



Countryside (Scotland) Act 1967

1967 CHAPTER 86

PART III

PUBLIC PATHS AND LONG-DISTANCE ROUTES

Creation of public paths

[^{F1}30] **Creation of public paths by agreement.**

- (1) [^{F2}A general or district planning] authority shall have power to enter into an agreement with any person having the necessary power in that behalf for the creation by that person of a public path over land in their area.
- (2) An agreement made under the foregoing subsection (in this Act referred to as a “public path creation agreement”) 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 creation of the public path subject to limitations or conditions affecting any public right of way thereover.
- (3) In this Part of this Act “public path” means a way which is a footpath or bridleway or a combination of those.]

Textual Amendments

- F1** S. 30 repealed (9.2.2005) by [Land Reform \(Scotland\) Act 2003 \(asp 2\)](#), s. 100(3), [Sch. 2 para. 4\(b\)](#) (with [s. 100\(2\)](#) and subject to savings in [Sch. 2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. II para 10](#)

[^{F3}31] **Compulsory powers for creation of public paths.**

- (1) Where it appears to [^{F4}a general or district planning] authority that there is need for a public path over land in their area and they are satisfied that, having regard to—

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- (a) the extent to which the path 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 would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 37 below,

it is expedient that the path should be created, the authority, if it appears to them impracticable to create the path by means of a public path creation agreement, may by order (in this Act referred to as a “public path creation order”) made by them and [F5, subject to paragraph 2(1A) of Schedule 3 of this Act,] submitted to and confirmed by the Secretary of State create a public path.

- (2) 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, and the Secretary of State may [F6, in a case where his confirmation of the order is required, confirm it] subject to such modifications or conditions as he thinks fit.
- (3) A public path creation order shall be in such form as may be prescribed and shall contain a map, on such scale as may be prescribed, defining the land over which a public path is thereby created.
- (4) The provisions in that behalf of Schedule 3 to this Act shall apply to the making, confirmation, validity and date of operation of public path creation orders.]

Textual Amendments

F3 S. 31 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)

F4 Words substituted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), s. 9, **Sch. 1 Pt. I, Pt. II para. 11**

F5 Words inserted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), **Sch. 3 para. 8(a)**

F6 Words substituted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), **Sch. 3 para. 8(b)**

[F7] **32 Exercise of powers under ss. 30 and 31.**

F8(1)

(2) Where a proposed public path lies partly within and partly outside the area of [F9 a general or district planning] authority, the powers conferred by the two last foregoing sections on the authority shall extend to the whole of the path as if it lay wholly within their area:
Provided that, in relation to so much of the path as lies outside the area of the authority, the said powers shall not be exercisable as respects any part thereof in the area of any [F10 other general or district planning] authority, except with the consent of that authority.

F8(3)]

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Textual Amendments

- F7** S. 32 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\(b\)](#)
- F8** Ss. 5(2)(3), 9, 14(7), 32(1)(3), 33(2)–(4), 36(2)(3), 37(3), and 45(2) repealed by [Countryside \(Scotland\) Act 1981 \(c. 44, SIF 46:1\), Sch. 2](#)
- F9** Words substituted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\), s. 9, Sch. 1 Pt. I, Pt. II para. 12\(a\)](#)
- F10** Words substituted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\), s. 9, Sch. 1 Pt. I, Pt. II para. 12\(b\)](#)

[^{F11}33 Making up and maintenance of public paths.

- (1) On the creation of a public path in pursuance of a public path creation agreement, or on the coming into operation of a public path creation order or public path diversion order, [^{F12}the general or district planning] authority shall carry out such work as appears to them to be necessary to bring it into a fit condition for use by the public as a public path in conformity with the terms and conditions of the said agreement or order, as the case may be, and shall maintain it in such condition.

^{F13}(2)]

Textual Amendments

- F11** S. 33 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\(b\)](#)
- F12** Words substituted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\), s. 9, Sch. 1 Pt. I, Pt. II para. 13](#)
- F13** Ss. 5(2)(3), 9, 14(7), 32(1)(3), 33(2)–(4), 36(2)(3), 37(3), and 45(2) repealed by [Countryside \(Scotland\) Act 1981 \(c. 44, SIF 46:1\), Sch. 2](#)

[^{F14}34 Closure of public paths.

- (1) Where it appears to [^{F15}a general or district planning] authority as respects a public path in their area that it is expedient that the path should be closed on the ground that the path is not needed for public use, the authority may by order (in this Act referred to as a “public path extinguishment order”) made by them and [^{F16}, subject to paragraph 2(1A) of Schedule 3 to this Act,] submitted to and confirmed by the Secretary of State extinguish the right of way over the path.
- (2) The Secretary of State shall not confirm a public path extinguishment order unless he is satisfied that it is expedient so to do having regard to the extent 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 contained in section 37 below.
- (3) A public path extinguishment order shall be in such form as may be prescribed and shall contain a map, on such scale as may be prescribed, defining the land over which the right of way is thereby extinguished.

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- (4) Schedule 3 to this Act shall have effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.
- (5) Where in accordance with regulations made under paragraph 3 of the said Schedule proceedings preliminary to the ^[F17]making or] confirmation of a public path extinguishment order are taken concurrently with proceedings preliminary to the ^[F17]making or] confirmation of a public path creation order or of a public path diversion order ^{F18} ... then, in considering—
- (a) under subsection (1) above whether the path to which the public path extinguishment order relates is needed for public use, or
 - (b) under subsection (2) above to what extent that path would apart from the order be likely to be used by the public,
- the local planning authority or the Secretary of State, as the case may be, may have regard to the extent to which the public path creation order or the public path diversion order would provide an alternative path.
- (6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path by the public shall be disregarded.]

Textual Amendments

- F14** S. 34 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)
- F15** Words substituted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), s. 9, **Sch. 1 Pt. I, Pt. II para. 14**
- F16** Words inserted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), s. 9, **Sch. 1 Pt. I, Pt. II para. 9(a)**
- F17** Words inserted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), **Sch. 3 para. 9(b)(i)**
- F18** Words repealed by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), **Sch. 4 Pt. I**

^[F19]35 Diversion of public paths.

- (1) Where an owner, tenant or occupier of land crossed by a public path satisfies ^[F20]the general or district planning] authority in whose area 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 convenient path across his land, 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 or his or on to land of another owner, tenant or occupier), the authority may by order (in this Act referred to as a “public path diversion order”) made by them and ^[F21], subject to paragraph 2(1A) of Schedule 3 to this Act,]submitted to and confirmed by the Secretary of State
- (a) create, as from such date as may be specified in the order, any such new public path as appears to the authority 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 right of way over so much of the path as appears to the authority requisite as aforesaid.
- (2) Where it appears to the authority that work requires to be done to provide necessary facilities for the convenient use of any such new public path as is mentioned in subsection (1)(a) above, the date specified under subsection (1)(b) above shall be later

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than the date specified under subsection (1)(a) above by such time as appears to the authority requisite for enabling the work to be carried out.

- (3) A right of way created by a public path diversion order may either be unconditional or may (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) be subject to such limitations or conditions as may be specified in the order, and the Secretary of State may ^{F22}, in a case where his confirmation of the order is required, confirm it]subject to such modifications or conditions as he thinks fit.
- (4) Before determining to make a public path diversion order on the representation of an owner, tenant or occupier, the authority may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards
 - (a) any compensation which may become payable under section 37 below;
 - (b) any expenses which ^{F23}any general or district planning] authority may incur in bringing the new site of the path into a fit conditions for use by the public.
- (5) The Secretary of State shall not confirm a public path diversion order unless he is satisfied that the diversion to be effected thereby is expedient as mentioned in subsection (1) above, 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 right of way, and
 - (c) any new right of way created by the order would have as respects the land over which the right is so created and any land held therewith,so, however, that for the purposes of paragraphs (b) and (c) of this subsection the Secretary of State shall take into account the provisions as to compensation of section 37 below.
- (6) A public path diversion order shall be in such form as may be prescribed and shall contain a map, on such scale as may be 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) Schedule 3 to this Act shall have effect as to the making, confirmation, validity and date of operation of public path diversion orders.]

Textual Amendments

- F19** S. 35 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)
- F20** Words substituted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), s. 9, [Sch. 1 Pt. I, Pt. II para. 15\(a\)](#)
- F21** Words inserted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), [Sch. 3 para. 10\(a\)](#)
- F22** Words substituted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), [Sch. 3 para. 10\(b\)](#)

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F23 Words substituted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), s. 9, [Sch. 1 Pt. I, Pt. II para. 15\(b\)](#)

[^{F24}36 Exercise of powers under sections 34 and 35.

(1) Subject to the provisions of this section, section 32 ^{F25}... (2) above shall apply in the exercise of the powers conferred by the two last foregoing sections in relation to any public path as [^{F26}it applies] in the exercise of the powers referred to in the said [^{F27}subsection].

^{F28}(2)

(4) An authority proposing to make a public path diversion order such that the authority who will be responsible for a part of the path after the diversion will be a different body from the authority who before the diversion are so responsible shall, before making the order, consult the authority who will be responsible for that part.]

Textual Amendments

- F24** S. 36 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)
- F25** Words repealed by [Countryside \(Scotland\) Act 1981 \(c. 44, SIF 46:1\)](#), [Sch. 2](#)
- F26** Words substituted by [Countryside \(Scotland\) Act 1981 \(c. 44, SIF 46:1\)](#), [Sch. 1 para. 2\(a\)](#)
- F27** Words substituted by [Countryside \(Scotland\) Act 1981 \(c. 44, SIF 46:1\)](#), [Sch. 1 para. 2\(b\)](#)
- F28** Ss. 5(2)(3), 9, 14(7), 32(1)(3), 33(2)–(4), 36(2)(3), 37(3), and 45(2) repealed by [Countryside \(Scotland\) Act 1981 \(c. 44, SIF 46:1\)](#), [Sch. 2](#)

[^{F29}37 Compensation for creation, diversion and closure of public paths.

(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 any person in land is depreciated, or that any 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, a public path diversion order or a public path extinguishment 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 and shall be made to the authority by whom the order was made.

^{F30}(3)

(4) Nothing in this section shall confer on any person, in respect of a right of way created by a public path creation order or a public path diversion order, a right to compensation for depreciation of the value of an interest in land, or for disturbance in his enjoyment of land, not being in either case land over which the right of way was created or land held therewith, unless the creation of the right of way would have been actionable at his instance if it had been effected otherwise than in the exercise of statutory powers.]

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Textual Amendments

- F29** S. 37 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)
- F30** Ss. 5(2)(3), 9, 14(7), 32(1)(3), 33(2)–(4), 36(2)(3), 37(3), and 45(2) repealed by [Countryside \(Scotland\) Act 1981 \(c. 44, SIF 46:1\)](#), [Sch. 2](#)

[^{F31}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 [^{F32}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 [^{F33}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 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 [^{F34}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

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consent is unreasonable or whether any requirement is reasonable shall be determined by the [^{F35}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 [^{F36}any [^{F37}electronic communications apparatus] kept installed for the purposes of [^{F38}an electronic communications code network], the operator of [^{F39}that network] shall have the same powers in respect of the [^{F37}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].
- [^{F40}(8) Paragraph 1(2) of [^{F41}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 [^{F41}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 [^{F37}electronic communications apparatus] as it applies in relation to an entitlement to require the removal of any such apparatus.]]

Textual Amendments

- F31** 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)
- F32** 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)**
- F33** 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)**
- F34** 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
- F35** 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**
- F36** Word substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), **Sch. 4 para. 46(2)(3)**
- F37** 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)**
- F38** 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)**
- F39** 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)**
- F40** S. 38(8)(9) inserted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), **Sch. 4 para. 46(2)**
- F41** 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.

Changes to legislation:

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