

Chapter 4: Private rights of way and other easements

Introduction

- 4-0 This chapter deals with private rights of way and other some other rights in the same legal class—known as “easements”. Much of the law in this area comes from decisions of the courts, though the Prescription Act 1832 is also important.

What is an easement?

- 4-1 An easement is a right to make limited use of someone else’s land. Such rights cannot exist independently¹—the law requires that an easement is attached to one piece of land, and confers the right to make some use of another, nearby (not necessarily adjoining) piece of land in separate ownership. The first piece of land is said to have the benefit of the easement, and the second to be burdened with it².

- 4-2 An easement must generally last either indefinitely, or for a fixed period of time. The use allowed by an easement must not be so great that it prevents the owner of the land making reasonable use of his land.

- 4-3 The right most commonly forming the subject of an easement is a private right of way: the easement is regarded by the law as being attached to a piece of land and gives the right to use another piece of land (usually a road or path) for access. Many other sorts of easement are possible, and some are considered briefly at the end of this chapter. In each case, the effect of the easement is to allow some specific use of land, for the benefit of nearby land*.

- 4-4 There are two main ways in which easements may be created—expressly, or by prescription. As to the former, easements are regarded by the law as being land, and the same formalities apply, so that a

*See also chapter 5 for parking.

1. See *Voice v Bell* (1994) 68 P&CR 441.
2. The land with the benefit of the easement is also said to be the “dominant tenement”, and the land subject to the easement is said to be the “servient tenement”