

SCHEDULES

SCHEDULE 2

Section 47.

STOPPING UP AND DIVERSION OF RAIL CROSSINGS

- 1 The Highways Act 1980 shall be amended as follows.
- 2 (1) Section 118 (stopping up of footpaths and bridleways) shall be amended as follows.
- (2) In subsection (5), for—
- (a) the words “or public path diversion order made under section 119 below”, and
 - (b) the words “or the public path diversion order”,
- there shall be substituted the words “, public path diversion order or rail crossing diversion order”.
- (3) In subsection (7), for “119” there shall be substituted “118A”.
- 3 After section 118 there shall be inserted—

“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
 - (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.

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- (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.”

4 After section 119 (diversion of footpaths and bridleways) there shall be inserted—

“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.

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- (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;
 - (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

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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.”

5 (1) Section 120 (exercise of powers of making public path extinguishment and diversion orders) shall be amended as follows.

(2) In subsection (1), for the words “and 119” there shall be substituted the words “to 119A”.

(3) In subsection (2), for the words from “public path extinguishment” to “and 119” there shall be substituted the words “orders under sections 118 to 119A”.

(4) In subsection (3)—

(a) after “118(1)” there shall be inserted “or 118A(1) or 119A(1)”;

(b) after the words “stopped up” there shall be inserted the words “or diverted”;

(c) after the words “extinguishment order” there shall be added the words “, a rail crossing extinguishment order, a rail crossing diversion order”;

(d) for the words “and 119” there shall be substituted the words “to 119A”;

(e) after the word “consultation” there shall be inserted the words “(subject to subsection (3A) below)”.

(5) After subsection (3) there shall be inserted—

“(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.”

(6) In subsection (4), after the words “public path diversion order” there shall be inserted the words “or a rail crossing diversion order”.

(7) In subsection (5)—

(a) for the words “he may require the owner, lessee or occupier” there shall be substituted the words “or, on the representations of the operator of the railway concerned, a rail crossing diversion order, he may require the person”;

(b) for the words “for the owner, lessee or occupier” there shall be substituted the words “for that person”;

(c) after “119(5)” there shall be inserted the words “, or as the case may be 119A(8),”.

6 (1) Section 121 (supplementary provisions) shall be amended as follows.

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- (2) In subsection (1)—
- (a) for the words “or a public path diversion order” there shall be substituted the words “, a rail crossing extinguishment order, a public path diversion order or a rail crossing diversion order”;
 - (b) after the words “and a public path diversion order” there shall be added the words “or a rail crossing diversion order”.
- (3) In subsection (2), for the words “and to public path diversion orders” there shall be substituted the words “, rail crossing extinguishment orders, public path diversion orders and rail crossing diversion orders”.
- (4) In subsection (3), for the words “and public path diversion orders” there shall be substituted the words “, rail crossing extinguishment orders, public path diversion orders and rail crossing diversion orders”.
- (5) In subsection (4), for the words “or a public path diversion order” there shall be substituted the words “, a rail crossing extinguishment order, a public path diversion order or a rail crossing diversion order”.
- 7 In section 293 (powers of entry for purposes connected with certain orders relating to footpaths and bridleways) in subsection (1) for the words “or a public path diversion order” there shall be substituted the words “, a rail crossing extinguishment order, a public path diversion order or a rail crossing diversion order”.
- 8 In section 325 (provisions as to regulations, schemes and orders) in subsection (2) (a), after the word “section”, there shall be inserted the words “120(3A) or”.
- 9 In section 329(1) (interpretation) after the definition of “rack rent” there shall be inserted—
- “rail crossing diversion order” means an order under section 119A above;
 - “rail crossing extinguishment order” means an order under section 118A above;
- 10 (1) Schedule 6 shall be amended as follows.
- (2) In paragraph 1—
- (a) in sub-paragraphs (1) and (2) for the words “or a public path diversion order” there shall be substituted the words “, a rail crossing extinguishment order, a public path diversion order or a rail crossing diversion order”;
 - (b) in sub-paragraph (3A) for the words “and public path diversion orders” there shall be substituted the words “, rail crossing extinguishment orders, public path diversion orders and rail crossing diversion orders”;
 - (c) in sub-paragraph (3B) for the words “and draft public path diversion orders” there shall be substituted the words “, draft rail crossing extinguishment orders, draft public path diversion orders and draft rail crossing diversion orders”.
- (3) In paragraph 2A(1), after the words “shall, except in” there shall be inserted the words “the case of a rail crossing extinguishment order, the case of a rail crossing diversion order and”.
- (4) In paragraph 3(2)—
- (a) after the words “public path extinguishment order” there shall be inserted the words “or a rail crossing extinguishment order”;

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- (b) for the words “or a public path diversion order” there shall be substituted the words “, a public path diversion order or a rail crossing diversion order”.