



# Highways Act 1980

## 1980 CHAPTER 66

### PART VI

#### CONSTRUCTION OF BRIDGES OVER AND TUNNELS UNDER NAVIGABLE WATERS AND DIVERSION ETC. OF WATERCOURSES

##### *Construction of bridges over and tunnels under navigable waters*

#### **106 Orders and schemes providing for construction of bridges over or tunnels under navigable waters.**

- (1) Provision may be made by an order made by the Minister under this subsection or under section 10 above (orders for trunk roads) for the construction of a bridge over or a tunnel under any specified navigable waters as part of a trunk road.
- (2) Provision may be made by a scheme under section 16 above (schemes for special roads) for the construction of a bridge over or a tunnel under specified navigable waters as part of a special road.
- (3) Provision may be made by a scheme made by a local highway authority under this subsection, and confirmed by the Minister, for the construction of a bridge over or a tunnel under specified navigable waters as part of a highway or proposed highway which is or is to be a highway (other than a special road) maintainable at the public expense by the authority.
- (4) Provision may be made by an order under section 14 above (roads that cross or join trunk or classified roads) or section 18 above (supplementary orders relating to special roads)—
  - (a) for the construction of a bridge over or tunnel under specified navigable waters as part of a highway which is to be altered or constructed in pursuance of the order;
  - (b) where the order authorises the highway authority by whom it is made to provide a new means of access to any premises from a highway, for the access

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to be provided by means of a bridge over specified navigable waters and for the construction of the bridge.

- [<sup>F1</sup>(4A) Subsections (1) and (3) are subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders or schemes in relation to highways for which development consent required).]
- (5) Parts I and III of Schedule 1 to this Act have effect as to the making of an order under subsection (1) above, Parts II and III of that Schedule have effect as to the making of a scheme under subsection (3) above and Schedule 2 to this Act has effect as to the validity and date of operation of any such order or scheme.
- (6) A scheme under subsection (3) above may be submitted to the Minister jointly by any two or more local highway authorities, and any such scheme may determine which of those authorities is to be the highway authority for the bridge or tunnel or any part of it, and may provide—
- (a) for the performance by that authority, in relation to the bridge or tunnel or that part of it, of any of the highway functions of any other authority who are party to the application, and
  - (b) for the making of contributions by that other authority to the highway authority in respect of expenditure incurred in the performance of those functions.
- (7) References in this section, in relation to any order or scheme, to specified navigable waters are references to such navigable waters (whether the sea, a river or other waters) as may be specified in the order or scheme.
- (8) References in the following provisions of this Part of this Act to an order or scheme which provides for the construction of a bridge over or a tunnel under navigable waters are references to any order or scheme made under or by virtue of subsection (1), (2), (3) or (4) above.

#### Textual Amendments

- F1** S. 106(4A) inserted (1.3.2010) by Planning Act 2008 (c. 29), ss. 36, 241, **Sch. 2 para. 26** (with s. 226); S.I. 2010/101, **art. 2** (with art. 6)

### 107 Provisions supplementary to section 106.

- (1) Before making or confirming an order or scheme which provides for the construction of a bridge over or a tunnel under navigable waters, the Minister shall take into consideration the reasonable requirements of navigation over the waters affected by the order or scheme.
- (2) An order or scheme which provides for the construction of such a bridge shall include such plans and specifications as may be necessary to indicate the position and dimensions of the proposed bridge including its spans, headways and waterways, and in the case of a swing bridge shall contain such provisions as the Minister considers expedient for regulating its operation.
- (3) An order or scheme which provides for the construction of such a tunnel shall include such plans and specifications as may be necessary to indicate the position and dimensions of the proposed tunnel, including its depth below the bed of the navigable waters.

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- (4) If objection to an order or scheme proposed to be made or, as the case may be, to an order or scheme made and proposed to be confirmed, is duly made in accordance with Schedule 1 to <sup>F2</sup>this Act by the Environment Agency, the Natural Resources Body for Wales or any <sup>F3</sup>navigation authority] on whom notice is required to be served under paragraph 3 or, as the case may be, paragraph 11 of that Schedule, on the ground that the bridge or tunnel is likely to obstruct or impede the performance of their functions under any enactment, or to interfere with the reasonable requirements of navigation over the waters affected by the order or scheme, as the case may be, and the objection is not withdrawn, the order or scheme, as the case may be, shall be subject to special parliamentary procedure.

#### Textual Amendments

- F2** Words in s. 107(4) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 162** (with Sch. 7)
- F3** 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(5), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

#### *Diversion etc. of watercourses*

### **108 Power to divert navigable watercourses.**

- (1) An order made under this subsection may authorise a highway authority to divert such part of any navigable watercourse as may be specified in the order if, in the opinion of the authority, the diversion of that part is necessary or desirable in connection with—
- the construction, improvement or alteration of a highway;
  - the provision of a new means of access to any premises from a highway; or
  - the provision of a maintenance compound or, if that authority are a special road authority, of a service area.

<sup>F4</sup>(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).]

- (2) An order under subsection (1) above shall—
- if the authority proposing to divert the watercourse is the Minister, be made by him; and
  - if that authority are a local highway authority, be made by that authority and confirmed by the Minister.
- (3) Parts I and III of Schedule 1 to this Act have effect as to the making of any order under subsection (1) above, and Schedule 2 to this Act has effect as to the validity and date of operation of any such order.
- (4) An order or scheme which provides for the construction of a bridge over or a tunnel under any navigable waters may authorise the highway authority by whom the bridge or tunnel is to be constructed to divert such part of any navigable watercourse as may be specified in the order or scheme if, in the opinion of that authority, the diversion of that part is necessary or desirable for purposes connected with the bridge or tunnel, or its construction.

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- (5) An order under section 14 or 18 above may authorise the highway authority by whom the order is made to divert such part of any navigable watercourse as may be specified in the order if, in the opinion of that authority, the diversion of that part is necessary or desirable in connection with—
- (a) the construction or improvement of the trunk road, special road or classified road, as the case may be, to which the order relates;
  - (b) the construction or alteration of any other highway to which the order relates;
  - (c) the provision in pursuance of the order of a new means of access to any premises; or
  - (d) the provision of a maintenance compound in connection with the trunk road, special road or classified road, as the case may be, to which the order relates or, in the case of an order under section 18, the provision of a service area.
- (6) Where by virtue of an order under subsection (1) above or an order or scheme falling within subsection (4) or (5) above a highway authority are authorised to divert any part of a navigable watercourse they may also divert any towing path or other way adjacent to that part.

#### Textual Amendments

- F4** S. 108(1A) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), ss. 36, 241, [Sch. 2 para. 27](#) (with s. 226); S.I. 2010/101, [art. 2](#) (with [art. 6](#))

### 109 Provisions supplementary to section 108.

- (1) Where a navigable watercourse is to be diverted in pursuance of an order under section 108(1) above or of any order or scheme falling within section 108(4) or (5) above, any new length of watercourse provided in pursuance of the order or scheme shall be such as will or, but for any bridge or tunnel constructed over or under it in pursuance of any order or scheme falling within section 108(4), would be navigable in a reasonably convenient manner by vessels of a kind which immediately before the date of the coming into operation of the order or scheme were accustomed to use that part of the watercourse which is to be replaced by the new length.
- (2) Where works for the diversion of a watercourse are carried out by a highway authority in accordance with any such order or scheme and any person suffers damage in consequence thereof by the depreciation of any interest in any land to which he is entitled or by reason of the fact that his right of access to a watercourse is extinguished or interfered with then, unless the works are carried out on land, or in the exercise of rights, acquired compulsorily in the exercise of highway land acquisition powers, that person is entitled to recover from the highway authority compensation under this subsection in respect of that damage.

### 110 Power to divert non-navigable watercourses and to carry out other works on any watercourse.

- (1) Subject to the provisions of this section, a highway authority may divert any part of a watercourse, other than a navigable watercourse, or carry out any other works on any part of a watercourse, including a navigable watercourse, if, in the opinion of that authority, the carrying out of the works is necessary or desirable in connection with—
- (a) the construction, improvement or alteration of a highway;

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- (b) the provision of a new means of access to any premises from a highway; or
- (c) the provision of a maintenance compound, a trunk road picnic area, a lorry area or a service area.

[<sup>F5</sup>(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).]

- (2) This section does not apply to any works which a highway authority are authorised to carry out by virtue of an order or scheme which has been made or confirmed in accordance with Schedule 1 to this Act.
- (3) Before carrying out any works under this section, the highway authority shall consult every council in whose area the works are to be carried out.
- (4) Where works are carried out by a highway authority under this section and any person suffers damage in consequence thereof by the depreciation of any interest in any land to which he is entitled or by reason of the fact that his right of access to a watercourse is extinguished or interfered with, then, unless the works are carried out on land, or in the exercise of rights, acquired compulsorily in the exercise of highway land acquisition powers, that person is entitled to recover from the highway authority compensation under this subsection in respect of the damage.
- (5) Subject to subsection (7) below, a highway authority who propose to carry out any works under this section shall serve on the owner and the occupier of the land affected a notice stating their intention to carry out those works and describing them and informing him that he may within 28 days after service of the notice on him by notice to the authority object to the proposed works.
- (6) If within that period the owner or occupier of the land affected objects to the proposed works and the objection is not withdrawn, then—
  - (a) if the objection is to works proposed to be carried out by the Minister, he shall consider the objection before carrying them out; and
  - (b) if the objection is to works proposed to be carried out by a local highway authority, they shall not carry them out without the consent of the Minister who may grant such consent either unconditionally or subject to such terms and conditions as he thinks just.
- (7) Subsections (5) and (6) above do not have effect in relation to works that are to be carried out—
  - (a) on land that has been acquired by the highway authority in question, either compulsorily or by agreement, in the exercise of highway land acquisition powers, for the purpose of carrying out those works, or
  - (b) in the exercise of rights so acquired by that authority for that purpose.

#### Textual Amendments

- F5** S. 110(1A) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), ss. 36, 241, [Sch. 2 para. 28](#) (with s. 226); [S.I. 2010/101](#), [art. 2](#) (with [art. 6](#))

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## *Interpretation*

### **111 Interpretation of Part VI.**

- (1) In this Part of this Act “navigable waters” and “navigable watercourse” means waters or a watercourse, as the case may be, over which a public right of navigation exists; and any waterway comprised in the undertaking of [<sup>F6</sup>Canal & River Trust] which is for the time being specified in Part I or Part II of Schedule 12 to the <sup>M1</sup>Transport Act 1968 (commercial and cruising waterways) is to be deemed to be navigable waters and a navigable watercourse for the purposes of this Part of this Act.
- (2) References in this Part of this Act to an order or scheme which provides for the construction of a bridge over or a tunnel under navigable waters are to be construed in accordance with section 106(8) above.

#### **Textual Amendments**

**F6** Words in s. 111(1) substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 3 para. 6(2)** (with arts. 4-6)

#### **Marginal Citations**

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