

DERIVATION  
1959, ss.28, 29(3); 1960,  
"death": s.329(1).

## CONCLUSIONS

DEFINITIONS  
"bridleway" and "footpath" : S.

GENERAL NOTE

## Scope

2-060.2

*Scope* Whilst s.25 provided a formal process for the dedication of public paths by agreement with the landowner, this section gives power to local authorities and to the Secretary of State to create footpaths or bridleways by order—imposing the path on the landowner. The process is somewhat similar to compulsory purchase although the effect of the order is not to acquire the land over which the public right of way will be created but to acquire compulsorily the right for the public to pass over that land. Compensation will be payable to the landowner in respect of the acquisition of the right under s.28, below.

Before making an order the order making body must be satisfied that it is expedient that the path should be created after having regard to two factors. The first factor is the extent to which the path or 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. The second is the effect which the creation of the path would have on the rights of persons interested in the land after having taking into account the provisions available for payment of compensation. Both factors must be considered and the authority effectively has to balance the public interest in the path being created against the private interest of the landowner. The Secretary of State must have regard to the same criteria when considering whether to make an order himself under subs.(2). A local authority making the order must also have regard to the needs of agriculture and forestry more generally in deciding whether to make the order: see s.29, below.

The right of way which is created can be unconditional or subject to such conditions or limitations as may be specified in the order. The order could, therefore, be made expressly subject to the rights of the land owner to use his land in ways which would otherwise amount to an obstruction of the highway or a public nuisance. Examples might include gating the path, ploughing the land (but see, in any event, ss.134-5 below) or driving motor vehicles over the path (so as to avoid committing an offence under s.34 of the Road Traffic Act 1991, below).

Section 27, below, prescribes the machinery for implementing the order once made and confirmed and, in particular, for ensuring that a public path or bridleway created by order by a body which is not the local highway authority for the created path is brought into a "fit condition for use by the public."

### Procedure

*Procedure*  
An order under s.26 may be made by any local authority. Local authorities for the purpose of this section are the councils of counties, districts, National Park Authorities (and formerly the joint planning boards responsible for National Parks), the Broads Authority, London borough councils and the Common Council: see subs.(1), s.25(2), above. Unitary authorities will also have power to make these orders under the terms of their Structural Change Order. Before making the order the authority must consult any other local authority or authorities in whose area the land concerned is situated.

The order, once made, is open to objection and is subject to confirmation. Where the order is opposed (*i.e.* where objections are lodged and are not withdrawn) the order will have to be confirmed by the Secretary of State for the Environment. Where it is unopposed, it may be confirmed by the making authority itself. Where objections have been lodged to the making of the order there will be a public inquiry or, alternatively, a public hearing into the objections at which the landowner and any other objector may appear to oppose the confirmation of the order: see Sch.6, below. In these cases, the decision may actually be taken by the Inspector holding the inquiry or hearing as a “*person appointed*”—see Sch.6 para.2A, below.

The procedure may be used in conjunction with, and the procedures may be taken concurrently with, other forms of order including diversion and extinguishment orders see. Sch.2 para.3 and the Public Path Orders Regulations 1993 (SI 1993/11) reg.4.

### Sub-section Notes

Subs.(1). An order under this subsection is not made by statutory instrument: see s.325(1)(d).

"appears to the authority." See the notes to s.82 as to the significance of the word "appears to," observing in this instance that the Minister has certain overriding powers under subs.(2).

"are satisfied:" see notes to s.18(6).