



# 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]
- (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 or by the parish or community council or, as the case may be, by the chairman of the

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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 or bridleway.
- (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 for the same petty sessions 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 the clerk of the court 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>F4</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\(11\)](#) inserted by [Road Traffic \(Driver Licensing and Information Systems\) Act 1989 \(c. 22, SIF 107:1\)](#), s. 13(1), [Sch. 4 para. 3\(3\)](#)

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## 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>F5</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

**F5** Words repealed by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 102, [Sch. 17](#)

## 118 Stopping up of footpaths and bridleways.

- (1) Where it appears to a council as respects a footpath or bridleway 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.
- (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>F6</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>F7</sup>, public path diversion order or rail crossing diversion order] would provide an alternative path or way.

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- (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.
- (7) In this section and in sections [<sup>F8</sup>118A] to 121 below “council” includes a joint planning board, within the meaning of [<sup>F9</sup>the Town and Country Planning Act 1990], for an area which comprises any part of a National Park.

#### Textual Amendments

- F6** 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.
- F7** 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.
- F8** Words in s. 118(7) 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(3)**; S.I. 1992/3144, **arts. 2, 3**, Sch.
- F9** Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(7)**

#### 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).

PROSPECTIVE

#### [<sup>F10</sup>118ZA] **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.

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- (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.
- (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

**F10** S. 118ZA inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 7**

#### [<sup>F11</sup>118A Stopping up of footpaths and bridleways 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 or bridleway 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

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- (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.
- (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

**F11** 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.

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

**C3** 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](#)).

**C4** 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. I](#); S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

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VALID FROM 12/02/2003

## **[<sup>F12</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,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—

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- (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,
  - (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

**F12** 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.



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PROSPECTIVE

**[<sup>F13</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**

**F13** S. 118C inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 8**

**119 Diversion of footpaths and bridleways.**

- (1) [<sup>F14</sup>Where it appears to a council as respects a footpath or bridleway 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 or bridleway as appears to the council requisite for effecting the diversion, and
  - (b) extinguish, as from such date as may be so specified 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.
- (3) Where it appears to the council that work requires to be done to provide necessary facilities for the convenient exercise of any such new public right of way as is mentioned in subsection (1)(a) above, the date specified under subsection (1)(b) above shall be later than the date specified under subsection (1)(a) by such time as appears to the council requisite for enabling the work to be carried out.

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- (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>F15</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 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.
- (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 or bridleway, 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 and bridleways) applies to a footpath or bridleway 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.

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### Textual Amendments

- F14** Words substituted by [Wildlife and Countryside Act 1981 \(c. 69, SIF 4:5\)](#), ss. 53, 54, Sch. 16 paras. 5(1), **10(1)**
- F15** Words substituted by [Wildlife and Countryside Act 1981 \(c. 69, SIF 4:5\)](#), ss. 53, 54, Sch. 16 paras. 5(1), **10(1)**

### Modifications etc. (not altering text)

- C5** 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)**
- C6** 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).
- C7** 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**

PROSPECTIVE

### [<sup>F16</sup>119Z] **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.
- (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.

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

#### **Textual Amendments**

**F16** S. 119ZA inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 10**

*Status: Point in time view as at 31/01/1993. This version of this cross heading contains provisions that are not valid for this point in time.*

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## **[<sup>F17</sup>119A Diversion of footpaths and bridleways 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 or bridleway 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 so specified, 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 or bridleway created by the order.
- (7) Where it appears to the council that work requires to be done to provide necessary facilities for the convenient exercise of any such new right of way as is mentioned in subsection (2)(a) above, the date specified under subsection (2)(b) shall be later than the date specified under subsection (2)(a) by such time as appears to the council requisite for enabling the work to be 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;

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- (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 or bridleway, 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 and bridleways) applies to a footpath or bridleway 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

**F17** 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.

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

**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](#)).

VALID FROM 12/02/2003

### <sup>F18</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

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- (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,
- 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

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- (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 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,



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- (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—
- (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

**F18** 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. 1 para. 12; S.I. 2003/272, art. 2(a)(h); S.I. 2005/1314, art. 3(c)

#### Marginal Citations

**M2** 1998 c. 37.

PROSPECTIVE

#### [<sup>F19</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.

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- (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
  - (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

**F19** S. 119C inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 12**

VALID FROM 21/05/2007

#### **[<sup>F20</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,

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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,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;

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- (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.

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

(12) In this section—

“the appropriate conservation body” means—

- (a) as respects England, [<sup>F21</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

**F20** 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

**F21** 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>F22</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.

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- (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>F23</sup>and]
  - (b) to such other persons as may be prescribed; <sup>F24</sup> . . .
  - (c) <sup>F24</sup> . . . . .
- (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>F25</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>F26</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—

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“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.]

#### Textual Amendments

- F22** 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**
- F23** 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**
- F24** 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**
- F25** 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)
- F26** 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 or bridleway lies partly within and partly outside the area of a council the powers conferred by sections 118 [<sup>F27</sup>to 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.
- (2) The powers of making [<sup>F28</sup>orders under sections 118 to 119A] above are not exercisable by a council—
  - (a) with respect to any part of a footpath or bridleway which is within their area, without prior consultation with the other council in whose area that part of the footpath or bridleway is situated;
  - (b) with respect to any part of a footpath or bridleway 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 footpath or bridleway in a National Park, without prior consultation with the Countryside Commission [<sup>F29</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 or bridleway that it is expedient as mentioned in section 118(1) [<sup>F30</sup>or 118A(1) or 119A(1)] above that

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the path or way should be stopped up [<sup>F31</sup>or diverted], or where an owner, lessee or occupier of land crossed by a footpath or bridleway 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>F32</sup>, a rail crossing extinguishment order, a rail crossing 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>F33</sup>to 119A] above,

he may himself make the order after consultation [<sup>F34</sup>(subject to subsection (3A) below)]with the appropriate authority.

[<sup>F35</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.]

(4) A council proposing to make a public path diversion order [<sup>F36</sup>or a rail crossing diversion order] such that the authority who will be the highway authority for a part of the path or way 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.

(5) Where under subsection (3) above the Secretary of State decides to make a public path diversion order, [<sup>F37</sup>or, on the representations of the operator of the railway concerned, a rail crossing diversion order, he may require the person] on whose representations he is acting to enter into an agreement with such council as he may specify [<sup>F38</sup>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) [<sup>F39</sup>, or as the case may be 119A(8),] above.

#### Textual Amendments

**F27** Words in s. 120(1) 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\(2\)](#); S.I. 1992/3144, [arts. 2, 3](#), Sch.

**F28** 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.

**F29** Words inserted (5.11.1990) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), ss. 130(1), 164(3), [Sch. 8 para. 5\(3\)](#)

**F30** 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.

**F31** 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.

**F32** Words in s. 120(3)(a) added (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\(4\)\(c\)](#); S.I. 1992/3144, [arts. 2, 3](#), Sch.

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- F33** Words in s. 120(3)(b) 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(4)(d)**; S.I. 1992/3144, **arts. 2, 3**, Sch.
- F34** 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)(e)**; S.I. 1992/3144, **arts. 2, 3**, Sch.
- F35** 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.
- F36** Words in s. 120(4) 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(6)**; S.I. 1992/3144, **arts. 2, 3**, Sch.
- F37** Words in s. 120(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. 5(7)(a)**; S.I. 1992/3144, **arts. 2, 3**, Sch.
- F38** Words in s. 120(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. 5(7)(b)**; S.I. 1992/3144, **arts. 2, 3**, Sch.
- F39** Words in s. 120(5) 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(7)(e)**; S.I. 1992/3144, **arts. 2, 3**, Sch.

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

- C9** 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)**
- C10** 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).

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

- (1) A public path extinguishment order [<sup>F40</sup>, a rail crossing extinguishment order, a public path diversion order or a rail crossing 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>F41</sup> or a rail crossing diversion order] diverting a part of the line of a path or way 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 path or way 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>F42</sup>, rail crossing extinguishment orders, public path diversion orders and rail crossing diversion orders] as it applies in relation to public path creation orders but as if the references in it to section 26(2) above were references to section 120(3) above.
- (3) Section 29 above (protection for agriculture and forestry) applies in relation to the making of public path extinguishment orders [<sup>F43</sup>, rail crossing extinguishment orders, public path diversion orders and rail crossing 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>F44</sup>, a rail crossing extinguishment order, a public path diversion order or a rail crossing 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.



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- (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.
- (6) In subsection (5) above the “appropriate Minister” means—
- (a) in relation to statutory undertakers carrying on an undertaking for the supply of . . . <sup>F45</sup>, . . . <sup>F46</sup>, [<sup>F47</sup> or hydraulic power], the Secretary of State; and
  - (b) in relation to any other statutory undertakers, the Minister.

#### Textual Amendments

- F40** 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.
- F41** Words in s. 121(1) added (31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 6(2)(b)**; S.I. 1992/3144, **art. 3**, Sch.
- F42** 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.
- F43** 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.
- F44** 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.
- F45** Word repealed by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(3)(4), Sch. 17 para. 35(1), **Sch. 18**
- F46** Word repealed by Gas Act 1986 (c. 44, SIF 44:2), s. 67(4), **Sch. 9 Pt. I**
- F47** 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)

- C11** 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
- C12** 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)**
- C13** 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**
- C14** 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)
- C15** 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**.

PROSPECTIVE

#### <sup>F48</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,

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- (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

**F48** S. 121A inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 15**

VALID FROM 21/11/2005

#### [<sup>F49</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.
- (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

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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

**F49** 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>F50</sup>121CCases 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
  - (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.]

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#### Textual Amendments

**F50** S. 121C inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 15

PROSPECTIVE

#### [<sup>F51</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—
- (a) refuse to make an order on the application,
  - (b) refuse to confirm as an unopposed order an order made on the application, or
  - (c) 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—
- (a) the council have no power to make the order requested without the consent of another person and that consent has not been given, or
  - (b) 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—
    - (i) in the case of a public path extinguishment order, under subsection (6) of section 118ZA above,
    - (ii) in the case of a special extinguishment order, under that subsection as applied by section 118C(2) above,
    - (iii) in the case of a public path diversion order, under section 119(5) above,
    - (iv) 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 no power to confirm it without the consent of another person and that consent has not been given]

#### Textual Amendments

**F51** S. 121D inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 15

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PROSPECTIVE

## **[<sup>F52</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.
- (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—

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- (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 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,

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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

**F52** 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 [<sup>F53</sup>the Town and Country Planning Act 1990].

#### Textual Amendments

**F53** Words substituted by **Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, Sch. 45(7)**

**Status:**

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**Changes to legislation:**

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