

*Status: Point in time view as at 19/09/2004. This version of this schedule contains provisions that are not valid for this point in time.*

*Changes to legislation: Countryside and Rights of Way Act 2000, SCHEDULE 6 is up to date with all changes known to be in force on or before 29 May 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)*

## SCHEDULES

### SCHEDULE 6

Section 57.

#### AMENDMENTS RELATING TO CREATION, STOPPING UP AND DIVERSION OF HIGHWAYS

#### PART I

##### AMENDMENTS OF HIGHWAYS ACT 1980

- 1 In section 26 of the 1980 Act (compulsory powers for creation of footpaths and bridleways) after subsection (3) there is inserted—

“(3A) The considerations to which—

- (a) the Secretary of State is to have regard in determining whether or not to confirm or make a public path creation order, and
- (b) a local authority are to have regard in determining whether or not to confirm such an order as an unopposed order,

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the proposed footpath or bridleway would be created.”

#### Commencement Information

- I1 Sch. 6 para. 1 in force at 12.2.2003 for E. by S.I. 2003/272, art. 2(b)
- I2 Sch. 6 para. 1 in force at 1.4.2004 for W. by S.I. 2004/315, art. 2(c)

- 2 For section 29 of the 1980 Act there is substituted—

#### “29 Duty to have regard to agriculture, forestry and nature conservation.

- (1) In the exercise of their functions under this Part of this Act relating to the making of public path creation agreements and public path creation orders it shall be the duty of councils to have due regard to—

- (a) the needs of agriculture and forestry, and
- (b) the desirability of conserving flora, fauna and geological and physiographical features.

- (2) In this section, “agriculture” includes the breeding or keeping of horses.”

#### Commencement Information

- I3 Sch. 6 para. 2 in force at 12.2.2003 for E. by S.I. 2003/272, art. 2(c)

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- 3 In section 31 of the 1980 Act (dedication of way as highway presumed after public use for 20 years), in subsection (6), in each of paragraphs (i) and (ii) for “six” there is substituted “ten”.

**Commencement Information**

**I4** Sch. 6 para. 3 in force at 13.2.2004 for E. by S.I. 2004/292, art. 2(e) (with art. 3(2))

VALID FROM 21/11/2005

- 4 After section 31 of the 1980 Act there is inserted—

**“31A Register of maps, statements and declarations.**

- (1) The appropriate council shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect to maps and statements deposited and declarations lodged with that council under section 31(6) above.
- (2) Regulations may make provision for the register to be kept in two or more parts, each part containing such information as may be prescribed with respect to such maps, statements and declarations.
- (3) Regulations may make provision as to circumstances in which an entry relating to a map, statement or declaration, or anything relating to it, is to be removed from the register or from any part of it.
- (4) Every register kept under this section shall be available for inspection free of charge at all reasonable hours.
- (5) In this section—
  - “appropriate council” has the same meaning as in section 31(6) above;
  - “prescribed” means prescribed by regulations;
  - “regulations” means regulations made by the Secretary of State.”

- 5 In section 36 of the 1980 Act (highways maintainable at public expense) in subsection (2), after paragraph (e) there is inserted—

“(f) a highway, being a footpath, a bridleway, a restricted byway or a way over which the public have a right of way for vehicular and all other kinds of traffic, created in consequence of a special diversion order or an SSSI diversion order.”

**Commencement Information**

**I5** Sch. 6 para. 5 in force at 12.2.2003 for specified purposes for E. by S.I. 2003/272, art. 2(d)

- 6 In section 118 of the 1980 Act (stopping up of footpaths and bridleways) after subsection (6) there is inserted—

“(6A) The considerations to which—

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- (a) the Secretary of State is to have regard in determining whether or not to confirm a public path extinguishment order, and
  - (b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,
- include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.”

#### Commencement Information

- I6** Sch. 6 para. 6 in force at 12.2.2003 for E. by S.I. 2003/272, art. 2(b)
- I7** Sch. 6 para. 6 in force at 1.4.2004 for W. by S.I. 2004/315, art. 2(c)

#### PROSPECTIVE

7 After section 118 of the 1980 Act there is inserted—

**“118ZA Application for a public path extinguishment order.**

- (1) The owner, lessee or occupier of any land used for agriculture, forestry or the breeding or keeping of horses may apply to a council for the area in which the land is situated for the making of a public path extinguishment order in relation to any footpath or bridleway which crosses the land.
- (2) An application under this section shall be in such form as may be prescribed and shall be accompanied by a map, on such scale as may be prescribed, showing the land over which it is proposed that the public right of way should be extinguished, and by such other information as may be prescribed.
- (3) Regulations may provide—
  - (a) that a prescribed charge is payable on the making of an application under this section, and
  - (b) that further prescribed charges are payable by the applicant if the council make a public path extinguishment order on the application.
- (4) An application under this section is not to be taken to be received by the council until the requirements of regulations under section 121A below have been satisfied in relation to it.
- (5) A council which receives an application under this section shall determine the application as soon as reasonably practicable.
- (6) Before determining to make a public path extinguishment 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, any compensation which may become payable under section 28 above as applied by section 121(2) below.
- (7) Where—
  - (a) an application under this section has been made to a council, and

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- (b) the council have not determined the application within four months of receiving it,  
the Secretary of State may, at the request of the applicant and after consulting the council, by direction require the council to determine the application before the end of such period as may be specified in the direction.
- (8) As soon as practicable after determining an application under this section, the council shall—
- (a) give to the applicant notice in writing of their decision and the reasons for it, and
  - (b) give a copy of the notice to such other persons as may be prescribed.
- (9) The council to whom an application under this section has been made may make a public path extinguishment order on the application only if the land over which the public right of way is to be extinguished by the order is that shown for the purposes of subsection (2) above on the map accompanying the application.
- (10) Any reference in this Act to the map accompanying an application under this section includes a reference to any revised map submitted by the applicant in prescribed circumstances in substitution for that map.
- (11) This section has effect subject to the provisions of sections 121A and 121C below.
- (12) In this section—
- “prescribed” means prescribed by regulations;  
“regulations” means regulations made by the Secretary of State.”

8

After section 118A of the 1980 Act there is inserted—

**“118B Stopping up 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 for the purposes of this section, 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 highway should be stopped up, 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

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- (iv) any other risk to their health or safety arising from such activity,  
that the highway should be stopped up.
- (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.
- (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, extinguish the public right of way over the highway.
- (5) An order under subsection (4) above is in this Act referred to as a “special extinguishment order”.
- (6) Before making a special extinguishment order, the council shall consult the police authority for the area in which the highway lies.
- (7) The Secretary of State shall not confirm a special extinguishment 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 stopping up of the highway is expedient as mentioned in subsection (1)(a) 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 <sup>M1</sup>Crime and Disorder Act 1998,
  - (b) the availability of a reasonably convenient alternative route or, if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the highway under section 119B below rather than stopping it up, and
  - (c) the effect which the extinguishment of the right of way would have as respects land served by the highway, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (8) The Secretary of State shall not confirm a special extinguishment 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 stopping up of the highway is expedient as mentioned in

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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 availability of a reasonably convenient alternative route or, if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the highway under section 119B below rather than stopping it up, and
  - (d) the effect which the extinguishment of the right of way would have as respects land served by the highway, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (9) A special 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 prescribed, defining the land over which the public right of way is thereby extinguished.
- (10) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of special extinguishment orders.

### **118C Application by proprietor of school for special extinguishment order.**

- (1) The proprietor of a school may apply to a council for the making by virtue of section 118B(1)(b) above of a special extinguishment 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 118B(2) above.
- (2) Subsections (2) to (11) of section 118ZA above shall apply to applications under this section as they apply to applications under that section, with the substitution for references to a public path extinguishment order of references to a special extinguishment order; 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.”.

#### **Commencement Information**

**I8** Sch. 6 para. 8 in force at 12.2.2003 for specified purposes for E. by S.I. 2003/272, art. 2(e)

#### **Marginal Citations**

**M1** 1998 c. 37.

- 9 (1) Section 119 of the 1980 Act (diversion of footpaths and bridleways) is amended as follows.
- (2) In subsection (1)(b), for “so specified” there is substituted “ specified in the order or determined ”.
- (3) For subsection (3), there is substituted—

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“(3) Where it appears to the council that work requires to be done to bring the new site of the footpath or bridleway into a fit condition for use by the public, the council shall—

- (a) specify a date under subsection (1)(a) above, and
- (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.”.

(4) In subsection (5)—

- (a) after “diversion order” there is inserted “ on an application under section 119ZA below or ”, and
- (b) for “him” there is substituted “ the person who made the application or representations ”.

(5) After subsection (6) there is inserted—

“(6A) The considerations to which—

- (a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and
- (b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.”

#### Commencement Information

**I9** Sch. 6 para. 9(1)-(3) in force at 12.2.2003 for E. by S.I. 2003/272, art. 2(f)

**I10** Sch. 6 para. 9(5) in force at 12.2.2003 for E. by S.I. 2003/272, art. 2(b)

**I11** Sch. 6 para. 9(5) in force at 1.4.2004 for W. by S.I. 2004/315, art. 2(c)

PROSPECTIVE

10 After section 119 of the 1980 Act there is inserted—

#### “119ZA Application for a public path diversion order.

- (1) Subject to subsection (2) below, the owner, lessee or occupier of any land used for agriculture, forestry or the breeding or keeping of horses may apply to a council for the area in which the land is situated for the making of a public path diversion order in relation to any footpath or bridleway which crosses the land, on the ground that in his interests it is expedient that the order should be made.
- (2) No application may be made under this section for an order which would create a new footpath or bridleway communicating with—
  - (a) a classified road,
  - (b) a special road,
  - (c) a GLA road, or

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- (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) No application under this section may propose the creation of a new right of way over land covered by works used by any statutory undertakers for the purposes of their undertaking or the curtilage of such land, unless the application is made with the consent of the statutory undertakers; and in this subsection “statutory undertaker” and “statutory undertaking” have the same meaning as in Schedule 6 to this Act.
- (4) An application under this section shall be in such form as may be prescribed and shall be accompanied by a map, on such scale as may be prescribed—
- (a) showing the existing site of so much of the line of the path or way as it is proposed to divert and the new site to which it is proposed to be diverted,
  - (b) indicating whether it is proposed to create a new right of way over the whole of the new site or whether some 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,
- and by such other information as may be prescribed.
- (5) Regulations may provide—
- (a) that a prescribed charge is payable on the making of an application under this section, and
  - (b) that further prescribed charges are payable by the applicant if the council make a public path diversion order on the application.
- (6) An application under this section is not to be taken to be received by the council until the requirements of regulations under section 121A below have been satisfied in relation to it.
- (7) A council which receives an application under this section shall determine the application as soon as reasonably practicable.
- (8) Where—
- (a) an application under this section has been made to a council, and
  - (b) the council have not determined the application within four months of receiving it,
- the Secretary of State may, at the request of the applicant and after consulting the council, by direction require the council to determine the application before the end of such period as may be specified in the direction.
- (9) As soon as practicable after determining an application under this section, the council shall—
- (a) give to the applicant notice in writing of their decision and the reasons for it, and
  - (b) give a copy of the notice to such other persons as may be prescribed.



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- (10) The council to whom an application under this section has been made may make a public path diversion order on the application only if—
- (a) the land over which the public right of way is to be extinguished by the order, and
  - (b) the new site to which the path or way is to be diverted,
- are those shown for the purposes of subsection (4) above on the map accompanying the application.
- (11) Any reference in this Act to the map accompanying an application under this section includes a reference to any revised map submitted by the applicant in prescribed circumstances in substitution for that map.
- (12) This section has effect subject to the provisions of sections 121A and 121C below.
- (13) In this section—
- “prescribed” means prescribed by regulations;
  - “regulations” means regulations made by the Secretary of State.”

- 11 (1) Section 119A (diversion of footpaths and bridleways crossing railways) is amended as follows.
- (2) In subsection (2)(b), for “so specified” there is substituted “ specified in the order or determined under subsection (7) below ”.
- (3) For subsection (7) there is substituted—
- “(7) Where it appears to the council that work requires to be done to bring the new site of the footpath or bridleway into a fit condition for use by the public, the council shall—
- (a) specify a date under subsection (2)(a) above, and
  - (b) provide that so much of the order as extinguishes (in accordance with subsection (2)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.”.

**Commencement Information**

**I12** Sch. 6 para. 11 in force at 12.2.2003 for E. by S.I. 2003/272, art. 2(g)

- 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

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- 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.
- (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.

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- (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) 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 <sup>M2</sup>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,

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- (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—
    - (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

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- (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, 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

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- (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.
- (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

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- (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
    - (b) as respects Wales, the Countryside Council for Wales;
  - “site of special scientific interest” has the same meaning as in the <sup>M3</sup>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.

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- (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 <sup>M4</sup>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.
- (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.



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- (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 <sup>M5</sup>Wildlife and Countryside Act 1981;
  - “traffic regulation order” means an order under section 1 or 6 of the Road Traffic Regulation Act 1984.”

#### Commencement Information

**I13** Sch. 6 para. 12 in force at 12.2.2003 for specified purposes for E. by [S.I. 2003/272](#), [art. 2\(h\)](#)

#### Marginal Citations

**M2** 1998 c. 37.

**M3** 1981 c. 69.

**M4** 1984 c. 27.

**M5** 1981 c. 69.

- 13 (1) Section 120 of the 1980 Act (exercise of powers of making public path extinguishment and diversion orders) is amended as follows.
- (2) In subsection (1), for “to 119A” there is substituted “, 118A, 119 and 119A ”.
- (3) After that subsection there is inserted—
- “(1A) Where a council are the highway authority for only part of a highway, the powers conferred on the council by sections 118B, 119B and 119D above are exercisable with respect to the whole of the highway, but subject to subsection (2) and only with the consent of every other council which is a highway authority for any other part with respect to which the powers are exercised.”
- (4) In subsection (2)—
- (a) for “to 119A” there is substituted “ to 119D ”, and
  - (b) for “footpath or bridleway”, wherever occurring, there is substituted “ highway ”.
- (5) In subsection (3)—
- (a) after “or diverted” there is inserted “ or where it appears to the Secretary of State as respects a relevant highway as defined by section 118B(2), 119B(2) or 119D(2) that it is expedient as mentioned in section 118B(1)(a) or (b), 119B(1)(a) or (b) or 119D(1)(b) that the highway should be stopped up or diverted ”,
  - (b) in paragraph (a), for “a rail crossing diversion order or a public path diversion order” there is substituted “ a special extinguishment order, a public path

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- diversion order, a rail crossing diversion order, a special diversion order or an SSSI diversion order ”,
- (c) in paragraph (b), for “to 119A” there is substituted “ to 119D ”,
- (d) for “(subject to subsection (3A) below)” there is substituted “ (subject to the following provisions of this section) ”, and
- (e) at the end there is inserted “ and, in the case of an SSSI diversion order, with the appropriate conservation body ”.
- (6) After subsection (3) there is inserted—
- “(3ZA) Where an appeal to the Secretary of State is brought under section 121D(1) below, paragraph (a) of subsection (3) above does not apply, and the power conferred on him by that subsection may be exercised without consultation with the appropriate authority.”
- (7) After subsection (3A) there is inserted—
- “(3B) Unless an appeal to the Secretary of State is brought under section 121D(1) below, the power conferred on the Secretary of State by subsection (3) above to make a special extinguishment order or a special diversion order is exercisable only after consultation with the police authority in whose area the highway lies.
- (3C) The power conferred on the Secretary of State by subsection (3) above to make an SSSI diversion order may be exercised even though the appropriate conservation body has not made an application under section 119D above to the council who are the highway authority for the highway.
- (3D) Where—
- (a) the appropriate conservation body has made an application under section 119D above to a council in respect of a highway for which the council are the highway authority, and
- (b) the council have neither confirmed the order nor submitted it to the Secretary of State for confirmation within 6 months of receiving the application,
- the power conferred on the Secretary of State by subsection (3) above to make an SSSI diversion order may be exercised without consultation with the council.”
- (8) In subsection (4)—
- (a) for “or a rail crossing diversion order” there is substituted “ , a rail crossing diversion order, a special diversion order or an SSSI diversion order ”, and
- (b) for “path or way” there is substituted “ highway ”.
- (9) For subsection (5) there is substituted—
- “(5) The Secretary of State may, before determining—
- (a) under subsection (3) above, to make a public path diversion order,
- (b) under subsection (3) above, to make a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order on an appeal under section 121D(1)(a) below,
- (c) to confirm a public path extinguishment order, special extinguishment order, public path diversion order or special

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- diversion order in respect of which an appeal under section 121D(1) (b) or (c) below has been brought, or
- (d) under subsection (3) above, to make a rail crossing diversion order on the representations of the operator of the railway concerned,
- require the appropriate person to enter into such agreement as he may specify with such council as he may specify for that person 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), or as the case may be, section 118ZA(6), 119A(8) or 119C(3) above.
- (6) In subsection (5) above “the appropriate person” means—
- (a) in a case falling within paragraph (a) of that subsection—
- (i) where an appeal under section 121D(1)(a) below has been brought, the appellant, or
- (ii) in any other case, the person on whose representations the Secretary of State is acting,
- (b) in a case falling within paragraph (b) or (c) of that subsection, the appellant, and
- (c) in a case falling within paragraph (d) of that subsection, the operator of the railway concerned.”
- (10) After subsection (6) there is inserted—
- “(7) Where under subsection (3) above the Secretary of State decides to make an SSSI diversion order he may require the appropriate conservation body to enter into an agreement with such council as he may specify for the body 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 119D(8) above.
- (8) In this section “the appropriate conservation body” has the same meaning as in section 119D above.”

#### Commencement Information

**114** Sch. 6 para. 13(1)-(5), (7)-(9) in force at 12.2.2003 for specified purposes for E. by [S.I. 2003/272](#), [art. 2\(i\)](#)

- 14 (1) Section 121 of the 1980 Act (supplementary provisions as to public path extinguishment and diversion orders) is amended as follows.
- (2) In subsection (1)—
- (a) after “rail crossing extinguishment order,” there is inserted “ a special extinguishment order ”,
- (b) for “or a rail crossing diversion order”, wherever occurring, there is substituted “ , a rail crossing diversion order, a special diversion order or an SSSI diversion order ”, and
- (c) for “path or way”, wherever occurring, there is substituted “ highway ”.
- (3) In subsection (2)—
- (a) after “rail crossing extinguishment orders,” there is inserted “ special extinguishment orders ”,

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- (b) for “and rail crossing diversion orders” there is substituted “, rail crossing diversion orders, special diversion orders and SSSI diversion orders ”, and
  - (c) for the words from “but” onwards there is substituted—
    - “but as if—
      - (a) the references in it to section 26(2) above were references to section 120(3) above, and
      - (b) in relation to special extinguishment orders, special diversion orders and SSSI diversion orders, the reference in section 28(4) to a footpath or bridleway included a reference to a restricted byway or a highway over which the public have a right of way for vehicular and all other kinds of traffic.”.
- (4) In subsection (3)—
- (a) for “(protection for agriculture and forestry)” there is substituted “ (duty to have regard to agriculture, forestry and nature conservation) ”,
  - (b) after “rail crossing extinguishment orders,” there is inserted “ special extinguishment orders ”, and
  - (c) for “and rail crossing diversion orders” there is substituted “, rail crossing diversion orders, special diversion orders and SSSI diversion orders ”.
- (5) In subsection (4)—
- (a) after “rail crossing extinguishment order,” there is inserted “ a special extinguishment order ”, and
  - (b) for “or a rail crossing diversion order” there is substituted “, a rail crossing diversion order, a special diversion order or an SSSI diversion order ”.
- (6) After subsection (5) there is inserted—
- “(5A) Before making a determination under subsection (5) above the appropriate Minister may, if he thinks fit, give any person an opportunity to be heard on the question, and he must either give such an opportunity or cause a local inquiry to be held if a request to be heard with respect to the question to be determined is made—
- (a) by the statutory undertakers,
  - (b) in the case of an order made on an application under section 118ZA, 118C, 119ZA or 119C above, by the person who made the application, and
  - (c) in the case of an order to be made on an appeal under section 121D(1)(a) below, by the appellant.
- (5B) The appropriate Minister may appoint any person to exercise on his behalf, with or without payment, the function of determining a question falling to be determined under subsection (5) above.
- (5C) Schedule 12ZA to this Act shall have effect with respect to appointments under subsection (5B) above; and subsection (5A) above has effect subject to the provisions of that Schedule.
- (5D) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (giving of evidence at, and defraying of costs of, inquiries) shall apply in relation to hearings or local inquiries which the appropriate Minister

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causes to be held under subsection (5A) above as they apply (by virtue of section 302(1) of this Act) to local inquiries which the Secretary of State causes to be held under this Act.

(5E) Section 322A of the <sup>M6</sup>Town and Country Planning Act 1990 (orders as to costs where no hearing or inquiry takes place) applies in relation to a hearing or inquiry under subsection (5A) above as it applies in relation to a hearing or local inquiry for the purposes referred to in that section, but as if references to the Secretary of State were references to the appropriate Minister.”

(7) In subsection (6), for “subsection (5)” there is substituted “ subsections (5) to (5E) ”.

#### Commencement Information

**I15** Sch. 6 para. 14 in force at 12.2.2003 for specified purposes for E. by [S.I. 2003/272](#), [art. 2\(j\)](#)

#### Marginal Citations

**M6** 1990 c. 8.

VALID FROM 21/11/2005

15 After section 121 of the 1980 Act there is inserted—

#### “121A Regulations with respect to applications for orders.

(1) The Secretary of State may by regulations make provision as respects applications under section 118ZA, 118C, 119ZA or 119C above—

- (a) requiring the applicant to issue a certificate as to the interests in, or rights in or over, the land to which the application relates and the purpose for which the land is used,
- (b) requiring the applicant to give notice of the application to such persons as may be prescribed,
- (c) requiring the applicant to certify that any requirement of regulations under this section has been complied with or to provide evidence that any such requirement has been complied with,
- (d) as to the publicising of any application,
- (e) as to the form, content and service of such notices and certificates, and
- (f) as to the remission or refunding in prescribed circumstances of the whole or part of any prescribed charge.

(2) If any person—

- (a) issues a certificate which purports to comply with any requirement imposed by virtue of subsection (1) above and contains a statement which he knows to be false or misleading in a material particular; or
- (b) recklessly issues a certificate which purports to comply with any such requirement and contains a statement which is false or misleading in a material particular,

he shall be guilty of an offence.

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- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Notwithstanding section 127 of the Magistrates' Courts Act 1980 (limitation of time for taking proceedings) summary proceedings for an offence under this section may be instituted at any time within three years after the commission of the offence.

### **121B Register of applications.**

- (1) Every council shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect to applications under section 118ZA, 118C, 119ZA or 119C above.
- (2) The register shall contain such information as may be prescribed with respect to the manner in which such applications have been dealt with.
- (3) Regulations may make provision for the register to be kept in two or more parts, each part containing such information relating to applications under section 118ZA, 118C, 119ZA or 119C above as may be prescribed.
- (4) Regulations may make provision—
  - (a) for a specified part of the register to contain copies of applications and of the maps submitted with them, and
  - (b) for the entry relating to any application, and everything relating to it, to be removed from any part of the register when the application (including any appeal to the Secretary of State) has been finally disposed of (without prejudice to the inclusion of any different entry relating to it in another part of the register).
- (5) Every register kept under this section shall be available for inspection by the public free of charge at all reasonable hours.
- (6) In this section—
 

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Secretary of State.

### **121C Cases where council may decline to determine applications.**

- (1) A council may decline to determine an application under section 118ZA, 118C, 119ZA or 119C above if, within the period of three years ending with the date on which the application is received, the Secretary of State—
  - (a) has refused to make an order on an appeal under section 121D(1) (a) below in respect of a similar application, or
  - (b) has refused to confirm an order which is similar to the order requested.
- (2) Before declining under subsection (1) above to determine an application under section 118C or 119C above, the council shall consider whether since the previous decision of the Secretary of State was made the risks referred to in subsection (1)(b)(i) to (iv) of section 118B or of section 119B have substantially increased.

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- (3) A council may decline to determine an application under section 118ZA, 118C, 119ZA or 119C above if—
- (a) in respect of an application previously made to them under that section which is similar to the current application or relates to any of the land to which the current application relates, the council have not yet determined whether to make a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order, or
  - (b) the council have made a similar order or an order which relates to any of the land to which the current application relates but no final decision as to the confirmation of the order has been taken.
- (4) For the purposes of this section an application or order is similar to a later application or order only if they are, in the opinion of the council determining the later application, the same or substantially the same, but an application or order may be the same or substantially the same as a later application or order even though it is made to or by a different council.

**121D Right of appeal to Secretary of State in respect of applications for orders.**

- (1) Subject to the provisions of this section, where, in relation to an application made under section 118ZA, 118C, 119ZA or 119C above, the council to which the application was made—
- (a) refuse to make an order on the application,
  - (b) refuse to confirm as an unopposed order an order made on the application, or
  - (c) refuse to submit to the Secretary of State an order which is made on the application and against which any representation or objection has been duly made and not withdrawn,
- the applicant may, by giving notice to the Secretary of State, appeal to the Secretary of State.
- (2) Subsection (1)(a) above does not confer any right to appeal to the Secretary of State where—
- (a) the council have no power to make the order requested without the consent of another person and that consent has not been given, or
  - (b) the reason, or one of the reasons, for the refusal to make the order is that the applicant has refused to enter into an agreement required by the council—
    - (i) in the case of a public path extinguishment order, under subsection (6) of section 118ZA above,
    - (ii) in the case of a special extinguishment order, under that subsection as applied by section 118C(2) above,
    - (iii) in the case of a public path diversion order, under section 119(5) above,
    - (iv) in the case of a special diversion order, under section 119C(3) above.

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- (3) Paragraph (b) of subsection (1) above does not confer any right to appeal to the Secretary of State in a case where the council has no power to confirm the order without the consent of another person and that consent has not been given; and paragraph (c) of that subsection does not confer any right to appeal to the Secretary of State in a case where, if the order had been unopposed, the council would have had no power to confirm it without the consent of another person and that consent has not been given

### **121E Determination of appeals.**

- (1) Where an appeal to the Secretary of State is brought under section 121D(1)(a) above, the Secretary of State shall—
- (a) prepare a draft of a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order under section 120(3) above giving effect to the application and containing such other provisions as, after consultation with such persons as he thinks fit, the Secretary of State may determine,
  - (b) give notice of the draft order in accordance with paragraph 1(2) of Schedule 6 to this Act, and
  - (c) subject to subsection (6) below and to paragraph 2 of that Schedule, determine whether to make the order (with or without modifications) under section 120(3) above.
- (2) Where an appeal to the Secretary of State is brought under section 121D(1)(b) or (c) above, the order made on the application shall be treated as having been submitted to him for confirmation (with or without modifications).
- (3) Where an appeal to the Secretary of State is brought under section 121D(1) above, the Secretary of State may not make or confirm a public path diversion order or special diversion order if it appears to him that—
- (a) work is necessary to bring the new highway created by the order into a fit condition for use by the public,
  - (b) if the order were made, the work could not be carried out by the highway authority without—
    - (i) the consent of another person, or
    - (ii) any authorisation (however described) which is required by or under any enactment, and
  - (c) the consent or authorisation has not been obtained.
- (4) Where an appeal to the Secretary of State is brought under section 121D(1) above, the Secretary of State may not—
- (a) make a public path diversion order or special diversion order so as to create a public right of way over land covered by works used for the purposes of a statutory undertaking or the curtilage of such land, or
  - (b) modify such an order so as to create such a public right of way, unless the statutory undertaker has consented to the making or modification of the order.



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- (5) In subsection (4) above “statutory undertaker” and “statutory undertaking” have the same meaning as in Schedule 6 to this Act.
- (6) Subsection (1)(c) above does not apply where any consent required by section 121(4) above has not been obtained.
- (7) The Secretary of State may by regulations make further provision with respect to appeals under section 121D(1) above.
- (8) Regulations under subsection (7) above may, in particular, make provision—
  - (a) as to the manner in which, and time within which, notice of an appeal is to be given,
  - (b) as to the provision of information to the Secretary of State by the council to which the application to which the appeal relates was made,
  - (c) for the payment by the applicant of any expenses incurred by the Secretary of State—
    - (i) in preparing a draft order,
    - (ii) in giving any notice required by subsection (1)(b) above or Schedule 6 to this Act,
  - (d) requiring the production by the council to whom the application was made of any certificates required by regulations under section 121A(1)(a) above,
  - (e) requiring the applicant to give notice of the appeal to such persons as may be prescribed,
  - (f) requiring the applicant to certify that any requirement of regulations under this section has been complied with or to provide evidence that any such requirement has been complied with,
  - (g) as to the publicising of any appeal,
  - (h) as to the form, content and service of such notices and certificates,
  - (i) modifying the provisions of Schedule 6 to this Act in their application to the procedure on appeals under section 121D(1) above, and
  - (j) as to the remission or refunding in prescribed circumstances of any prescribed charge.
- (9) The Secretary of State may by regulations provide that section 28 above, as applied by section 121(2) above, is to have effect in cases where a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order is made under section 120(3) above on an appeal under section 121D(1)(a) above, as if the reference to such one of the authorities referred to as may be nominated by the Secretary of State were a reference to such one of those authorities as may be specified in or determined in accordance with, the regulations.
- (10) Subsections (2) to (4) of section 121A above shall apply in relation to any certificate purporting to comply with a requirement imposed by virtue of this section as they apply to a certificate purporting to comply with a requirement imposed by virtue of subsection (1) of that section.

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(11) For the purposes of this section—

- (a) a draft public path extinguishment order or special extinguishment order gives effect to an application under section 118ZA or 118C above only if the land over which the public right of way is to be extinguished by the order is that shown for the purposes of subsection (2) of section 118ZA above (or that subsection as applied by section 118C(2) above) on the map accompanying the application, and
- (b) a draft public path diversion order or draft special diversion order gives effect to an application made to a council under section 119ZA or 119C above only if—
  - (i) the land over which the public right of way is to be extinguished by the order, and
  - (ii) the new site to which the highway is to be diverted,
 are those shown for the purposes of subsection (4) of section 119ZA above (or that subsection as applied by section 119C(4) above) on the map accompanying the application.

(12) In this section “prescribed” means prescribed by regulations made by the Secretary of State.”

PROSPECTIVE

16 After section 135 of the 1980 Act there is inserted—

**“135A Temporary diversion for dangerous works.**

- (1) Where works of a prescribed description are likely to cause danger to users of a footpath or bridleway which passes over any land, the occupier of the land may, subject to the provisions of this section, temporarily divert—
  - (a) so much of the footpath or bridleway as passes over that land, and
  - (b) so far as is requisite for effecting that diversion, so much of the footpath or bridleway as passes over other land occupied by him.
- (2) A person may not under this section divert any part of a footpath or bridleway if—
  - (a) the period or periods for which that part has been diverted under this section, and
  - (b) the period or periods for which any other part of the same footpath or bridleway passing over land occupied by him has been diverted under this section,
 amount in aggregate to more than fourteen days in any one calendar year.
- (3) Where a person diverts a footpath or bridleway under this section—
  - (a) he shall do so in a manner which is reasonably convenient for the exercise of the public right of way, and
  - (b) where the diversion is by means of a temporary footpath or bridleway, he shall so indicate the line of the temporary footpath or

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bridleway on the ground to not less than the minimum width that it is apparent to members of the public wishing to use it.

- (4) This section does not authorise a person—
- (a) to divert a footpath or bridleway on to land not occupied by him without the consent of the occupier of that land and of any other person whose consent is needed to obtain access to it,
  - (b) to divert a footpath onto a highway other than a footpath or bridleway, or
  - (c) to divert a bridleway onto a highway other than a bridleway.
- (5) The person by whom a footpath or bridleway is diverted under this section shall—
- (a) at least fourteen days before the commencement of the diversion, give notice of the diversion in accordance with subsection (6) below,
  - (b) at least seven days before the commencement of the diversion, publish notice of the diversion in a local newspaper circulating in the area in which the footpath or bridleway is situated, and
  - (c) display such notices as may be prescribed at such places, in such manner and at such times before or during the diversion as may be prescribed.
- (6) Notice under subsection (5)(a) above shall be given—
- (a) to the highway authority for the footpath or bridleway,
  - (b) if the footpath or bridleway is on or contiguous with access land in England, to the Countryside Agency, and
  - (c) if the footpath or bridleway is on or contiguous with access land in Wales, to [<sup>F1</sup>the Natural Resources Body for Wales].
- (7) A notice under subsection (5)(a), (b) or (c) above shall be in such form and contain such information as may be prescribed.
- (8) If a person—
- (a) in a notice which purports to comply with the requirements of subsection (5)(a) or (b) above, makes a statement which he knows to be false in a material particular,
  - (b) by a notice displayed on or near a footpath or bridleway, falsely purports to be authorised under this section to divert the footpath or bridleway, or
  - (c) in diverting a footpath or bridleway under this section, fails to comply with subsection (3) above,
- he shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.
- (9) In this section—
- “access land” has the same meaning as in Part I of the Countryside and Rights of Way Act 2000;
- “minimum width” in relation to a temporary footpath or bridleway, means the minimum width, within the meaning of Schedule 12A to this Act, of the footpath or bridleway diverted;

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“prescribed” means prescribed by regulations made by the Secretary of State.

### **135B Temporary diversion for dangerous works: supplementary.**

- (1) The person by whom a footpath or bridleway is diverted under section 135A above shall, before the diversion ceases to be authorised by that section, make good any damage to the footpath or bridleway resulting from the works mentioned in subsection (1) of that section, and remove from the footpath or bridleway any obstruction resulting from those works.
- (2) Any person who fails to comply with the duty imposed on him by subsection (1) above is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.
- (3) The highway authority may make good any damage, or remove any obstruction, in respect of which any person has failed to comply with that duty and recover from that person the amount of any expenses reasonably incurred by them in or in connection with doing so.
- (4) Paragraph 3(1) of Schedule 12A to this Act does not apply in relation to any disturbance of the surface of a footpath or bridleway which subsection (1) above requires any person to make good; but paragraphs 7 and 8 of that Schedule apply for the purposes of subsection (3) above as if—
  - (a) references to the authority were references to the highway authority,
  - (b) references to the work were references to work carried out under subsection (3) above in relation to a footpath or bridleway, and
  - (c) references to the relevant land were references to the land over which the footpath or bridleway passes.
- (5) The diversion of a footpath or bridleway under section 135A above does not—
  - (a) affect the liability of any person for anything done in relation to the path or way otherwise than for the purposes of or in consequence of the works mentioned in subsection (1) of that section, or
  - (b) authorise any interference with the apparatus or works of any statutory undertakers.
- (6) Without prejudice to section 130 (protection of public rights of way) above, it is the duty of the highway authority to enforce the provisions of section 135A and this section.”

#### **Textual Amendments**

- F1** Words in Sch. 6 para. 16 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 411\(3\)](#) (with Sch. 7)

- 17 In section 293 of the 1980 Act (powers of entry for purposes connected with certain orders relating to footpaths and bridleways), in subsection (1)—
- (a) after “rail crossing extinguishment order,” there is inserted “ a special extinguishment order ”, and

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- (b) for “or a rail crossing diversion order” there is substituted “, a rail crossing diversion order, a special diversion order or an SSSI diversion order”.

#### Commencement Information

- I16** Sch. 6 para. 17(a) in force at 12.2.2003 for E. by S.I. 2003/272, art. 2(k)(i)  
**I17** Sch. 6 para. 17(b) in force at 12.2.2003 for specified purposes for E. by S.I. 2003/272, art. 2(k)(ii)

- 18 In section 325 of the 1980 Act (regulations, schemes and orders)—  
(a) in subsection (1)(d), for “118, 119,” there is substituted “ 118, 118A, 118B(4), 119, 119A, 119B(4), 119D ”, and  
(b) in subsection (2)(b), after “17” there is inserted “ or 118B(1)(a) ”.

#### Commencement Information

- I18** Sch. 6 para. 18 partly in force; Sch. 6 para. 18 not in force at Royal Assent see s. 103(3); Sch. 6 para. 18(a) in force for certain purposes for E. at 30.1.2001 by S.I. 2001/114, art. 2(1)(e); Sch. 6 para. 18(a) in force for certain purposes for W. by S.I. 2001/1410, art. 2(k)  
**I19** Sch. 6 para. 18(a) in force at 12.2.2003 for specified purposes for E. by S.I. 2003/272, art. 2(1)(i)  
**I20** Sch. 6 para. 18(b) in force at 12.2.2003 for E. by S.I. 2003/272, art. 2(1)(ii)

- 19 In section 326 of the 1980 Act (revocation and variation of schemes and orders) in subsection (5), for “a public path diversion order” there is substituted “ a rail crossing extinguishment order, a special extinguishment order, a public path diversion order, a rail crossing diversion order, a special diversion order or an SSSI diversion order ”.

#### Commencement Information

- I21** Sch. 16 para. 19 partly in force; Sch. 6 para. 19 not in force at Royal Assent see s. 103(3); Sch. 16 para. 19 in force for certain purposes for E. at 1.5.2001 by S.I. 2001/114, art. 2(1)(f); Sch. 6 para. 19 in force for certain purposes for W. at 1.5.2001 by S.I. 2001/1410, art. 2(1)  
**I22** Sch. 6 para. 19 in force at 12.2.2003 for specified purposes for E. by S.I. 2003/272, art. 2(m)

- 20 In section 329(1) of the 1980 Act (interpretation)—  
(a) after the definition of “cycle track” there is inserted—  
““definitive map and statement” has the same meaning as in Part III of the <sup>M7</sup>Wildlife and Countryside Act 1981;”,  
(b) after the definition of “proposed highway” there is inserted—  
““proprietor”, in relation to a school, has the same meaning as in the Education Act 1996;”,  
(c) after the definition of “road-ferry” there is inserted—  
““school” has the same meaning as in the Education Act 1996;”,  
(d) after the definition of “service area” there is inserted—  
““special diversion order” means an order under section 119B(4) above;”,  
(e) after the definition of “special enactment” there is inserted—

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““special extinguishment order” means an order under section 118B(4) above;”,

and

(f) after the definition of “special road authority” there is inserted—

““SSSI diversion order” means an order under section 119D above;”.

#### Commencement Information

**I23** Sch. 6 para. 20 in force at 12.2.2003 for E. by [S.I. 2003/272](#), [art. 2\(n\)](#)

#### Marginal Citations

**M7** 1981 c. 69.

- 21 In section 334 of the 1980 Act (savings relating to telecommunications apparatus) in subsection (2), for “and a public path diversion order” there is substituted “ , a special extinguishment order, a public path diversion order, a special diversion order and an SSSI diversion order ”.

#### Commencement Information

**I24** Sch. 6 para. 21 in force at 12.2.2003 for specified purposes for E. by [S.I. 2003/272](#), [art. 2\(o\)](#)

#### PROSPECTIVE

- 22 In section 344 of the 1980 Act (application to Isles of Scilly) in subsection (2)(a) after “135,” there is inserted “ 135A, 135B, ”.
- 23 (1) Schedule 6 to the 1980 Act (provisions as to making, confirmation, validity and date of operation of certain orders relating to footpaths and bridleways), including that Schedule as applied by section 32(2) of the Acquisition of Land Act 1981, is amended as follows.
- (2) In paragraph 1(1) and (2)—
- (a) after “rail crossing extinguishment order,” there is inserted “ a special extinguishment order ”, and
- (b) for “or a rail crossing diversion order” there is substituted “ , a rail crossing diversion order, a special diversion order or an SSSI diversion order ”.
- (3) In paragraph 1(3A)—
- (a) after “rail crossing extinguishment orders,” there is inserted “ special extinguishment orders ”, and
- (b) for “and rail crossing diversion orders” there is substituted “ , rail crossing diversion orders, special diversion orders and SSSI diversion orders ”.
- (4) In paragraph 1(3B)—
- (a) after “draft rail crossing extinguishment orders,” there is inserted “ draft special extinguishment orders ”, and

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- (b) for “and draft rail crossing diversion orders” there is substituted “, draft rail crossing diversion orders, draft special diversion orders and draft SSSI diversion orders”.

(5) In paragraph 2—

- (a) in sub-paragraph (1), at the beginning of paragraph (a) there is inserted “subject to sub-paragraph (2A)”,
- (b) in sub-paragraphs (2) and (3), for “or a public path diversion order,” there is substituted “, a public path diversion order, a special diversion order or an SSSI diversion order”, and
- (c) after sub-paragraph (2) there is inserted—

“(2A) Before making or confirming an order on an appeal under section 121D(1) of this Act, the Secretary of State shall—

- (a) if requested by the authority who made an order to which the appeal relates to cause a local inquiry to be held, cause such an inquiry to be held, and
- (b) if a request to be heard with respect to the question to be determined is made by the appellant, either afford to the appellant an opportunity of being heard by a person appointed by the Secretary of State for the purpose or cause a local inquiry to be held,

whether or not he would be required to do so apart from this sub-paragraph.”

(6) After paragraph 2 there is inserted—

“~~2Z~~(1) Where a public path extinguishment order, a special extinguishment order, a public path diversion order or a special diversion order is made by an authority other than the Secretary of State on an application under section 118ZA, 118C, 119ZA or 119C of this Act, that authority shall, as soon as reasonably practicable after the expiry of the time for representations, determine—

- (a) whether, in the case of an unopposed order, to confirm it under paragraph 2(1)(b) above, or
- (b) whether to submit the order to the Secretary of State.

(2) The authority making a determination required by sub-paragraph (1) above shall, as soon as practicable after making it, give to the applicant notice in writing of their determination and the reasons for it and give a copy of the notice to such other persons as may be prescribed.

(3) Where—

- (a) an authority other than the Secretary of State have made a public path extinguishment order, a special extinguishment order, a public path diversion order or a special diversion order on an application under section 118ZA, 118C, 119ZA or 119C of this Act, and
- (b) at the end of the period of two months beginning with the expiry of the time for representations, that authority have not determined—
- (i) whether, in the case of an unopposed order, to confirm it under paragraph 2(1)(b) above, or
- (ii) whether to submit the order to the Secretary of State,

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the Secretary of State may, at the request of the person on whose application the order was made, by direction require the authority to determine that question before the end of such period as may be specified in the direction.

- (4) In this paragraph “the time for representations” means the time specified by the authority in accordance with paragraph 1(1)(c) above.

2ZB Where, in relation to any public path extinguishment order, special extinguishment order, public path diversion order or special diversion order which was made by an authority other than the Secretary of State on an application under section 118ZA, 118C, 119ZA or 119C of this Act, no representations or objections are duly made or any representations or objections so made are withdrawn, that authority may not submit the order to the Secretary of State for confirmation with any modification of the map contained in the order.”

- (7) In paragraph 2A(1), for the words from the beginning to “shall” there is substituted—

“The following decisions—

- (a) a decision of the Secretary of State under paragraph 2 above as respects an order made by an authority other than the Secretary of State including any related decision under section 120(5) of this Act, and
- (b) a decision of the Secretary of State under section 121E(1)(c) of this Act, including any related decision under section 120(5) of this Act, shall”.

- (8) After paragraph 2A there is inserted—

“2B (1) Subject to sub-paragraph (2), subsections (2) to (5) of section 250 of the <sup>M8</sup>Local Government Act 1972 (giving of evidence at, and defraying of costs of, inquiries) apply to a hearing which the Secretary of State causes to be held under paragraph 2 above as they apply (by virtue of section 302(1) of this Act) to a local inquiry which he causes to be held under this Act.

- (2) In its application to a hearing or local inquiry held under paragraph 2 above by a person appointed under paragraph 2A(1) above, subsection (5) of section 250 of that Act shall have effect as if the reference to the Minister causing the inquiry to be held were a reference to the person so appointed or the Secretary of State.

- (3) Section 322A of the <sup>M9</sup>Town and Country Planning Act 1990 (orders as to costs where no hearing or inquiry takes place) applies in relation to a hearing or inquiry under paragraph 2 above as it applies in relation to a hearing or local inquiry for the purposes referred to in that section.”.

- (9) In paragraph 3(2)—

- (a) for “or a rail crossing extinguishment order” there is substituted “ , a rail crossing extinguishment order or a special extinguishment order ”, and
- (b) for “or a rail crossing diversion order” there is substituted “ , a rail crossing diversion order, a special diversion order or an SSSI diversion order ”.

- (10) At the end of paragraph 4(3) there is inserted “ other than any person on whom notice of the decision is required to be served under paragraph 2ZA(2) above ”.



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#### Commencement Information

**I25** Sch. 6 para. 23(1)-(4) (5)(b) (7)(8) (9) in force at 12.2.2003 for specified purposes for E. by [S.I. 2003/272](#), [art. 2\(p\)](#)

#### Marginal Citations

**M8** 1972 c. 70.

**M9** 1990 c. 8.

24 After Schedule 12 to the 1980 Act there is inserted—

### “SCHEDULE 12ZA

#### DELEGATION OF FUNCTION OF MAKING DETERMINATION

##### *Interpretation*

1 In this Schedule—

“appointed person” means a person appointed under section 121(5B) of this Act;

“appropriate Minister” has the same meaning as in section 121(5) of this Act;

“appointment”, in the case of any appointed person, means appointment under section 121(5B) of this Act.

##### *Appointments*

2 An appointment under section 121(5B) of this Act must be in writing and—

(a) may relate to a particular question specified in the appointment or to questions of a description so specified,

(b) may provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of such conditions as may be specified in the appointment, and

(c) may, by notice in writing given to the appointed person, be revoked at any time by the appropriate Minister in respect of any question which has not been determined by the appointed person before that time.

##### *Powers of appointed person*

3 Subject to the provisions of this Schedule, an appointed person shall, in relation to the determination of any question to which his appointment relates, have the same powers and duties as the appropriate Minister, other than—

(a) any function of holding an inquiry or other hearing or of causing an inquiry or other hearing to be held; or

(b) any function of appointing a person for the purpose—

(i) of enabling persons to appear before and be heard by the person so appointed; or

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(ii) of referring any question or matter to that person.

*Holding of inquiries and other hearings by appointed persons*

- 4 (1) If either of the following persons—
- (a) the statutory undertakers to which the question relates, and
  - (b) in the case of an order to be made on an application under section 118ZA, 118C, 119ZA or 119C of this Act, the person who made the application,
- express a wish to appear before and be heard by the appointed person, the appointed person shall give them an opportunity of appearing and being heard.
- (2) Whether or not sub-paragraph (1) above applies, the appointed person—
- (a) may hold an inquiry or other hearing in connection with the determination of the question, and
  - (b) shall, if the appropriate Minister so directs, hold an inquiry in connection with that determination.
- (3) Where an appointed person holds an inquiry or other hearing by virtue of this Schedule, an assessor may be appointed by the appropriate Minister to sit with the appointed person at the inquiry or hearing and advise him on any matters arising, notwithstanding that the appointed person is to determine the question.
- (4) Subject to paragraph 7 below, the costs of an inquiry or other hearing held under this Schedule shall be defrayed by the appropriate Minister.

*Revocation of appointments and making of new appointments*

- 5 (1) Where under paragraph 2(c) above the appointment of the appointed person is revoked in respect of any question, the appropriate Minister shall, unless he proposes to determine the question himself, appoint another person under section 121(5B) of this Act to determine the question instead.
- (2) Where such a new appointment is made, the consideration of the question, or any hearing in connection with it, shall be begun afresh.
- (3) Nothing in sub-paragraph (2) above shall require any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

*Certain acts and omissions of appointed person to be treated as those of appropriate Minister*

- 6 (1) Anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates shall be treated for all purposes as done or omitted to be done by the appropriate Minister.
- (2) Sub-paragraph (1) above does not apply—
- (a) for the purposes of so much of any contract made between the appropriate Minister and the appointed person as relates to the exercise of the function, or

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- (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that subparagraph.

*Local inquiries and hearings: evidence and costs*

- 7 Subsections (2) to (5) of section 250 of the <sup>M10</sup>Local Government Act 1972 (local inquiries: evidence and costs) shall apply to local inquiries or other hearings held under this Schedule by an appointed person as they apply to inquiries caused to be held under that section by a Minister, but as if—
- (a) in subsection (2) (evidence) the reference to the person appointed to hold the inquiry were a reference to the appointed person,
  - (b) in subsection (4) (recovery of costs of holding inquiry) references to the Minister causing the inquiry to be held were references to the appropriate Minister, and
  - (c) in subsection (5) (orders as to the costs of the parties) the reference to the Minister causing the inquiry to be held were a reference to the appointed person or the appropriate Minister.”

**Commencement Information**

**I26** Sch. 6 para. 24 in force at 12.2.2003 for specified purposes for E. by S.I. 2003/272, art. 2(q)

**Marginal Citations**

**M10** 1972 c. 70.

**PART II**

CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

*Norfolk and Suffolk Broads Act 1988 (c. 4)*

- 25 In Schedule 3 to the Norfolk and Suffolk Broads Act 1988 (functions of Broads Authority), in paragraph 47 (footpaths and bridleways)—
- (a) for “118 to 121” there is substituted “ 118 to 121E ”, and
  - (b) after “footpaths etc.)” there is inserted “ , except sections 118B and 119B of that Act (stopping up and diversion for purposes of crime prevention, etc.), ”.

**Commencement Information**

**I27** Sch. 6 para. 25 in force at 12.2.2003 for E. by S.I. 2003/272, art. 2(r)

*Environment Act 1995 (c. 25)*

- 26 In Schedule 9 to the Environment Act 1995 (miscellaneous functions of National Park authorities), in paragraph 11 (footpaths and bridleways) for paragraph (c) there is substituted—

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“(c) sections 118 to 121E (stopping up and diversion of public paths, etc.), except sections 118B and 119B (stopping up and diversion for purposes of crime prevention, etc.), and”.

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**Commencement Information**

**I28** Sch. 6 para. 26 in force at 12.2.2003 for E. by S.I. 2003/272, art. 2(s)

**Status:**

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