of the work—

- (a) in a case falling within paragraph 3(1) above, from the occupier of the relevant land or the person who disturbed the surface of the highway; and
- (b) in any other case, from the occupier of the relevant land.

(2) A person—

- (a) is not liable under paragraph (a) of sub-paragraph (1) above if he shows that he had any lawful authority or excuse for disturbing the surface of the highway; and

(b) is not liable under that paragraph as an occupier of land if he shows that the surface of the highway was not disturbed by him or with his consent.”

5. There shall be paid out of moneys provided by Parliament any increase attributable to the provisions of this Act in the sums payable out of moneys so provided under any other Act. Expenses.

6.—(1) This Act may be cited as the Rights of Way Act 1990. Short title, commencement, consequential repeals and extent.

(2) This Act shall come into force at the end of the period of one month beginning with the day on which it is passed. 1980 c. 66.

(3) Nothing in this Act shall affect the application of sections 134 and 135 of the Highways Act 1980 in relation to any ploughing of a footpath or bridleway begun before the commencement of this Act. 1981 c. 69. 1986 c. 49.

(4) Section 61 of the Wildlife and Countryside Act 1981 and section 21 of the Agriculture Act 1986 (which amend sections 134 and 135 of the Highways Act 1980) are hereby repealed. 1985 c. 51.

(5) In paragraph 25 of Schedule 4 to the Local Government Act 1985, the words “134(7) and (10)(a),” are hereby repealed.

(6) This Act extends to England and Wales only.

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Dd 5068541. 12/98. 76937. Job No J0068747

1st Impression July 1990
3rd Impression December 1998



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and available from:

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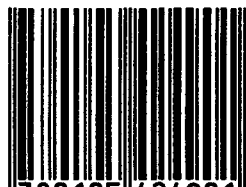
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ISBN 0-10-542490-0



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