



National Parks and Access to the Countryside Act 1949

1949 CHAPTER 97

PART IV

PUBLIC RIGHTS OF WAY

Creation of new public rights of way

39 Creation of rights of way by agreement

- (1) The council of a county borough or county district shall have power to 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 the county borough or county district, as the case may be:

Provided that the powers conferred by this subsection 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; and
 - (c) by the council of a county borough, not being the local planning authority, except with the consent of that authority.
- (2) An agreement made under the last foregoing subsection (hereinafter referred to as a "public path 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 dedication of the footpath or bridleway subject to limitations or conditions affecting the public right of way thereover.
- (3) Where a public path agreement has been made it shall be the duty of the council to take all necessary steps for securing that the footpath or bridleway is dedicated in accordance therewith.

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- (4) References in this section to the dedication of a footpath or bridleway shall be construed as including references to the widening or extension of a footpath or bridleway.

40 Compulsory powers for creation of public rights of way

- (1) Where it appears to the council of a county borough or county district that there is need for a public right of way on foot, or on foot and on horseback, over land in their area and they are satisfied that, having regard to—
- (a) the extent to which the right of 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 right of way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation hereinafter contained,
- it is expedient that the right of way should be created, the council may by order (hereinafter referred to as a "public path order") made by them and submitted to and confirmed by the Minister create a public right of way over the land.
- (2) A right of way created by a public path order may be either a right of way on foot only, or a right of way on foot and on horseback, as may be specified in the order, and may be either unconditional or subject to such limitations or conditions as may be so specified.
- (3) Subject to the provisions of the next following section, the powers conferred by this section 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 ; and
 - (c) by the council of a county borough, not being the local planning authority, except with the consent of that authority.
- (4) A public path 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 a public right of way is thereby created.
- (5) 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 public path orders.
- (6) References in this section to the creation of a public right of way shall be construed as including references to the widening or extension of the area over which there is an existing public right of way ; and references therein to a right of way on horseback shall be construed as including references to a right of leading a horse along the highway.

41 Exercise by other authorities of powers under ss. 39 and 40

- (1) The Minister, on the application of the council of a county, may direct, either generally or as respects the creation of a particular right of way, that the powers conferred by the two last foregoing sections or either of them on the council of a county district

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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:

Provided that, in relation to the creation of rights of way in a National Park, this subsection shall have effect as if—

- (a) references to the council of a county included reference to a local planning authority whose area consists of or includes any part of the Park, and
 - (b) references to a county district in the county included references to a county borough or county district any part of which is comprised in the area of such a local planning authority.
- (2) 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.
 - (3) Where it appears to the Minister in any particular case that there is need for a public right of way as mentioned in subsection (1) of the last foregoing section, and the Minister is satisfied as mentioned in that subsection, the Minister, after consultation with the appropriate authority, may direct the authority to make and submit to him a public path order creating the right of way or may himself make the order; and where the Minister gives a direction under this subsection, the provisions of subsection (3) of the last foregoing section shall not apply.
 - (4) In the last foregoing subsection the expression " the appropriate authority," in relation to the making of a public path 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 the last foregoing section or by that section as modified by a direction given under subsection (1) of this section.