



Highways Act 1980

1980 CHAPTER 66

PART III

CREATION OF HIGHWAYS

35 Creation of walkways by agreement.

- (1) An agreement under this section may be entered into—
 - (a) by a local highway authority, after consultation with the council of any [^{F1}non-metropolitan] district in which the land concerned is situated;
 - (b) by a [^{F1}non-metropolitan] district council, either alone or jointly with the local highway authority, after consultation with the local highway authority.
- (2) An agreement under this section is an agreement with any person having an interest in any land on which a building is, or is proposed to be, situated, being a person who by virtue of that interest has the necessary power in that behalf,—
 - (a) for the provision of ways over, through or under parts of the building, or the building when constructed, as the case may be, or parts of any structure attached, or to be attached, to the building; and
 - (b) for the dedication by that person of those ways as footpaths subject to such limitations and conditions, if any, affecting the public right of way thereover as may be specified in the agreement and to any rights reserved by the agreement to that person and any person deriving title to the land under him.

A footpath created in pursuance of an agreement under this section is referred to below as a “walkway”.

- (3) An agreement under this section may make provision for—
 - (a) the maintenance, cleansing and drainage of any walkway to which the agreement relates;
 - (b) the lighting of such walkway and of that part of the building or structure which will be over or above it;
 - (c) the provision and maintenance of support for such walkway;

Status: Point in time view as at 18/02/2014.

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- (d) entitling the authority entering into the agreement or, where the agreement is entered into jointly by a [^{F1}non-metropolitan] district council and a local highway authority, either of those authorities to enter on any building or structure in which such walkway will be situated and to execute any works necessary to secure the performance of any obligation which any person is for the time being liable to perform by virtue of the agreement or of subsection (4) below;
 - (e) the making of payments by the authority entering into the agreement or, where the agreement is entered into jointly by a [^{F1}non-metropolitan] district council and a local highway authority, either of those authorities to any person having an interest in the land or building affected by the agreement;
 - (f) the termination, in such manner and subject to such conditions as may be specified in the agreement, of the right of the public to use such walkway;
 - (g) any incidental and consequential matters.
- (4) Any covenant (whether positive or restrictive) contained in an agreement under this section and entered into by a person having an interest in any land affected by the agreement shall be binding upon persons deriving title to the land under the covenantor to the same extent as it is binding upon the covenantor notwithstanding that it would not have been binding upon those persons apart from the provisions of this subsection, and shall be enforceable against those persons by the local highway authority.
- (5) A covenant contained in an agreement under this section and entered into by a person having an interest in any land affected by the agreement is a local land charge.
- (6) Where an agreement has been entered into under this section the appropriate authority may make byelaws regulating—
- (a) the conduct of persons using any walkway to which the agreement relates;
 - (b) the times at which any such walkway may be closed to the public;
 - (c) the placing or retention of anything (including any structure or projection) in, on or over any such walkway.
- (7) For the purposes of subsection (6) above, “the appropriate authority” means—
- (a) where the agreement was entered into by a local highway authority, that authority;
 - (b) where the agreement was entered into by a [^{F2}non-metropolitan] district council alone, that council;
 - (c) where the agreement was entered into by a [^{F2}non-metropolitan] district council jointly with the local highway authority, the local highway authority;
- but in cases falling within paragraph (c) above the local highway authority shall before making any byelaw consult the district council, and in exercising his power of confirmation the Minister shall have regard to any dispute between the local highway authority and the district council.
- (8) Not less than 2 months before an authority propose to make byelaws under subsection (6) above they shall display in a conspicuous position on or adjacent to the walkway in question notice of their intention to make such byelaws.
- (9) A notice under subsection (8) above shall specify the place where a copy of the proposed byelaws may be inspected and the period, which shall not be less than 6 weeks from the date on which the notice was first displayed as aforesaid, within which representations may be made to the authority, and the authority shall consider any representations made to them within that period.

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- (10) The Minister of the Crown having power by virtue of section 236 of the ^{M1}Local Government Act 1972 to confirm byelaws made under subsection (6) above may confirm them with or without modifications; and if he proposes to confirm them with modifications he may, before confirming them, direct the authority by whom they were made to give notice of the proposed modifications to such persons and in such manner as may be specified in the direction.
- (11) Subject to subsection (12) below, the Minister, after consulting such representative organisations as he thinks fit, may make regulations—
- (a) for preventing any enactment or instrument relating to highways or to things done on or in connection with highways from applying to walkways which have been, or are to be, created in pursuance of agreements under this section or to things done on or in connection with such walkways;
 - (b) for amending, modifying or adapting any such enactment or instrument in its application to such walkways;
 - (c) without prejudice to the generality of paragraphs (a) and (b) above, for excluding, restricting or regulating the rights of statutory undertakers, ^{F3} . . . [^{F4F3} . . . and the operators of [^{F5}electronic communications code networks] to place] and maintain apparatus in, under, over, along or across such walkways;
 - (d) without prejudice as aforesaid, for defining the circumstances and manner in which such walkways may be closed periodically or temporarily or stopped up and for prescribing the procedure to be followed before such a walkway is stopped up.
- (12) Regulations under this section shall not exclude the rights of statutory undertakers, ^{F6} . . . [^{F7F6} . . . or the operators of [^{F5}electronic communications code networks] to place] and maintain apparatus in, under, along or across any part of a walkway, being a part which is not supported by any structure.
- (13) Without prejudice to subsection (11) above, regulations under this section may make different provisions for different classes of walkways and may include such incidental, supplemental and consequential provisions (and, in particular, provisions relating to walkways provided in pursuance of agreements made before the coming into operation of the regulations) as appear to the Minister to be expedient for the purposes of the regulations.
- (14) Nothing in this section is to be taken as affecting any other provision of this Act, or any other enactment, by virtue of which highways may be created.

Textual Amendments

- F1** Word inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 9](#)
- F2** Word inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 9](#)
- F3** Word repealed by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 41\(1\), 57\(6\), 58](#), [Sch. 27 Pt. I](#)
- F4** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, [Sch. 4 para. 76\(2\)\(a\)](#), [Sch. 5 para. 45](#)
- F5** Words in s. 35(11)(c)(12) substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), ss. 406(1)(6), 408, 411, [Sch. 17 para. 53](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), [2\(1\)](#), 3(1), [Sch. 1](#) (with art. 3(2) (as amended (8.12.2003) by [S.I. 2003/3142](#), art. 1(3))); [S.I. 2003/3142](#), [art. 3\(2\)](#) (with art. 11)
- F6** Word repealed by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 41\(1\), 57\(6\), 58](#), [Sch. 27 Pt. I](#)

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F7 Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, [Sch. 4 para. 76\(2\)\(a\)](#), Sch. 5 para. 45

Marginal Citations

M1 [1972 c. 70](#).

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