



# Highways Act 1980

## 1980 CHAPTER 66

### PART VIII

#### STOPPING UP AND DIVERSION OF HIGHWAYS AND STOPPING UP OF MEANS OF ACCESS TO HIGHWAYS

##### *Stopping up and diversion of highways*

#### **116 Power of magistrates' court to authorise stopping up or diversion of highway.**

(1) Subject to the provisions of this section, if it appears to a magistrates' court, after a view, if the court thinks fit, by any two or more of the justices composing the court, that a highway (other than a trunk road or a special road) as respects which the [<sup>F1</sup>highway] authority have made an application under this section—

- (a) is unnecessary, or
- (b) can be diverted so as to make it nearer or more commodious to the public,

the court may by order authorise it to be stopped up or, as the case may be, to be so diverted.

(2) ..... <sup>F2</sup>

(3) If an authority propose to make an application under this section for an order relating to any highway (other than a classified road) they shall give notice of the proposal to—

- [<sup>F3</sup>(a) if the highway is in a non-metropolitan district, the council of that district; and]
- [<sup>F4</sup>(aa) if the highway is in Wales, the Welsh council for the area in which it is situated if they are not the highway authority for it; and]
- (b) if the highway is in England, the council of the parish (if any) in which the highway is situated or, if the parish does not have a separate parish council, to the chairman of the parish meeting; and
- (c) if the highway is in Wales, the council (if any) of the community in which the highway is situated;

and the application shall not be made if within 2 months from the date of service of the notice by the authority notice is given to the authority by the district council [<sup>F5</sup>or

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Welsh council] or by the parish or community council or, as the case may be, by the chairman of the parish meeting that the council or meeting have refused to consent to the making of the application.

- (4) An application under this section may be made, and an order under it may provide, for the stopping up or diversion of a highway for the purposes of all traffic, or subject to the reservation of a footpath [<sup>F6</sup>, bridleway or restricted byway].
- (5) An application or order under this section may include 2 or more highways which are connected with each other.
- (6) A magistrates' court shall not make an order under this section unless it is satisfied that the applicant authority have given the notices required by Part I of Schedule 12 to this Act.
- (7) On the hearing of an application under this section the applicant authority, any person to whom notice is required to be given under paragraph 1 of Schedule 12, any person who uses the highway and any other person who would be aggrieved by the making of the order applied for, have a right to be heard.
- (8) An order under this section authorising the diversion of a highway—
  - (a) shall not be made unless the written consent of every person having a legal interest in the land over which the highway is to be diverted is produced to and deposited with the court; and
  - (b) except in so far as the carrying out of the diversion may necessitate temporary interference with the highway, shall not authorise the stopping up of any part of the highway until the new part to be substituted for the part to be stopped up (including, where a diversion falls to be carried out under orders of 2 different courts, any necessary continuation of the new part in the area of the other court) has been completed to the satisfaction of 2 justices of the peace acting [<sup>F7</sup>in the same local justice] area as the court by which the order was made and a certificate to that effect signed by them has been transmitted to the clerk of the applicant authority.
- (9) Every order under this section shall have annexed to it a plan signed by the chairman of the court and shall be transmitted by [<sup>F8</sup>a justices' clerk] to the proper officer of the applicant authority, together with any written consents produced to the court under subsection (8) above.
- (10) Part II of Schedule 12 to this Act applies where, in pursuance of an order under this section, a highway is stopped up or diverted and, immediately before the order is made, there is under, in, upon, over, along or across the highway any apparatus belonging to or used by any statutory undertakers for the purpose of their undertaking.

[<sup>F9</sup>(11) In this section “statutory undertakers” includes operators of driver information systems.]

#### Textual Amendments

- F1** Word substituted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 24\(a\)](#)
- F2** [S. 116\(2\)](#) repealed by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 102, [Sch. 17](#)
- F3** [S. 116\(3\)\(a\)](#) substituted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 24\(b\)](#)
- F4** [S. 116\(3\)\(aa\)](#) inserted (1.4.1996) by [1994 c. 19, s. 22\(1\)](#), [Sch. 7 Pt. I para. 11](#) (with s. 54(7), [Sch. 17 paras. 22\(1\), 23\(2\)](#)); [S.I. 1996/396](#), art. 3, [Sch. 1](#).

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- F5** Words in s. 116(3) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 11** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**.
- F6** Words in s. 116(4) substituted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, s. 51, Sch. 5 Pt. II para. 15; S.I. 2006/1172, **art. 2(e)(g)(iv)**; S.I. 2006/1279, **art. 2(e)(g)**
- F7** Words in s. 116(8)(b) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 109(1), **Sch. 8 para. 257(2)**; S.I. 2005/910, **art. 3(y)**
- F8** Words in s. 116(9) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 109(1), **Sch. 8 para. 257(3)**; S.I. 2005/910, **art. 3(y)**
- F9** S. 116(11) inserted by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), s. 13(1), **Sch. 4 para. 3(3)**

## 117 Application for order under section 116 on behalf of another person.

A person who desires a highway to be stopped up or diverted but is not authorised to make an application for that purpose under section 116 above may request the highway authority . . . <sup>F10</sup> to make such an application; and if the authority grant the request they may, as a condition of making the application, require him to make such provision for any costs to be incurred by them in connection with the matter as they deem reasonable.

### Textual Amendments

- F10** Words repealed by **Local Government Act 1985** (c. 51, SIF 81:1), s. 102, **Sch. 17**

## 118 Stopping up of footpaths [<sup>F11</sup>, bridleways and restricted byways].

- (1) Where it appears to a council as respects a footpath [<sup>F12</sup>, bridleway or restricted byway] in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.

An order under this section is referred to in this Act as a “public path extinguishment order”.

- (2) The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (3) A public path extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.
- (4) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.

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(5) Where, in accordance with regulations made under paragraph 3 of the said Schedule 6, proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order [<sup>F13</sup>, public path diversion order or rail crossing diversion order] then, in considering—

- (a) under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use, or
- (b) under subsection (2) above to what extent (if any) that path or way would apart from the order be likely to be used by the public,

the council or the Secretary of State, as the case may be, may have regard to the extent to which the public path creation order [<sup>F14</sup>, public path diversion order or rail crossing diversion order] would provide an alternative path or way.

(6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.

[<sup>F15</sup>(6A) The considerations to which—

- (a) the Secretary of State is to have regard in determining whether or not to confirm a public path extinguishment order, and
- (b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.]

<sup>F16</sup>(7) .....

**Textual Amendments**

- F11** Words in s. 118 sidenote substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2, [Sch. Pt. 1](#); S.I. 2006/1172, [art. 2\(a\)-\(d\)](#) (with art. 3); S.I. 2006/1279, [art. 2\(a\)-\(d\)](#) (with art. 3)
- F12** Words in s. 118(1) substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2, [Sch. Pt. 1](#); S.I. 2006/1172, [art. 2\(a\)-\(d\)](#) (with art. 3); S.I. 2006/1279, [art. 2\(a\)-\(d\)](#) (with art. 3)
- F13** Words in s. 118(5) substituted (22.12.1992 for certain purposes and otherwise 31.1.1993) by [Transport and Works Act 1992 \(c. 42\)](#), s. 47, [Sch. 2 para. 2\(2\)](#); S. I. 1992/3144, arts. 2, 3, [Sch.](#)
- F14** Words in s. 118(5) substituted (22.12.1992 for certain purposes and otherwise 31.1.1993) by [Transport and Works Act 1992 \(c. 42\)](#), s. 47, [Sch. 2 para. 2\(2\)](#); S.I. 1992/3144, arts. 2, 3, [Sch.](#)
- F15** S. 118(6A) inserted (12.2.2003 for E. and 1.4.2004 for W.) by 2000 c. 37, s. 57, [Sch. 6 Pt. I para. 6](#); S.I. 2003/272, [art. 2\(a\)\(b\)](#); S.I. 2004/315, [art. 2\(c\)](#); S.I. 2006/3257, art. 2(a)(i)
- F16** S. 118(7) repealed (1.4.1997) by 1995 c. 25, s. 120(3), [Sch. 24](#) (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, [Sch.](#)

**Modifications etc. (not altering text)**

- C1** S. 118 extended by [Norfolk and Suffolk Broads Act 1988 \(c. 4, SIF 81:1\)](#), ss. 2(5)(6), 23(2), 27(2), [Sch. 3 para. 47\(1\)](#)
- C2** S. 118-121 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), [Sch. 9 para. 11\(c\)](#) (with ss. 7(6), 115, 117, [Sch. 8 para. 7](#)).

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- C3** S. 118: functions of local authority not to be responsibility of an executive of the authority (E) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**
- C4** S. 118 applied (2.5.2006 for E. and 11.5.2006 for W.) by **The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006** (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. I**; S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

## PROSPECTIVE

### [<sup>F17</sup>118Z] **Application for a public path extinguishment order.**

- (1) The owner, lessee or occupier of any land used for agriculture, forestry or the breeding or keeping of horses may apply to a council for the area in which the land is situated for the making of a public path extinguishment order in relation to any footpath or bridleway which crosses the land.
- (2) An application under this section shall be in such form as may be prescribed and shall be accompanied by a map, on such scale as may be prescribed, showing the land over which it is proposed that the public right of way should be extinguished, and by such other information as may be prescribed.
- (3) Regulations may provide—
  - (a) that a prescribed charge is payable on the making of an application under this section, and
  - (b) that further prescribed charges are payable by the applicant if the council make a public path extinguishment order on the application.
- (4) An application under this section is not to be taken to be received by the council until the requirements of regulations under section 121A below have been satisfied in relation to it.
- (5) A council which receives an application under this section shall determine the application as soon as reasonably practicable.
- (6) Before determining to make a public path extinguishment order on an application under this section, the council may require the applicant to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards, any compensation which may become payable under section 28 above as applied by section 121(2) below.
- (7) Where—
  - (a) an application under this section has been made to a council, and
  - (b) the council have not determined the application within four months of receiving it,
 the Secretary of State may, at the request of the applicant and after consulting the council, by direction require the council to determine the application before the end of such period as may be specified in the direction.
- (8) As soon as practicable after determining an application under this section, the council shall—
  - (a) give to the applicant notice in writing of their decision and the reasons for it, and
  - (b) give a copy of the notice to such other persons as may be prescribed.

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- (9) The council to whom an application under this section has been made may make a public path extinguishment order on the application only if the land over which the public right of way is to be extinguished by the order is that shown for the purposes of subsection (2) above on the map accompanying the application.
- (10) Any reference in this Act to the map accompanying an application under this section includes a reference to any revised map submitted by the applicant in prescribed circumstances in substitution for that map.
- (11) This section has effect subject to the provisions of sections 121A and 121C below.
- (12) In this section—
  - “prescribed” means prescribed by regulations;
  - “regulations” means regulations made by the Secretary of State.]

#### Textual Amendments

F17 S. 118ZA inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 7

### [<sup>F19</sup>118A Stopping up of footpaths [<sup>F18</sup>, bridleways and restricted byways] crossing railways.

- (1) This section applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath [<sup>F20</sup>, bridleway or restricted byway] in their area which crosses a railway, otherwise than by tunnel or bridge, should be stopped up.
- (2) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way—
  - (a) on the crossing itself, and
  - (b) for so much of its length as they deem expedient from the crossing to its intersection with another highway over which there subsists a like right of way (whether or not other rights of way also subsist over it).
- (3) An order under this section is referred to in this Act as a “rail crossing extinguishment order”.
- (4) The Secretary of State shall not confirm a rail crossing extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient to do so having regard to all the circumstances, and in particular to—
  - (a) whether it is reasonably practicable to make the crossing safe for use by the public, and
  - (b) what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.
- (5) Before determining to make a rail crossing extinguishment order on the representations of the operator of the railway crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards, any expenses which the council may incur in connection with the erection or maintenance of barriers and signs.

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- (6) A rail crossing extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.
- (7) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of rail crossing extinguishment orders.
- (8) In this section—
- “operator”, in relation to a railway, means any person carrying on an undertaking which includes maintaining the permanent way;
- “railway” includes tramway but does not include any part of a system where rails are laid along a carriageway.]

#### Textual Amendments

- F18** Words in s. 118A sidenote substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)
- F19** S. 118A inserted (22.12.1992 for certain purposes and otherwise 31.1.1993) by [Transport and Works Act 1992 \(c. 42\)](#), s. 47, **Sch. 2 para.3**; S.I. 1992/3144, **arts. 2, 3**, Sch.
- F20** Words in s. 118A(1) substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)

#### Modifications etc. (not altering text)

- C5** S. 118-121 extended (with modifications) (19.9.1995) by [1995 c. 25, ss. 70, 125\(2\)](#), **Sch. 9 para. 11(c)** (with ss. 7(6), 115, 117, **Sch. 8 para. 7**).
- C6** S. 118A applied (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

### [<sup>F21</sup>118B Stopping up of certain highways for purposes of crime prevention, etc.

- (1) This section applies where it appears to a council—
- (a) that, as respects any relevant highway for which they are the highway authority and which is in an area designated by the Secretary of State by order for the purposes of this section, the conditions in subsection (3) below are satisfied and it is expedient, for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, that the highway should be stopped up, or
- (b) that, as respects any relevant highway for which they are the highway authority and which crosses land occupied for the purposes of a school, it is expedient, for the purpose of protecting the pupils or staff from—
- (i) violence or the threat of violence,
- (ii) harassment,
- (iii) alarm or distress arising from unlawful activity, or
- (iv) any other risk to their health or safety arising from such activity,

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that the highway should be stopped up.

- (2) In subsection (1) above “relevant highway” means—
- (a) any footpath, bridleway or restricted byway,
  - (b) any highway which is shown in a definitive map and statement as a footpath, a bridleway, or a restricted byway, but over which the public have a right of way for vehicular and all other kinds of traffic, or
  - (c) any highway which is shown in a definitive map and statement as a byway open to all traffic,
- but does not include a highway that is a trunk road or a special road.
- (3) The conditions referred to in subsection (1)(a) above are—
- (a) that premises adjoining or adjacent to the highway are affected by high levels of crime, and
  - (b) that the existence of the highway is facilitating the persistent commission of criminal offences.
- (4) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the highway.
- (5) An order under subsection (4) above is in this Act referred to as a “special extinguishment order”.
- (6) Before making a special extinguishment order, the council shall consult the police authority for the area in which the highway lies.
- (7) The Secretary of State shall not confirm a special extinguishment order made by virtue of subsection (1)(a) above, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the conditions in subsection (3) above are satisfied, that the stopping up of the highway is expedient as mentioned in subsection (1)(a) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to—
- (a) whether and, if so, to what extent the order is consistent with any strategy for the reduction of crime and disorder prepared under section 6 of the <sup>M1</sup>Crime and Disorder Act 1998,
  - (b) the availability of a reasonably convenient alternative route or, if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the highway under section 119B below rather than stopping it up, and
  - (c) the effect which the extinguishment of the right of way would have as respects land served by the highway, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (8) The Secretary of State shall not confirm a special extinguishment order made by virtue of subsection (1)(b) above, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the stopping up of the highway is expedient as mentioned in subsection (1)(b) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to—
- (a) any other measures that have been or could be taken for improving or maintaining the security of the school,



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- (b) whether it is likely that the coming into operation of the order will result in a substantial improvement in that security,
  - (c) the availability of a reasonably convenient alternative route or, if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the highway under section 119B below rather than stopping it up, and
  - (d) the effect which the extinguishment of the right of way would have as respects land served by the highway, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (9) A special extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be prescribed, defining the land over which the public right of way is thereby extinguished.
- (10) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of special extinguishment orders.]

#### Textual Amendments

**F21** S. 118B inserted (12.2.2003 for E., 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 8; S.I. 2003/272, art. 2(a)(e); S.I. 2005/1314, art. 3(b)

#### Marginal Citations

**M1** 1998 c. 37.

PROSPECTIVE

#### [<sup>F22</sup>118C Application by proprietor of school for special extinguishment order.

- (1) The proprietor of a school may apply to a council for the making by virtue of section 118B(1)(b) above of a special extinguishment order in relation to any highway for which the council are the highway authority and which—
- (a) crosses land occupied for the purposes of the school, and
  - (b) is a relevant highway as defined by section 118B(2) above.
- (2) Subsections (2) to (11) of section 118ZA above shall apply to applications under this section as they apply to applications under that section, with the substitution for references to a public path extinguishment order of references to a special extinguishment order; and regulations made under that section by virtue of this subsection may make different provision for the purposes of this section and for the purposes of that section.]

#### Textual Amendments

**F22** S. 118C inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 8

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## 119 Diversion of footpaths <sup>[F23]</sup>, bridleways and restricted byways].

- (1) <sup>[F24]</sup>Where it appears to a council as respects a footpath <sup>[F25]</sup>, bridleway or restricted byway] in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or] of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,—
- (a) create, as from such date as may be specified in the order, any such new footpath <sup>[F25]</sup>, bridleway or restricted byway] as appears to the council requisite for effecting the diversion, and
  - (b) extinguish, as from such date as may be <sup>[F26]</sup>specified in the order or determined] in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.

An order under this section is referred to in this Act as a “public path diversion order”.

- (2) A public path diversion order shall not alter a point of termination of the path or way—
- (a) if that point is not on a highway, or
  - (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
- <sup>[F27]</sup>(3) Where it appears to the council that work requires to be done to bring the new site of the footpath <sup>[F25]</sup>, bridleway or restricted byway] into a fit condition for use by the public, the council shall—
- (a) specify a date under subsection (1)(a) above, and
  - (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.]
- (4) A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.
- (5) Before determining to make a public path diversion order <sup>[F28]</sup>on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him] to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—
- (a) any compensation which may become payable under section 28 above as applied by section 121(2) below, or
  - (b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public, or
  - (c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.
- (6) The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may

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be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—

- (a) the diversion would have on public enjoyment of the path or way as a whole,
- (b) the coming into operation of the order would have as respects other land served by the existing public right of way, and
- (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,

so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) above.

[<sup>F29</sup>(6A) The considerations to which—

- (a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and
- (b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.]

(7) A public path diversion order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed,—

- (a) showing the existing site of so much of the line of the path or way as is to be diverted by the order and the new site to which it is to be diverted,
- (b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a footpath [<sup>F25</sup>, bridleway or restricted byway], and
- (c) where some part of the new site is already so comprised, defining that part.

(8) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path diversion orders.

(9) Section 27 above (making up of new footpaths [<sup>F30</sup>, bridleways and restricted byways]) applies to a footpath [<sup>F25</sup>, bridleway or restricted byway] created by a public path diversion order with the substitution, for references to a public path creation order, of references to a public path diversion order and, for references to section 26(2) above, of references to section 120(3) below.

#### Textual Amendments

- F23** Words in s. 119 sidenote substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2, [Sch. Pt. 1](#); S.I. 2006/1172, [art. 2\(a\)-\(d\)](#) (with art. 3); S.I. 2006/1279, [art. 2\(a\)-\(d\)](#) (with art. 3)
- F24** Words substituted by [Wildlife and Countryside Act 1981 \(c. 69, SIF 4:5\)](#), ss. 53, 54, [Sch. 16 paras. 5\(1\), 10\(1\)](#)
- F25** Words in s. 119(1)(3)(7)(9) substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I.](#)

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2006/1177), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)

- F26** Words in s. 119(1)(b) substituted (12.2.2003 for E. and 31.5.2005 for W.) by 2000 c. 37, s. 57, Sch. 6 Pt. I para. 9(2); S.I. 2003/272, **art. 2(a)(f)**; S.I. 2005/1314, **art. 2(b)(iii)**
- F27** S. 119(3) substituted (12.2.2003 for E. and 31.5.2005 for W.) by 2000 c. 37, s. 57, Sch. 6 Pt. I para. 9(3); S.I. 2003/272, **art. 2(a)(f)**; S.I. 2005/1314, **art. 2(b)(iii)**
- F28** Words substituted by Wildlife and Countryside Act 1981 (c. 69, SIF 4:5), ss. 53, 54, Sch. 16 paras. 5(1), **10(1)**
- F29** S. 119(6A) inserted (12.2.2003 for E. and 1.4.2004 for W.) by 2000 c. 37, s. 57, Sch. 6 Pt. I para. 9(5); S.I. 2003/272, **art. 2(a)(b)**; S.I. 2004/315, **art. 2(c)**; S.I. 2006/3257, art. 2(a)(i)
- F30** Words in s. 119(9) substituted (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)

#### Modifications etc. (not altering text)

- C7** S. 119 extended by Norfolk and Suffolk Broads Act 1988 (c. 4, SIF 81:1), ss. 2(5)(6), 23(2), 27(2), **Sch. 3 para. 47(1)**
- C8** S. 118-121 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 11(c)** (with ss. 7(6), 115, 117, Sch. 8 para. 7).
- C9** S. 119: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**
- C10** S. 119 applied (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

PROSPECTIVE

#### [<sup>F31</sup>119ZA] **Application for a public path diversion order.**

- (1) Subject to subsection (2) below, the owner, lessee or occupier of any land used for agriculture, forestry or the breeding or keeping of horses may apply to a council for the area in which the land is situated for the making of a public path diversion order in relation to any footpath or bridleway which crosses the land, on the ground that in his interests it is expedient that the order should be made.
- (2) No application may be made under this section for an order which would create a new footpath or bridleway communicating with—
  - (a) a classified road,
  - (b) a special road,
  - (c) a GLA road, or
  - (d) any highway not falling within paragraph (a) or (b) above for which the Minister is the highway authority,
 unless the application is made with the consent of the highway authority for the way falling within paragraph (a), (b), (c) or (d) above.
- (3) No application under this section may propose the creation of a new right of way over land covered by works used by any statutory undertakers for the purposes of their undertaking or the curtilage of such land, unless the application is made with the consent of the statutory undertakers; and in this subsection “statutory undertaker” and “statutory undertaking” have the same meaning as in Schedule 6 to this Act.

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- (4) An application under this section shall be in such form as may be prescribed and shall be accompanied by a map, on such scale as may be prescribed—
  - (a) showing the existing site of so much of the line of the path or way as it is proposed to divert and the new site to which it is proposed to be diverted,
  - (b) indicating whether it is proposed to create a new right of way over the whole of the new site or whether some of it is already comprised in a footpath or bridleway, and
  - (c) where some part of the new site is already so comprised, defining that part, and by such other information as may be prescribed.
- (5) Regulations may provide—
  - (a) that a prescribed charge is payable on the making of an application under this section, and
  - (b) that further prescribed charges are payable by the applicant if the council make a public path diversion order on the application.
- (6) An application under this section is not to be taken to be received by the council until the requirements of regulations under section 121A below have been satisfied in relation to it.
- (7) A council which receives an application under this section shall determine the application as soon as reasonably practicable.
- (8) Where—
  - (a) an application under this section has been made to a council, and
  - (b) the council have not determined the application within four months of receiving it,the Secretary of State may, at the request of the applicant and after consulting the council, by direction require the council to determine the application before the end of such period as may be specified in the direction.
- (9) As soon as practicable after determining an application under this section, the council shall—
  - (a) give to the applicant notice in writing of their decision and the reasons for it, and
  - (b) give a copy of the notice to such other persons as may be prescribed.
- (10) The council to whom an application under this section has been made may make a public path diversion order on the application only if—
  - (a) the land over which the public right of way is to be extinguished by the order, and
  - (b) the new site to which the path or way is to be diverted,are those shown for the purposes of subsection (4) above on the map accompanying the application.
- (11) Any reference in this Act to the map accompanying an application under this section includes a reference to any revised map submitted by the applicant in prescribed circumstances in substitution for that map.
- (12) This section has effect subject to the provisions of sections 121A and 121C below.
- (13) In this section—

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“prescribed” means prescribed by regulations;  
 “regulations” means regulations made by the Secretary of State.]

#### Textual Amendments

**F31** S. 119ZA inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 10

### [<sup>F32</sup>119A Diversion of footpaths]<sup>F33</sup>, bridleways and restricted byways] crossing railways.

- (1) This section applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath<sup>F34</sup>, bridleway or restricted byway] in their area which crosses a railway, otherwise than by tunnel or bridge, should be diverted (whether on to land of the same or of another owner, lessee or occupier).
- (2) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order—
  - (a) create, as from such date as may be specified in the order, any such new path or way as appears to the council requisite for effecting the diversion, and
  - (b) extinguish, as from such date as may be [<sup>F35</sup>specified in the order or determined under subsection (7) below], the public right of way over the crossing and over so much of the path or way of which the crossing forms part as appears to the council requisite as aforesaid.
- (3) An order under this section is referred to in this Act as a “rail crossing diversion order”.
- (4) The Secretary of State shall not confirm a rail crossing diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient to do so having regard to all the circumstances, and in particular to—
  - (a) whether it is reasonably practicable to make the crossing safe for use by the public, and
  - (b) what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.
- (5) A rail crossing diversion order shall not alter a point of termination of a path or way diverted under the order—
  - (a) if that point is not on a highway over which there subsists a like right of way (whether or not other rights of way also subsist over it), or
  - (b) (where it is on such a highway) otherwise than to another point which is on the same highway, or another such highway connected with it.
- (6) A rail crossing diversion order may make provision requiring the operator of the railway to maintain all or part of the footpath<sup>F36</sup>, bridleway or restricted byway] created by the order.

[ Where it appears to the council that work requires to be done to bring the new site <sup>F37</sup>(7) of the footpath<sup>F38</sup>, bridleway or restricted byway] into a fit condition for use by the public, the council shall—

- (a) specify a date under subsection (2)(a) above, and
- (b) provide that so much of the order as extinguishes (in accordance with subsection (2)(b) above) a public right of way is not to come into force until

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the local highway authority for the new path or way certify that the work has been carried out.]

- (8) Before determining to make a rail crossing diversion order on the representations of the operator of the railway crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—
- (a) any compensation which may become payable under section 28 above as applied by section 121(2) below;
  - (b) any expenses which the council may incur in connection with the erection or maintenance of barriers and signs;
  - (c) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use by the public;
  - (d) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (11) below.
- (9) A rail crossing diversion order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed—
- (a) showing the existing site of so much of the line of the path or way as is to be diverted by the order and the new site to which it is to be diverted,
  - (b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a footpath<sup>F39</sup>, bridleway or restricted byway], and
  - (c) where some part of the new site is already so comprised, defining that part.
- (10) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of rail crossing diversion orders.
- (11) Section 27 above (making up of new footpaths<sup>F40</sup>, bridleways and restricted byways]) applies to a footpath<sup>F41</sup>, bridleway or restricted byway] created by a rail crossing diversion order with the substitution, for references to a public path creation order, of references to a rail crossing diversion order and, for references to section 26(2) above, of references to section 120(3) below.
- (12) In this section and in section 120 below—
- “operator”, in relation to a railway, means any person carrying on an undertaking which includes maintaining the permanent way;
- “railway” includes tramway but does not include any part of a system where rails are laid along a carriageway.]

### Textual Amendments

**F32** S. 119A inserted (22.12.1992 for certain purposes and otherwise 31.1.1993) by [Transport and Works Act 1992 \(c. 42\), s. 47, Sch. 2 para. 4](#); S.I. 1992/3144, arts. 2, 3, [Sch.](#)

**F33** Words in s. 119A sidenote substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\), regs. 1\(2\)\(4\), 2, Sch. Pt. 1](#); S.I. 2006/1172, [art. 2\(a\)-\(d\)](#) (with art. 3); S.I. 2006/1279, [art. 2\(a\)-\(d\)](#) (with art. 3)

**F34** Words in s. 119A(1) substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\), regs.](#)

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- 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)
- F35** Words in s. 119A(2)(b) substituted (12.2.2003 for E. and 31.5.2005 for W.) by 2000 c. 37, s. 57, Sch. 6 Pt. I para. 11(2); S.I. 2003/272, **art. 2(a)(g)**; S.I. 2005/1314, **art. 2(b)(iv)**
- F36** Words in s. 119A(6) substituted (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)
- F37** S. 119A(7) substituted (12.2.2003 for E. and 31.5.2005 for W.) by 2000 c. 37, s. 57, Sch. 6 Pt. I para. 11(3); S.I. 2003/272, **art. 2(a)(g)**; S.I. 2005/1314, **art. 2(b)(iv)**
- F38** Words in s. 119A(7) substituted (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)
- F39** Words in s. 119A(9)(b) substituted (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)
- F40** Words in s. 119A(11) substituted (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)
- F41** Words in s. 119A(11) substituted (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)

**Modifications etc. (not altering text)**

- C11** S. 118-121 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 11(c)** (with ss. 7(6), 115, 117, Sch. 8 para. 7).
- C12** S. 119A applied (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

**[<sup>F42</sup>119B Diversion of certain highways for purposes of crime prevention, etc.**

- (1) This section applies where it appears to a council—
- (a) that, as respects any relevant highway for which they are the highway authority and which is in an area designated by the Secretary of State by order under section 118B(1)(a) above, the conditions in subsection (3) below are satisfied and it is expedient, for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, that the line of the highway, or part of that line should be diverted (whether on to land of the same or another owner, lessee or occupier), or
  - (b) that, as respects any relevant highway for which they are the highway authority and which crosses land occupied for the purposes of a school, it is expedient, for the purpose of protecting the pupils or staff from—
    - (i) violence or the threat of violence,
    - (ii) harassment,
    - (iii) alarm or distress arising from unlawful activity, or
    - (iv) any other risk to their health or safety arising from such activity,



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that the line of the highway, or part of that line, should be diverted (whether on to land of the same or another owner, lessee or occupier).

- (2) In subsection (1) above “relevant highway” means—
- (a) any footpath, bridleway or restricted byway,
  - (b) any highway which is shown in a definitive map and statement as a footpath, a bridleway, or a restricted byway, but over which the public have a right of way for vehicular and all other kinds of traffic, or
  - (c) any highway which is shown in a definitive map and statement as a byway open to all traffic,
- but does not include a highway that is a trunk road or a special road.
- (3) The conditions referred to in subsection (1)(a) above are—
- (a) that premises adjoining or adjacent to the highway are affected by high levels of crime, and
  - (b) that the existence of the highway is facilitating the persistent commission of criminal offences.
- (4) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order—
- (a) create, as from such date as may be specified in the order, any such—
    - (i) new footpath, bridleway or restricted byway, or
    - (ii) in a case falling within subsection (2)(b) or (c) above, new highway over which the public have a right of way for vehicular and all other kinds of traffic,as appears to the council requisite for effecting the diversion, and
  - (b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (8) below, the public right of way over so much of the highway as appears to the council to be requisite for the purpose mentioned in paragraph (a) or (b) of subsection (1) above.
- (5) An order under subsection (4) above is in this Act referred to as a “special diversion order”.
- (6) Before making a special diversion order, the council shall consult the police authority for the area in which the highway is situated.
- (7) A special diversion order shall not alter a point of termination of the highway—
- (a) if that point is not on a highway, or
  - (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it.
- (8) Where it appears to the council that work requires to be done to bring the new site of the highway into a fit condition for use by the public, the council shall—
- (a) specify a date under subsection (4)(a) above, and
  - (b) provide that so much of the order as extinguishes (in accordance with subsection (4)(b) above) a public right of way is not to come into force until the local highway authority for the new highway certify that the work has been carried out.
- (9) A right of way created by a special diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations

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or conditions of any description) subject to such limitations or conditions as may be specified in the order.

- (10) The Secretary of State shall not confirm a special diversion order made by virtue of subsection (1)(a) above, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the conditions in subsection (3) above are satisfied, that the diversion of the highway is expedient as mentioned in subsection (1)(a) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to—
- (a) whether and, if so, to what extent the order is consistent with any strategy for the reduction of crime and disorder prepared under section 6 of the <sup>M2</sup>Crime and Disorder Act 1998,
  - (b) the effect which the coming into operation of the order would have as respects land served by the existing public right of way, and
  - (c) the effect which any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,
- so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (11) The Secretary of State shall not confirm a special diversion order made by virtue of subsection (1)(b) above, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the diversion of the highway is expedient as mentioned in subsection (1)(b) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to—
- (a) any other measures that have been or could be taken for improving or maintaining the security of the school,
  - (b) whether it is likely that the coming into operation of the order will result in a substantial improvement in that security,
  - (c) the effect which the coming into operation of the order would have as respects land served by the existing public right of way, and
  - (d) the effect which any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,
- so, however, that for the purposes of paragraphs (c) and (d) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (12) A special diversion order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed—
- (a) showing the existing site of so much of the line of the highway as is to be diverted by the order and the new site to which it is to be diverted,
  - (b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a highway, and
  - (c) where some part of the new site is already so comprised, defining that part.
- (13) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of special diversion orders.
- (14) Section 27 above (making up of new footpaths and bridleways) applies to a highway created by a special diversion order with the substitution—

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- (a) for references to a footpath or bridleway of references to a footpath, a bridleway, a restricted byway or a highway over which the public have a right of way for vehicular and all other kinds of traffic,
  - (b) for references to a public path creation order of references to a special diversion order, and
  - (c) for references to section 26(2) above of references to section 120(3) below.
- (15) Neither section 27 nor section 36 above is to be regarded as obliging a highway authority to provide on any highway created by a special diversion order a metalled carriage-way.]

#### Textual Amendments

**F42** S. 119B inserted (12.2.2003 for E., 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 12; S.I. 2003/272, art. 2(a)(h); S.I. 2005/1314, art. 3(e)

#### Marginal Citations

**M2** 1998 c. 37.

PROSPECTIVE

### [<sup>F43</sup>119C Application by proprietor of school for special diversion order.

- (1) The proprietor of a school may apply to a council for the making by virtue of section 119B(1)(b) above of a special diversion order in relation to any highway for which the council are the highway authority and which—
  - (a) crosses land occupied for the purposes of the school, and
  - (b) is a relevant highway as defined by section 119B(2) above.
- (2) No application may be made under this section for an order which would create a new highway communicating with—
  - (a) a classified road,
  - (b) a special road,
  - (c) a GLA road, or
  - (d) any highway not falling within paragraph (a) or (b) above for which the Minister is the highway authority,
 unless the application is made with the consent of the highway authority for the way falling within paragraph (a), (b), (c) or (d) above.
- (3) Before determining to make a special diversion order on an application under this section, the council may require the applicant to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards—
  - (a) any compensation which may become payable under section 28 above as applied by section 121(2) below, or
  - (b) to the extent that the council are the highway authority for the highway in question, any expenses which they may incur in bringing the new site of the highway into fit condition for use by the public, or

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- (c) to the extent that the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by section 119B(14) above.
- (4) Subsections (3) to (12) of section 119ZA above shall apply to applications under this section as they apply to applications under that section, with the substitution—
  - (a) for references to a public path diversion order of references to a special diversion order, and
  - (b) for references to a footpath or bridleway of references to a highway, and regulations made under that section by virtue of this subsection may make different provision for the purposes of this section and for the purposes of that section.]

#### Textual Amendments

**F43** S. 119C inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 12

VALID FROM 21/05/2007

#### **[<sup>F44</sup>119D] Diversion of certain highways for protection of sites of special scientific interest.**

- (1) Subsection (3) below applies where, on an application made in accordance with this section by the appropriate conservation body, it appears to a council, as respects any relevant highway for which they are the highway authority and which is in, forms part of, or is adjacent to or contiguous with, a site of special scientific interest—
  - (a) that public use of the highway is causing, or that continued public use of the highway is likely to cause, significant damage to the flora, fauna or geological or physiographical features by reason of which the site of special scientific interest is of special interest, and
  - (b) that it is expedient that the line of the highway, or part of that line should be diverted (whether on to land of the same or another owner, lessee or occupier) for the purpose of preventing such damage.
- (2) In subsection (1) “relevant highway” means—
  - (a) a footpath, bridleway or restricted byway,
  - (b) a highway which is shown in a definitive map and statement as a footpath, a bridleway or a restricted byway but over which the public have a right of way for vehicular and all other kinds of traffic, or
  - (c) any highway which is shown in a definitive map and statement as a byway open to all traffic,
 but does not include any highway that is a trunk road or special road.
- (3) Where this subsection applies, the council may, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,—
  - (a) create, as from such date as may be specified in the order, any such—
    - (i) new footpath, bridleway or restricted byway, or
    - (ii) in a case falling within subsection (2)(b) or (c) above, new highway over which the public have a right of way for vehicular and all other kinds of traffic,

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- as appears to the council requisite for effecting the diversion, and
- (b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (6) below, the public right of way over so much of the way as appears to the council to be requisite for the purpose mentioned in subsection (1)(b) above.
- (4) An order under this section is referred to in this Act as an “SSSI diversion order”.
- (5) An SSSI diversion order shall not alter a point of termination of the highway—
- (a) if that point is not on a highway, or
  - (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it.
- (6) Where it appears to the council that work requires to be done to bring the new site of the highway into a fit condition for use by the public, the council shall—
- (a) specify a date under subsection (3)(a) above, and
  - (b) provide that so much of the order as extinguishes (in accordance with subsection (3)(b) above) a public right of way is not to come into force until the local highway authority for the new highway certify that the work has been carried out.
- (7) A right of way created by an SSSI diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.
- (8) Before determining to make an SSSI diversion order, the council may require the appropriate conservation body to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—
- (a) any compensation which may become payable under section 28 above as applied by section 121(2) below,
  - (b) to the extent that the council are the highway authority for the highway, any expenses which they may incur in bringing the new site of the highway into fit condition for use for the public, or
  - (c) to the extent that the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by section 119E(6) below.
- (9) The Secretary of State shall not confirm an SSSI diversion order, and a council shall not confirm such an order as an unopposed order, unless he, or as the case may be, they are satisfied that the conditions in subsection (1)(a) and (b) are satisfied, and that it is expedient to confirm the order having regard to the effect which—
- (a) the diversion would have on public enjoyment of the right of way as a whole;
  - (b) the coming into operation of the order would have as respects other land served by the existing public right of way; and
  - (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,
- so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (8)(a) above.
- (10) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of SSSI diversion orders.

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(11) This section has effect subject to section 119E below.

(12) In this section—

“the appropriate conservation body” means—

- (a) as respects England, [<sup>F45</sup>Natural England] , and
- (b) as respects Wales, the Countryside Council for Wales;

“site of special scientific interest” has the same meaning as in the <sup>M3</sup>Wildlife and Countryside Act 1981.]

#### Textual Amendments

**F44** S. 119D inserted (21.5.2007 for E. and otherwise prosp.) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 12; S.I. 2007/1493, art. 2

**F45** Words in s. 119D(12) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), s. 105(1), Sch. 11 Pt. 1 para. 64; S.I. 2006/2541, art. 2

#### Marginal Citations

**M3** 1981 c. 69.

VALID FROM 21/05/2007

#### [<sup>F46</sup>119E Provisions supplementary to section 119D.

(1) An application under section 119D above shall be in such form as may be prescribed and shall be accompanied by—

- (a) a map, on such scale as may be prescribed,—
  - (i) showing the existing site of so much of the line of the highway as would be diverted if the order were made and the new site to which it would be diverted,
  - (ii) indicating whether a new right of way would be created by the order over the whole of the new site or whether some of it is already comprised in a highway, and
  - (iii) where some part of the new site is already so comprised, defining that part,
- (b) by an assessment in the prescribed form of the effects of public use of the right of way on the site of special scientific interest, and
- (c) by such other information as may be prescribed.

(2) At least fourteen days before making an application under section 119D above, the appropriate conservation body shall give a notice in the prescribed form of their intention to do so—

- (a) to any owner, lessee or occupier of land over which the proposed order would create or extinguish a public right of way; [<sup>F47</sup>and]
- (b) to such other persons as may be prescribed; <sup>F48</sup> . . .
- (c) <sup>F48</sup> . . . . .

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- (3) A council, in determining whether it is expedient to make or confirm an SSSI diversion order, and the Secretary of State, in determining whether to confirm such an order, shall, in particular, have regard to the following questions—
- (a) whether the council would be able to prevent damage of the kind referred to in section 119D(1) above by making a traffic regulation order, and
  - (b) if so, whether the making of a traffic regulation order would cause less inconvenience to the public than that which would be caused by the diversion of the highway.
- (4) The Secretary of State, in determining whether it is expedient to make an SSSI diversion order under section 120(3) below in a case where by virtue of section 22(4) of the <sup>M4</sup>Road Traffic Regulation Act 1984 he has power to make a traffic regulation order shall, in particular, have regard to the following questions—
- (a) whether he would be able to prevent damage of the kind referred to in section 119D(1) above by making a traffic regulation order, and
  - (b) if so, whether the making of a traffic regulation order would cause less inconvenience to the public than that which would be caused by the diversion of the highway.
- (5) An SSSI diversion order shall be in such form as may be prescribed and shall contain a map, on such scale as may be prescribed,—
- (a) showing the existing site of so much of the line of the highway as is to be diverted by the order and the new site to which it is to be diverted,
  - (b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a highway, and
  - (c) where some part of the new site is already so comprised, defining that part.
- (6) Section 27 above (making up of new footpaths<sup>F49</sup>, bridleways and restricted byways) applies to a highway created by an SSSI diversion order with the substitution—
- (a) for references to a footpath<sup>F50</sup>, bridleway or restricted byway] of references to a footpath, a bridleway, a restricted byway or a highway over which the public have a right of way for vehicular and all other kinds of traffic,
  - (b) for references to a public path creation order, of references to an SSSI diversion order, and
  - (c) for references to section 26(2) above, of references to section 120(3) below.
- (7) Neither section 27 nor section 36 above is to be regarded as obliging a highway authority to provide on any highway created by an SSSI diversion order a metalled carriage-way.
- (8) In this section—
- “the appropriate conservation body” has the same meaning as in section 119D above;
- “prescribed” means prescribed by regulations made by the Secretary of State;
- “site of special scientific interest” has the same meaning as in the <sup>M5</sup>Wildlife and Countryside Act 1981;
- “traffic regulation order” means an order under section 1 or 6 of the Road Traffic Regulation Act 1984.]

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### Textual Amendments

- F46** S. 119E inserted (21.5.2007 for E. and otherwise prosp.) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 12; S.I. 2007/1493, **art. 2**
- F47** Words in s. 119E(2)(a) inserted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), s. 105(1), **Sch. 11 para. 65**; S.I. 2006/2541, **art. 2**
- F48** S. 119E(2)(c) and preceding word repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), s. 105, **Sch. 11 para. 65, Sch. 12**; S.I. 2006/2541, **art. 2**
- F49** Words in s. 119E(6) substituted (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)
- F50** Words in s. 119E(6)(a) substituted (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)

### Marginal Citations

- M4** 1984 c. 27.  
**M5** 1981 c. 69.

## 120 Exercise of powers of making public path extinguishment and diversion orders.

- (1) Where a footpath<sup>[F51]</sup>, bridleway or restricted byway] lies partly within and partly outside the area of a council the powers conferred by sections 118<sup>[F52]</sup>, 118A, 119 and 119A] above on the council extend, subject to subsection (2) below, to the whole of the path or way as if it lay wholly within their area.
- [<sup>F53</sup>(1A) Where a council are the highway authority for only part of a highway, the powers conferred on the council by sections 118B, 119B and 119D above are exercisable with respect to the whole of the highway, but subject to subsection (2) and only with the consent of every other council which is a highway authority for any other part with respect to which the powers are exercised.]
- (2) The powers of making [<sup>F54</sup>orders under sections 118 [<sup>F55</sup>to 119D]] above are not exercisable by a council—
- (a) with respect to any part of a [<sup>F56</sup>highway] which is within their area, without prior consultation with [<sup>F57</sup>any] other council in whose area that part of the [<sup>F56</sup>highway] is situated;
  - (b) with respect to any part of a [<sup>F56</sup>highway] which is outside their area, without the consent of every council in whose area it is; and
  - (c) with respect to any part of a [<sup>F56</sup>highway] in a National Park, without prior consultation with [<sup>F58</sup>Natural England][<sup>F59</sup>(if the National Park is in England) or the Countryside Council for Wales (if the National Park is in Wales)].
- (3) Where it appears to the Secretary of State as respects a footpath<sup>[F60]</sup>, bridleway or restricted byway] that it is expedient as mentioned in section 118(1) [<sup>F61</sup>or 118A(1) or 119A(1)] above that the path or way should be stopped up [<sup>F62</sup>or diverted], [<sup>F63</sup>or where it appears to the Secretary of State as respects a relevant highway as defined by section 118B(2), 119B(2) or 119D(2) that it is expedient as mentioned in section 118B(1)(a) or (b), 119B(1)(a) or (b) or 119D(1)(b) that the highway should be stopped up or diverted] or where an owner, lessee or occupier of land crossed by



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a footpath<sup>F60</sup>, bridleway or restricted byway] satisfies the Secretary of State that a diversion of it is expedient as mentioned in section 119(1) above, then if—

- (a) no council having power to do so have made and submitted to him a public path extinguishment order [<sup>F64</sup>a special extinguishment order, a public path diversion order, a rail crossing diversion order, a special diversion order or an SSSI diversion order] or a public path diversion order, as the case may be, and
- (b) the Secretary of State is satisfied that, if such an order were made and submitted to him, he would have power to confirm the order in accordance with the provisions in that behalf of sections 118 [<sup>F65</sup>to 119D] above,

he may himself make the order after consultation [<sup>F66</sup>(subject to the following provisions of this section)] with the appropriate authority [<sup>F67</sup>and, in the case of an SSSI diversion order, with the appropriate conservation body].

<sup>F68</sup>[(3A) Where—

- (a) the operator of a railway makes a request to a council to make an order under section 118A or 119A above in respect of a crossing over the railway,
- (b) the request is in such form and gives such particulars as are prescribed by regulations made by the Secretary of State, and
- (c) the council have neither confirmed the order nor submitted it to the Secretary of State within 6 months of receiving the request,

the power conferred on the Secretary of State by subsection (3) above may be exercised without consultation with the council.]

<sup>F69</sup>(3B) Unless an appeal to the Secretary of State is brought under section 121D(1) below, the power conferred on the Secretary of State by subsection (3) above to make a special extinguishment order or a special diversion order is exercisable only after consultation with the police authority in whose area the highway lies.

(3C) The power conferred on the Secretary of State by subsection (3) above to make an SSSI diversion order may be exercised even though the appropriate conservation body has not made an application under section 119D above to the council who are the highway authority for the highway.

(3D) Where—

- (a) the appropriate conservation body has made an application under section 119D above to a council in respect of a highway for which the council are the highway authority, and
- (b) the council have neither confirmed the order nor submitted it to the Secretary of State for confirmation within 6 months of receiving the application,

the power conferred on the Secretary of State by subsection (3) above to make an SSSI diversion order may be exercised without consultation with the council.]

(4) A council proposing to make a public path diversion order [<sup>F70</sup>, a rail crossing diversion order, a special diversion order or an SSSI diversion order] such that the authority who will be the highway authority for a part of the [<sup>F71</sup>highway] after the diversion will be a different body from the authority who before the diversion are the highway authority for it shall, before making the order, notify the first mentioned authority.

<sup>F72</sup>(5) The Secretary of State may, before determining—

- (a) under subsection (3) above, to make a public path diversion order,
- (b) under subsection (3) above, to make a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order on an appeal under section 121D(1)(a) below,

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- (c) to confirm a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order in respect of which an appeal under section 121D(1)(b) or (c) below has been brought, or
- (d) under subsection (3) above, to make a rail crossing diversion order on the representations of the operator of the railway concerned,

require the appropriate person to enter into such agreement as he may specify with such council as he may specify for that person to defray, or to make such contribution as may be specified in the agreement towards, any such compensation or expenses as are specified in paragraphs (a), (b) and (c) of section 119(5), or as the case may be, section 118ZA(6), 119A(8) or 119C(3) above.

- (6) In subsection (5) above “the appropriate person” means—
  - (a) in a case falling within paragraph (a) of that subsection—
    - (i) where an appeal under section 121D(1)(a) below has been brought, the appellant, or
    - (ii) in any other case, the person on whose representations the Secretary of State is acting,
  - (b) in a case falling within paragraph (b) or (c) of that subsection, the appellant, and
  - (c) in a case falling within paragraph (d) of that subsection, the operator of the railway concerned.]

#### Textual Amendments

- F51** Words in s. 120(1) substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2, [Sch. Pt. 1](#); S.I. 2006/1172, [art. 2\(a\)-\(d\)](#) (with art. 3); S.I. 2006/1279, [art. 2\(a\)-\(d\)](#) (with art. 3)
- F52** Words in s. 120(1) substituted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by [2000 c. 37, ss. 57, 103\(3\), Sch. 6 Pt. I para. 13\(2\)](#); S.I. 2003/272, [art. 2\(a\)\(i\)](#); S.I. 2005/1314, [art. 3\(d\)\(i\)](#); S.I. 2007/1493, [art. 2](#)
- F53** S. 120(1A) inserted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by [2000 c. 37, ss. 57, 103\(3\), Sch. 6 Pt. I para. 13\(3\)](#); S.I. 2003/272, [art. 2\(a\)\(i\)](#); S.I. 2005/1314, [art. 3\(d\)\(i\)](#); S.I. 2007/1493, [art. 2](#)
- F54** Words in s. 120(2) substituted (22.12.1992 for certain purposes and otherwise 31.1.1993) by [Transport and Works Act 1992 \(c. 42\), s. 47, Sch. 2 para. 5\(3\)](#); S.I. 1992/3144, arts. 2, 3, [Sch.](#)
- F55** Words in s. 120(2) substituted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by [2000 c. 37, ss. 57, 103\(3\), Sch. 6 Pt. I para. 13\(4\)\(a\)](#); S.I. 2003/272, [art. 2\(a\)\(i\)](#); S.I. 2005/1314, [art. 3\(d\)\(i\)](#); S.I. 2007/1493, [art. 2](#)
- F56** Word in s. 120(2) substituted (12.2.2003 and 21.5.2007 for E. for certain purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by [2000 c. 37, ss. 57, 103\(3\), Sch. 6 Pt. I para. 13\(4\)\(b\)](#); S.I. 2003/272, [art. 2\(a\)\(i\)](#); S.I. 2005/1314, [art. 3\(d\)\(i\)](#); S.I. 2007/1493, [art. 2](#)
- F57** Word in s. 120(2)(a) substituted (1.4.1996) by [1994 c. 19, s. 22\(1\), Sch. 7 Pt. I para. 12](#) (with s. 54(7), [Sch. 17 paras. 22\(1\), 23\(2\)](#)); S.I. 1996/396, art. 3, [Sch. 1](#).
- F58** Words in s. 120(2)(c) substituted (1.10.2006) by [Natural Environment and Rural Communities Act 2006 \(c. 16\), s. 105\(1\), Sch. 11 para. 66](#); S.I. 2006/2541, [art. 2](#)
- F59** Words inserted (5.11.1990) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\), ss. 130\(1\), 164\(3\), Sch. 8 para. 5\(3\)](#)
- F60** Words in s. 120(3) substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs.

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- 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)
- F61** Words in s. 120(3) inserted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 5(4)(a)**; S.I. 1992/3144, arts. 2, 3, **Sch.**
- F62** Words in s. 120(3) inserted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 5(4)(b)**; S.I. 1992/3144, arts. 2, 3, **Sch.**
- F63** Words in s. 120(3) inserted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 13(5)(a); S.I. 2003/272, **art. 2(a)(i)**; S.I. 2005/1314, **art. 3(d)(i)**; S.I. 2007/1493, **art. 2**
- F64** Words in s. 120(3)(a) substituted (12.2.2003 for E. for certain purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 13(5)(b); S.I. 2003/272, **art. 2(a)(i)**; S.I. 2005/1314, **art. 3(d)(i)**
- F65** Words in s. 120(3)(b) substituted (12.2.2003 for E. for certain purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 13(5)(c); S.I. 2003/272, **art. 2(a)(i)**; S.I. 2005/1314, **art. 3(d)(i)**
- F66** Words in s. 120(3) substituted (12.2.2003 for E. for certain purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 13(5)(d); S.I. 2003/272, **art. 2(a)(i)**; S.I. 2005/1314, **art. 3(d)(i)**
- F67** Words in s. 120(3) inserted (12.2.2003 for E. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 13(5)(e); S.I. 2003/272, **art. 2(a)(i)**
- F68** S. 120(3A) inserted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 5(5)**; S.I. 1992/3144, arts. 2, 3, **Sch.**
- F69** S. 120(3B)-(3D) inserted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 13(7); S.I. 2003/272, **art. 2(a)(i)**; S.I. 2005/1314, **art. 3(d)(i)**; S.I. 2007/1493, **art. 2**
- F70** Words in s. 120(4) substituted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 13(8)(a); S.I. 2003/272, **art. 2(a)(i)**; S.I. 2005/1314, **art. 3(d)(i)**; S.I. 2007/1493, **art. 2**
- F71** Word in s. 120(4) substituted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 13(8)(b); S.I. 2003/272, **art. 2(a)(i)**; S.I. 2005/1314, **art. 3(d)(i)**; S.I. 2007/1493, **art. 2**
- F72** S. 120(5)(6) substituted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) for s. 120(5) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 13(9); S.I. 2003/272, **art. 2(a)(i)**; S.I. 2005/1314, **art. 3(d)(i)**; S.I. 2007/1493, **art. 2**

#### Modifications etc. (not altering text)

- C13** S. 120 extended by Norfolk and Suffolk Broads Act 1988 (c. 4, SIF 81:1), ss. 2(5)(6), 23(2), 27(2), **Sch. 3 para. 47(1)**
- C14** S. 118-121 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 11(c)** (with ss. 7(6), 115, 117, Sch. 8 para. 7).
- C15** S. 120 applied (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. I**; S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

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## 121 Supplementary provisions as to public path extinguishment and diversion orders.

- (1) A public path extinguishment order [<sup>F73</sup>, a rail crossing extinguishment order, [<sup>F74</sup>a special extinguishment order]a public path diversion order [<sup>F75</sup>, a rail crossing diversion order, a special diversion order or an SSSI diversion order]] affecting in any way the area of more than one council may contain provisions requiring one of the councils to defray, or contribute towards, expenses incurred in consequence of the order by another of the councils; and a public path diversion order [<sup>F75</sup>, a rail crossing diversion order, a special diversion order or an SSSI diversion order] diverting a part of the line of a [<sup>F76</sup>highway] from a site in the area of one local highway authority to a site in the area of another may provide that the first mentioned authority are to continue to be the highway authority for that part of the [<sup>F76</sup>highway] after the diversion.
  - (2) Section 28 above (compensation for loss caused by public path creation order) applies in relation to public path extinguishment orders [<sup>F77</sup>, rail crossing extinguishment orders, [<sup>F78</sup>special extinguishment orders]public path diversion orders [<sup>F79</sup>, rail crossing diversion orders, special diversion orders and SSSI diversion orders]] as it applies in relation to public path creation orders [<sup>F80</sup>but as if—
    - (a) the references in it to section 26(2) above were references to section 120(3) above, and
    - (b) in relation to special extinguishment orders, special diversion orders and SSSI diversion orders, the reference in section 28(4) to a footpath or bridleway included a reference to a restricted byway or a highway over which the public have a right of way for vehicular and all other kinds of traffic.]
  - (3) Section 29 above [<sup>F81</sup>(duty to have regard to agriculture, forestry and nature conservation)] applies in relation to the making of public path extinguishment orders [<sup>F82</sup>, rail crossing extinguishment orders, [<sup>F83</sup>special extinguishment orders] public path diversion orders [<sup>F84</sup>, rail crossing diversion orders, special diversion orders and SSSI diversion orders]] as it applies in relation to the making of public path creation agreements and public path creation orders.
  - (4) The Secretary of State shall not make or confirm a public path extinguishment order [<sup>F85</sup>, a rail crossing extinguishment order, [<sup>F86</sup>a special extinguishment order] a public path diversion order [<sup>F87</sup>, a rail crossing diversion order, a special diversion order or an SSSI diversion order]], and a council shall not confirm such an order as an unopposed order, if the order extinguishes a right of way over land under, in, upon, over, along or across which there is any apparatus belonging to or used by any statutory undertakers for the purpose of their undertaking unless the undertakers have consented to the making or, as the case may be, confirmation of the order.
  - (5) A consent under subsection (4) above may be given subject to the condition that there are included in the order such provisions for the protection of the undertakers as they reasonably require, but a consent under that subsection shall not be unreasonably withheld, and any question whether the withholding of such a consent is unreasonable or whether any requirement is reasonable shall be determined by the appropriate Minister.
- [<sup>F88</sup>(5A) Before making a determination under subsection (5) above the appropriate Minister may, if he thinks fit, give any person an opportunity to be heard on the question, and he must either give such an opportunity or cause a local inquiry to be held if a request to be heard with respect to the question to be determined is made—
- (a) by the statutory undertakers,

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- (b) in the case of an order made on an application under section 118ZA, 118C, 119ZA or 119C above, by the person who made the application, and
  - (c) in the case of an order to be made on an appeal under section 121D(1)(a) below, by the appellant.
- (5B) The appropriate Minister may appoint any person to exercise on his behalf, with or without payment, the function of determining a question falling to be determined under subsection (5) above.
- (5C) Schedule 12ZA to this Act shall have effect with respect to appointments under subsection (5B) above; and subsection (5A) above has effect subject to the provisions of that Schedule.
- (5D) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (giving of evidence at, and defraying of costs of, inquiries) shall apply in relation to hearings or local inquiries which the appropriate Minister causes to be held under subsection (5A) above as they apply (by virtue of section 302(1) of this Act) to local inquiries which the Secretary of State causes to be held under this Act.
- (5E) Section 322A of the <sup>M6</sup>Town and Country Planning Act 1990 (orders as to costs where no hearing or inquiry takes place) applies in relation to a hearing or inquiry under subsection (5A) above as it applies in relation to a hearing or local inquiry for the purposes referred to in that section, but as if references to the Secretary of State were references to the appropriate Minister.]
- (6) In [F<sup>89</sup> subsections (5) to (5E)] above the “appropriate Minister” means—
- (a) in relation to statutory undertakers carrying on an undertaking for the supply of <sup>F<sup>90</sup></sup> . . . , <sup>F<sup>91</sup></sup> . . . , [F<sup>92</sup> or hydraulic power], the Secretary of State; and
  - (b) in relation to any other statutory undertakers, the Minister.

### Textual Amendments

- F73** Words in s. 121(1) substituted (31.1.1993) by [Transport and Works Act 1992 \(c. 42\), s. 47, Sch. 2 para. 6\(2\)\(a\)](#); S.I. 1992/3144, art. 3, Sch.
- F74** Words in s. 121(1) inserted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by [2000 c. 37, ss. 57, 103\(3\), Sch. 6 Pt. I para. 14\(2\)\(a\)](#); S.I. 2003/272, art. 2(a)(j); S.I. 2005/1314, art. 3(d)(ii); S.I. 2007/1493, art. 2
- F75** Words in s. 121(1) substituted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by [2000 c. 37, ss. 57, 103\(3\), Sch. 6 Pt. I para. 14\(2\)\(b\)](#); S.I. 2003/272, art. 2(a)(j); S.I. 2005/1314, art. 3(d)(ii); S.I. 2007/1493, art. 2
- F76** Word in s. 121(1) substituted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by [2000 c. 37, ss. 57, 103\(3\), Sch. 6 Pt. I para. 14\(2\)\(c\)](#); S.I. 2003/272, art. 2(a)(j); S.I. 2005/1314, art. 3(d)(ii); S.I. 2007/1493, art. 2
- F77** Words in s. 121(2) substituted (31.1.1993) by [Transport and Works Act 1992 \(c. 42\), s. 47, Sch. 2 para. 6\(3\)](#); S.I. 1992/3144, art. 3, Sch.
- F78** Words in s. 121(2) inserted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by [2000 c. 37, ss. 57, 103\(3\), Sch. 6 Pt. I para. 14\(3\)\(a\)](#); S.I. 2003/272, art. 2(a)(j); S.I. 2005/1314, art. 3(d)(ii); S.I. 2007/1493, art. 2

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- F79** Words in s. 121(2) substituted (12.2.2003 for E. for certain purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 14(3)(b); S.I. 2003/272, **art. 2(a)(j)**; S.I. 2005/1314, **art. 3(d)(ii)**
- F80** Words in s. 121(2) substituted (12.2.2003 for E. for certain purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 14(3)(c); S.I. 2003/272, **art. 2(a)(j)**; S.I. 2005/1314, **art. 3(d)(ii)**
- F81** Words in s. 121(3) substituted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 31.5.2005 for W. and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 14(4)(a); S.I. 2003/272, **art. 2(a)(j)**; S.I. 2005/1314, **art. 2(b)(v)**; S.I. 2007/1493, **art. 2**
- F82** Words in s. 121(3) substituted (31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 6(4)**; S.I. 1992/3144, art. 3, **Sch.**
- F83** Words in s. 121(3) inserted (12.2.2003 for E. for certain purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 14(4)(b); S.I. 2003/272, **art. 2(a)(j)**; S.I. 2005/1314, **art. 3(d)(ii)**
- F84** Words in s. 121(3) substituted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 14(4)(c); S.I. 2003/272, **art. 2(a)(j)**; S.I. 2005/1314, **art. 3(d)(ii)**; S.I. 2007/1493, **art. 2**
- F85** Words in s. 121(4) substituted (31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 6(5)**; S.I. 1992/3144, art. 3, **Sch.**
- F86** Words in s. 121(4) inserted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 14(5)(a); S.I. 2003/272, **art. 2(a)(j)**; S.I. 2005/1314, **art. 3(d)(ii)**; S.I. 2007/1493, **art. 2**
- F87** Words in s. 121(4) substituted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 14(5)(b); S.I. 2003/272, **art. 2(a)(j)**; S.I. 2005/1314, **art. 3(d)(ii)**; S.I. 2007/1493, **art. 2**
- F88** S. 121(5A)-(5E) inserted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 14(6); S.I. 2003/272, **art. 2(a)(j)**; S.I. 2005/1314, **art. 3(d)(ii)**; S.I. 2007/1493, **art. 2**
- F89** Words in s. 121(6) substituted (12.2.2003 for E. for certain purposes and 21.5.2007 for certain further purposes, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 14(7); S.I. 2003/272, **art. 2(a)(j)**; S.I. 2005/1314, **art. 3(d)(ii)**; S.I. 2007/1493, **art. 2**
- F90** Word repealed by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(3)(4), Sch. 17 para. 35(1), **Sch. 18**
- F91** Word repealed by Gas Act 1986 (c. 44, SIF 44:2), s. 67(4), **Sch. 9 Pt. I**
- F92** Words substituted 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. 25 para. 62(6), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

#### Modifications etc. (not altering text)

- C16** S. 121 modified by Gas Act 1986 (c. 44, SIF 44:2), s. 67(1)(3), **Sch. 7 para. 2(10)(c)**, Sch. 8 para. 33
- C17** S. 121 modified by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 3(2)(g), Sch. 17 paras. 33, **35(1)**
- C18** S. 121 modified 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. 25 para. 1(10)(vii), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- C19** S. 121 extended by Norfolk and Suffolk Broads Act 1988 (c. 4, SIF 81:1), **ss. 2(5)(6)**, 23(2), 27(2) Sch. 3 para. 47(1)
- C20** S. 118-121 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 11(c)** (with ss. 7(6), 115, 117, Sch. 8 para. 7).  
 S. 121 modified (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(11)(c)**; S.I. 1996/218, **art. 2**.
- C21** S. 121 applied (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. I**; S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

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#### Marginal Citations

M6 1990 c. 8.

PROSPECTIVE

#### [<sup>F93</sup>121A Regulations with respect to applications for orders.

- (1) The Secretary of State may by regulations make provision as respects applications under section 118ZA, 118C, 119ZA or 119C above—
  - (a) requiring the applicant to issue a certificate as to the interests in, or rights in or over, the land to which the application relates and the purpose for which the land is used,
  - (b) requiring the applicant to give notice of the application to such persons as may be prescribed,
  - (c) requiring the applicant to certify that any requirement of regulations under this section has been complied with or to provide evidence that any such requirement has been complied with,
  - (d) as to the publicising of any application,
  - (e) as to the form, content and service of such notices and certificates, and
  - (f) as to the remission or refunding in prescribed circumstances of the whole or part of any prescribed charge.
- (2) If any person—
  - (a) issues a certificate which purports to comply with any requirement imposed by virtue of subsection (1) above and contains a statement which he knows to be false or misleading in a material particular; or
  - (b) recklessly issues a certificate which purports to comply with any such requirement and contains a statement which is false or misleading in a material particular,he shall be guilty of an offence.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Notwithstanding section 127 of the Magistrates' Courts Act 1980 (limitation of time for taking proceedings) summary proceedings for an offence under this section may be instituted at any time within three years after the commission of the offence.]

#### Textual Amendments

**F93** S. 121A inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 15

#### [<sup>F94</sup>121B Register of applications.

- (1) Every council shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect to applications under section 118ZA, 118C, 119ZA or 119C above.

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- (2) The register shall contain such information as may be prescribed with respect to the manner in which such applications have been dealt with.
- (3) Regulations may make provision for the register to be kept in two or more parts, each part containing such information relating to applications under section 118ZA, 118C, 119ZA or 119C above as may be prescribed.
- (4) Regulations may make provision—
  - (a) for a specified part of the register to contain copies of applications and of the maps submitted with them, and
  - (b) for the entry relating to any application, and everything relating to it, to be removed from any part of the register when the application (including any appeal to the Secretary of State) has been finally disposed of (without prejudice to the inclusion of any different entry relating to it in another part of the register).
- (5) Every register kept under this section shall be available for inspection by the public free of charge at all reasonable hours.
- (6) In this section—
 

“prescribed” means prescribed by regulations;  
 “regulations” means regulations made by the Secretary of State.]

#### Textual Amendments

**F94** S. 121B inserted (21.11.2005 for W. and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 15; S.I. 2005/1314, art. 4(b)(ii)

PROSPECTIVE

#### [<sup>F95</sup>121C Cases where council may decline to determine applications.

- (1) A council may decline to determine an application under section 118ZA, 118C, 119ZA or 119C above if, within the period of three years ending with the date on which the application is received, the Secretary of State—
  - (a) has refused to make an order on an appeal under section 121D(1)(a) below in respect of a similar application, or
  - (b) has refused to confirm an order which is similar to the order requested.
- (2) Before declining under subsection (1) above to determine an application under section 118C or 119C above, the council shall consider whether since the previous decision of the Secretary of State was made the risks referred to in subsection (1)(b) (i) to (iv) of section 118B or of section 119B have substantially increased.
- (3) A council may decline to determine an application under section 118ZA, 118C, 119ZA or 119C above if—
  - (a) in respect of an application previously made to them under that section which is similar to the current application or relates to any of the land to which the current application relates, the council have not yet determined whether to make a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order, or



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- (b) the council have made a similar order or an order which relates to any of the land to which the current application relates but no final decision as to the confirmation of the order has been taken.
- (4) For the purposes of this section an application or order is similar to a later application or order only if they are, in the opinion of the council determining the later application, the same or substantially the same, but an application or order may be the same or substantially the same as a later application or order even though it is made to or by a different council.]

#### Textual Amendments

**F95** S. 121C inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 15

PROSPECTIVE

#### [<sup>F96</sup>121D] Right of appeal to Secretary of State in respect of applications for orders.

- (1) Subject to the provisions of this section, where, in relation to an application made under section 118ZA, 118C, 119ZA or 119C above, the council to which the application was made—
- refuse to make an order on the application,
  - refuse to confirm as an unopposed order an order made on the application, or
  - refuse to submit to the Secretary of State an order which is made on the application and against which any representation or objection has been duly made and not withdrawn,
- the applicant may, by giving notice to the Secretary of State, appeal to the Secretary of State.
- (2) Subsection (1)(a) above does not confer any right to appeal to the Secretary of State where—
- the council have no power to make the order requested without the consent of another person and that consent has not been given, or
  - the reason, or one of the reasons, for the refusal to make the order is that the applicant has refused to enter into an agreement required by the council—
    - in the case of a public path extinguishment order, under subsection (6) of section 118ZA above,
    - in the case of a special extinguishment order, under that subsection as applied by section 118C(2) above,
    - in the case of a public path diversion order, under section 119(5) above,
    - in the case of a special diversion order, under section 119C(3) above.
- (3) Paragraph (b) of subsection (1) above does not confer any right to appeal to the Secretary of State in a case where the council has no power to confirm the order without the consent of another person and that consent has not been given; and paragraph (c) of that subsection does not confer any right to appeal to the Secretary of State in a case where, if the order had been unopposed, the council would have had

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no power to confirm it without the consent of another person and that consent has not been give]

#### Textual Amendments

**F96** S. 121D inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 15

PROSPECTIVE

#### [<sup>F97</sup> 121E Determination of appeals.

- (1) Where an appeal to the Secretary of State is brought under section 121D(1)(a) above, the Secretary of State shall—
  - (a) prepare a draft of a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order under section 120(3) above giving effect to the application and containing such other provisions as, after consultation with such persons as he thinks fit, the Secretary of State may determine,
  - (b) give notice of the draft order in accordance with paragraph 1(2) of Schedule 6 to this Act, and
  - (c) subject to subsection (6) below and to paragraph 2 of that Schedule, determine whether to make the order (with or without modifications) under section 120(3) above.
- (2) Where an appeal to the Secretary of State is brought under section 121D(1)(b) or (c) above, the order made on the application shall be treated as having been submitted to him for confirmation (with or without modifications).
- (3) Where an appeal to the Secretary of State is brought under section 121D(1) above, the Secretary of State may not make or confirm a public path diversion order or special diversion order if it appears to him that—
  - (a) work is necessary to bring the new highway created by the order into a fit condition for use by the public,
  - (b) if the order were made, the work could not be carried out by the highway authority without—
    - (i) the consent of another person, or
    - (ii) any authorisation (however described) which is required by or under any enactment, and
  - (c) the consent or authorisation has not been obtained.
- (4) Where an appeal to the Secretary of State is brought under section 121D(1) above, the Secretary of State may not—
  - (a) make a public path diversion order or special diversion order so as to create a public right of way over land covered by works used for the purposes of a statutory undertaking or the curtilage of such land, or
  - (b) modify such an order so as to create such a public right of way,
 unless the statutory undertaker has consented to the making or modification of the order.

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- (5) In subsection (4) above “statutory undertaker” and “statutory undertaking” have the same meaning as in Schedule 6 to this Act.
- (6) Subsection (1)(c) above does not apply where any consent required by section 121(4) above has not been obtained.
- (7) The Secretary of State may by regulations make further provision with respect to appeals under section 121D(1) above.
- (8) Regulations under subsection (7) above may, in particular, make provision—
  - (a) as to the manner in which, and time within which, notice of an appeal is to be given,
  - (b) as to the provision of information to the Secretary of State by the council to which the application to which the appeal relates was made,
  - (c) for the payment by the applicant of any expenses incurred by the Secretary of State—
    - (i) in preparing a draft order,
    - (ii) in giving any notice required by subsection (1)(b) above or Schedule 6 to this Act,
  - (d) requiring the production by the council to whom the application was made of any certificates required by regulations under section 121A(1)(a) above,
  - (e) requiring the applicant to give notice of the appeal to such persons as may be prescribed,
  - (f) requiring the applicant to certify that any requirement of regulations under this section has been complied with or to provide evidence that any such requirement has been complied with,
  - (g) as to the publicising of any appeal,
  - (h) as to the form, content and service of such notices and certificates,
  - (i) modifying the provisions of Schedule 6 to this Act in their application to the procedure on appeals under section 121D(1) above, and
  - (j) as to the remission or refunding in prescribed circumstances of any prescribed charge.
- (9) The Secretary of State may by regulations provide that section 28 above, as applied by section 121(2) above, is to have effect in cases where a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order is made under section 120(3) above on an appeal under section 121D(1)(a) above, as if the reference to such one of the authorities referred to as may be nominated by the Secretary of State were a reference to such one of those authorities as may be specified in or determined in accordance with, the regulations.
- (10) Subsections (2) to (4) of section 121A above shall apply in relation to any certificate purporting to comply with a requirement imposed by virtue of this section as they apply to a certificate purporting to comply with a requirement imposed by virtue of subsection (1) of that section.
- (11) For the purposes of this section—
  - (a) a draft public path extinguishment order or special extinguishment order gives effect to an application under section 118ZA or 118C above only if the land over which the public right of way is to be extinguished by the order is that shown for the purposes of subsection (2) of section 118ZA above (or that

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subsection as applied by section 118C(2) above) on the map accompanying the application, and

(b) a draft public path diversion order or draft special diversion order gives effect to an application made to a council under section 119ZA or 119C above only if—

(i) the land over which the public right of way is to be extinguished by the order, and

(ii) the new site to which the highway is to be diverted,

are those shown for the purposes of subsection (4) of section 119ZA above (or that subsection as applied by section 119C(4) above) on the map accompanying the application.

(12) In this section “prescribed” means prescribed by regulations made by the Secretary of State.]

#### Textual Amendments

F97 S. 121E inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 15

### 122 Power to make temporary diversion where highway about to be repaired or widened.

- (1) A highway authority who are about to repair or widen a highway, and a person who is about to repair or widen a highway maintainable by him by reason of tenure, enclosure or prescription, may, subject to the provisions of this section, construct on adjoining land a temporary highway for use while the work is in progress.
- (2) Where any damage is sustained by the owner or occupier of any land in consequence of the construction of a highway on that land in exercise of a power conferred by this section the owner or occupier of the land may recover compensation in respect of that damage from the authority or other person by whom the highway was constructed.
- (3) Nothing in this section authorises interference with land which is part of the site of a house, or is a garden, lawn, yard, court, park, paddock, plantation, planted walk or avenue to a house, or is inclosed land set apart for building or as a nursery for trees.

### 123 Saving and interpretation.

- (1) The provisions of any enactment contained in the foregoing provisions of this Part of this Act do not prejudice any power conferred by any other enactment (whether contained in this Part of this Act or not) to stop up or divert a highway, and do not otherwise affect the operation of any enactment not contained in this Part of this Act relating to the extinguishment, suspension, diversion or variation of public rights of way.
- (2) Unless the context otherwise requires, expressions in the foregoing provisions of this Part of this Act, other than expressions to which meanings are assigned by sections 328 and 329 below, have the same meanings respectively as in [F98 the Town and Country Planning Act 1990].

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### Textual Amendments

**F98** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\), s. 4, Sch. 45\(7\)](#)

## *Stopping up of means of access to highways*

### **124 Stopping up of private access to highways.**

- (1) Subject to subsection (3) below, where the highway authority for a highway consider that a private means of access from the highway to any premises is likely to cause danger to, or to interfere unreasonably with, traffic on the highway, they may be authorised by an order made in accordance with this section to stop up the means of access.
- (2) An order under this section shall be made by the highway authority for the highway in question and, if they are a local highway authority, shall be confirmed either by the Minister or, where subsection (5) below allows, by the highway authority themselves.
- (3) No order under this section relating to an access to any premises shall be made by the Minister or, in the case of an order made by a local highway authority, confirmed either by the Minister or by that authority unless the Minister or, as the case may be, the confirming authority is or are satisfied—
  - (a) that no access to the premises from the highway in question is reasonably required, or
  - (b) that another reasonably convenient means of access to the premises is available or will be provided by the Minister or, as the case may be, the local highway authority.
- (4) Subject to subsection (5) below, the Minister may make regulations for prescribing the procedure to be followed in connection with the making and confirmation of orders under this section, and such regulations shall in particular make provision—
  - (a) for the publication in such manner as may be prescribed by the regulations of notice of the order proposed to be made or confirmed and for service on such persons as may be so prescribed of a copy of that notice and of such other documents, if any, as may be so prescribed;
  - (b) as to the content of that notice;
  - (c) for objections to the making of an order by the Minister received within such period as may be so prescribed and not withdrawn, to be considered by him;
  - (d) for objections to the confirmation of an order made by a local highway authority to be considered by the Minister if any of the objections to the confirmation of the order received within such period as may be so prescribed and not withdrawn was made by an owner, lessee or occupier of any premises with a private means of access which the order would authorise the highway authority to stop up;
  - (e) for objections to the confirmation of an order made by a local highway authority received within such period as may be so prescribed and not withdrawn to be considered by the local highway authority if there is no objection received within that period from an owner, lessee or occupier such as is mentioned in paragraph (d) above or if all such objections so received are withdrawn before the order is referred to the Minister for confirmation;

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- (f) for the making of modifications in the order, whether in consequence of any objections or otherwise, before the order is made or confirmed.
- (5) In the case of an order made by a local highway authority under this section—
- (a) if no objection to the confirmation of the order is received within the period prescribed by regulations under subsection (4) above; or
  - (b) if every such objection so received is withdrawn; or
  - (c) if every such objection so received from an owner, lessee or occupier of any premises with a private means of access which the order would authorise the highway authority to stop up is withdrawn,
- the local highway authority may themselves confirm the order, with or without modifications.
- (6) Before confirming an order with modifications the local highway authority, if they consider that the proposed modifications will make a substantial change in the order, shall inform every such owner, lessee or occupier as is mentioned in subsection (5) (c) above and every other person who appears to them to be likely to be affected by the modifications to the order—
- (a) of their intention to make the order; and
  - (b) of the form in which they propose to make it.
- (7) The local highway authority shall give every such person as is mentioned in subsection (6) above an opportunity to make representations with regard to the order, and shall consider any representations with regard to it which any such person makes.
- (8) Schedule 2 to this Act has effect as to the validity and date of operation of any order under this section.

## **125 Further powers to stop up private access to premises.**

- (1) Subject to subsection (2) below an order under section 14 or 18 above (orders for certain purposes connected with trunk, classified or special roads) and an order under [F99 section 248 of the Town and Country Planning Act 1990] (order by Minister [F100 or London Borough] to stop up or divert highway that crosses etc. a main highway) may authorise the appropriate authority—
- (a) to stop up any private means of access to premises adjoining or adjacent to land comprised in the route of the relevant road, or forming the site of any works authorised by the order or by any previous order made under the same enactment;
  - (b) to provide a new means of access to any such premises.
- (2) For the purposes of subsection (1) above—
- (a) the appropriate authority in the case of an order under [F101 section 248 of the Town and Country Planning Act 1990] is the highway authority for the main highway, and in any other case is the authority by whom the order is made; and
  - (b) the relevant road is the trunk road, classified road, special road or, as the case may be, main highway to which the order relates.
- (3) No order authorising the stopping up of a means of access to premises shall be made or confirmed by the Minister by virtue of subsection (1)(a) above unless he is satisfied—
- (a) that no access to the premises is reasonably required, or

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- (b) that another reasonably convenient means of access to the premises is available or will be provided in pursuance of an order made by virtue of subsection (1)(b) above or otherwise.
- (4) [<sup>F102</sup>Section 252 of the Town and Country Planning Act 1990] (procedure for making certain orders) in its application to an order under [<sup>F102</sup>section 248 of that Act] which by virtue of subsection (1)(a) above authorises the stopping up of a private means of access to premises has effect as if the persons on whom the Minister [<sup>F103</sup>or, as the case may be, the council of a London borough] is required by [<sup>F102</sup>section 252(2), (3), (10) and (11)] to serve certain documents relating to the order included the owner and the occupier of those premises.

In this subsection “owner” in relation to any premises, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple in the premises, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the premises under a lease the unexpired term of which exceeds 3 years.

#### Textual Amendments

- F99** Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s.4, **Sch. 2 para. 45(8)(a)**
- F100** Words in s. 125(1) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 1(2)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch. Pt. 3**
- F101** Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(8)(a)**
- F102** Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(8)(b)**
- F103** Words in s. 125(4) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 1(3)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch. Pt. 3**

#### Modifications etc. (not altering text)

- C22** S. 125 modified (18.12.1996) by 1996 c. 61, s. 44, **Sch. 12 Pt. III para. 10(1)**.

## 126 Provisions supplementary to sections 124 and 125 etc.

- (1) Where—
- an order under section 124 above, or
  - an order, by virtue of section 125 above, under section 14 or 18 above or under [<sup>F104</sup>section 248 of the Town and Country Planning Act 1990],
- authorises a highway authority to stop up a private means of access to any premises, then, notwithstanding anything in section 80(3) above, that authority may stop up the access in any way that seems to them appropriate, but not, if the order in question is under section 124 above, so as to obstruct any highway.
- (2) Where a means of access to any premises—
- is stopped up in pursuance of any such order as is specified in subsection (1) above, or
  - is limited by virtue of any restrictions imposed on the use (including the crossing) of a special road under Part II of this Act, or by section 13 of the <sup>M7</sup>Road Traffic Regulation Act 1967, or by regulations made under that section,

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and any person suffers damage in consequence thereof by the depreciation of any interest in the premises to which he is entitled or by being disturbed in his enjoyment of the premises he is entitled to recover compensation in respect of that damage from the appropriate authority.

- (3) The appropriate authority for the purpose of subsection (2) above in cases falling within paragraph (a) of that subsection is the highway authority authorised by the order to stop up the means of access and in cases falling within paragraph (b) of that subsection is the special road authority.
- (4) Where any person is entitled to compensation in respect of any matter under subsection (2) above he is not entitled to recover compensation in respect of the same matter under any other enactment.

#### Textual Amendments

**F104** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, [Sch. 2 para. 45\(9\)](#)

#### Marginal Citations

**M7** [1967 c. 76](#).

### 127 Stopping up private access to premises by agreement.

The highway authority for a highway may agree with the occupier of any premises and any other person having an interest in them that any private means of access to the premises from the highway shall be stopped up by that authority in any way which seems to them appropriate but not so as to obstruct any highway; and an agreement under this section may make provision for the payment by the highway authority to the other party of compensation in respect of the damage (if any) suffered by him in consequence of the stopping up of the means of access.

### 128 Penalty for using access which has been stopped up.

Any person who uses an access which has been stopped up by virtue of section 124, 125 or 127 above other than a person exercising a public right of way is guilty of an offence and liable to a fine not exceeding [<sup>F105</sup>level 3 on the standard scale].

#### Textual Amendments

**F105** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#)

### 129 Further provisions with respect to new means of access.

- (1) Without prejudice to their power to provide a new means of access to any premises when authorised to do so by an order made under any enactment, a highway authority—
  - (a) who by virtue of an order under section 124 above or an agreement under section 127 above have stopped up a means of access to any premises or propose to do so; or



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- (b) who consider it necessary or expedient in connection with the construction, improvement or alteration of a highway to provide a new means of access to any premises,
- may, subject to subsection (2) below, provide a new means of access to those premises from any highway or proposed highway.
- (2) If a highway authority proposing to provide a new means of access under subsection (1) above are not the highway authority for the highway from which the access will be provided or, as the case may be, will not become the highway authority for it on the completion of its construction, they shall not provide the access without the consent of the authority who are, or will become, the highway authority for that highway.
- (3) Where a private means of access to any premises is proposed to be stopped up by virtue of section 124 or 125 above and another means of access to those premises from a highway is available or is to be provided, then, in determining for the purposes of section 124 or 125 whether that other means of access is or, as the case may be, will be reasonably convenient the Minister or, in the case of an order under section 124 which a local highway authority have power to confirm, that authority shall have regard—
- (a) to the need, if any, for a means of access from the highway to different places on those premises, and
- (b) to any roads, paths or other ways on those or other premises which are or will be capable of providing such a means.
- (4) The provision of a new means of access to any premises from a highway under this section or under or by virtue of section 124, 125 or 127 above includes the provision of a road, path or other way on those or any other premises.

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