



National Parks and Access to the Countryside Act 1949

1949 CHAPTER 97

PART IV

PUBLIC RIGHTS OF WAY

Liability for Repair of Public Paths

47 Liability for repair of public paths

- (1) Subject to the following provisions of this Part of this Act, the rule of law whereby a highway is repairable by the inhabitants at large shall apply to all public paths, whether coming into existence before or after the commencement of this Act, notwithstanding anything contained in any enactment passed or made before the commencement of this Act and notwithstanding any liability to repair of any other person; and accordingly the enactments relating to highways so repairable shall have effect in relation to all such public paths.
- (2) Without prejudice to the generality of the last foregoing subsection—
 - (a) no order made under section twenty-one of the Highway Act, 1864, or section twenty-four of the Highways and Locomotives (Amendment) Act, 1878 (which sections provide for the making of orders for discontinuing the maintenance of unnecessary highways) shall have effect after the commencement of this Act as respects any public path; and
 - (b) after the commencement of this Act no proceedings shall be instituted under either of the said sections for an order relating to a public path.
- (3) Where apart from this section any person would be under an obligation to repair a public path, whether under any enactment, or by reason of tenure, enclosure or prescription—
 - (a) the operation of subsection (1) of this section shall not release him from the obligation, but

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (b) if in the performance of their duty under the said subsection (1) the highway authority repair the public path, they may recover from the said person the necessary expenses of so doing, and
- (c) where the highway authority exercise a right of recovery under the last foregoing paragraph, then, if the said person would have been entitled to recover from some other person the whole or part of the expenses of repairing the path if he had repaired it himself, he shall be entitled to recover from that other person the whole or the like part, as the case may be, of the expenses recovered from him by the highway authority:

Provided that the right of recovery conferred by paragraph (b) of this subsection shall not be exercisable unless, before repairing the path, the highway authority have given notice to the said person that the path is in need of repair, specifying a reasonable time within which he may repair the path, and the said person has failed to repair the path within that time.

48 Making up of public paths

- (1) On the dedication of a public path in pursuance of a public path agreement, or on the coming into operation of a public path order, being—
 - (a) an agreement or order made by a local authority who are not the highway authority as respects the path in question, or
 - (b) an order made by the Minister under subsection (3) of section forty-one of this Act where, in relation to the making of a public path order creating the right of way in question, the appropriate authority for the purposes of the said subsection (3) are such a local authority,

the highway authority shall survey the path and shall certify what work (if any) appears to them to be necessary to bring the path 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) or (b) of this subsection, as the case may be.

- (2) An authority on whom a copy of a certificate is served under the last foregoing subsection may apply to the Minister on the ground that the work specified in the certificate, or any part thereof, is unnecessary or unduly expensive or is undesirable in the interests of amenity; and where such an application is made the Minister shall either cause a local inquiry to be held or shall give to the applicants and to the highway 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 confirming, quashing or varying the certificate as he may think fit.
- (3) Where the certificate of a highway authority in respect of a public path is quashed under the last foregoing subsection, the path shall not be required to be maintained in a better condition than the condition in which it was at the date of the certificate; and where under the last foregoing subsection such a certificate is varied, the path shall not be required to be maintained in a better condition than the condition in which it is immediately after the completion of the work specified in the certificate as so varied.
- (4) Subject to the provisions of subsection (2) of this section, it shall be the duty of the highway authority to carry out any work specified in a certificate under subsection (1) thereof; 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

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

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.

- (5) Where a public path order—
- (a) is made in compliance with a direction of the Minister under subsection (3) of section forty-one of this Act and is so made by the local authority who, on the coming into operation of the order, become the highway authority as respects the path in question, or
 - (b) is made by the Minister under the said subsection (3) in a case where, in relation to the making of a public path order creating the right of way in question, the appropriate authority for the purposes of the said subsection (3) are that local authority,

the following provisions shall have effect, that is to say—

- (i) the local authority specified in paragraph (a) or (b) of this subsection, as the case may be, shall survey the path and shall certify what work (if any) appears to them to be necessary to bring the path into a fit condition for use by the public as a footpath or bridleway, as the case may be, and shall furnish the Minister with a copy of the certificate;
 - (ii) if the Minister is not satisfied with a certificate made under the last 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
 - (iii) subject to the provisions of the last foregoing paragraph, it shall be the duty of the highway authority to carry out the work specified in a certificate made by them under paragraph (i) of this subsection.
- (6) The foregoing provisions of this section shall apply to any public path created by a diversion order with the substitution of references to such an order for references to a public path order and of references to subsection (5) of section forty-four of this Act for references to subsection (3) of section forty-one thereof.

49 Acceptance of new paths created by dedication

Section twenty-three of the Highway Act, 1835 (which provides that such highways as are therein mentioned shall not become repairable by the inhabitants at large unless certain conditions are complied with on the dedication thereof) shall apply to any public path dedicated after the commencement of this Act otherwise than in pursuance of a public path agreement.

50 Private street works

Where apart from the provisions of section forty-seven of this Act a public path in existence at the passing of this Act would, for the purposes of any of the following enactments, that is to say—

- (a) section one hundred and fifty of the Public Health Act, 1875, or
- (b) the Private Street Works Act, 1892, or
- (c) the corresponding provisions of any other Act (including a local Act),

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

be a street, or part of a street, not being a highway repairable by the inhabitants at large, nothing in the said section shall prevent a local authority carrying out, or requiring the carrying out of, work under any of the said enactments or recovering expenses thereof.