

SCHEDULES

SCHEDULE 6

AMENDMENTS RELATING TO CREATION, STOPPING UP AND DIVERSION OF HIGHWAYS

PART I

AMENDMENTS OF HIGHWAYS ACT 1980

12 After section 119A of the 1980 Act there is inserted—

“119B Diversion of certain highways for purposes of crime prevention, etc

(1) This section applies where it appears to a council—

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

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.

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

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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 Crime and Disorder Act 1998,
- (b) the effect which the coming into operation of the order would have as respects land served by the existing public right of way, and
- (c) the effect which any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,

so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

- (11) The Secretary of State shall not confirm a special diversion order made by virtue of subsection (1)(b) above, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the diversion of the highway is expedient as mentioned in subsection (1)(b) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to—

- (a) any other measures that have been or could be taken for improving or maintaining the security of the school,
- (b) whether it is likely that the coming into operation of the order will result in a substantial improvement in that security,
- (c) the effect which the coming into operation of the order would have as respects land served by the existing public right of way, and
- (d) the effect which any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,

so, however, that for the purposes of paragraphs (c) and (d) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

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

- (a) showing the existing site of so much of the line of the highway as is to be diverted by the order and the new site to which it is to be diverted,
- (b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a highway, and
- (c) where some part of the new site is already so comprised, defining that part.

- (13) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of special diversion orders.

- (14) Section 27 above (making up of new footpaths and bridleways) applies to a highway created by a special diversion order with the substitution—

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

119C Application by proprietor of school for special diversion order

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

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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.

119D Diversion of certain highways for protection of sites of special scientific interest

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

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

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(b) as respects Wales, the Countryside Council for Wales;
“site of special scientific interest” has the same meaning as in the
Wildlife and Countryside Act 1981.

119E Provisions supplementary to section 119D

- (1) An application under section 119D above shall be in such form as may be prescribed and shall be accompanied by—
 - (a) a map, on such scale as may be prescribed,—
 - (i) showing the existing site of so much of the line of the highway as would be diverted if the order were made and the new site to which it would be diverted,
 - (ii) indicating whether a new right of way would be created by the order over the whole of the new site or whether some of it is already comprised in a highway, and
 - (iii) where some part of the new site is already so comprised, defining that part,
 - (b) by an assessment in the prescribed form of the effects of public use of the right of way on the site of special scientific interest, and
 - (c) by such other information as may be prescribed.
- (2) At least fourteen days before making an application under section 119D above, the appropriate conservation body shall give a notice in the prescribed form of their intention to do so—
 - (a) to any owner, lessee or occupier of land over which the proposed order would create or extinguish a public right of way;
 - (b) to such other persons as may be prescribed; and
 - (c) in the case of English Nature, to the Countryside Agency.
- (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 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.

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- (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 and bridleways) applies to a highway created by an SSSI 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 an SSSI diversion order, and
 - (c) for references to section 26(2) above, of references to section 120(3) below.
- (7) Neither section 27 nor section 36 above is to be regarded as obliging a highway authority to provide on any highway created by an SSSI diversion order a metalled carriage-way.
- (8) In this section—
- “the appropriate conservation body” has the same meaning as in section 119D above;
 - “prescribed” means prescribed by regulations made by the Secretary of State;
 - “site of special scientific interest” has the same meaning as in the Wildlife and Countryside Act 1981;
 - “traffic regulation order” means an order under section 1 or 6 of the Road Traffic Regulation Act 1984.”