



# Highways Act 1980

## 1980 CHAPTER 66

### PART VI

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

##### *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—
  - (a) the construction, improvement or alteration of a highway;
  - (b) the provision of a new means of access to any premises from a highway; or
  - (c) the provision of a maintenance compound or, if that authority are a special road authority, of a service area.
- (2) An order under subsection (1) above shall—
  - (a) if the authority proposing to divert the watercourse is the Minister, be made by him; and
  - (b) 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.

*Status: Point in time view as at 01/11/1991.*

*Changes to legislation: Highways Act 1980, Cross Heading: Diversion etc. of watercourses is up to date with all changes known to be in force on or before 20 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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.

#### **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;
  - (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.

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- (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.

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