



National Parks and Access to the Countryside Act 1949

1949 CHAPTER 97

PART IV

PUBLIC RIGHTS OF WAY

Diversion and Closure of Public Paths

42 Diversion of public paths

- (1) Where an owner, lessee or occupier of land crossed by a public path satisfies the council of the county borough or county district in which the land is situated that for securing the efficient use of the land or of other land held therewith or providing a shorter or more commodious path 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, lessee or occupier), the council may by order (hereinafter referred to as a "diversion order") made by them and submitted to and confirmed by the Minister—
 - (a) create, as from such date as may be specified in the order, any such new public right of way as appears to the council 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 public right of way over so much of the path as appears to the council requisite as aforesaid.
- (2) Where it appears to the council that any work requires to be done to provide necessary facilities for the convenient exercise of any such new public right of way as is mentioned in paragraph (a) of the last foregoing subsection, the date specified under paragraph (b) of that subsection shall be later than the date specified under paragraph (a) thereof by such time as appears to the council requisite for enabling the work to be carried out.

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- (3) A public right of way created by a diversion order shall be either a right of way on foot only, or a right of way on foot and on horseback (including a right of leading a horse along the highway), as may be specified in the order in accordance with the nature of the right of way extinguished by the order, and may either be unconditional or may (whether or not the last-mentioned right was subject to limitations or conditions of any description) be subject to such limitations or conditions as may be so specified.
- (4) Before determining to make a diversion order on the representation of any owner, lessee or occupier, the council may require him to enter into an agreement with the council to defray, or to make such contribution as may be specified in the agreement towards—
- (a) any compensation which may become payable under the following provisions of this Part of this Act in consequence of the coming into operation of the order, or
 - (b) where the council are the highway authority as respects the path in question, any expenses which they may incur in bringing the new site of the path into a fit condition for use by the public, or
 - (c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority in consequence of the order under the provisions of subsection (4) of section forty-eight of this Act.
- (5) The Minister shall not confirm a diversion order unless he is satisfied that the diversion to be effected thereby is expedient as mentioned in subsection (1) of this section, 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 public right of way, and
 - (c) any new public right of way created by the order would have as respects the land over which the right is so created and of any land held therewith,
- so however that for the purposes of paragraphs (b) and (c) of this subsection the Minister shall take into account the provisions as to compensation hereinafter contained.
- (6) A diversion order shall be in such form as may be prescribed by regulations made by the Minister, and shall contain a map, on such scale as may be so 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) The provisions in that behalf of the First Schedule to this Act shall have effect as to the making, confirmation, coming into operation and validity of diversion orders.
- (8) References in this section and in the said First Schedule to the diversion of the line of a path shall be construed as including, in the case of a path which terminates at a point on any public path or other highway, references to modifying the line of the path so as to terminate at another point on the same highway or on a highway connected therewith, being a point substantially as convenient to the public.

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43 Closure of public paths

- (1) Where it appears to the council of a county borough or county district as respects a public path in their area that it is expedient that the path should be stopped up, otherwise than by way of a diversion order, on the grounds that the path is not needed for public use, the council may by order (hereinafter referred to as an "extinguishment order") made by them and submitted to and confirmed by the Minister extinguish the public right of way over the path.
- (2) The Minister shall not confirm an extinguishment order unless he is satisfied that it is expedient so to do having regard to the extent (if any) 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 hereinafter contained. 40
- (3) An extinguishment order shall be in such form as may be prescribed by regulations made by the Minister, and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.
- (4) The provisions in that behalf of the First Schedule to this Act shall have effect as to the making, confirmation, coming into operation and validity of extinguishment orders.
- (5) Where in accordance with regulations made under paragraph 4 of the said First Schedule proceedings preliminary to the confirmation of an extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path order or a diversion order, then in considering under subsection (1) of this section whether the path to which the extinguishment order relates is needed for public use, or under subsection (2) of this section to what extent (if any) that path would apart from the order be likely to be used by the public, the council or the Minister, as the case may be, may have regard to the extent to which the public path order or diversion order would provide an alternative path.
- (6) References in this section to a public path shall be construed as including references to a part of such a path.
- (7) For the purposes of subsections (1) and (2) of this section, any temporary circumstances preventing or diminishing the use of a path by the public shall be disregarded.

44 Exercise of powers of making diversion and extinguishment orders

- (1) Subject to the following provisions of this section, the powers of making diversion orders and extinguishment orders conferred by the two last foregoing sections shall not be exercisable—
 - (a) by the council of a rural district except with the consent of the county council and, if the county council is not the local planning authority, the consent of that authority;
 - (b) by the council of any other county district, except with the consent of the local planning authority;
 - (c) by the council of a county borough, not being the local planning authority, except with the consent of that authority; and
 - (d) by any local authority as respects a path, or part of a path, in a National Park, except after consultation with the Commission.

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- (2) Where a public path lies partly within and partly outside a county borough or county district, the powers conferred by the two last foregoing sections on the council of the county borough or county district, as the case may be, shall extend to the whole of the path as if the path lay wholly within their area :

Provided that, in relation to so much of the path as lies outside the area of the council, the said powers shall not be exercisable—

- (a) as respects any part of the path in a rural district, except with the consent of the council of that district and of the county council, and, if that county council is not the local planning authority, the consent of that authority;
 - (b) as respects any part of the path in any other county district, except with the consent of the council of that district and the consent of the local planning authority; and
 - (c) as respects any part of the path in a county borough, except with the consent of the council of the county borough and, if that council is not the local planning authority, the consent of that authority.
- (3) The Minister, on the application of the council of a county, may direct, either generally or as respects the diversion or stopping up of a particular public path or part thereof, that the powers conferred by the two last foregoing sections or either of them (including those powers as extended by the last foregoing subsection) on the council of a county district specified in the direction, being a district in the county in question, shall be exercisable by the county council and shall not be exercisable by the council of the county district.
- (4) A county council exercising a power by virtue of a direction under the last foregoing subsection shall consult the local planning authority, where that authority is a joint board, but shall not be required to obtain the consent of the board to the exercise of the power:

Provided that a county council shall not exercise any such power as aforesaid as respects so much of a public path as lies in another county except with the consent of the council of that county and, if the last mentioned council is not the local planning authority, the consent of that authority.

- (5) Where an owner, lessee or occupier of land crossed by a public path satisfies the Minister that a diversion thereof is expedient as mentioned in subsection (1) of the last but one foregoing section, or where it appears to the Minister as respects a public path that it is expedient as mentioned in subsection (1) of the last foregoing section that the path or part thereof should be stopped up, then if—
- (a) the appropriate authority have not made and submitted to him a diversion order or an extinguishment order, as the case may be, and
 - (b) the Minister 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 Minister, after consultation with the said authority, may direct the authority to make and submit to him a diversion order or an extinguishment order, as the case may be, or may himself make the order; and where the Minister gives a direction under this subsection, the provisions of subsection (1) of this section, of that subsection and of the proviso to subsection (2) of this section, or the proviso to the last foregoing subsection, as the case may be, shall not apply.

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- (6) A council proposing to make a diversion order such that the authority who will be the highway authority in respect of any part of the path after the diversion will be a different body from the existing highway authority in respect thereof shall, before making the order, notify the first-mentioned authority.
- (7) In subsection (5) of this section the expression " the appropriate authority," in relation to the making of a diversion order or an extinguishment order, means the authority upon whom power to make the order (whether the power is exercisable with the consent of any other authority or not) is conferred by or under the relevant provisions of the two last foregoing sections and of subsections (2) and (3) of this section.

45 Supplementary provisions as to diversion and extinguishment orders

- (1) The three last foregoing sections shall apply in relation to public rights of way created before as well as after the commencement of this Act.
- (2) The provisions of the three last foregoing sections shall be without prejudice to the provisions of any other enactment under which highways may be stopped up or diverted or public rights of way may be extinguished.
- (3) A diversion order or extinguishment order affecting in any way the area of more than one authority may contain provisions requiring one of the authorities to defray, or contribute towards, expenditure incurred in consequence of the order by another of the authorities; and a diversion order diverting any part of the line of a path from a site in the area of one highway authority to a site in the area of another may provide that the coming into operation of the order shall not discharge any liability to repair of the first mentioned authority or impose any such liability on the last mentioned authority.
- (4) A diversion order or extinguishment order shall not be made so as to extinguish a right of way over land on, over or under which there is any apparatus belonging to statutory undertakers unless the undertakers consent to the making of the order, 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 refused, and any question arising under this subsection whether any requirement or refusal is reasonable shall be determined by the appropriate Minister.