



Department for  
Communities and  
Local Government

Temporarily removing restrictions on the use of the Stray, Harrogate, imposed by the Harrogate Stray Act 1985, to facilitate Harrogate Borough Council hosting the Tour de France 2014

The Harrogate Stray Act 1985 (Tour de France) Order 2014

Explanatory Document by the Department for Communities and Local Government

© Crown copyright, 2014

*Copyright in the typographical arrangement rests with the Crown.*

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This document/publication is also available on our website at [www.gov.uk/dclg](http://www.gov.uk/dclg)

If you have any enquiries regarding this document/publication, email [contactus@communities.gov.uk](mailto:contactus@communities.gov.uk) or write to us at:

Department for Communities and Local Government  
Eland House  
Bressenden Place  
London  
SW1E 5DU  
Telephone: 030 3444 0000

For all our latest news and updates follow us on Twitter: <https://twitter.com/CommunitiesUK>

March 2014

ISBN: 978-1-4098-4153-1

# Contents

1. Introduction
2. Background to the Draft Order
3. Government response to the consultation: laying the Draft Order
4. Consultation

Appendix A: Parliamentary scrutiny

Appendix B: The Harrogate Stray Act 1985

# Chapter 1

## Introduction

- 1.1 In January 2013, the proposed route of the 2014 Tour de France was announced. This includes the finish of the first stage – the Grand Départ – adjacent to the area within Harrogate known as the Stray. Harrogate Borough Council considered that several parts of the Harrogate Stray Act 1985 (the 1985 Act) would prevent or restrict it from exercising the general power of competence in hosting the Tour de France. They wrote to the Secretary of State asking he use his powers under section 5 of the Localism Act 2011 (the 2011 Act) to make an order to temporarily disapply or amend parts of the 1985 Act for three sections of the Stray for the sole purpose of hosting the Tour de France.
- 1.2 The Secretary of State agrees with Harrogate Borough Council that several provisions of the 1985 Act prevent or restrict them from exercising the general power of competence in hosting the Tour de France. The draft Order accompanying this Explanatory Document proposes the temporary disapplication or amendment of provisions of the 1985 Act for three sections of the Stray from 23 June to 8 July 2014 for the sole purpose of hosting the Tour de France. The three areas of the Stray for which the 1985 Act would be disapplied or amended are shown on the map referred to in the draft Order.
- 1.3 This Explanatory Document is laid before Parliament in accordance with section 7(2) of the 2011 Act together with the draft of the Harrogate Stray Act 1985 (Tour de France) Order 2014 that the Secretary of State proposes to make under Section 5(1) of that Act. The purpose of the draft Order is to temporarily remove some restrictions on the use of the Stray, Harrogate, imposed by the 1985 Act, to facilitate Harrogate Borough Council hosting the Tour de France 2014.
- 1.4 The Government is satisfied that the requirements under the relevant sections of the 2011 Act have been met. This includes that the draft Order serves a purpose under section 5(1), that the conditions under section 6(2) have been met, and that the appropriate consultation has been carried out in accordance with section 5(7).
- 1.5 As this is the first time the Secretary of State has used his powers under section 5 of the Localism Act, Appendix A to this Explanatory Document details the parliamentary scrutiny procedure that follows the laying of the draft Order.

# Chapter 2

## Background to the draft Order

### The Tour de France 2014

- 2.1 In order to host the Tour de France 2014 Harrogate Borough Council intends to use some of the area of land in Harrogate known as the Stray. The Stray is owned by the Duchy of Lancaster but managed by Harrogate Borough Council. Its use and management has been regulated since 1770 by a succession of private acts, the current being the 1985 Act, a copy of which is attached at Appendix B.
- 2.2 The precise requirements for the Tour de France 2014 are not yet known<sup>1</sup>, but on the basis of current understanding, Harrogate Borough Council anticipate that they will need to section off 19.5 hectares of the 80 hectare Stray for a maximum of 16 days, and that it would be occupied by temporary infrastructure to support the Tour. The Council would ensure the Stray is returned to its original state very shortly after the event.
- 2.3 It is likely that the temporary infrastructure would comprise:
- An enclosed secure technical zone, to include approximately 130 trucks, and temporary living accommodation close to the technical area for the technicians to stay whilst they set up the infrastructure to support the Tour de France;
  - Facilities for the anticipated number of spectators, to include at least two grandstands accommodating 80 people per stand;<sup>2</sup>
  - A large screen for spectators;
  - An area for merchandising kiosks and tents;<sup>3</sup>
  - Approximately 300 toilets;
  - Catering facilities;

---

<sup>1</sup> Once the Technical Document for 2014 is produced by the Amaury Sport Organization – the organisers of the Tour de France – Harrogate Borough Council intend to make clear their detailed expectations of how the Stray will be used to make the experience for all involved safe and enjoyable.

<sup>2</sup> This is required by the Amaury Sport Organization – the organisers of the Tour de France.

<sup>3</sup> This is required by the Amaury Sport Organization – the organisers of the Tour de France.

- An area for spectators for the second day of the tour;
- Temporary roads for support vehicles (there are approximately 250 support vehicles consisting of team cars, cars for officials and medical vehicles);
- Car parking (although Harrogate Borough Council is working to accommodate as much car parking as possible within the municipal car parks);
- An assembly point for approximately 180 advertising vehicles (a procession of floats that precede the cyclists in crossing the finish line);
- Provision for emergency vehicles; and
- A helicopter landing area.

## **The general power of competence**

2.4 To host the Tour de France 2014, Harrogate Borough Council proposes to use the general power of competence. The general power of competence is provided for in section 1 of the 2011 Act. It gives councils confidence in their legal capacity to act for communities. Prior to the 2011 Act, local authorities could only do what Parliament had provided they could do – they were given discrete, often narrowly defined powers. The general power of competence was provided on the basis that local authorities would be able to do anything that an individual with full capacity might do, other than that which is specifically prohibited, with some limitations.

2.5 Harrogate Borough Council has presented to Government a compelling case for using the general power of competence to host the Tour de France 2014: the general power of competence is a broad power and the economic merits of hosting the Tour are significant. The general power of competence applies in these circumstances as an individual with full capacity would have the power to host a cycle race on someone else's land, subject to complying with an applicable legal restrictions and obtaining the landowner's consent. The reasoning for this is set out below:

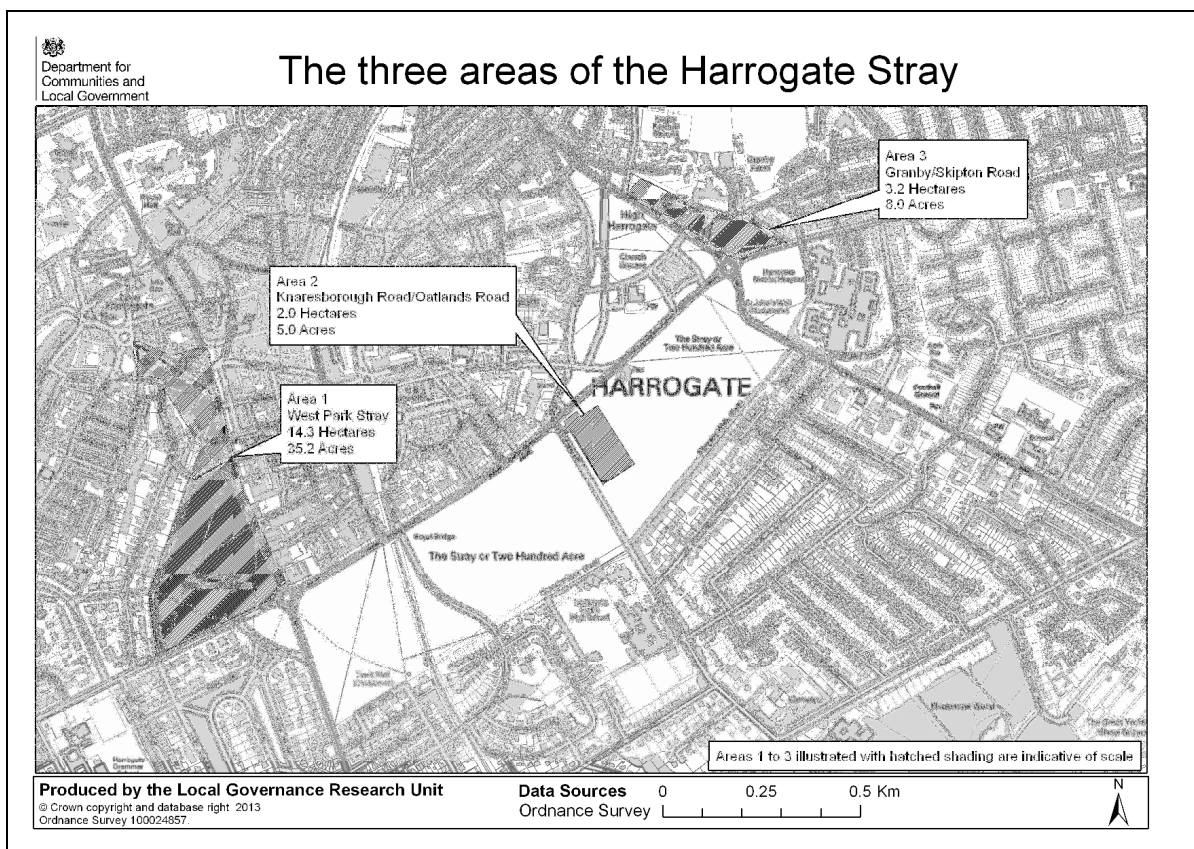
- the Stray comprises land;
- any individual can own land (in this case the Stray is owned by the Duchy of Lancaster but managed by Harrogate Borough Council);
- a landowner can grant someone the right to manage the land;
- the right to manage land can include the right to enter into contracts to license the land for certain purposes; and

- the grantee can then enter into a contract with the organisers of the Tour de France to allow the event to take place on that land.
- 2.6 As it is established that an individual (other than Harrogate Borough Council) could host such an event on someone else's land; it is then a question of whether there are any legal obstacles to the Council doing that and whether the general power of competence provides that such obstacles can be removed.
- 2.7 The 1985 Act governs the management of the area within Harrogate known as the Stray. Harrogate Borough Council is identified as the body holding these management functions on behalf of the Duchy of Lancaster. The 1985 Act includes various obligations and restrictions on the Council, a number of these have been identified as preventing Harrogate from hosting the Tour de France 2014. These are:
- a) section 4(2), which requires the Council to maintain and preserve the aspect of the Stray (this could be problematic given the siting of temporary infrastructure on the Stray);
  - b) section 4(3), which requires the Council to protect trees, shrubs, plants, turf and herbage growing on the Stray (this could be problematic given the siting of temporary infrastructure on the Stray);
  - c) section 4(4), which imposes a requirement that where the Council 'inclose' part of the Stray they are to provide an area, at least the size of that 'inclosed', within 100 metres of the Stray (there is no appropriate substitute area);
  - d) section 5, which gives inhabitants of the Borough of Harrogate free access to the Stray (the necessary temporary infrastructure will require parts of the Stray to be 'inclosed');
  - e) section 6(1)(d), which imposes limits on the number of aircraft landings allowed (this could be problematic given media and judging requirements); and
  - f) section 6(4) which sets out restrictions regarding area (3.5 hectares) and time (maximum 5 weeks) attached to a licence to 'inclose' the Stray (the necessary temporary infrastructure for the Tour de France requires 19.5 hectares of the Stray and while the hosting of the Tour de France only requires 16 days, there are other events throughout the year that would then exceed the maximum time period).<sup>4</sup>
- 2.8 The draft Order disapplies sections 4(2), 4(3), 4(4), 5 and 6(4) of the 1985 Act from 23 June to 8 July 2014, for the sole purpose of hosting the Tour de France. The draft Order amends section 6(1)(d) of the 1985 Act so

---

<sup>4</sup> 'Inclose' is the language used in the 1985 Act.

there are no limits on the number of aircraft landings allowed from 23 June to 8 July 2014, for the sole purpose of hosting the Tour de France. The three areas of the Stray (totalling 19.5 hectares) for which the 1985 Act would be disapplied or amended are shown on the map referred to in the draft Order. An indicative map is shown below for information. Detailed maps have been prepared for the draft Order and are available at the offices of the Department for Communities and Local Government (Eland House, Bressenden Place, London, SW1E 5DU) and Harrogate Borough Council (Springfield House, Kings Road, Harrogate, HG1 5NX). The set of two maps is marked “Maps referred to by the Harrogate Stray Act 1985 (Tour de France) Order 2014” and are dated 24 February 2014.



2.9 There are also byelaws that impose other restrictions. However, the Government understands that this will be addressed by Harrogate Borough Council.



# Chapter 3

## Government response to the consultation: laying the draft Order

### **Power to amend, repeal, revoke or disapply statutory provision that prevents or restricts local authorities from exercising the general power of competence under section 5 of the 2011 Act**

- 3.1 Following consultation and consideration of the statutory conditions, the Secretary of State has decided that several parts of the 1985 Act do prevent or restrict Harrogate Borough Council from exercising the general power of competence in hosting the Tour de France 2014, and it is appropriate for him to use his powers under section 5(1) of the 2011 Act to lay before Parliament an Order to disapply or amend parts of the 1985 Act, for the period of 23 June to 8 July 2014, for the sole purpose of hosting the Tour de France 2014. The three areas of the Stray for which the 1985 Act would be disapplied or amended are shown on the map referred to in the draft Order.
- 3.2 The other way of securing the policy objective would be to seek an amendment to the 1985 Act. However, this would likely take more time than is available and involve more public resource, including more parliamentary time. It would also be difficult to secure the time, area and purpose-limited temporary inclosure that an Order can allow. The 2011 Act was expressly drafted to allow for the temporary repeal of primary legislation, and so is ideally suited to the purpose.

### **Compliance with conditions in section 6 of the 2011 Act**

- 3.3 The Secretary of State has considered carefully the responses to the consultation, which are summarised in chapter 4 of this Explanatory Document. Significant efforts were made to promote the consultation – including the Department arranging for letters to be hand delivered to 500 residents adjacent to the Stray and Public Notices to be placed around the Stray – but there were only 14 responses. Of those that commented on the proposal, six were favourable and six raised concerns. Two responses did not comment on the issues raised by the consultation document. On balance, the Secretary of State considers that the conditions in section 6(2) of the 2011 Act are met as the concerns raised through the consultation are addressed in a number of ways, including:

- The reassurances provided by Harrogate Borough Council that the Stray will be returned to its original state very shortly after the event;
- The temporary nature of the draft Order: for 16 days only it disapplies five provisions and amends one provision of the 1985 Act;
- The purpose limit applied to the proposed disapplication and amendment of the 1985 Act: it is solely for the Tour de France 2014;
- The area limit to the proposed disapplication and amendment of the 1985 Act: the draft Order applies to 19.5 hectares of the 80 hectare Stray; and
- No precedent is set for any future events on the Stray: if the Council wished to again temporarily disapply sections of the 1985 Act in order to use their general power of competence to host an event on the Stray, another Order would be required to again amend the 1985 Act for that purpose. The same statutory process would apply to any such future Order.

3.4 In accordance with section 7(2) of the 2011 Act, the following sets out the Secretary of State's reasons for considering the conditions in section 6(2) of the same Act are satisfied in relation to the proposals.

## Proportionality

3.5 Harrogate Borough Council have provided appropriate reassurances that all land will be returned to its original state shortly after the event and all items of infrastructure will be removed by 8 July. The main period of restricted access will be between 2 July and 8 July, but a slightly longer timeframe is provided for in the draft Order (23 June to 8 July) given the necessary preparation works such as the installation of temporary water, electricity and sewerage to the technical area. Certain limited tasks required for re-instatement may need to be completed later in the year – for example, reseeding grass cannot be done during very dry weeks. The disapplication of five provisions of the 1985 Act and amendment of one provision is time, area and purpose limited, and the Tour coming to Harrogate is likely to bring significant advantages to the area in terms of growth and other opportunities. Accordingly, the Secretary of State considers that the effect of the provision is proportionate to the policy objective intended to be secured by the provision.

## Fair balance

3.6 The Secretary of State has time, purpose and area limited the disapplication and amendment of the 1985 Act to ensure the impact on any interests affected is for the shortest time necessary, for the smallest area possible and the only purpose is for hosting the Tour de France

2014. Accordingly, the Secretary of State considers that the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it.

## Necessary protection

- 3.7 The 1985 Act will still ensure that the Stray is protected for public access in the long term, the proposed amendment will only have effect for 16 days in relation to identified areas of the Stray, and the Council has provided appropriate reassurances about the reinstatement of the Stray following the Tour de France 2014. In their response to the consultation they confirmed that “Harrogate Borough Council will ensure that the land is returned to its original state after the Tour”. Accordingly, the Secretary of State considers that the proposal will not remove any necessary protection.

## Rights and freedoms

- 3.8 The proposal would disapply the provision in the 1985 Act that provides the inhabitants of the borough to have free access to the Stray and a privilege at all times of enjoying recreation upon the Stray without payment. The proposed disapplication and amendment will only have effect for 16 days and affect less than a quarter of the area of the Stray. As the 1985 Act allows the Council to restrict access when exercising its management powers to maintain the Stray, the public do not have a reasonable expectation that their rights and freedoms will always be exercisable to their fullest extent across the Stray. The Secretary of State considers that whilst the proposed temporary area and purpose specific disapplication will prevent persons from exercising free access to less than a quarter of the Stray for 16 days, it is not the case that they might reasonably expect to exercise free access to the Stray across the full Stray at all times. Accordingly, the Secretary of State is satisfied that the draft Order will not prevent any person from continuing to access any right or freedom that they might reasonably expect to continue to exercise.

## Constitutional significance

- 3.9 The draft Order suspends the operation of some provisions of local significance for a very short period. Accordingly, the Secretary of State has concluded that the proposals have no constitutional significance.

## Other requirements under the 2011 Act

### Consultation

- 3.10 The Secretary of State conducted a six week consultation exercise on the proposal between November 2013 and January 2014 and is satisfied that the consultation met the requirements of section 5(7) of the 2011 Act. More details of the consultation and the responses received are set out in chapter 4 of this Explanatory Document, in accordance with section 7(2) of the 2011 Act.
- 3.11 Also in accordance with section 7(2) of the 2011 Act, the Secretary of State can confirm that no changes have been made to the draft Order as a result of the representations. Amendments have been made to the draft Order that was published with the consultation document. However, these amendments are to ensure that the policy intent, as described in the consultation document and chapter 2 of this Explanatory Document, is realised by the draft Order.
- 3.12 The original drafting disapplied 6(1)(d) of the 1985 Act, which could have the unintended consequence of withdrawing consent for the landing of aircraft, rather than removing the limit on the number of aircraft landings. Accordingly, the draft Order now amends 6(1)(d) to remove the limit from 23 June to 8 July for the specified area of the Stray for the sole purpose of the Tour de France 2014. The original drafting also disapplied part 6(4) of the 1985 Act to disapply the restrictions that no more than 3.5 hectares of the Stray can be 'inclosed' at any time and that the Stray cannot be 'inclosed' for more than five weeks in any year. This could have the unintended consequence that when the provision came back in to force on 9 July the Council would have to include the amount of time for which the Stray was 'inclosed' when considering other 'inclosures' during the year. Accordingly, the draft Order now specifies that the 'inclosure' of the Stray for the Tour de France 2014 should be disregarded when determining the total 'inclosure' for the year.

## Parliamentary procedure

- 3.13 In accordance with section 7(3) of the 2011 Act the Secretary of State recommends the negative resolution procedure to Parliament (see Appendix A for a description of the negative resolution procedure). The draft Order is a minor and technical instrument. The draft Order only provides for a short and temporary disapplication – 16 days – of five select provisions of a local Act, the 1985 Act, and the amendment of one provision of the same Act. The disapplication and amendment would only be applied to less than a quarter of the area of the Stray and would only be for the purpose of hosting the Tour de France 2014.
- 3.14 This is the first time the Secretary of State has approached Parliament to exercise his powers under section 5(1) of the 2011 Act, and it is clear that the role of Parliament in discharging these powers is critical to ensuring appropriate scrutiny of what is, potentially, a very broad power. However, in this instance – temporarily disapplying and amending a local Act so as to ensure the Tour de France 2014 can be successfully hosted in

Harrogate – the draft Order is a minor and technical instrument and so the negative resolution procedure is wholly appropriate. As discussed above, the draft Order does not remove any necessary protection. Unlike other Acts, the 2011 Act does not specify that the affirmative resolution procedure should be applied in the first case of the Secretary of State using delegated powers under section 5.

- 3.15 In considering which procedure the Secretary of State should recommend to Parliament, the Department has looked at Legislative Reform Orders that have been recently considered by Parliament. This is relevant as the 2011 Act specifies that parts of the procedure that applies to Legislative Reform Orders should also apply to Localism Orders. The Legislative Reform (Payments by Parish Councils, Community Councils and Charter Trustees) Order 2013 was considered using the negative resolution procedure.

## Compatibility with the European Convention on Human Rights

- 3.16 Brandon Lewis, Parliamentary Under Secretary of State at the Department for Communities and Local Government has made the following statement regarding Human Rights: In my view the provisions of the draft Harrogate Stray Act 1985 (Tour de France) Order 2014 are compatible with the Convention rights.

## Compatibility with the legal obligations arising from membership of the European Union

- 3.17 The Secretary of State is satisfied that the provisions of the draft Harrogate Stray Act 1985 (Tour de France) Order 2014 are compatible with the legal obligations arising from membership of the European Union.

## Territorial extent

- 3.18 This instrument applies to England.

# Chapter 4

## Consultation

### The consultation undertaken

- 4.1 The Secretary of State consulted over a six week period (26 November 2013 to 7 January 2014) on the 'Proposal to enable Harrogate Borough Council to host the Grand Départ of the Tour de France 2014.' The consultation is available here:  
<https://www.gov.uk/government/consultations/harrogate-borough-council-general-power-of-competence>
- 4.2 The statutory consultees were Harrogate Borough Council, the Duchy of Lancaster, and the Stray Defence Association (a non-political organisation which represents the views of those who seek to protect the Harrogate Stray).
- 4.3 To help ensure the consultation reached those people who could be affected by the proposal, the Department arranged for Public Notices to be placed around the Stray, informing people of the proposal and seeking responses to the consultation. The Department also wrote in similar terms to residents and local organisations believed to have an interest in the proposal, including:
- Around 500 residents of Harrogate who live adjacent to the Stray;
  - Chief Executives of the other local authorities hosting the opening stages of the Tour de France 2014 (Barnsley Metropolitan Borough Council, Bradford Metropolitan District Council, Calderdale Council, City of York Council, Craven District Council, Derbyshire County Council, Kirklees Council, Leeds City Council, North Yorkshire County Council, Peak District National Park, Richmondshire District Council, Rochdale Metropolitan Borough Council, Sheffield City Council and Yorkshire Dales National Park);
  - The Local Government Association;
  - Harrogate Chamber of Commerce; and
  - The Chief Executive of the North Yorkshire Police and Crime Commissioner.

## Representations received as a result of the consultation

- 4.4 The Department received 14 responses to the consultation. Of these, two did not address the issues of the consultation. Of the remaining 12 responses, seven were from members of the public, one was from a Councillor, one was from another local authority hosting the Tour de France and the remaining three were from the statutory consultees.
- 4.5 As a statutory consultee, Harrogate Borough Council considered that the objective of the draft Order was undoubtedly worthwhile, and overwhelming when compared to the relatively small disadvantages. They provided their consideration of how each of the statutory tests were met, in accordance with the consultation questions. The Duchy of Lancaster, as a statutory consultee, supported the proposals in the consultation document. The Stray Defence Association, also as a statutory consultee, offered support for the Tour de France 2014 coming to Harrogate, but sought reassurances regarding the drafting of the Order, given their view that necessary protections were being removed. In particular, they sought reassurance that the Stray would be wholly reinstated as soon as possible after the Tour de France 2014.
- 4.6 There were four other responses that supported the proposals. These came from two residents, one local Councillor and one local authority which is also hosting part of the Tour. The responses drew attention to the significant opportunities presented by the Tour, the necessary amendments to facilitate the event, and the temporary nature of the disapplication which meant that it was a proportionate response that was in the public interest.
- 4.7 There were five responses from residents that raised concerns about the proposal. One resident considered that the temporary disapplication would set a dangerous precedent. Another resident also considered that an unwelcome precedent would be set and was concerned about damage to the Stray and an adverse impact on residents. Concerns about damage to the Stray and the time it would take to reinstate the land were also raised by three other residents. Two of these drew attention to the limitation to the right of access for the 16 days specified in the draft Order.

## Proportionality

- 4.8 Harrogate Borough Council considered that the objective of the draft Order was undoubtedly worthwhile, and overwhelming when compared to the relatively small disadvantages. They referred to the economic, sporting, social and other benefits of the Tour, to the local economy, local residents and visitors. Four of the other responses also highlighted the economic, sporting, social and other benefits that the Tour will bring to Harrogate, which is likely to continue after the event. One respondent was

concerned about the precedent that would be set, and the Stray Defence Association sought reassurances from Harrogate Borough Council that the proposal was only for a limited period and that the affected areas would be wholly reinstated after the event.

## Fair balance

- 4.9 Harrogate Borough Council considered that the potential detriment and interests of persons adversely affected by the Order were minimal as the lack of access to a small part of the Stray will only be for a very limited amount of time when the Tour infrastructure is sited on the Stray. Two of the consultation responses raised concerns about physical damage to the Stray.

## Necessary protection

- 4.10 Harrogate Borough Council do not believe the Order will remove any necessary protection, as the Stray continues to be protected for public access in the long term, and they will return the land to its original state after the Tour de France 2014. They considered that it is not necessary to protect access to the entire Stray for a very limited period when access to the vast majority is maintained during that period. In their view the public will, in any event, derive different sporting and recreational benefit from the visit of the Tour. The Stray Defence Association though considered that the proposed suspension of the 1985 Act would remove necessary protection to the Stray. They considered that this could only be justified if written assurances were provided from Harrogate Borough Council that the Stray would be wholly reinstated within a reasonable period after the Tour.

## Rights and freedoms

- 4.11 Harrogate Borough Council considers that rights and freedoms are not adversely affected by the Order, as the 1985 Act already provides for the Council to use its management powers to maintain the Stray and restrict access, so people already expect that their rights of access to the Stray may be temporarily restricted. Harrogate Borough Council also confirmed that the rights and freedoms in regard to the Stray can continue to be exercised throughout the period of the visit – the only restriction will be the geographical limitation as to which parts of the Stray may be used to exercise these rights and freedoms. Two of the consultation responses raised concerns about the proposed limitation to local rights of access to important parts of the Stray.



## Constitutional significance

- 4.12 Harrogate Borough Council expressed the opinion that the proposals fall well short of having any constitutional significance and that the proposed Order is merely suspending the operation of some provisions of purely local significance for a short period. No other respondents commented on this question.

## Parliamentary procedure

- 4.13 In addition to the consultation questions on the statutory conditions, the consultation paper also asked whether the negative Parliamentary resolution procedure should apply to the scrutiny of the proposal. The only response to this question came from Harrogate Borough Council, who considered that the short and temporary disapplication provided in the draft Order was a minor and technical instrument.

# Appendix A

## Parliamentary scrutiny

- A1 The procedure for parliamentary scrutiny of Localism Orders is set out in sections 5-7 of the 2011 Act and sections 15-19 of the Legislative and Regulatory Reform Act 2006. Additional information is provided by the Companion to Standing Orders for the House of Lords and Standing Orders for the Regulatory Reform Committee in the House of Commons.
- A2 After the Secretary of State uses his powers from section 5 of the 2011 Act to lay a draft Order, the draft Order and Explanatory Document are considered by both the Delegated Powers and Regulatory Reform Committee in the House of Lords and the Regulatory Reform Committee in the House of Commons. The Committees first decide whether the recommended procedure is appropriate, or whether the level of scrutiny should be escalated. They then take a view on the draft Order and whether it meets the conditions in the 2011 Act. The conclusions of each Committee must be published within 30 days from the date the draft Order is laid (not including Parliamentary recesses longer than four days).
- A3 If the Secretary of State recommends the negative parliamentary procedure and both Committees agree with the recommendation and raise no points of issue or substance with the draft Order or the consultation, then if there are no objections from either House, 40 days after the draft Order was laid (not including parliamentary recesses longer than four days) the Secretary of State can make the Order.
- A4 If the Secretary of State recommends a negative parliamentary procedure either Committee can seek to escalate the scrutiny by recommending the affirmative or the super-affirmative procedure to Parliament. If the Secretary of State recommends an affirmative parliamentary procedure then either Committee can seek to escalate the scrutiny by recommending the super-affirmative procedure to Parliament. If the affirmative parliamentary process is applied, then there will be a motion in both Houses. If neither committee decides that further proceedings be taken in relation to the draft Order, then following affirmative votes the Secretary of State can make the Order 40 days after the draft Order was laid (not including Parliamentary recesses longer than four days).
- A5 If Parliament adopts either the affirmative or the super-affirmative procedure, then the Chairman of the Committees in the House of Lords must take a decision on whether hybridity applies. The purpose of the

hybrid instruments procedure is to allow those whose private interests are affected by the instrument to have an opportunity to petition against it.

A6 If the Chairman of the Committees declares that hybridity does apply, there is a 14 day period for people to make petitions. If there are no petitions, the Chairman of Committees reports to the House and the procedure ends. If there are petitions, they and the draft Order are referred to the Hybrid Instruments Committee. This Committee will then consider the petitions and decide if the petitioners have standing. If they decide that the petitioner(s) does not have standing this decision is reported to the House. However, if they find the petitioners do have standing they will then report to the House:

- 1) Whether the petition discloses substantial grounds of complaint;
- 2) Whether the matters complained of have been dealt with so that no further inquiry is necessary;
- 3) Whether the petitioner failed to avail him/herself of opportunities to have the matters looked into; and
- 4) Whether or not in light of the Committees findings there ought to be a further inquiry by select committee.

If further inquiry is considered necessary the Hybrid Instrument Committee will report this to the House. The House *may* then refer the matters to a select committee for further investigation. Where there has been such a referral the Hybrid procedure ends on the House receiving the report of the select committee.

## Appendix B

# The Harrogate Stray Act 1985



## **Harrogate Stray Act 1985**

### CHAPTER xxii

#### ARRANGEMENT OF SECTIONS

1. Citation
2. Commencement
3. Interpretation
4. Management of Stray
5. Access to Stray
6. Stray to be free from encroachments
7. Byelaws
8. Removal of unlawfully parked vehicles
9. Use of parts of Stray for certain purposes
10. Council may charge for changing-rooms
11. Pump rooms and Wells
12. Protection of Wells mineral waters.

ii c. xxii Harrogate Stray Act 1985

Section

- 13. Restriction on right to prosecute
- 14. Liability of directors, etc
- 15. Penalty for obstruction
- 16. Correction of errors in deposited plan and book of reference
- 17. Application of general provisions of Public Health Act 1936
- 18. Saving for Duchy of Lancaster
- 19. Repeals
- 20. Transitional provisions

SCHEDULE – Enactments repealed -

- Part I Local Acts
- Part II Confirmation Acts

**ELIZABETH II**



**1985 CHAPTER xxii**

An Act to re-enact with amendments certain local enactments in force within the borough of Harrogate; to confer further powers on the Council of the Borough of Harrogate with respect to the management of the Stray; and for other purposes.

[16<sup>th</sup> July 1985]

WHEREAS -

(1) The borough of Harrogate (hereinafter referred to as “the borough”) is under the management and local government of the Council of the Borough of Harrogate (hereinafter referred to as “the Council”):

(2) By virtue of the Local Government Act 1972 (hereinafter referred to as “the Act of 1972”) the borough was constituted on 1 April 1974 and comprises the former boroughs of Harrogate and Ripon, the former urban district of Knaresborough, the former rural districts of Masham, Nidderdale, Ripon and Pateley Bridge, Wath, Wetherby (except the parishes of Bardsey cum Rigton, Boston Spa, Bramham cum Oglethorpe, Clifford, Collingham, East Keswick, Harewood, Scarcroft, Thorner, Thorp Arch, Walton, Wetherby and Wothersome) and Wharfedale (except the parishes of Arthington, Bramhope, Carlton and Pool) and in the former rural district to Thirsk, the parishes of Ellen Thorpe, Humberton, Kirby Hill, Langthorpe, Milby, Norton-le-Clay and Thornton Bridge:

1972 c.70.

- (3) Certain local enactments were in force in the said former

Borough of Harrogate and by section 262 of the Act of 1972 it was provided that, subject to certain modifications, certain local statutory provisions should continue to apply to the area, things or persons to which or to whom they applied before that date:

(4) It was further provided by the said section 262 that certain local statutory provisions should cease to have effect at the end of 1984; but the Non-metropolitan and Welsh Counties (Local Statutory Provisions) Order 1983 has subsequently provided that such local statutory provisions shall cease to have effect at the end of 1986:

S.I. 1983/919

(5) The management of the Stray and Wells in the borough is by statute vested in the Council and it is expedient that it should remain so:

(6) It is expedient that certain of the said local statutory provisions should be re-enacted with amendments:

(7) It is expedient to confer further powers on the Council and that the other provisions contained in this Act should be enacted:

(8) The purpose of this Act cannot be effected without the authority of Parliament:

(9) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Act of 1972 have been observed:

(10) The plan showing the land which may be used for the purposes of this Act and a book of reference thereto containing the names of the owners or reputed owners, lessees or reputed lessees and the occupiers of those lands and describing the same have been duly deposited in the office of the Clerk of the Parliaments, House of Lords and in the Private Bill Office, House of Commons and with the proper officer of the North Yorkshire County Council which plan is referred to in this Act as the deposited plan:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. This Act may be cited as the Harrogate Stray Act 1985 Citation
  
2. This Act shall come into operation on the expiry of a period of three months beginning with the date on which it is passed. Commence-  
ment
  
3. In this Act unless the context otherwise requires - Interpretation
  - "the borough" means the borough of Harrogate;
  - "contravention" includes a failure to comply and "contravene" shall be construed accordingly;
  - "the Council" means the Council of the Borough of Harrogate;
  - "pump rooms" means the pump rooms associated with the Wells;
  - "Stray" means the area in Harrogate known as the Stray and more particularly delineated and shown edged green on the Stray Plan;
  - "Stray Plan" means the plan showing the land to which this Act applies marked "Stray Plan" and prepared in triplicate one copy of which has been deposited in the office of the Clerk of the Parliaments, House of Lords, one in the Private Bill Office, House of Commons and one in the office of the chief executive of the Council;
  - "Wells" means those wells and associated springs situate on the Stray.
  
- 4-(1) The management of the Stray and of the wells shall remain vested in the Council. Management  
of Stray
  - (2) The Council shall maintain and preserve the aspect of the Stray.
  - (3) The Council shall protect the trees, shrubs, plants, turf and herbage growing on the Stray and shall prevent all persons, other than the Council in the course of management, from felling, cutting, lopping or removing such vegetation and from digging clay, loam and soil therefrom.



(4) The Council may improve the Stray or a part thereof so far as may be necessary or desirable for the purposes of health, recreation and enjoyment and may thereon -

- (a) make and maintain roads and footpaths;
- (b) plant trees, shrubs and plants for the purposes of ornament and shelter;
- (c) let the pasturage of the Stray other than for feeding swine or geese;
- (d) provide pounds for impounding stray cattle:

Provide that the Council shall not exercise their powers under paragraph (a) above in such a way as to inclose any part of the Stray unless they have, in exchange for the land comprised in such inclosed part, dedicated as public open space other land within the borough not being -

- (i) less in area than the inclosed part and being equally advantageous to the inhabitants of the borough as public open space; and
- (ii) as measured from its nearest point to any part of the Stray more than 100 metres therefrom.

**5.** The inhabitants of the borough shall have free access to and a privilege at all times of enjoying recreation upon the Stray without payment but subject to the provisions of this Act.

Access to Stray

**6. – (1)** Subject to the provision of this section the Council shall maintain the Stray free from all encroachments save for -

Stray to be free from encroachments

- (a) temporary encroachments for the preservation of trees and shrubs;
- (b) such lawful permanent inclosures as exist at the commencement of this Act;
- (c) such repairs, rebuilding or improvements as are necessary to maintain the public conveniences at Devonshire Place in working order; and
- (d) not more than 12 temporary encroachments in any year for the setting aside of part of the Stray for the landing and take-off of aircraft capable of descending or climbing vertically provided that such aircraft shall not be engaged in the public transport of passengers for hire or reward.

(2) It shall not be lawful for any persons other than the Council without the consent of the Council in writing to make any temporary or other inclosure of any part of the Stray or to put any tents, kiosks, fences, posts, rails or other matters or things thereon or to make any road or footpath.

(3) Without prejudice to the generality of subsection (2) above, the Council may grant a licence to any person, at such reasonable fee and subject to such conditions as they may determine, to inclose any part of the Stray for the purpose of holding -

- (a) circuses, pleasure fairs, shows or other public entertainments; or
- (b) displays; or
- (c) events for the raising of funds for charitable purposes.

(4) The Council shall not exercise their powers under subsection (3) above so as to permit -

- (a) more than 3.5 hectares of the Stray to be inclosed at any time; and
- (b) the stray to be inclosed for more than five weeks in any year.

(5) It shall be lawful for any person inclosing part of the Stray in pursuance of a licence so to do granted to him under subsection (3) above to charge for admission to the inclosure.

(6) Nothing in this section shall affect the rights of the British Gas Corporation under paragraphs 1 and 2 of Schedule 4 to the Gas Act 1972.

1972 c.60.

7. – (1) The Council may make byelaws in respect of the Stray for all or any of the following purposes:-

Byelaws

- (a) for the improvement and management of the Stray and the preservation of good order and conduct among persons frequenting it;
- (b) for the prevention of nuisances and annoyances;
- (c) for the prevention of the cutting or digging, firing, or otherwise removing or displacing turf, sods, gravels, clays, sand, gorse, heather, ferns, brackens, bushes, trees and the like;
- (d) for the regulation of sports and games;

- (e) for the prevention of vehicles being parked or driven, or horses being exercised, on any part of the Stray not set apart by the Council for the purpose;
- (f) for the prevention of the posting of bills or placards on any wall, railing, fence, tree, lamp-post, walk, path or seat or elsewhere and the prevention of any other injury to or the removal of any such wall, railing fence, tree, lamp-post, walk, path or seat;
- (g) for the prevention of all acts and things tending to the injury or disfigurement of the Stray or the interference with the use thereof by the public for purposes of exercise and recreation;
- (h) for regulating the hiring or riding of horses and other animals;
- (i) for preventing horse-racing or the racing of other animals.

(2) Byelaws made under this section may provide that persons contravening the byelaws shall be liable on summary conviction to a maximum fine of an amount not exceeding level 2 on the standard scale.

**8.** – (1) If any vehicle is left without authority on the Stray the Council may remove the vehicle for safe custody, and may recover from the person responsible the expenses reasonably incurred in such removal and safe custody.

Removal of unlawfully parked vehicles

(2) In this section “person responsible” has the same meaning as in section 102 (8) of the Road Traffic Regulation Act 1984.

1984 c.27

**9.** – (1) Notwithstanding anything contained in section 6 (Stray to be free from encroachments) of this Act or any other enactment the Council may use -

Use of parts of Stray for certain purposes

- (a) the part of the Stray delineated on the deposited plan and thereon numbered 1 for the construction of a public conveniences; and
- (b) the part of the stray delineated on the deposited plan and thereon numbered 2 for the construction of changing-rooms.

(2) The Council shall not exercise the powers contained in subsection (1) above except with the agreement of the Chancellor of the Duchy of Lancaster as freeholder of the Stray.

(3) In their application to development authorised by this Act, Article 3 of, and Class XII in Schedule 1 to, the Town and Country Planning General Development Order 1977 (which permit development authorised by private Act designating specifically both the nature of the development thereby authorised and the land on which it may be carried out) shall have effect as if the authority to develop given by this Act were limited to development begun within 10 years after the passing of this Act.

S.I. 1977/289.

**10.** The Council may charge for admission to and use of the changing-rooms on the Stray.

Council may charge for changing-rooms

**11.** – (1) The Council shall maintain and protect -

Pump rooms and Wells.

- (a) the Wells;
- (b) the pump rooms; and
- (c) the supply of water without charge from the public drinking fountain situate outside the Royal Pump Room.

(2) The Council may -

- (a) improve the pump rooms; and
- (b) make byelaws for the regulation and use of the pump rooms; and
- (c) demand charges for admission to the pump rooms; and
- (d) subject to paragraph (c) of subsection (1) above, levy charges for the supply of water for consumption from the Wells.

(3) Byelaws made under this section may provide that persons contravening the byelaws shall be liable on summary conviction to a maximum fine of an amount not exceeding level 2 on the standard scale.

**12.** Any person who, without the authority of the Council or without reasonable excuse -

Protection of Wells' mineral waters.

- (a) pollutes or contaminates the waters of the Wells; or
- (b) diverts the supply of water to the Wells; or
- (c) carries out works which interfere with, or which cause interference with, the supply of water to the Wells; shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**13.** The written consent of the Director of Public Prosecutions is needed for the laying of an information of an offence created by or under this Act by any person other than a party aggrieved, the council or a constable.

Restriction on right to prosecute.

**14.** – (1) Where an offence under this Act, or against any byelaw made under this Act, committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence.

Liability of directors, etc.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

**15.** Any person who intentionally obstructs any officer of the Council acting in execution of this Act or of any byelaws made under this act shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Penalty for obstruction

**16.** – (1) If either the deposited plan or the deposited book of reference is inaccurate in its description of any land, or in its statement or description of the ownership or occupation of any land, the Council after giving 10 days' notice to the owner, lessee and occupier of the land in question may apply to two justices having jurisdiction in the borough for the correction thereof.

Correction of errors in deposited plan and book of reference.

(2) If on any such application it appears to the justices that the misstatement or wrong description arose from mistake, the justices shall certify the fact accordingly and shall in their certificate state in what respect any matter is misstated or wrongly described.

(3) The certificate shall be deposited in the office of the Clerk of the Parliaments, House of Lords and a copy thereof in the Private Bill Office, House of Commons and with the proper officer of the North Yorkshire County Council, and thereupon the deposited plan and the deposited book of reference shall be deemed to be corrected according to the certificate and it shall be lawful for the Council to exercise the powers of this act in accordance with the certificate.

(4) A person with whom a copy of the certificate is deposited under this section shall keep it with the other documents to which it relates.

**17.** Section 304 (Judges and justices not to be disqualified by liability to rates) and section 328 (Powers of Act to be cumulative) of the Public Health Act 1936 shall have effect as if references therein to that Act included references to this Act.

Application of general provisions of Public Health Act 1936. 1936 c. 49.

**18.** Nothing in this Act except as expressly provided therein shall -

Saving for Duchy of Lancaster.

(1) extend or operate to authorise the Council to take, use, enter upon or in any manner interfere with the lands and premises comprising of the Stray or any manorial rights or other rights of whatsoever description of Her Majesty in Right of Her Duchy of Lancaster without the consent in writing of the Chancellor for the time being of the Duchy of Lancaster (which consent may be given either unconditionally or subject to such conditions and upon such terms as the Chancellor shall deem necessary or appropriate);

(2) take away, prejudice or diminish any estate, right, privilege, power of authority vested in or exercisable by Her Majesty, Her Heirs, successors in the right of her said Duchy.

**19.** The enactments specified in column (2) of the Schedule to this Act are repealed to the extent specified in column (3) of that Schedule.

Repeals.

**20.** – (1) (a) Anything begun under an enactment repealed by this Act may be continued under any enactment in this Act relating to the same matter as if begun under that last-mentioned provision.

Transitional provisions.

(b) Where any period of time specified in, or having effect in relation to, an enactment repealed by this Act is current at the date of the coming into operation under this Act of any provision thereof relating to the same matter, that provision of this Act shall have effect as if it were in force when that period began to run.

(2) Nothing in this section shall affect the operation of the Interpretation Act 1978 or of section 254 of the Local Government Act 1972.

1978 c. 30.  
1972 c. 70.

Section 19

**SCHEDULE**  
**ENACTMENTS REPEALED**  
**PART I**  
**LOCAL ACTS**

Session and chapter (1)	Title or short title (2)	Extent of repeal (3)
10 Geo. 3. c.94 (1770)	The Act for dividing and enclosing such of the Open Parts of the District called the Forest of Knaresborough, in the County of York, as lie within the Eleven Constableries thereof; and for other purpose therein mentioned.	The whole Act.
4 Geo. 4 c.xxxv. (1823)	An Act for paving, lighting, watching, cleansing, and improving the Town of Knaresborough in the West Riding of the County of York, and that Part of the Township of Scriven-with- Tentergate which adjoins the said Town, and is called Tentergate.	The whole Act except sections XVIII to XXVIII.
4 & 5 Vict. c. xvi.	Harrogate Improvement Act 1841	The whole Act.
9 & 10 Vict. c. cxiii.	Harrogate Waterworks Act 1846	The whole Act.
32 & 33 Vict. c. xvii.	Harrogate Waterworks Act 1869	The whole Act
49 & 50 Vict. c. lxxvii.	Ripon Corporation Act 1886	The whole Act except sections 6, 7, 10, 11, 21 to 23, 25 and 40 to 42.

Schedule continued

Session and chapter (1)	Title or short title (2)	Extent of repeal (3)
56 & 57 Vict. c. ccix.	Harrogate Corporation Act 1893.	The whole Act except section 23 and the remainder of Part II so far as it relates to the area shown on the deposited plan thereto as Bogs Field.
57 & 58 Vict. c.xx.	Local Government Board's Provisional Orders Confirmation (No 2) Act 1984	The references to Knaresborough in Schedule C.
60 & 61 Vict. c. ccxxxii.	Harrogate Waterworks Act 1897.	The whole Act except sections 4, 9, 10 and 11.
60 & 61 Vict. c. ccxxxvii.	Harrogate Corporation (Waterworks Transfer) Act 1897	The whole Act
1 Edw. 7 c. ccxvi.	Ripon Corporation Act 1901	The whole Act
1 Edw. 7 c. ccxv.	Harrogate Water Act 1901.	The whole Act except sections 4, 8, 14, 32 and 35.
1 Edw. 7 c. cclxviii.	Harrogate Corporation Act 1901	The whole Act.
2 Edw. 7 c. cxxii.	Knaresborough Improvement Act 1902.	The whole Act except Parts II and IV.
3 Edw. 7 c. xxxvii.	Harrogate Water Act 1903.	The whole Act.
1 & 2 Geo. 5 c. lii.	Harrogate Corporation Water Act 1911.	The whole Act.
14 & 15 Geo. 5 c. xxxiii.	Harrogate Corporation Act 1924.	The whole Act



Schedule continued


---

**PART II  
CONFIRMATION ACTS**

---

Session and chapter (1)	Title or short title (2)	Extent of repeal (3)
29 & 30 Vict. c. 106	Local Government Supplemental Act 1866 (No 3)	The Order relating to Harrogate dated 6 June 1866.
30 & 31 Vict. c. 67	Local Government Supplemental Act 1867 (No 4)	The Order relating to Harrogate dated 3 June 1867.
31 & 32 Vict. c. cliii.	Local Government Act 1868 (No 6)	The Order relating to Harrogate dated 9 June 1868.
32 & 33 Vict. c. cxxiv.	Local Government Supplemental Act 1869.	The Order relating to Harrogate dated 23 January 1869.
34 & 35 Vict. c.i.	Local Government Supplemental Act 1871	The two Orders relating to Harrogate dated 6 June 1870 and 9 July 1870.
34 & 35 Vict. c. clxxxvii.	Local Government Supplemental Act 1871 (No 4)	The two Orders relating to Harrogate dated 31 May 1871
40 & 41 Vict. c.ccxlii.	Local Government Board's Provisional Orders Confirmation (Atherton, & c.) Acts 1877.	The Order relating to Harrogate dated 30 May 1877.
49 & 50 Vict. c. xviii.	Local Government Board's Provisional Orders Confirmation (No 2) Act 1886.	The Order relating to Harrogate dated 5 April 1886.
54 & 55 Vict. c. lxxvii.	Local Government Board's Provisional Orders Confirmation (No 4) Act 1891.	The Order relating to Knaresborough and Tentergate.

---

**PART II  
CONFIRMATION ACTS**

---

Session and chapter (1)	Title or short title (2)	Extent of repeal (3)
57 & 58 Vict. c. xlvi.	Local Government Board's Provisional Orders Confirmation (No 5) Act 1894.	The Wharfedale Union Order 1894.
60 & 61 Vict. c. cxxxvii.	Local Government Board's Provisional Orders Confirmation (No 3) Act 1897.	The Harrogate Order 1897.
60 & 61 Vict. c. cxli.	Local Government Board's Provisional Orders Confirmation (No 14) Act 1897.	The Harrogate Order (No 2) 1897.
61 & 62 Vict. c. xxxv.	Local Government Board's Provisional Orders Confirmation (No 3) Act 1898.	The Wetherby Rural Order 1898.
63 & 64 Vict. c.clxxix.	Local Government Board's Provisional Orders Confirmation (No 3) Act 1898.	The Harrogate (Extension) Order 1900.