



# 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 appropriate 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) For the purposes of subsection (1) above, the appropriate authority are—

- (a) in relation to a metropolitan road, the local authority for the area in which the road is situated acting with the consent of the Greater London Council; and
- (b) in relation to any other highway, the highway authority for the highway.

A consent required by this subsection shall not be unreasonably withheld.

(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—

- (a) the council of the district in which the highway is situated; 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 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.

## **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 or local authority who, by virtue of that section, are the appropriate authority in relation to the highway 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.

## **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 or public path diversion order made under section 119 below 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 or the public path 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.
- (7) In this section and in sections 119 to 121 below " council" includes a joint planning board, within the meaning of the Town and Country Planning Act 1971, for an area which comprises any part of a National Park.

## **119 Diversion of footpaths and bridleways**

- (1) Where an owner, lessee or occupier of land crossed by a footpath or bridleway (other than one which is a trunk road or a special road) satisfies the council in whose area the land is situated that for securing the efficient use of the land or of other land held with it or providing a shorter or more commodious path or way it is expedient that the line of the path or way across the land, or part of that line, should be diverted (whether on to other land of his or on to land 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.
- (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 the council may require the owner, lessee or occupier on whose representations they are acting 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.

## **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 and 119 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 public path extinguishment orders and public path diversion orders conferred by sections 118 and 119 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.
- (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) above that the path or way should be stopped up, 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 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 and 119 above,
- he may himself make the order after consultation with the appropriate authority.
- (4) A council proposing to make a public path 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, he may require the owner, lessee or occupier on whose representations he is acting to enter into an agreement with such council as he may specify for the owner, lessee or occupier 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) above.

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

- (1) A public path extinguishment order or a public path 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 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 and to public path 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 and public path 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 or a public path 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.

- (6) In subsection (5) above the "appropriate Minister" means—
- (a) in relation to statutory undertakers carrying on an undertaking for the supply of electricity, gas, hydraulic power or water, the Secretary of State ; and
  - (b) in relation to any other statutory undertakers, the Minister.

**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 the Town and Country Planning Act 1971,