

*Status: Point in time view as at 13/02/2004.*

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## SCHEDULES

### SCHEDULE 1

Section 1(2).

#### EXCEPTED LAND FOR PURPOSES OF PART I

#### PART I

##### EXCEPTED LAND

- 1 Land on which the soil is being, or has at any time within the previous twelve months been, disturbed by any ploughing or drilling undertaken for the purposes of planting or sowing crops or trees.
- 2 Land covered by buildings or the curtilage of such land.
- 3 Land within 20 metres of a dwelling.
- 4 Land used as a park or garden.
- 5 Land used for the getting of minerals by surface working (including quarrying).
- 6 Land used for the purposes of a railway (including a light railway) or tramway.
- 7 Land used for the purposes of a golf course, racecourse or aerodrome.
- 8 Land which does not fall within any of the preceding paragraphs and is covered by works used for the purposes of a statutory undertaking or [<sup>F1</sup>an electronic communications code network ], or the curtilage of any such land.

#### Textual Amendments

- F1** Words in [Sch. 1 para. 8](#) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\)](#), [Sch. 17 para. 165\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Schs. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))

- 9 Land as respects which development which will result in the land becoming land falling within any of paragraphs 2 to 8 is in the course of being carried out.
- 10 Land within 20 metres of a building which is used for housing livestock, not being a temporary or moveable structure.
- 11 Land covered by pens in use for the temporary reception or detention of livestock.
- 12 Land habitually used for the training of racehorses.
- 13 Land the use of which is regulated by byelaws under section 14 of the <sup>M1</sup>Military Lands Act 1892 or section 2 of the <sup>M2</sup>Military Lands Act 1900.

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### Marginal Citations

- M1** 1892 c. 43.  
**M2** 1900 c. 56.

## PART II

### SUPPLEMENTARY PROVISIONS

14 In this Schedule—

“building” includes any structure or erection and any part of a building as so defined, but does not include any fence or wall, or anything which is a means of access as defined by section 34; and for this purpose “structure” includes any tent, caravan or other temporary or moveable structure;

“development” and “minerals” have the same meaning as in the <sup>M3</sup>Town and Country Planning Act 1990;

“ploughing” and “drilling” include respectively agricultural or forestry operations similar to ploughing and agricultural or forestry operations similar to drilling;

“statutory undertaker” means—

- (a) a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power,
- (b) any public gas transporter, within the meaning of Part I of the <sup>M4</sup>Gas Act 1986,
- (c) any water or sewerage undertaker,
- (d) any holder of a licence under section 6(1) of the <sup>M5</sup>Electricity Act 1989, or
- (e) the Environment Agency, [<sup>F2</sup>a universal service provider (within the meaning of the Postal Services Act 2000) in connection with the provision of a universal postal service (within the meaning of that Act)]<sup>F3</sup>, the Civil Aviation Authority or a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (to the extent that the person is carrying out activities authorised by the licence)];

“statutory undertaking” means—

- (a) the undertaking of a statutory undertaker [<sup>F4</sup>(which, in the case of a universal service provider (within the meaning of the Postal Services Act 2000), means his undertaking so far as relating to the provision of a universal postal service (within the meaning of that Act) [<sup>F5</sup>and, in the case of a person who holds a licence under Chapter I of Part I of the Transport Act 2000, means that person’s undertaking as licence holder)]], or
- (b) an airport to which Part V of the <sup>M6</sup>Airports Act 1986 applies.

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#### Textual Amendments

- F2** Sch. 1 para. 14: words in definition of “statutory undertaker” in para. (e) substituted (26.3.2001) by [S.I. 2001/1149, art. 3\(1\)](#), [Sch. 1 para. 136\(1\)\(2\)](#)
- F3** Sch. 1 para. 14: words in definition of “statutory undertaker” in para. (e) substituted (21.12.2001) by [S.I. 2001/4050, art. 2](#), [Sch. Pt. II para. 9\(a\)](#)
- F4** Sch. 1 para. 14: words in definition of “statutory undertaking” inserted (26.3.2001) by [S.I. 2001/1149, art. 3\(1\)](#), [Sch. 1 para. 136\(1\)\(3\)](#)
- F5** Sch. 1 para. 14: words in definition of “statutory undertaking” in para. (a) inserted (21.12.2001) by [S.I. 2001/4050, art. 2](#), [Sch. 1 Pt. II para. 9\(b\)](#)

#### Marginal Citations

- M3** 1990 c. 8.  
**M4** 1986 c. 44.  
**M5** 1989 c. 29.  
**M6** 1986 c. 31.

- 15 (1) Land is not to be treated as excepted land by reason of any development carried out on the land, if the carrying out of the development requires planning permission under Part III of the <sup>M7</sup>Town and Country Planning Act 1990 and that permission has not been granted.
- (2) Sub-paragraph (1) does not apply where the development is treated by section 191(2) of the <sup>M8</sup>Town and Country Planning Act 1990 as being lawful for the purposes of that Act.

#### Marginal Citations

- M7** 1990 c. 8.  
**M8** 1990 c. 8.

- 16 The land which is excepted land by virtue of paragraph 10 does not include—
- (a) any means of access, as defined by section 34, or
  - (b) any way leading to such a means of access,
- if the means of access is necessary for giving the public reasonable access to access land.
- 17 Land which is habitually used for the training of racehorses is not to be treated by virtue of paragraph 11 as excepted land except—
- (a) between dawn and midday on any day, and
  - (b) at any other time when it is in use for that purpose.

VALID FROM 19/09/2004

## SCHEDULE 2

Section 2.

RESTRICTIONS TO BE OBSERVED BY PERSONS EXERCISING RIGHT OF ACCESS

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## SCHEDULE 3

Section 8(2).

### DELEGATION OF APPELLATE FUNCTIONS

#### *Interpretation*

- 1 In this Schedule—
- “appointed person” means a person appointed under section 8(1)(a);
  - “the appointing authority” means—
    - (a) the Secretary of State, in relation to an appointment made by him, or
    - (b) the National Assembly for Wales, in relation to an appointment made by it;
  - “appointment”, in the case of any appointed person, means appointment under section 8(1)(a).

#### *Appointments*

- 2 An appointment under section 8(1)(a) must be in writing and—
- (a) may relate to any particular appeal or matter specified in the appointment or to appeals or matters 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 appointing authority in respect of any appeal or matter 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 any appeal or matter to which his appointment relates, have the same powers and duties as the appointing authority, other than—
- (a) any function of making regulations;
  - (b) any function of holding an inquiry or other hearing or of causing an inquiry or other hearing to be held; or
  - (c) 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
    - (ii) of referring any question or matter to that person.

#### *Holding of local inquiries and other hearings by appointed persons*

- 4 (1) If either of the parties to an appeal or matter expresses a wish to appear before and be heard by the appointed person, the appointed person shall give both of them an opportunity of appearing and being heard.
- (2) Whether or not a party to an appeal or matter has asked for an opportunity to appear and be heard, the appointed person—
- (a) may hold a local inquiry or other hearing in connection with the appeal or matter, and

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- (b) shall, if the appointing authority so directs, hold a local inquiry in connection with the appeal or matter.
- (3) Where an appointed person holds a local inquiry or other hearing by virtue of this Schedule, an assessor may be appointed by the appointing authority 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 appeal or matter.
- (4) Subject to paragraph 5, the costs of a local inquiry held under this Schedule shall be defrayed by the appointing authority.

*Local inquiries under this Schedule: evidence and costs*

- 5 Subsections (2) to (5) of section 250 of the <sup>M12</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 the inquiry)—
    - (i) references to the Minister causing the inquiry to be held were references to the appointing authority, and
    - (ii) references to a local authority included references to the appropriate countryside body, 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 appointing authority.

**Marginal Citations**

M12 1972 c. 70.

*Revocation of appointments and making of new appointments*

- 6 (1) Where under paragraph 2(c) the appointment of the appointed person is revoked in respect of any appeal or matter, the appointing authority shall, unless he proposes to determine the appeal or matter himself, appoint another person under section 8(1)(a) to determine the appeal or matter instead.
- (2) Where such a new appointment is made, the consideration of the appeal or matter, or any hearing in connection with it, shall be begun afresh.
  - (3) Nothing in sub-paragraph (2) 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 appointing authority*

- 7 (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 appointing authority.

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- (2) Sub-paragraph (1) does not apply—
- (a) for the purposes of so much of any contract made between the appointing authority and the appointed person as relates to the exercise of the function, or
  - (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that sub-paragraph.

## SCHEDULE 4

Section 46(3).

### MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO PART I

#### *Law of Property Act 1925 (c. 20)*

- 1 In section 193(1) of the Law of Property Act 1925 (rights of public over commons and waste lands), in paragraph (b) of the proviso, after “injuriously affected,” there is inserted “ for conserving flora, fauna or geological or physiographical features of the land, ”.

#### **Commencement Information**

- II** Sch. 4 para. 1 wholly in force at 1.5.2001; Sch. 4 para. 1 not in force at Royal Assent see s. 103(3); Sch. 4 para. 1 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(j); Sch. 4 para. 1 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(j)

VALID FROM 19/09/2004

#### *Forestry Act 1967 (c. 10)*

- 2 In section 9 of the Forestry Act 1967 (requirement of licence for felling), in the definition of “public open space” in subsection (6), after “1949” there is inserted “ or Part I of the Countryside and Rights of Way Act 2000 ”.

VALID FROM 19/09/2004

#### *Agriculture Act 1967 (c. 22)*

- 3 In section 52 of the Agriculture Act 1967 (control of afforestation), in the definition of “public open space” in subsection (15), after “1949” there is inserted “ or Part I of the Countryside and Rights of Way Act 2000 ”.

#### *Countryside Act 1968 (c. 41)*

- 4 In section 2(6) of the Countryside Act 1968 (Countryside Agency and Countryside Council for Wales to make recommendations to public bodies in relation to byelaws) for “and the Act of 1949” there is substituted “ , the Act of 1949 and Part I of the Countryside and Rights of Way Act 2000 ”.

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#### Commencement Information

- I2** Sch. 4 para. 4 wholly in force at 1.5.2001; Sch. 4 para. 4 not in force at Royal Assent see s. 103(3); Sch. 4 para. 4 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(j); Sch. 4 para. 4 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(j)

#### Local Government Act 1974 (c. 7)

- 5 In section 9 of the Local Government Act 1974 (grants and loans by Countryside Agency and Countryside Council for Wales), for “or the National Parks and Access to the Countryside Act 1949” there is substituted “, the National Parks and Access to the Countryside Act 1949 or the Countryside and Rights of Way Act 2000 ”.

#### Commencement Information

- I3** Sch. 4 para. 5 wholly in force at 1.5.2001; Sch. 4 para. 5 not in force at Royal Assent see s. 103(3); Sch. 4 para. 5 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 4 para. 5 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(j)

#### Wildlife and Countryside Act 1981 (c. 69)

- 6 In paragraph 13(1) of Schedule 13 to the Wildlife and Countryside Act 1981 (Countryside Agency’s annual report on the discharge of their functions) after “1968 Act” there is inserted “, the Countryside and Rights of Way Act 2000 ”.

#### Commencement Information

- I4** Sch. 4 para. 6 wholly in force at 1.5.2001; Sch. 4 para. 6 not in force at Royal Assent see s. 103(3); Sch. 4 para. 6 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(j); Sch. 4 para. 6 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(j)

## SCHEDULE 5

Section 51.

### DEFINITIVE MAPS AND STATEMENTS AND RESTRICTED BYWAYS

#### PART I

#### AMENDMENTS OF PART III OF WILDLIFE AND COUNTRYSIDE ACT 1981

VALID FROM 02/05/2006

- 1 (1) Section 53 of the 1981 Act is amended as follows.
- (2) In subsection (1) (meaning of “definitive map and statement”) after “subject to section 57(3)” there is inserted “ and 57A(1) ”.

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- (3) In subsection (3)(a)(iii), after “public path” there is inserted “ or a restricted byway ”.
- (4) In subsection (3)(c)(i) for “a right of way to which this Part applies” there is substituted “ a right of way such that the land over which the right subsists is a public path or, subject to section 54A, a byway open to all traffic ”.
- (5) In subsection (4), after “public path” there is inserted “ , restricted byway ”.
- (6) After subsection (4) there is inserted—
- “(4A) Subsection (4B) applies to evidence which, when considered with all other relevant evidence available to the surveying authority, shows as respects a way shown in a definitive map and statement as a restricted byway that the public have, and had immediately before the commencement of section 47 of the Countryside and Rights of Way Act 2000, a right of way for vehicular and all other kinds of traffic over that way.
- (4B) For the purposes of subsection (3)(c)(ii), such evidence is evidence which, when so considered, shows that the way concerned ought, subject to section 54A, to be shown in the definitive map and statement as a byway open to all traffic.”
- (7) After subsection (5) there is inserted—
- “(5A) Evidence to which subsection (4B) applies on the commencement of section 47 of the Countryside and Rights of Way Act 2000 shall for the purposes of subsection (5) and any application made under it be treated as not having been discovered by the surveying authority before the commencement of that section.”

VALID FROM 27/09/2005

- 2 After section 53 of that Act there is inserted—
- “53A Power to include modifications in other orders.**
- (1) This section applies to any order—
- (a) which is of a description prescribed by regulations made by the Secretary of State,
- (b) whose coming into operation would, as regards any definitive map and statement, be an event within section 53(3)(a),
- (c) which is made by the surveying authority, and
- (d) which does not affect land outside the authority’s area.
- (2) The authority may include in the order such provision as it would be required to make under section 53(2)(b) in consequence of the coming into operation of the other provisions of the order.
- (3) An authority which has included any provision in an order by virtue of subsection (2)—
- (a) may at any time before the order comes into operation, and



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- (b) shall, if the order becomes subject to special parliamentary procedure,  
withdraw the order and substitute for it an order otherwise identical but omitting any provision so included.
- (4) Anything done for the purposes of any enactment in relation to an order withdrawn under subsection (3) shall be treated for those purposes as done in relation to the substituted order.
- (5) No requirement for the confirmation of an order applies to provisions included in the order by virtue of subsection (2), but any power to modify an order includes power to make consequential modifications to any provision so included.
- (6) Provisions included in an order by virtue of subsection (2) shall take effect on the date specified under section 56(3A) as the relevant date.
- (7) Where any enactment provides for questioning the validity of an order on any grounds, the validity of any provision included by virtue of subsection (2) may be questioned in the same way on the grounds—
- (a) that it is not within the powers of this Part, or
- (b) that any requirement of this Part or of regulations made under it has not been complied with.
- (8) Subject to subsections (5) to (7), the Secretary of State may by regulations provide that any procedural requirement as to the making or coming into operation of an order to which this section applies shall not apply, or shall apply with modifications prescribed by the regulations, to so much of the order as contains provision included by virtue of subsection (2).
- (9) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **53B Register of applications under section 53.**

- (1) Every surveying authority shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect to applications under section 53(5).
- (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 53(5) 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—
- (i) the application (including any appeal to the Secretary of State) has been finally disposed of, and

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(ii) if an order is made, a decision has been made to confirm or not to confirm the order,  
 (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 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 by statutory instrument;

and a statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

PROSPECTIVE

3 (1) Until the coming into force of section 47(1) of this Act, section 54 of the 1981 Act (duty to reclassify roads used as public paths) has effect as follows.

(2) In subsection (2)—

(a) for the words from the beginning to “by” there is substituted “ Where the particulars relating to any road used as a public path have been reviewed under subsection (1)(a), the definitive map and statement shall be modified so as to show that way by ”, and

(b) the words from “and shall not” to the end are omitted.

(3) In subsection (3), for the words “A road used as a public path” there is substituted “ Such a way ”.

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

“(5A) No order under this Part modifying a definitive map and statement, and no provision included by virtue of section 53A(2) in any order, shall use the expression “road used as a public path” to describe any way not already shown as such in the map and statement.”

PROSPECTIVE

4 After section 54 of that Act there is inserted—

**“54A BOATs not to be added to definitive maps.**

(1) No order under this Part shall, after the cut-off date, modify a definitive map and statement so as to show as a byway open to all traffic any way not shown in the map and statement as a highway of any description.

(2) In this section “the cut-off date” means, subject to regulations under subsection (3), 1st January 2026.

(3) The Secretary of State may make regulations—

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- (a) substituting as the cut-off date a date later than the date specified in subsection (2) or for the time being substituted under this paragraph;
  - (b) containing such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the operation of subsection (1), including in particular its operation in relation to—
    - (i) an order under section 53(2) for which on the cut-off date an application is pending,
    - (ii) an order under this Part which on that date has been made but not confirmed,
    - (iii) an order under section 55 made after that date, or
    - (iv) an order under this Part relating to any way as respects which such an order, or any provision of such an order, has after that date been to any extent quashed.
- (4) Regulations under subsection (3)(a)—
- (a) may specify different dates for different areas; but
  - (b) may not specify a date later than 1st January 2031, except as respects an area within subsection (5).
- (5) An area is within this subsection if it is in—
- (a) the Isles of Scilly, or
  - (b) an area which, at any time before the repeal by section 73 of this Act of sections 27 to 34 of the 1949 Act—
    - (i) was excluded from the operation of those sections by virtue of any provision of the 1949 Act, or
    - (ii) would have been so excluded but for a resolution having effect under section 35(2) of that Act.
- (6) Where by virtue of regulations under subsection (3) there are different cut-off dates for areas into which different parts of any way extend, the cut-off date in relation to that way is the later or latest of those dates.
- (7) Where it appears to the Secretary of State that any provision of this Part can by virtue of subsection (1) have no further application he may by order make such amendments or repeals in this Part as appear to him to be, in consequence, necessary or expedient.
- (8) An order or regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

VALID FROM 27/09/2005

5 In section 55 of that Act (no further surveys or reviews under the National Parks and Access to the <sup>M13</sup>Countryside Act 1949), after subsection (6) there is inserted—

“(7) Every way which—

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- (a) in pursuance of an order under subsection (5) is shown in a definitive map and statement as a byway open to all traffic, a bridleway or a footpath, and
  - (b) before the making of the order, was shown in the map and statement under review as a road used as a public path,
- shall be a highway maintainable at the public expense.
- (8) Subsection (7) does not oblige a highway authority to provide, on a way shown in a definitive map and statement as a byway open to all traffic, a metalled carriage-way or a carriage-way which is by any other means provided with a surface suitable for the passage of vehicles.”

### Marginal Citations

**M13** 1949 c. 97.

VALID FROM 02/05/2006

- 6 (1) Section 56 of that Act (effect of definitive map and statement) is amended as follows.
- (2) In subsection (1)(d)—
- (a) for “road used as a public path” there is substituted “ restricted byway ”,
  - (b) after “the map shall” there is inserted “ , subject to subsection (2A), ”, and
  - (c) after “leading a horse” there is inserted “ together with a right of way for vehicles other than mechanically propelled vehicles ”.
- (3) After subsection (1) there is inserted—
- “(1A) In subsection (1)(d) “mechanically propelled vehicle” does not include an electrically assisted pedal cycle of a class prescribed for the purposes of section 189(1)(c) of the <sup>M14</sup>Road Traffic Act 1988.”
- (4) In subsection (2)—
- (a) in paragraph (a)—
    - (i) after “this Part” there is inserted “ or an order to which section 53A applies which includes provision made by virtue of subsection (2) of that section ”, and
    - (ii) after “means” there is inserted “ , subject to subsection (2A), ” and
  - (b) in paragraph (b), after “(3)” there is inserted “ or (3A) ”.
- (5) After that subsection there is inserted—
- “(2A) In the case of a map prepared before the date of the coming into force of section 47 of the Countryside and Rights of Way Act 2000—
- (a) subsection (1)(d) and (e) have effect subject to the operation of any enactment or instrument, and to any other event, whereby a way shown on the map as a restricted byway has, on or before that date—
    - (i) been authorised to be stopped up, diverted or widened, or
    - (ii) become a public path, and

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(b) subsection (2)(a) has effect in relation to any way so shown with the substitution of that date for the date mentioned there.”

(6) After subsection (3) there is inserted—

“(3A) Every order to which section 53A applies which includes provision made by virtue of subsection (2) of that section shall specify, as the relevant date for the purposes of the order, such date as the authority may in accordance with regulations made by the Secretary of State determine.”

(7) After subsection (4) there is inserted—

“(4A) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

(8) Subsection (5) is omitted.

#### Marginal Citations

M14 1988 c. 52.

VALID FROM 02/05/2006

7 (1) Section 57 of that Act (supplementary provisions as to definitive maps and statements) is amended as follows.

(2) In subsection (1), the words “on such scale as may be so prescribed,” are omitted.

(3) In subsection (2), for “section 55(3)” there is substituted “ subsection (1) or any other provision of this Part ”.

(4) In subsection (3) after “for the purposes of the foregoing provisions of this Part” there is inserted “ , and for the purposes of section 57A(1), ”.

(5) After that subsection there is inserted—

“(3A) Where as respects any definitive map and statement the requirements of section 53(2), and of section 55 so far as it applies, have been complied with, the map and statement are to be regarded for the purposes of subsection (3) as having been modified in accordance with the foregoing provisions of this Part whether or not, as respects the map and statement, the requirements of section 54 have been complied with.”

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

“(6A) In subsection (1), the reference to an order under the foregoing provisions of this Part includes a reference to so much of an order to which section 53A applies as contains provision made by virtue of subsection (2) of that section; and subsections (5) and (6) apply to—

(a) orders to which section 53A applies modifying the map and statement, and

(b) such documents relating to them as may be prescribed by regulations made by the Secretary of State,

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as those subsections apply to orders under this Part modifying the map and statement.

- (6B) Regulations under paragraph (b) of subsection (6A) may require any document to be prepared by a surveying authority for the purposes of that paragraph, and any such document shall be in such form as may be prescribed by the regulations.
- (6C) Regulations made by the Secretary of State may require any surveying authority—
- (a) to keep such other documents as may be prescribed by the regulations available for inspection at such times and places and in such manner as may be so prescribed, or
  - (b) to provide to any other surveying authority any document so prescribed which that authority is, by regulations under paragraph (a), required to keep available for inspection.”

8 After section 57 of that Act there is inserted—

**“57A Consolidation of definitive maps and statements.**

- (1) Where—
- (a) different definitive maps and statements relate to different parts of a surveying authority’s area,
  - (b) as respects so much of each definitive map and statement as relates to that area the requirements of section 53(2), and of section 55 so far as it applies, have been complied with, and
  - (c) there is no part of that area to which no definitive map and statement relate,

the authority may, if it appears to them expedient to do so, prepare a map and statement comprising copies of so much of each definitive map and statement as relates to the authority’s area; and where they do so the map and statement so prepared and not, so far as copied, the earlier maps and statements shall be regarded for the purposes of sections 53 to 56 and 57(2) and (3) as the definitive map and statement for the area to which they relate.

- (2) The power conferred by subsection (1) is not exercisable by a surveying authority if the definitive map and statement relating to any part of the authority’s area is a map and statement in respect of which a review under section 33 of the 1949 Act was begun before the commencement date but has been neither abandoned in pursuance of a direction under section 55(1) nor completed.
- (3) References in subsection (1) to a definitive map and statement are, in the case of a map and statement modified in accordance with any of the foregoing provisions of this Part, references to the map and statement as modified.
- (4) The statement prepared under subsection (1) shall specify, as the relevant date for the purposes of the map, such date, not being earlier than six months before the preparation of the map and statement, as the authority may determine.

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- (5) Every surveying authority shall take such steps as they consider expedient for bringing to the attention of the public the preparation by them of any map and statement under subsection (1).”

**Commencement Information**

**I5** Sch. 5 para. 8 in force at 13.2.2004 for E. by S.I. 2004/292, art. 2(d)(i)

VALID FROM 02/05/2006

9 In section 66(1) of that Act (interpretation of Part III) after the definition of “public path” there is inserted—

““restricted byway” has the same meaning as in Part II of the Countryside and Rights of Way Act 2000;”.

10 In Schedule 14 to that Act (applications for certain orders under Part III), in paragraph 4(2) at the end there is inserted “ (which may include a direction as to the time within which an order is to be made) ”

**Commencement Information**

**I6** Sch. 5 para. 10 in force at 13.2.2004 for E. by S.I. 2004/292, art. 2(d)(ii)

11 (1) Schedule 15 to that Act (procedure in connection with certain orders) is amended as follows.

(2) In paragraph 3, in sub-paragraph (1)(c) after “order” there is inserted “ , which must include particulars of the grounds relied on, ”.

(3) In sub-paragraph (9) of that paragraph—

(a) after “sub-paragraph” there is inserted “ (1)(c) or ”, and

(b) after “limiting” there is inserted “ the grounds which may be relied on or ”.

(4) In paragraph 7, in sub-paragraph (2) after “shall” there is inserted “ , subject to sub-paragraph (2A), ”.

(5) After sub-paragraph (2) of that paragraph there is inserted—

“(2A) The Secretary of State may, but need not, act as mentioned in sub-paragraph (2)(a) or (b) if, in his opinion, no representation or objection which has been duly made and not withdrawn relates to an issue which would be relevant in determining whether or not to confirm the order, either with or without modifications.”

(6) In sub-paragraph (3) of that paragraph, for “the person appointed to hold the inquiry” there is substituted “ any person appointed to hold an inquiry ”.

(7) In paragraph 8—

(a) in sub-paragraph (2)(a) after “the proposal” there is inserted “ , which must include particulars of the grounds relied on, ”,

(b) for sub-paragraph (2)(b) and (c) there is substituted—

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- “(b) if any representation or objection duly made is not withdrawn (but subject to sub-paragraph (3)), hold a local inquiry or afford any person by whom any such representation or objection has been made an opportunity of being heard by a person appointed by the Secretary of State for the purpose; and
- (c) consider the report of any person appointed to hold an inquiry or to hear representations or objections.
- (3) The Secretary of State may, but need not, act as mentioned in sub-paragraph (2)(b) if, in his opinion, no representation or objection which has been duly made and not withdrawn relates to an issue which would be relevant in determining whether or not to confirm the order in accordance with his proposal.
- (4) Sub-paragraph (2)(a) shall not be construed as limiting the grounds which may be relied on at any local inquiry or hearing held under this paragraph.”
- (8) Paragraph 9 is omitted and after paragraph 10 there is inserted—

*“ Hearings and local inquiries*

- 10A(1) Subject to sub-paragraph (2), subsections (2) to (5) of section 250 of the <sup>M15</sup>Local Government Act 1972 (giving of evidence at, and defraying of costs of, inquiries) shall apply in relation to any hearing or local inquiry held under paragraph 7 or 8 as they apply in relation to a local inquiry which a Minister causes to be held under subsection (1) of that section.
- (2) In its application to a hearing or inquiry held under paragraph 7 or 8 by a person appointed under paragraph 10(1), subsection (5) of that section 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>M16</sup>Town and Country Planning Act 1990 (orders as to costs where no hearing or inquiry takes place) shall apply in relation to a hearing or local inquiry under paragraph 7 or 8 as it applies in relation to a hearing or local inquiry for the purposes referred to in that section.”

**Commencement Information**

**I7** Sch. 5 para. 11 in force at 13.2.2004 for E. by S.I. 2004/292, art. 2(d)(iii) (with art. 3(1))

**Marginal Citations**

**M15** 1970 c. 70.

**M16** 1990 c. 8.



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VALID FROM 02/05/2006

## PART II

### AMENDMENTS OF OTHER ACTS

#### *National Parks and Access to the Countryside Act 1949 (c. 97)*

- 12 (1) Section 51 of the National Parks and Access to the Countryside Act 1949 (general provisions as to long-distance routes) is amended as follows.
- (2) In subsection (2)(a), for the words from “any public path” to the end there is substituted “ any highway along which the route passes and which is a public path, a restricted byway or a way shown in a definitive map and statement as a restricted byway or byway open to all traffic; ”.
- (3) In subsection (5), for the words from “existing public paths” to “route passes” there is substituted “ existing highways falling within paragraph (a) of that subsection ”.
- (4) After that subsection there is inserted—
- “(6) In this section—
- “definitive map and statement” has the same meaning as in Part III of the Wildlife and Countryside Act 1981; and
- “restricted byway” has the same meaning as in Part II of the Countryside and Rights of Way Act 2000.”

- 13 (1) Section 57 of that Act (penalty for displaying on footpaths notices deterring public use) is amended as follows.
- (2) In subsection (1), for “road used as a public path” there is substituted “ restricted byway ”.
- (3) In subsection (3), for “or road used as a public path” there is substituted “ restricted byway or byway open to all traffic ”.
- (4) After that subsection there is inserted—
- “(4) In this section—
- “byway open to all traffic” has the same meaning as in Part III of the Wildlife and Countryside Act 1981;
- “restricted byway” has the same meaning as in Part II of the Countryside and Rights of Way Act 2000.”

#### *Countryside Act 1968 (c. 41)*

- 14 In section 41(11) of the Countryside Act 1968 (power to make byelaws and related provision about wardens)—
- (a) for “road used as a public path” there is substituted “ restricted byway ”, and
- (b) after “27(6) of the Act of 1949” there is inserted “ and section 48(4) of the Countryside and Rights of Way Act 2000 ”.

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*Highways Act 1980 (c. 66)*

15 In section 116 of the 1980 Act (power of magistrates' court to authorise stopping up or diversion of highway) in subsection (4), for "or bridleway" there is substituted " , bridleway or restricted byway ".

16 In section 329 of the 1980 Act (interpretation)—  
 (a) in subsection (1) after the definition of "reconstruction" there is inserted—

"restricted byway" has the same meaning as in Part II of the Countryside and Rights of Way Act 2000;,"

(b) in subsection (2) for "either "bridleway" or "footpath"" there is substituted " "bridleway", "footpath" or "restricted byway" ".

*Criminal Justice and Public Order Act 1994 (c. 33)*

17 In section 61 of the Criminal Justice and Public Order Act 1994 (power to remove trespassers on land), in paragraph (b)(i) of the definition of "land" in subsection (9) for the words from "it falls" to "public path)" there is substituted " it is a footpath, bridleway or byway open to all traffic within the meaning of Part III of the Wildlife and Countryside Act 1981, is a restricted byway within the meaning of Part II of the Countryside and Rights of Way Act 2000 ".

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**

**18** Sch. 6 para. 1 in force at 12.2.2003 for E. by S.I. 2003/272, art. 2(b)

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

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**“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**

**I9** Sch. 6 para. 2 in force at 12.2.2003 for E. by S.I. 2003/272, art. 2(c)

- 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**

**II0** 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;

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“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**

**111** 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—
- (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**

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

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

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- (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
  - (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.”

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**“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
    - (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

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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>M17</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 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

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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**

**I13** 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**

**M17** 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—
- “(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**

**I14** Sch. 6 para. 9(1)-(3) in force at 12.2.2003 for E. by S.I. 2003/272, art. 2(f)

**I15** Sch. 6 para. 9(5) in force at 12.2.2003 for E. by S.I. 2003/272, art. 2(b)



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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
  - (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.

*Status: Point in time view as at 13/02/2004.*

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- (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.
- (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

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into force until the local highway authority for the new path or way certify that the work has been carried out.”.

#### Commencement Information

**I16** 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 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.

*Status: Point in time view as at 13/02/2004.*

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- (4) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order—
- (a) create, as from such date as may be specified in the order, any such—
    - (i) new footpath, bridleway or restricted byway, or
    - (ii) in a case falling within subsection (2)(b) or (c) above, new highway over which the public have a right of way for vehicular and all other kinds of traffic,
 as appears to the council requisite for effecting the diversion, and
  - (b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (8) below, the public right of way over so much of the highway as appears to the council to be requisite for the purpose mentioned in paragraph (a) or (b) of subsection (1) above.
- (5) An order under subsection (4) above is in this Act referred to as a “special diversion order”.
- (6) Before making a special diversion order, the council shall consult the police authority for the area in which the highway is situated.
- (7) A special diversion order shall not alter a point of termination of the highway—
- (a) if that point is not on a highway, or
  - (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it.
- (8) Where it appears to the council that work requires to be done to bring the new site of the highway into a fit condition for use by the public, the council shall—
- (a) specify a date under subsection (4)(a) above, and
  - (b) provide that so much of the order as extinguishes (in accordance with subsection (4)(b) above) a public right of way is not to come into force until the local highway authority for the new highway certify that the work has been carried out.
- (9) A right of way created by a special diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.
- (10) The Secretary of State shall not confirm a special diversion order made by virtue of subsection (1)(a) above, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the conditions in subsection (3) above are satisfied, that the diversion of the highway is expedient as mentioned in subsection (1)(a) 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>M18</sup>Crime and Disorder Act 1998,

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

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

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

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

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

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

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

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

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

- (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

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- (c) for references to section 26(2) above of references to section 120(3) below.
- (15) Neither section 27 nor section 36 above is to be regarded as obliging a highway authority to provide on any highway created by a special diversion order a metalled carriage-way.

### **119C Application by proprietor of school for special diversion order.**

- (1) The proprietor of a school may apply to a council for the making by virtue of section 119B(1)(b) above of a special diversion order in relation to any highway for which the council are the highway authority and which—
  - (a) crosses land occupied for the purposes of the school, and
  - (b) is a relevant highway as defined by section 119B(2) above.
- (2) No application may be made under this section for an order which would create a new highway communicating with—
  - (a) a classified road,
  - (b) a special road,
  - (c) a GLA road, or
  - (d) any highway not falling within paragraph (a) or (b) above for which the Minister is the highway authority,
 unless the application is made with the consent of the highway authority for the way falling within paragraph (a), (b), (c) or (d) above.
- (3) Before determining to make a special diversion order on an application under this section, the council may require the applicant to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards—
  - (a) any compensation which may become payable under section 28 above as applied by section 121(2) below, or
  - (b) to the extent that the council are the highway authority for the highway in question, any expenses which they may incur in bringing the new site of the highway into fit condition for use by the public, or
  - (c) to the extent that the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by section 119B(14) above.
- (4) Subsections (3) to (12) of section 119ZA above shall apply to applications under this section as they apply to applications under that section, with the substitution—
  - (a) for references to a public path diversion order of references to a special diversion order, and
  - (b) for references to a footpath or bridleway of references to a highway, 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.

*Status: Point in time view as at 13/02/2004.*

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

- (1) Subsection (3) below applies where, on an application made in accordance with this section by the appropriate conservation body, it appears to a council, as respects any relevant highway for which they are the highway authority and which is in, forms part of, or is adjacent to or contiguous with, a site of special scientific interest—
  - (a) that public use of the highway is causing, or that continued public use of the highway is likely to cause, significant damage to the flora, fauna or geological or physiographical features by reason of which the site of special scientific interest is of special interest, and
  - (b) that it is expedient that the line of the highway, or part of that line should be diverted (whether on to land of the same or another owner, lessee or occupier) for the purpose of preventing such damage.
- (2) In subsection (1) “relevant highway” means—
  - (a) a footpath, bridleway or restricted byway,
  - (b) a highway which is shown in a definitive map and statement as a footpath, a bridleway or a restricted byway but over which the public have a right of way for vehicular and all other kinds of traffic, or
  - (c) any highway which is shown in a definitive map and statement as a byway open to all traffic,but does not include any highway that is a trunk road or special road.
- (3) Where this subsection applies, the council may, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,—
  - (a) create, as from such date as may be specified in the order, any such—
    - (i) new footpath, bridleway or restricted byway, or
    - (ii) in a case falling within subsection (2)(b) or (c) above, new highway over which the public have a right of way for vehicular and all other kinds of traffic,as appears to the council requisite for effecting the diversion, and
  - (b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (6) below, the public right of way over so much of the way as appears to the council to be requisite for the purpose mentioned in subsection (1)(b) above.
- (4) An order under this section is referred to in this Act as an “SSSI diversion order”.
- (5) An SSSI diversion order shall not alter a point of termination of the highway—
  - (a) if that point is not on a highway, or
  - (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it.

*Status: Point in time view as at 13/02/2004.*

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



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(b) as respects Wales, the Countryside Council for Wales;  
“site of special scientific interest” has the same meaning as in the  
<sup>M19</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.
- (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>M20</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.

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- (5) An SSSI diversion order shall be in such form as may be prescribed and shall contain a map, on such scale as may be prescribed,—
- (a) showing the existing site of so much of the line of the highway as is to be diverted by the order and the new site to which it is to be diverted,
  - (b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a highway, and
  - (c) where some part of the new site is already so comprised, defining that part.
- (6) Section 27 above (making up of new footpaths and bridleways) applies to a highway created by an SSSI diversion order with the substitution—
- (a) for references to a footpath or bridleway of references to a footpath, a bridleway, a restricted byway or a highway over which the public have a right of way for vehicular and all other kinds of traffic,
  - (b) for references to a public path creation order, of references to an SSSI diversion order, and
  - (c) for references to section 26(2) above, of references to section 120(3) below.
- (7) Neither section 27 nor section 36 above is to be regarded as obliging a highway authority to provide on any highway created by an SSSI diversion order a metalled carriage-way.
- (8) In this section—
- “the appropriate conservation body” has the same meaning as in section 119D above;
- “prescribed” means prescribed by regulations made by the Secretary of State;
- “site of special scientific interest” has the same meaning as in the <sup>M21</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**

**I17** 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**

**M18** 1998 c. 37.

**M19** 1981 c. 69.

**M20** 1984 c. 27.

**M21** 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—

*Status: Point in time view as at 13/02/2004.*

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“(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 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

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- (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 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.

*Status: Point in time view as at 13/02/2004.*

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(8) In this section “the appropriate conservation body” has the same meaning as in section 119D above.”

#### Commencement Information

**I18** 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 ”,
- (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—

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“(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 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>M22</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

**I19** 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

**M22** 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—

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- (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.
- (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

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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.
- (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,



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- (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.
- (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

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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.
- (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,

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- (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.
- (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.”

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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 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,

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- (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>F6</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;
  - “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,

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- (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

- F6** 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
  - (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

- I20** [Sch. 6 para. 17\(a\)](#) in force at 12.2.2003 for E. by [S.I. 2003/272](#), [art. 2\(k\)\(i\)](#)
- I21** [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

- I22** [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\(k\)](#)
- I23** [Sch. 6 para. 18\(a\)](#) in force at 12.2.2003 for specified purposes for E. by [S.I. 2003/272](#), [art. 2\(1\)\(i\)](#)
- I24** [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

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diversion order, a rail crossing diversion order, a special diversion order or an SSSI diversion order”.

#### Commencement Information

- I25** 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)
- I26** 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>M23</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—
- ““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

- I27** Sch. 6 para. 20 in force at 12.2.2003 for E. by S.I. 2003/272, art. 2(n)

#### Marginal Citations

- M23** 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

- I28** Sch. 6 para. 21 in force at 12.2.2003 for specified purposes for E. by S.I. 2003/272, art. 2(o)

*Status: Point in time view as at 13/02/2004.*

*Changes to legislation: Countryside and Rights of Way Act 2000 is up to date with all changes known to be in force on or before 09 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)*

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
  - (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—



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- “2ZA(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,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”.

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(8) After paragraph 2A there is inserted—

“2B (1) Subject to sub-paragraph (2), subsections (2) to (5) of section 250 of the <sup>M24</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>M25</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 ”.

#### **Commencement Information**

**I29** 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**

**M24** 1972 c. 70.

**M25** 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.

*Status: Point in time view as at 13/02/2004.*

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### *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
    - (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.

*Status: Point in time view as at 13/02/2004.*

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

*Local inquiries and hearings: evidence and costs*

- 7 Subsections (2) to (5) of section 250 of the <sup>M26</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**

**I30** Sch. 6 para. 24 in force at 12.2.2003 for specified purposes for E. by S.I. 2003/272, art. 2(q)

*Status: Point in time view as at 13/02/2004.*

*Changes to legislation: Countryside and Rights of Way Act 2000 is up to date with all changes known to be in force on or before 09 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)*

#### Marginal Citations

M26 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

I31 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—
- “(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”.

#### Commencement Information

I32 Sch. 6 para. 26 in force at 12.2.2003 for E. by S.I. 2003/272, art. 2(s)

## SCHEDULE 7

Section 67.

### DRIVING OF MECHANICALLY PROPELLED VEHICLES ELSEWHERE THAN ON ROADS

#### *National Parks and Access to the Countryside Act 1949 (c. 97)*

- 1 In section 51(1) of the National Parks and Access to the Countryside Act 1949 (general provisions as to long-distance routes), for “not being a motor vehicle” there is substituted “ not being a mechanically propelled vehicle ”.

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*Countryside Act 1968 (c. 41)*

- 2 (1) Section 30 of the Countryside Act 1968 (riding of pedal cycles on bridleways) is amended as follows.
- (2) In subsection (1), for “not being a motor vehicle” there is substituted “not being a mechanically propelled vehicle”.
- (3) For subsection (5) there is substituted—
- “(5) In this section “mechanically propelled vehicle” does not include a vehicle falling within paragraph (c) of section 189(1) of the Road Traffic Act 1988.”

*Chronically Sick and Disabled Persons Act 1970 (c. 44)*

- 3 In section 20 of the Chronically Sick and Disabled Persons Act 1970 (use of invalid carriages on highways), in subsection (1)(b) after “sections 1 to 4,” there is inserted “21, 34,”.

*Road Traffic Act 1988 (c. 52)*

- 4 (1) Section 21 of the Road Traffic Act 1988 (prohibition of driving or parking on cycle tracks) is amended as follows.
- (2) In subsection (1), for “motor” there is substituted “mechanically propelled”.
- (3) In subsection (3), after paragraph (a) there is inserted—
- “(aa) in subsection (1) “mechanically propelled vehicle” does not include a vehicle falling within paragraph (a), (b) or (c) of section 189(1) of this Act,”.
- 5 For section 34 of that Act there is substituted—

**“34 Prohibition of driving mechanically propelled vehicles elsewhere than on roads.**

- (1) Subject to the provisions of this section, if without lawful authority a person drives a mechanically propelled vehicle—
- (a) on to or upon any common land, moorland or land of any other description, not being land forming part of a road, or
- (b) on any road being a footpath, bridleway or restricted byway,
- he is guilty of an offence.
- (2) For the purposes of subsection (1)(b) above, a way shown in a definitive map and statement as a footpath, bridleway or restricted byway is, without prejudice to section 56(1) of the <sup>M27</sup>Wildlife and Countryside Act 1981, to be taken to be a way of the kind shown, unless (subject to section 34A of this Act) the contrary is proved.
- (3) It is not an offence under this section to drive a mechanically propelled vehicle on any land within fifteen yards of a road, being a road on which a motor vehicle may lawfully be driven, for the purpose only of parking the vehicle on that land.
- (4) A person shall not be convicted of an offence under this section with respect to a vehicle if he proves to the satisfaction of the court that it was driven in

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contravention of this section for the purpose of saving life or extinguishing fire or meeting any other like emergency.

(5) It is hereby declared that nothing in this section prejudices the operation of—

- (a) section 193 of the <sup>M28</sup>Law of Property Act 1925 (rights of the public over commons and waste lands), or
- (b) any byelaws applying to any land,

or affects the law of trespass to land or any right or remedy to which a person may by law be entitled in respect of any such trespass or in particular confers a right to park a vehicle on any land.

(6) Subsection (2) above and section 34A of this Act do not extend to Scotland.

(7) In this section—

“definitive map and statement” has the same meaning as in Part III of the <sup>M29</sup>Wildlife and Countryside Act 1981;

“mechanically propelled vehicle” does not include a vehicle falling within paragraph (a), (b) or (c) of section 189(1) of this Act; and

“restricted byway” means a way over which the public have restricted byway rights within the meaning of Part II of the Countryside and Rights of Way Act 2000, with or without a right to drive animals of any description along the way, but no other rights of way.”

**Marginal Citations**

- M27** 1981 c. 69.
- M28** 1925 c. 20.
- M29** 1981 c. 69.

PROSPECTIVE

F76

**Textual Amendments**

- F7** Sch. 7 para. 6 repealed (2.5.2006 for E. immediately after the coming into force of Countryside and Rights of Way Act 2000 (c. 37), ss. 47-50, and 1.10.2006 in so far as not already in force) by [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#), ss. 70(8), 107(4), [Sch. 12](#); S.I. 2006/1176, art. 6

PROSPECTIVE

F87

*Status: Point in time view as at 13/02/2004.*

*Changes to legislation: Countryside and Rights of Way Act 2000 is up to date with all changes known to be in force on or before 09 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)*

### Textual Amendments

- F8** Sch. 7 para. 7 repealed (2.5.2006 for E. immediately after the coming into force of Countryside and Rights of Way Act 2000 (c. 37), ss. 47-50, and 1.10.2006 in so far as not already in force) by [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#), ss. 70(8), 107(4), [Sch. 12](#); S.I. 2006/1176, art. 6

### *Road Traffic Offenders Act 1988 (c. 53)*

- 8 In Schedule 2 to the Road Traffic Offenders Act 1988 (prosecution and punishment of offences), in the second column of the entry in Part I relating to section 34 of the Road Traffic Act 1988, for “motor” there is substituted “mechanically propelled”.
- 9 In Schedule 3 to that Act (fixed penalty offences), in the second column of the entry relating to section 34 of the Road Traffic Act 1988, for “motor” there is substituted “mechanically propelled”.

## SCHEDULE 8

Section 73(4).

### AMENDMENTS CONSEQUENTIAL ON CHANGE OF NAME OF NATURE CONSERVANCY COUNCIL FOR ENGLAND

- 1 In each provision specified in relation to each of the Acts set out below, for “the Nature Conservancy Council for England” or, as the case may be, “Nature Conservancy Council for England” there is substituted “English Nature”
- (a) the National Parks and Access to the <sup>M30</sup>Countryside Act 1949: section 15A (meaning of “Nature Conservancy Council”);
  - (b) the <sup>M31</sup>Sea Fisheries Regulation Act 1966: in section 5A (byelaws under section 5 for marine environmental purposes), subsection (3)(a);
  - (c) the <sup>M32</sup>Countryside Act 1968—
    - (i) in section 15 (areas of special scientific interest), subsection (6A), and
    - (ii) section 37 (protection for interests in countryside);
  - (d) the <sup>M33</sup>Conservation of Seals Act 1970: in section 10 (power to grant licences to kill or take seals), subsection (5);
  - (e) the <sup>M34</sup>Import of Live Fish (England and Wales) Act 1980: in section 1 (power to limit the import etc. of fish and fish eggs), subsection (2);
  - (f) the <sup>M35</sup>Highways Act 1980: in section 105B (procedure relating to environmental impact assessments), in subsection (8), paragraph (b) of the definition of “the consultation bodies”;
  - (g) the <sup>M36</sup>Animal Health Act 1981: in section 21 (destruction of wild life on infection other than rabies), subsection (9);
  - (h) the <sup>M37</sup>Wildlife and Countryside Act 1981—
    - (i) in section 27 (interpretation of Part I), subsection (3A),
    - (ii) in section 27A (construction of references to Nature Conservancy Council), paragraph (a), and
    - (iii) in section 52 (interpretation of Part II), subsection (1);



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- (i) the <sup>M38</sup>Inheritance Tax Act 1984: Schedule 3 (bodies receiving gifts for national purposes etc.);
- (j) the <sup>M39</sup>Agriculture Act 1986: in section 18 (designation and management of environmentally sensitive areas), subsection (2)(a);
- (k) the <sup>M40</sup>Channel Tunnel Act 1987—
  - (i) in Schedule 2, Part II (regulation of scheduled works), paragraph 5(3), and
  - (ii) in Schedule 3 (planning permission), paragraph 17(4)(a);
- (l) the <sup>M41</sup>Norfolk and Suffolk Broads Act 1988—
  - (i) in section 1 (the Broads Authority), subsection (3)(b),
  - (ii) in section 4 (conservation of areas of natural beauty), subsections (3)(a) and (5)(a),
  - (iii) in section 5 (notification of certain operations within the Broads), subsection (4), and
  - (iv) in Schedule 3 (functions of Broads Authority), paragraph 33(1)(c);
- (m) the <sup>M42</sup>Electricity Act 1989: in Schedule 9 (preservation of amenities and fisheries), paragraph 2(2)(a);
- (n) the <sup>M43</sup>Environmental Protection Act 1990—
  - (i) in section 36 (grant of waste management licences), subsection (7), and
  - (ii) in section 128 (creation and constitution of the Nature Conservancy Council for England and the Countryside Council for Wales), subsections (1) and (2)(a);
- (o) the <sup>M44</sup>Deer Act 1991: in section 8 (licences for exemptions from sections 2 to 4 of the Act), subsections (1) and (4);
- (p) the <sup>M45</sup>Water Industry Act 1991—
  - (i) in section 4 (environmental duties with respect to sites of special interest), subsections (1) and (4),
  - (ii) in section 5 (codes of practice with respect to environmental and recreational duties), subsection (4)(b), and
  - (iii) in section 156 (restrictions on disposals of land), subsection (4)(c)(i);
- (q) the <sup>M46</sup>Land Drainage Act 1991—
  - (i) in section 61C (duties with respect to sites of special scientific interest), subsections (1) and (4), and
  - (ii) in section 61E (codes of practice), subsection (4)(b);
- (r) the <sup>M47</sup>Transport and Works Act 1992: in section 6 (applications for orders relating to railways, tramways, inland waterways, etc.), subsection (7)(e);
- (s) the <sup>M48</sup>Protection of Badgers Act 1992: in section 10 (licences to do otherwise prohibited acts relating to badgers), subsection (4)(a);
- (t) the <sup>M49</sup>Environment Act 1995—
  - (i) in section 8 (environmental duties with respect to sites of special interest), subsections (1) and (4),
  - (ii) in section 9 (codes of practice with respect to environmental and recreational duties), subsection (3)(b),

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- (iii) in section 66 (national park management plans), subsection (7)(a), and
- (iv) in section 99 (consultation required before making or modifying certain subordinate legislation for England), subsection (2)(c);
- (u) the <sup>M50</sup>Channel Tunnel Rail Link Act 1996—
  - (i) in Schedule 6 (planning conditions), paragraph 27(4), and
  - (ii) in Schedule 14 (overhead lines: consent), paragraph 7(4); and
- (v) the <sup>M51</sup>Greater London Authority Act 1999: in section 352 (the Mayor’s biodiversity action plan), subsection (3)(a).

#### Marginal Citations

**M30** 1949 c.97.  
**M31** 1966 c. 38.  
**M32** 1968 c. 41.  
**M33** 1970 c. 30.  
**M34** 1980 c. 27.  
**M35** 1980 c. 66.  
**M36** 1981 c. 22.  
**M37** 1981 c. 69.  
**M38** 1984 c. 51.  
**M39** 1986 c. 49.  
**M40** 1987 c. 53.  
**M41** 1988 c. 4.  
**M42** 1989 c. 29.  
**M43** 1990 c. 43.  
**M44** 1991 c. 54.  
**M45** 1991 c. 56.  
**M46** 1991 c. 59.  
**M47** 1992 c. 42.  
**M48** 1992 c. 51.  
**M49** 1995 c. 25.  
**M50** 1996 c. 61.  
**M51** 1999 c. 29.

- 2 In the following enactments, the entry for the Nature Conservancy Council for England is omitted, and in the appropriate place there is inserted “English Nature”
- (a) the <sup>M52</sup>Public Records Act 1958: in Schedule 1 (definition of public records), Part II of the Table in paragraph 3;
  - (b) the <sup>M53</sup>Superannuation Act 1965: in section 39 (meaning of “public office”), paragraph 7 of subsection (1); and
  - (c) the <sup>M54</sup>Parliamentary Commissioner Act 1967: Schedule 2 (departments etc. subject to investigation).

#### Marginal Citations

**M52** 1958 c. 51.  
**M53** 1965 c. 74.  
**M54** 1967 c. 13.

*Status: Point in time view as at 13/02/2004.*

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- 3 In Part III of Schedule 1 to the <sup>M55</sup>House of Commons Disqualification Act 1975 (which sets out offices the holders of which are disqualified from membership of the House of Commons), the entry for “Any member of the Nature Conservancy Council for England or the Countryside Council for Wales in receipt of remuneration” is omitted, and in the appropriate places there are inserted the following two entries—

“Any member of the Countryside Council for Wales in receipt of remuneration.”

“Any member of English Nature in receipt of remuneration.”

**Marginal Citations**

**M55** 1975 c. 24.

SCHEDULE 9

Section 75(1).

SITES OF SPECIAL SCIENTIFIC INTEREST

- 1 For section 28 of the 1981 Act (areas of special scientific interest) there is substituted—

**“28 Sites of special scientific interest.**

- (1) Where the Nature Conservancy Council are of the opinion that any area of land is of special interest by reason of any of its flora, fauna, or geological or physiographical features, it shall be the duty of the Council to notify that fact—
  - (a) to the local planning authority in whose area the land is situated;
  - (b) to every owner and occupier of any of that land; and
  - (c) to the Secretary of State.
- (2) The Council shall also publish a notification of that fact in at least one local newspaper circulating in the area in which the land is situated.
- (3) A notification under subsection (1) shall specify the time (not being less than three months from the date of the giving of the notification) within which, and the manner in which, representations or objections with respect to it may be made; and the Council shall consider any representation or objection duly made.
- (4) A notification under subsection (1)(b) shall also specify—
  - (a) the flora, fauna, or geological or physiographical features by reason of which the land is of special interest, and
  - (b) any operations appearing to the Council to be likely to damage that flora or fauna or those features,and shall contain a statement of the Council’s views about the management of the land (including any views the Council may have about the conservation and enhancement of that flora or fauna or those features).

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- (5) Where a notification under subsection (1) has been given, the Council may within the period of nine months beginning with the date on which the notification was served on the Secretary of State either—
  - (a) give notice to the persons mentioned in subsection (1) withdrawing the notification; or
  - (b) give notice to those persons confirming the notification (with or without modifications).
- (6) A notification shall cease to have effect—
  - (a) on the giving of notice of its withdrawal under subsection (5)(a) to any of the persons mentioned in subsection (1); or
  - (b) if not withdrawn or confirmed by notice under subsection (5) within the period of nine months referred to there, at the end of that period.
- (7) The Council’s power under subsection (5)(b) to confirm a notification under subsection (1) with modifications shall not be exercised so as to add to the operations specified in the notification or extend the area to which it applies.
- (8) As from the time when there is served on the owner or occupier of any land which has been notified under subsection (1)(b) a notice under subsection (5) (b) confirming the notification with modifications, the notification shall have effect in its modified form in relation to so much (if any) of that land as remains subject to it.
- (9) A notification under subsection (1)(b) of land in England and Wales shall be a local land charge.
- (10) For the purposes of this section and sections 28A to 28D, “local planning authority”, in relation to land within the Broads, includes the Broads Authority.

**28A Variation of notification under section 28.**

- (1) At any time after notice has been given under section 28(5)(b) confirming a notification (with or without modifications), the Nature Conservancy Council may by notice vary the matters specified or stated in the confirmed notification (whether by adding to them, changing them, or removing matter from them).
- (2) The area of land cannot be varied under this section.
- (3) The Council shall give notice setting out the variation to—
  - (a) the local planning authority in whose area the land is situated,
  - (b) every owner and occupier of any of the land who in the opinion of the Council may be affected by the variation, and
  - (c) the Secretary of State,
 and after service of a notice under paragraph (b) the notification under section 28(1)(b) shall have effect in its varied form.
- (4) Section 28(3) shall apply to such a notice as it applies to a notification under section 28(1).

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- (5) Where a notice under subsection (3) has been given, the Council may within the period of nine months beginning with the date the last of the owners and occupiers referred to in subsection (3)(b) was served with the notice either—
  - (a) give notice to the persons mentioned in subsection (3) withdrawing the notice; or
  - (b) give notice to them confirming the notice (with or without modifications).
- (6) A notice under subsection (3) shall cease to have effect—
  - (a) on the giving of notice of its withdrawal under subsection (5)(a) to any of the persons mentioned in subsection (3); or
  - (b) if not withdrawn or confirmed by notice under subsection (5) within the period of nine months referred to in that subsection, at the end of that period.
- (7) As from the time when there is served on the owner or occupier of any land a notice under subsection (5)(b) confirming a notice of variation with modifications, the notification under section 28(1)(b) shall have effect as so varied.
- (8) A local land charge existing by virtue of section 28(9) shall be varied in accordance with a notice under subsection (3) or (5)(b).

## **28B Notification of additional land.**

- (1) Where the Nature Conservancy Council are of the opinion that if land adjacent to a site of special scientific interest (“the extra land”) were combined with the site of special scientific interest (“the SSSI”), the combined area of land would be of special interest by reason of any of its flora, fauna, or geological or physiological features, the Council may decide to notify that fact.
- (2) If they do so decide, the persons whom they must notify are—
  - (a) the local planning authority in whose area the extra land is situated;
  - (b) every owner and occupier of any of that extra land; and
  - (c) the Secretary of State.
- (3) No such notification may be given until after notice has been given under section 28(5)(b) confirming (with or without modifications) the notification under section 28(1) relating to the SSSI.
- (4) Subsections (2) and (3) of section 28 shall apply for the purposes of this section as they apply for the purposes of that section.
- (5) A notification under subsection (2)(b) shall also specify—
  - (a) the area of land constituting the SSSI;
  - (b) what (as at the date of the notification under subsection (2)(b)) is specified or contained in the notification under section 28(1)(b) relating to the SSSI by virtue of section 28(4); and
  - (c) the reasons why the Council is of the opinion referred to in subsection (1).

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- (6) In addition, the notification under subsection (2)(b) shall include a statement—
- (a) saying whether or not anything among the matters specified in the notification by virtue of subsection (5)(c) is particularly relevant to the extra land; and
  - (b) if any such thing is of particular relevance, specifying which.
- (7) Subsections (5) to (7) of section 28 apply in relation to a notification under subsection (2) of this section as they apply in relation to a notification under subsection (1) of that section, as if references to “subsection (1)” in section 28(5) to (7) were references to subsection (2) of this section.
- (8) As from the time when a notification under subsection (2)(b) is served on the owner or occupier of any land, the notification under section 28(1)(b) shall have effect as if it included the notification under subsection (2)(b).
- (9) As from the time when there is served on the owner or occupier of any land which has been notified under subsection (2)(b) a notice under section 28(5)(b) (as applied by subsection (7) of this section) confirming the notification under subsection (2)(b) with modifications, the notification under section 28(1)(b) (as extended by virtue of subsection (8) of this section) shall have effect in its modified form.
- (10) A local land charge existing by virtue of section 28(9) shall be varied in accordance with a notification under subsection (2) or under section 28(5) (b) as applied by subsection (7) of this section.

### **28C Enlargement of SSSI.**

- (1) Where the Nature Conservancy Council are of the opinion that any area of land which includes, but also extends beyond, a site of special scientific interest (“the SSSI”) is of special interest by reason of any of its flora, fauna, or geological or physiographical features, the Council may decide to notify that fact.
- (2) If they do so decide, the persons whom they must notify are—
- (a) the local planning authority in whose area the land (including the SSSI) is situated;
  - (b) every owner and occupier of any of that land (including the SSSI); and
  - (c) the Secretary of State.
- (3) Subsections (2) to (8) of section 28 apply to a notification under subsection (2) of this section as they apply to a notification under subsection (1) of that section, as if references to “subsection (1)” and “subsection (1)(b)” in section 28(2) to (8) were references to subsection (2) and subsection (2)(b) of this section respectively.
- (4) No notification may be given under subsection (2) until after notice has been given under section 28(5)(b) (or section 28(5)(b) as applied by subsection (3)) confirming (with or without modifications) the notification under section 28(1) (or subsection (2)) relating to the SSSI.

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- (5) As from the time when a notification under subsection (2) is served on the owner or occupier of any land included in the SSSI, the notification in relation to that land which had effect immediately before the service of the notification under subsection (2) shall cease to have effect.
- (6) A notification under subsection (2)(b) of land in England and Wales shall be a local land charge; and, to the extent that any such land was the subject of a local land charge by virtue of section 28(9), that local land charge shall be discharged.
- (7) A notice under section 28E(1)(a) and a consent under section 28E(3)(a) given before a notification under subsection (2)(b) continue to have effect.
- (8) The enlargement of a site of special scientific interest under this section does not affect anything done under section 28J to 28L.
- (9) Any reference to—
  - (a) a notification under section 28(1) (or any of its paragraphs) shall be construed as including the corresponding notification under subsection (2);
  - (b) a notification under section 28(5)(b) shall be construed as including a notification under that provision as applied by subsection (3); and
  - (c) a local land charge existing by virtue of section 28(9) shall be treated as including one existing by virtue of subsection (6).

#### **28D Denotification.**

- (1) Where the Nature Conservancy Council are of the opinion that all or part of a site of special scientific interest is no longer of special interest by reason of any of the matters mentioned in section 28(1), they may decide to notify that fact.
- (2) If they do so decide, the persons whom they must notify are—
  - (a) the local planning authority in whose area the land which the Council no longer consider to be of special interest is situated;
  - (b) every owner and occupier of any of that land;
  - (c) the Secretary of State;
  - (d) the Environment Agency; and
  - (e) every relevant undertaker (within the meaning of section 4(1) of the <sup>M56</sup>Water Industry Act 1991) and every internal drainage board (within the meaning of section 61C(1) of the <sup>M57</sup>Land Drainage Act 1991) whose works, operations or activities may affect the land.
- (3) The Council shall also publish a notification of that fact in at least one local newspaper circulating in the area in which the land referred to in subsection (2)(a) is situated.
- (4) Section 28(3) shall apply to a notification under subsection (2) or (3) as it applies to a notification under section 28(1).
- (5) Where a notification under subsection (2) has been given, the Council may within the period of nine months beginning with the date on which the notification was served on the Secretary of State either—

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- (a) give notice to the persons mentioned in subsection (2) withdrawing the notification, or
  - (b) give notice to those persons confirming the notification, or confirming it in relation to an area of land specified in the notice which is smaller than that specified in the notification under subsection (2),
- but if they do neither the notification shall cease to have effect.
- (6) A notification under subsection (2) shall have effect in relation to any land as from the time a notice under subsection (5)(b) is served on its owner or occupier, and from that time a notification under section 28(1)(b) in relation to that land shall cease to have effect.
- (7) A local land charge existing by virtue of section 28(9) shall be discharged in relation to land which is the subject of a notice under subsection (5)(b).

### **28E Duties in relation to sites of special scientific interest.**

- (1) The owner or occupier of any land included in a site of special scientific interest shall not while the notification under section 28(1)(b) remains in force carry out, or cause or permit to be carried out, on that land any operation specified in the notification unless—
- (a) one of them has, after service of the notification, given the Nature Conservancy Council notice of a proposal to carry out the operation specifying its nature and the land on which it is proposed to carry it out; and
  - (b) one of the conditions specified in subsection (3) is fulfilled.
- (2) Subsection (1) does not apply to an owner or occupier being an authority to which section 28G applies acting in the exercise of its functions.
- (3) The conditions are—
- (a) that the operation is carried out with the Council's written consent;
  - (b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act;
  - (c) that the operation is carried out in accordance with a management scheme under section 28J or a management notice under section 28K.
- (4) A consent under subsection (3)(a) may be given—
- (a) subject to conditions, and
  - (b) for a limited period,
- as specified in the consent.
- (5) If the Council do not consent, they shall give notice saying so to the person who gave the notice under subsection (1).
- (6) The Council may, by notice given to every owner and occupier of any of the land included in the site of special scientific interest, or the part of it to which the consent relates—
- (a) withdraw the consent; or
  - (b) modify it (or further modify it) in any way.



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- (7) The following—
- (a) a consent under subsection (3)(a) granting consent subject to conditions or for a limited period, and
  - (b) a notice under subsection (5) or (6),
- must include a notice of the Council's reasons for imposing the conditions, for the limitation of the period, for refusing consent, or for withdrawing or modifying the consent, and also a notice of the matters set out in subsection (8).
- (8) The matters referred to in subsection (7) are—
- (a) the rights of appeal under section 28F;
  - (b) the effect of subsection (9); and
  - (c) in the case of a notice under subsection (6), the effect of section 28M.
- (9) A withdrawal or modification of a consent is not to take effect until—
- (a) the expiry of the period for appealing against it; or
  - (b) if an appeal is brought, its withdrawal or final determination.
- (10) The Council shall have power to enforce the provisions of this section.

## **28F Appeals in connection with consents.**

- (1) The following persons—
- (a) an owner or occupier who has been refused a consent under section 28E(3)(a),
  - (b) an owner or occupier who has been granted such a consent but who is aggrieved by conditions attached to it, or by the fact that it is for a limited period, or by the length of that period,
  - (c) an owner or occupier who is aggrieved by the modification of a consent;
  - (d) an owner or occupier who is aggrieved by the withdrawal of a consent,
- may by notice appeal to the Secretary of State against the relevant decision.
- (2) If the Nature Conservancy Council neither give consent nor refuse it within the period of four months beginning with the date on which the notice referred to in section 28E(1)(a) was sent, the person who gave that notice may for the purposes of subsection (1) treat the Council as having refused consent (and his appeal is to be determined on that basis).
- (3) Notice of an appeal must reach the Secretary of State—
- (a) except in a case falling within subsection (2), within the period of two months beginning with the date of the notice giving consent or the notice under section 28E(5) or (6), or
  - (b) in a case falling within subsection (2), within the period of two months beginning immediately after the expiry of the four-month period referred to there,
- or, in either case, within such longer period as is agreed in writing between the Council and the appellant.
- (4) Before determining an appeal, the Secretary of State may, if he thinks fit—

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- (a) cause the appeal to take, or continue in, the form of a hearing (which may be held wholly or partly in private if the appellant so requests and the person hearing the appeal agrees), or
  - (b) cause a local inquiry to be held,
- and he must act as mentioned in paragraph (a) or (b) if either party to the appeal asks to be heard in connection with the appeal.
- (5) On determining an appeal against a decision, the Secretary of State may—
- (a) affirm the decision,
  - (b) where the decision was a refusal of consent, direct the Council to give consent,
  - (c) where the decision was as to the terms of a consent (whether the original or a modified one), quash all or any of those terms,
  - (d) where the decision was a withdrawal or modification of consent, quash the decision,
- and where he exercises any of the powers in paragraphs (b), (c) or (d) he may give directions to the Council as to the terms on which they are to give consent.
- (6) The Secretary of State may by regulations made by statutory instrument make provision about appeals under this section, and in particular about—
- (a) notices of appeal and supporting documentation required, and
  - (b) how appeals are to be brought and considered,
- and any such regulations may make different provision for different cases and circumstances.
- (7) A statutory instrument containing regulations under subsection (6) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) The Secretary of State may appoint any person to exercise on his behalf, with or without payment, his function of determining an appeal under this section or any matter involved in such an appeal.
- (9) Schedule 10A shall have effect with respect to appointments under subsection (8).
- (10) Subsections (2) to (5) of section 250 of the <sup>M58</sup>Local Government Act 1972 (local inquiries: evidence and costs) apply in relation to hearings or local inquiries under this section as they apply in relation to local inquiries under that section, but as if the reference there—
- (a) to the person appointed to hold the inquiry were a reference to the Secretary of State or to the person appointed to conduct the hearing or hold the inquiry under this section; and
  - (b) to the Minister causing an inquiry to be held were to the Secretary of State.
- (11) Section 322A of the <sup>M59</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 local inquiry under this section as it applies in relation to a hearing or local inquiry referred to in that section.

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### **28G Statutory undertakers, etc.: general duty.**

- (1) An authority to which this section applies (referred to in this section and in sections 28H and 28I as “a section 28G authority”) shall have the duty set out in subsection (2) in exercising its functions so far as their exercise is likely to affect the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest.
- (2) The duty is to take reasonable steps, consistent with the proper exercise of the authority’s functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.
- (3) The following are section 28G authorities—
  - (a) a Minister of the Crown (within the meaning of the Ministers of the <sup>M60</sup>Crown Act 1975) or a Government department;
  - (b) the National Assembly for Wales;
  - (c) a local authority;
  - (d) a person holding an office—
    - (i) under the Crown,
    - (ii) created or continued in existence by a public general Act of Parliament, or
    - (iii) the remuneration in respect of which is paid out of money provided by Parliament;
  - (e) a statutory undertaker (meaning the persons referred to in section 262(1), (3) and (6) of the <sup>M61</sup>Town and Country Planning Act 1990); and
  - (f) any other public body of any description.

### **28H Statutory undertakers, etc.: duty in relation to carrying out operations.**

- (1) A section 28G authority shall give notice to the Nature Conservancy Council before carrying out, in the exercise of its functions, operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest.
- (2) Subsection (1) applies even if the operations would not take place on land included in a site of special scientific interest.
- (3) In response to the notice referred to in subsection (1), the Council may send a notice—
  - (a) saying that they do not assent to the proposed operations, or
  - (b) assenting to them (with or without conditions),but if they do not send a notice under paragraph (b) within the period of 28 days beginning with the date of the notice under subsection (1) they shall be treated as having declined to assent.
- (4) If the Council do not assent, or if the authority proposes to carry out the operations otherwise than in accordance with the terms of the Council’s assent, the authority—

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- (a) shall not carry out the operations unless the condition set out in subsection (5) is satisfied, and
  - (b) shall comply with the requirements set out in subsection (6) when carrying them out.
- (5) The condition is that the authority has, after the expiry of the period of 28 days beginning with the date of the notice under subsection (1), notified the Council of—
- (a) the date on which it proposes to start the operations (which must be after the expiry of the period of 28 days beginning with the date of the notification under this paragraph), and
  - (b) how (if at all) it has taken account of any written advice it received from the Council, before the date of the notification under this paragraph, in response to the notice under subsection (1).
- (6) The requirements are—
- (a) that the authority carry out the operations in such a way as to give rise to as little damage as is reasonably practicable in all the circumstances to the flora, fauna or geological or physiographical features by reason of which the site is of special interest (taking account, in particular, of any such advice as is referred to in subsection (5)(b)); and
  - (b) that the authority restore the site to its former condition, so far as is reasonably practicable, if any such damage does occur.

### **28I Statutory undertakers, etc.: duty in relation to authorising operations.**

- (1) This section applies where the permission of a section 28G authority is needed before operations may be carried out.
- (2) Before permitting the carrying out of operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest, a section 28G authority shall give notice of the proposed operations to the Nature Conservancy Council.
- (3) Subsection (2) applies even if the operations would not take place on land included in a site of special scientific interest.
- (4) The authority shall wait until the expiry of the period of 28 days beginning with the date of the notice under subsection (2) before deciding whether to give its permission, unless the Nature Conservancy Council have notified the authority that it need not wait until then.
- (5) The authority shall take any advice received from the Council into account—
  - (a) in deciding whether or not to permit the proposed operations, and
  - (b) if it does decide to do so, in deciding what (if any) conditions are to be attached to the permission.
- (6) If the Council advise against permitting the operations, or advise that certain conditions should be attached, but the section 28G authority does not follow that advice, the authority—

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- (a) shall give notice of the permission, and of its terms, to the Council, the notice to include a statement of how (if at all) the authority has taken account of the Council's advice, and
  - (b) shall not grant a permission which would allow the operations to start before the end of the period of 21 days beginning with the date of that notice.
- (7) In this section “permission”, in relation to any operations, includes authorisation, consent, and any other type of permission (and “permit” and “permitting” are to be construed accordingly).

## **28J Management schemes.**

- (1) The Nature Conservancy Council may formulate a management scheme for all or part of a site of special scientific interest.
- (2) A management scheme is a scheme for—
  - (a) conserving the flora, fauna, or geological or physiographical features by reason of which the land (or the part of it to which the scheme relates) is of special interest; or
  - (b) restoring them; or
  - (c) both.
- (3) The Council shall serve notice of a proposed management scheme on every owner and occupier of any of the land (or the part of it to which the scheme would relate); but it may be served on them only after they have been consulted about the proposed management scheme.
- (4) The notice may be served with the notification referred to in section 28(1)(b) or afterwards.
- (5) The owners and occupiers upon whom the notice must be served (referred to in this section as “the relevant owners and occupiers”) are—
  - (a) if it is served with the notification under section 28(1)(b), or later but before the notification referred to in section 28(5)(b), the owners and occupiers referred to in section 28(1)(b);
  - (b) if it is served with the notification under section 28(5)(b) or later, the owners and occupiers of such of the land as remains subject to the notification.
- (6) The notice of a proposed management scheme must include a copy of the proposed scheme.
- (7) The notice must specify the time (not being less than three months from the date of the giving of the notice) within which, and the manner in which, representations or objections with respect to the proposed management scheme may be made; and the Council shall consider any representation or objection duly made.
- (8) Where a notice under subsection (3) has been given, the Council may within the period of nine months beginning with the date on which the notice was served on the last of the relevant owners and occupiers either—
  - (a) give notice to the relevant owners and occupiers withdrawing the notice, or

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- (b) give notice to them confirming the management scheme (with or without modifications),  
and if notice under paragraph (b) is given, the management scheme shall have effect from the time the notice is served on all of the relevant owners or occupiers.
- (9) A notice under subsection (3) shall cease to have effect—
  - (a) on the giving of a notice of withdrawal under subsection (8)(a) to any of the relevant owners and occupiers; or
  - (b) if not withdrawn or confirmed by notice under subsection (8) within the period of nine months referred to there, at the end of that period.
- (10) The Council’s power under subsection (8)(b) to confirm a management scheme with modifications shall not be exercised so as to make complying with it more onerous.
- (11) The Council may at any time cancel or propose the modification of a management scheme.
- (12) In relation to—
  - (a) the cancellation of a management scheme, subsections (3) to (5) apply, and
  - (b) a proposal to modify a management scheme, subsections (3) to (10) apply,
 as they apply in relation to a proposal for a management scheme.
- (13) An agreement under section 16 of the 1949 Act or section 15 of the 1968 Act relating to a site of special scientific interest may provide for any matter for which a management scheme relating to that site provides (or could provide).

## **28K Management notices.**

- (1) Where it appears to the Nature Conservancy Council that—
  - (a) an owner or occupier of land is not giving effect to a provision of a management scheme, and
  - (b) as a result any flora, fauna or geological or physiographical features by reason of which the land is of special interest are being inadequately conserved or restored,
 they may if they think fit serve a notice on him (a “management notice”).
- (2) They may not serve a management notice unless they are satisfied that they are unable to conclude, on reasonable terms, an agreement with the owner or occupier as to the management of the land in accordance with the management scheme.
- (3) A management notice is a notice requiring the owner or occupier to—
  - (a) carry out such work on the land, and
  - (b) do such other things with respect to it,
 as are specified in the notice, and to do so before the dates or within the periods so specified.

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- (4) The work and other things specified in the notice must appear to the Council to be measures which it is reasonable to require in order to ensure that the land is managed in accordance with the management scheme.
- (5) The management notice must explain the effect of subsection (7) and (8) and of sections 28L and 28M(2) to (4).
- (6) A copy of the management notice must be served on every other owner and occupier of the land.
- (7) If any of the work or other things required by a management notice have not been done within the period or by the date specified in it, the Council may—
  - (a) enter the land, and any other land, and carry out the work, or do the other things; and
  - (b) recover from the owner or occupier upon whom the notice was served any expenses reasonably incurred by them in carrying out the work or doing the other things.
- (8) If an appeal is brought against the management notice, and upon the final determination of the appeal the notice is affirmed (with or without modifications), subsection (7) applies as if the references there to the management notice were to the notice as affirmed.

#### **28L Appeals against management notices.**

- (1) A person who is served with a management notice may appeal against its requirements to the Secretary of State; and a management notice does not take effect until—
  - (a) the expiry of the period for appealing against it; or
  - (b) if an appeal is brought, its withdrawal or final determination.
- (2) An appeal may be on the ground that some other owner or occupier of the land should take all or any of the measures specified in the management notice, or should pay all or part of their cost.
- (3) Where the grounds of appeal are, or include, that mentioned in subsection (2), the appellant must serve a copy of his notice of appeal on each other person referred to.
- (4) Before determining an appeal, the Secretary of State may, if he thinks fit—
  - (a) cause the appeal to take, or continue in, the form of a hearing (which may be held wholly or partly in private if the appellant so requests and the person hearing the appeal agrees), or
  - (b) cause a local inquiry to be held,and he must act as mentioned in paragraph (a) or (b) if either party to the appeal (or, in a case falling within subsection (2), any of the other persons mentioned there) asks to be heard in connection with the appeal.
- (5) On determining the appeal, the Secretary of State may quash or affirm the management notice; and if he affirms it, he may do so either in its original form or with such modifications as he thinks fit.
- (6) In particular, on determining an appeal whose grounds are, or include, those mentioned in subsection (2), the Secretary of State may—

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- (a) vary the management notice so as to impose its requirements (or some of them) upon any such other person as is referred to in the grounds; or
  - (b) determine that a payment is to be made by any such other person to the appellant.
- (7) In exercising his powers under subsection (6), the Secretary of State must take into account, as between the appellant and any of the other people referred to in subsection (2)—
- (a) their relative interests in the land (considering both the nature of the interests and the rights and obligations arising under or by virtue of them);
  - (b) their relative responsibility for the state of the land which gives rise to the requirements of the management notice; and
  - (c) the relative degree of benefit to be derived from carrying out the requirements of the management notice.
- (8) The Secretary of State may by regulations made by statutory instrument make provision about appeals under this section, and in particular about—
- (a) the period within which and the manner in which appeals are to be brought, and
  - (b) the manner in which they are to be considered,
- and any such regulations may make different provision for different cases or circumstances.
- (9) A statutory instrument containing regulations under subsection (8) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) The Secretary of State may appoint any person to exercise on his behalf, with or without payment, his function of determining an appeal under this section or any matter involved in such an appeal.
- (11) Schedule 10A shall have effect with respect to appointments under subsection (10).
- (12) Subsections (2) to (5) of section 250 of the <sup>M62</sup>Local Government Act 1972 (local inquiries: evidence and costs) apply in relation to hearings or local inquiries under this section as they apply in relation to local inquiries under that section, but as if the reference there—
- (a) to the person appointed to hold the inquiry were a reference to the Secretary of State or to the person appointed to conduct the hearing or hold the inquiry under this section; and
  - (b) to the Minister causing an inquiry to be held were to the Secretary of State.
- (13) Section 322A of the <sup>M63</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 local inquiry under this section as it applies in relation to a hearing or local inquiry referred to in that section.



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### **28M Payments.**

- (1) Where the Council, under section 28E(6), modify or withdraw a consent, they shall make a payment to any owner or occupier of the land who suffers loss because of the modification or withdrawal.
- (2) The Council may, if they think fit, make one or more payments to any owner or occupier of land in relation to which a management scheme under section 28J is in force.
- (3) The amount of a payment under this section is to be determined by the Council in accordance with guidance given and published by the Ministers.
- (4) Section 50(3) applies to the determination of the amount of payments under this section as it applies to the determination of the amount of payments under that section.

### **28N Compulsory purchase.**

- (1) The Nature Conservancy Council may in circumstances set out in subsection (2) acquire compulsorily all or any part of a site of special scientific interest.
- (2) The circumstances are—
  - (a) that the Council are satisfied that they are unable to conclude, on reasonable terms, an agreement with the owner or occupier as to the management of the land; or
  - (b) that the Council have entered into such an agreement, but they are satisfied that it has been breached in such a way that the land is not being managed satisfactorily.
- (3) A dispute about whether or not there has been a breach of the agreement for the purposes of subsection (2)(b) is to be determined by an arbitrator appointed by the Lord Chancellor.
- (4) Where the Council have acquired land compulsorily under this section, they may—
  - (a) manage it themselves; or
  - (b) dispose of it, or of any interest in it, on terms designed to secure that the land is managed satisfactorily.
- (5) Section 103 of the 1949 Act (general provisions as to acquisition of land) applies for the purposes of this section as it applies for the purposes of that Act.

### **28P Offences.**

- (1) A person who, without reasonable excuse, contravenes section 28E(1) is guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.
- (2) A section 28G authority which, in the exercise of its functions, carries out an operation which damages any of the flora, fauna or geological or

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physiographical features by reason of which a site of special scientific interest is of special interest—

- (a) without first complying with section 28H(1), or
- (b) (if it has complied with section 28H(1)) without first complying with section 28H(4)(a),

is, unless there was a reasonable excuse for carrying out the operation without complying, guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.

- (3) A section 28G authority acting in the exercise of its functions which, having complied with section 28H(1), fails without reasonable excuse to comply with section 28H(4)(b) is guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.
- (4) For the purposes of subsections (1), (2) and (3), it is a reasonable excuse in any event for a person to carry out an operation (or to fail to comply with a requirement to send a notice about it) if—
  - (a) subject to subsection (5), the operation in question was authorised by a planning permission granted on an application under Part III of the <sup>M64</sup>Town and Country Planning Act 1990 or permitted by a section 28G authority which has acted in accordance with section 28I; or
  - (b) the operation in question was an emergency operation particulars of which (including details of the emergency) were notified to the Nature Conservancy Council as soon as practicable after the commencement of the operation.
- (5) If an operation needs both a planning permission and the permission of a section 28G authority, subsection (4)(a) does not provide reasonable excuse unless both have been obtained.
- (6) A person (other than a section 28G authority acting in the exercise of its functions) who without reasonable excuse—
  - (a) intentionally or recklessly destroys or damages any of the flora, fauna, or geological or physiographical features by reason of which land is of special interest, or intentionally or recklessly disturbs any of those fauna, and
  - (b) knew that what he destroyed, damaged or disturbed was within a site of special scientific interest,
 is guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.
- (7) It is a reasonable excuse in any event for a person to do what is mentioned in subsection (6) if—
  - (a) paragraph (a) or (b) of subsection (4) is satisfied in relation to what was done (reading references there to an operation as references to the destruction, damage or disturbance referred to in subsection (6)), and
  - (b) where appropriate, subsection (5) is also satisfied, reading the reference there to an operation in the same way.

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- (8) A person who without reasonable excuse fails to comply with a requirement of a management notice is guilty of an offence and is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.
- (9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.
- (10) Proceedings in England and Wales for an offence under this section shall not, without the consent of the Director of Public Prosecutions, be taken by a person other than the Council.
- (11) In this section, “a section 28G authority” means an authority to which section 28G applies.

#### **28Q Change of owner or occupier.**

- (1) This section applies where the owner of land included in a site of special scientific interest—
  - (a) disposes of any interest of his in the land; or
  - (b) becomes aware that it is occupied by an additional or a different occupier.
- (2) If this section applies, the owner shall send a notice to the Nature Conservancy Council before the end of the period of 28 days beginning with the date on which he disposed of the interest or became aware of the change in occupation.
- (3) The notice is to specify the land concerned and—
  - (a) in a subsection (1)(a) case, the date on which the owner disposed of the interest in the land, and the name and address of the person to whom he disposed of the interest; or
  - (b) in a subsection (1)(b) case, the date on which the change of occupation took place (or, if the owner does not know the exact date, an indication of when to the best of the owner’s knowledge it took place), and, as far as the owner knows them, the name and address of the additional or different occupier.
- (4) A person who fails without reasonable excuse to comply with the requirements of this section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 1 on the standard scale.
- (5) For the purposes of subsection (1), an owner “disposes of” an interest in land if he disposes of it by way of sale, exchange or lease, or by way of the creation of any easement, right or privilege, or in any other way except by way of mortgage.

#### **28R Byelaws.**

- (1) The Nature Conservancy Council may make byelaws for the protection of a site of special scientific interest.

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- (2) The following provisions of the 1949 Act apply in relation to byelaws under this section as they apply in relation to byelaws under section 20 of that Act—
- (a) subsections (2) and (3) of section 20 (reading references there to nature reserves as references to sites of special scientific interest); and
  - (b) sections 106 and 107.”

#### Marginal Citations

- M56** 1991 c. 56.  
**M57** 1991 c. 59.  
**M58** 1972 c. 70.  
**M59** 1990 c. 8.  
**M60** 1975 c. 26.  
**M61** 1990 c. 8.  
**M62** 1972 c. 70.  
**M63** 1990 c. 8.  
**M64** 1990 c. 8.

- 2 Section 29 (special protection for certain areas of special scientific interest) and section 30 (compensation where an order is made under section 29) of the 1981 Act shall cease to have effect.
- 3 (1) Section 31 of the 1981 Act (restoration where order under section 29 is contravened) is amended as follows.
- (2) For subsection (1) there is substituted—
- “(1) Where—
- (a) the operation in respect of which a person is convicted of an offence under section 28P(1), (2) or (3) has destroyed or damaged any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest, or
  - (b) a person is convicted of an offence under section 28P(6),
- the court by which he is convicted, in addition to dealing with him in any other way, may make an order requiring him to carry out, within such period as may be specified in the order, such operations (whether on land included in the site of special scientific interest or not) as may be so specified for the purpose of restoring the site of special scientific interest to its former condition.”
- (3) For the sidenote, there is substituted “ Restoration following offence under section 28P. ”.
- 4 In section 32 (duties of agriculture Ministers with respect to areas of special scientific interest), in subsection (1), for “land notified under section 28(1)” there is substituted “ land included in a site of special scientific interest ”.
- 5 (1) Section 52 of the 1981 Act (interpretation of Part II) is amended as follows.
- (2) In subsection (1), after the definition of “the Nature Conservancy Councils” there is inserted—

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““notice” and “notification” mean notice or notification in writing;

“site of special scientific interest” means an area of land which has been notified under section 28(1)(b);”.

(3) In subsection (2), after “district planning authority” there is inserted “ and, in sections 28 to 28D, shall also be construed in accordance with section 28(10); ”.

(4) After subsection (2) there is inserted—

“(2A) Where a notification under section 28(1)(b) has been—

- (a) modified under section 28(5)(b),
- (b) varied under section 28A(3), or
- (c) varied with modifications under section 28A(5)(b),
- (d) extended under section 28B(2), or
- (e) extended with modifications by virtue of section 28B(7),

a reference to such a notification (however expressed) is (unless the context otherwise requires) a reference to the notification as thus altered.

(2B) References to a notification under section 28(1) or 28(5)(b), or to a local land charge existing by virtue of section 28(9), shall be construed in accordance with section 28C(9).

(2C) For the purposes of this Part, in relation to land in England and Wales which is common land, “occupier” includes the commoners or any of them; and

- (a) “common land” means common land as defined in section 22 of the <sup>M65</sup>Commons Registration Act 1965; and
- (b) “commoner” means a person with rights of common as defined in that section.”

#### Marginal Citations

M65 1965 c. 64.

6 In section 67 of the 1981 Act (application to Crown), after subsection (1) there is inserted—

“(1A) An interest in Crown land, other than one held by or on behalf of the Crown, may be acquired under section 28N, but only with the consent of the appropriate authority.

(1B) Byelaws made by virtue of section 28R may apply to Crown land if the appropriate authority consents.”

7 In the 1981 Act, after Schedule 10 there is inserted the following Schedule—

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## “SCHEDULE 10A

### DELEGATION OF APPELLATE FUNCTIONS

#### *Interpretation*

- 1 In this Schedule—
- “appointed person” means a person appointed under section 28F(8) or 28L(10); and
- “appointment”, in the case of any appointed person, means appointment under either of those provisions.

#### *Appointments*

- 2 An appointment under section 28F(8) or 28L(10) must be in writing and—
- (a) may relate to any particular appeal or matter specified in the appointment or to appeals or matters 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 Secretary of State in respect of any appeal or matter 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 any appeal or matter to which his appointment relates, have the same powers and duties as the Secretary of State, other than—
- (a) any function of making regulations;
  - (b) any function of holding an inquiry or other hearing or of causing an inquiry or other hearing to be held; or
  - (c) 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
    - (ii) of referring any question or matter to that person.

#### *Holding of local inquiries and other hearings by appointed persons*

- 4 (1) If either of the parties to an appeal or matter expresses a wish to appear before and be heard by the appointed person, the appointed person shall give both of them an opportunity of appearing and being heard.
- (2) Whether or not a party to an appeal or matter has asked for an opportunity to appear and be heard, the appointed person—
- (a) may hold a local inquiry or other hearing in connection with the appeal or matter, and

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- (b) shall, if the Secretary of State so directs, hold a local inquiry in connection with the appeal or matter.
- (3) Where an appointed person holds a local inquiry or other hearing by virtue of this Schedule, an assessor may be appointed by the Secretary of State 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 appeal or matter.
- (4) Subject to section 28F(10) or 28L(12), the costs of a local inquiry held under this Schedule shall be defrayed by the Secretary of State.

*Revocation of appointments and making of new appointments*

- 5 (1) Where under paragraph 2(c) the appointment of the appointed person is revoked in respect of any appeal or matter, the Secretary of State shall, unless he proposes to determine the appeal or matter himself, appoint another person under section 28F(8) or 28L(10) to determine the appeal or matter instead.
- (2) Where such a new appointment is made, the consideration of the appeal or matter, or any hearing in connection with it, shall be begun afresh.
- (3) Nothing in sub-paragraph (2) 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 persons  
to be treated as those of the Secretary of State*

- 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 Secretary of State.
- (2) Sub-paragraph (1) shall not apply—
  - (a) for the purposes of so much of any contract made between the Secretary of State and the appointed person as relates to the exercise of the function; or
  - (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that sub-paragraph.”

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## SCHEDULE 10

Section 76(1).

### CONSEQUENTIAL AMENDMENTS RELATING TO SITES OF SPECIAL SCIENTIFIC INTEREST

#### PART I

##### AMENDMENTS OF WILDLIFE AND COUNTRYSIDE ACT 1981

- 1 (1) The 1981 Act is amended as follows.
- (2) In section 28 (areas of special scientific interest)—
- (a) in subsection (8)(a), “Part III of the Town and Country Planning Act 1990 or” is omitted; and
  - (b) subsections (10) and (11) are omitted.
- (3) In section 29 (special protection for certain areas of special scientific interest), in subsection (9)(a), “Part III of the Town and Country Planning Act 1990 or” is omitted.
- (4) In section 30 (compensation where order is made under section 29)—
- (a) in subsection (4)(c), “section 10 of the Land Compensation Act 1973 (mortgages, trusts for sale and settlements) or” is omitted;
  - (b) in subsection (5), “section 5 of the Land Compensation Act 1961 or” is omitted;
  - (c) in subsection (7), “section 32 of the Land Compensation Act 1961 or” is omitted;
  - (d) in subsection (8), “the Lands Tribunal or” is omitted; and
  - (e) in subsection (9), “sections 2 and 4 of the Land Compensation Act 1961 or” is omitted.
- 2 In section 74 of the 1981 Act (short title, commencement and extent), after subsection (5) there is inserted—
- “(5A) Sections 29 and 30 extend to Scotland only.”

#### PART II

##### OTHER AMENDMENTS

##### *Harbours Act 1964 (c. 40)*

- 3 In Schedule 3 to the Harbours Act 1964 (procedure for making harbour revision and empowerment orders), in paragraph 1 (interpretation), for paragraph (a) of the definition of “sensitive area” there is substituted—
- “(a) land within a site of special scientific interest (within the meaning of the Wildlife and Countryside Act 1981);”.

##### *Conservation of Seals Act 1970 (c. 30)*

- 4 In section 10 of the Conservation of Seals Act 1970 (power to grant licences to kill or take seals), in subsection (4), for paragraph (b) there is substituted—



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“(b) is a site of special scientific interest (within the meaning of the <sup>M66</sup>Wildlife and Countryside Act 1981); or”.

**Marginal Citations**

M66 1981 c. 69.

*Highways Act 1980 (c. 66)*

5 In section 105A of the Highways Act 1980 (environmental impact assessments), in subsection (6), for paragraph (a) there is substituted—

“(a) a site of special scientific interest (within the meaning of the Wildlife and Countryside Act 1981);”.

*Channel Tunnel Act 1987 (c. 53)*

6 In section 9 of the Channel Tunnel Act 1987 (planning permission), for subsection (7) there is substituted—

“(7) Section 28I of the Wildlife and Countryside Act 1981 (statutory undertakers: duty in relation to authorising operations) shall not apply in relation to any operation which is connected with the carrying out of any works authorised to be carried out by this Act and which is carried out within the limits of land to be acquired for any of those works, and neither shall the following—

- (a) section 28E(1) (prohibition of operations on land forming part of a site of special scientific interest), in relation to an owner or occupier other than an authority to which section 28G of that Act applies;
- (b) sections 28G(2) (general duty of statutory undertakers) and 28H (duty of statutory undertakers when carrying out operations), in relation to such an authority.”

*Town and Country Planning Act 1990 (c. 8)*

7 In section 87 of the Town and Country Planning Act 1990 (exclusion of certain descriptions of land or development from a simplified planning zone), in subsection (1), for paragraph (f) there is substituted—

“(f) land within a site of special scientific interest (within the meaning of the Wildlife and Countryside Act 1981).”.

*Environmental Protection Act 1990 (c. 43)*

8 In section 36 of the Environmental Protection Act 1990 (grant of waste management licences), in subsection (7), for “land which has been notified under section 28(1) of the Wildlife and Countryside Act 1981 (protection for certain areas)” there is substituted “ within a site of special scientific interest (within the meaning of the Wildlife and Countryside Act 1981) ”.

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*Water Industry Act 1991 (c. 56)*

- 9 In section 156 of the Water Industry Act 1991 (restriction on disposals of land), in subsection (8), for paragraph (b) in the definition of “area of outstanding natural beauty or special scientific interest” there is substituted—
- “(b) is a site of special scientific interest within the meaning of the Wildlife and Countryside Act 1981;”.

*Environment Act 1995 (c. 25)*

- 10 In Schedule 13 to the Environment Act 1995 (review of old mineral planning permissions), for paragraph 2(4)(b) there is substituted—
- “(b) a site of special scientific interest (within the meaning of the Wildlife and Countryside Act 1981);”.

*Channel Tunnel Rail Link Act 1996 (c. 61)*

- 11 In Schedule 10 to the Channel Tunnel Rail Link Act 1996 (disapplication and modification of miscellaneous controls), for paragraph 6 and the heading preceding it there is substituted—

*“ Sites of special scientific interest*

- 6 Section 28I of the <sup>M67</sup>Wildlife and Countryside Act 1981 (statutory undertakers: duty in relation to authorising operations) shall not apply to any operation carried out for the purposes of or in connection with the exercise of any of the powers conferred by this Part of this Act with respect to works, and neither shall the following—
- (a) section 28E(1) (prohibition of operations on land forming part of a site of special scientific interest), in relation to an owner or occupier other than an authority to which section 28G of that Act applies;
- (b) sections 28G(2) (general duty of statutory undertakers) and 28H (duty of statutory undertakers when carrying out operations), in relation to such an authority.”.

**Marginal Citations**

M67 1981 c. 69.

SCHEDULE 11

Section 76(2).

TRANSITIONAL PROVISIONS AND SAVINGS RELATING  
TO SITES OF SPECIAL SCIENTIFIC INTEREST

*Interpretation*

- 1 (1) In this Schedule—

*Status: Point in time view as at 13/02/2004.*

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“the Nature Conservancy Council” has the meaning given by section 27A of the 1981 Act and “stop notice” has the meaning given by paragraph 9(3) of this Schedule;

“old section 28” means section 28 of the 1981 Act as it had effect before its substitution by section 75(1) of and Schedule 9 to this Act;

“new section 28” means section 28 of the 1981 Act as substituted by section 75(1) of and Schedule 9 to this Act; and

“the substitution date” means the date on which new section 28 is substituted for old section 28,

and references to other sections are to those sections in the 1981 Act unless otherwise specified.

- (2) Nothing in this Schedule prejudices the application of section 16 (general savings) or 17 (repeal and re-enactment) of the <sup>M68</sup>Interpretation Act 1978 to any case not provided for in this Schedule.

#### Marginal Citations

M68 1978 c. 30.

#### *Notifications given under old section 28*

2 Except as mentioned in paragraphs 4 and 5, a notification under old section 28(1) (a), (b) or (c) (including one having effect in modified form by virtue of old section 28(4C)) has effect from the substitution date as if it were a notification under new section 28(1)(a), (b) or (c) respectively.

3 A notice under old section 28(4A)(a) or (b) has effect from the substitution date as if it were a notice under new section 28(5)(a) or (b) respectively.

#### *Modification of operation of new section 28*

4 New section 28(2) does not apply to a notification taking effect as mentioned in paragraph 2.

5 The words following paragraph (b) in new section 28(4) do not apply to a notification taking effect as mentioned in paragraph 2, but instead paragraph 6 applies.

6 (1) The Nature Conservancy Council shall, within the period of five years beginning with the substitution date, give a notice to every owner and occupier of any land which is the subject of—

(a) a notification under old section 28(4A)(b), or

(b) a notice under new section 28(5)(b) following a notification under old section 28(1),

containing a statement of the Council’s views about the matters referred to in the words following paragraph (b) in new section 28(4).

- (2) The notice shall specify the date (not being less than three months from the date of the giving of the notice) on or before which, and the manner in which, representations or objections with respect to it may be made; and the Council shall consider any representation or objection duly made.

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- (3) Within the period of two months beginning immediately after the date referred to in sub-paragraph (2), the Council shall give a notice to every owner and occupier of the land confirming the statement referred to in sub-paragraph (1) or containing a revised statement.

*Modification of operation of section 28A*

- 7 (1) This paragraph applies to a notification under old section 28(1) given—
- (a) before the commencement of the <sup>M69</sup>Wildlife and Countryside (Amendment) Act 1985; or
  - (b) after the commencement of that Act but preceded by a notice under section 28(2) as originally enacted, given during the six months immediately preceding that commencement.
- (2) In relation to a notification to which this paragraph applies, the reference in section 28A(1) to—
- (a) notice given under section 28(5)(b) confirming a notification with or without modifications, and
  - (b) the confirmed notification,
- shall be construed as a reference to the notification under old section 28(1).

**Marginal Citations**

**M69** 1985 c. 31.

*Modification of operation of section 28E*

- 8 (1) Except as provided in paragraph 9—
- (a) a notice given under old section 28(5)(a) has effect from the substitution date as if it were a notice given under section 28E(1)(a); and
  - (b) a consent given under old section 28(6)(a) has effect from that date as if it were a consent under section 28E(3)(a).
- (2) In relation to such a consent, section 28E has effect as if for subsections (7) and (8) there were substituted—
- “(7) A notice under subsection (6) must include a notice of—
- (a) the Council’s reasons for withdrawing or modifying the consent;
  - (b) the rights of appeal under section 28F;
  - (c) the effect of subsection (9); and
  - (d) the effect of section 28M.”
- 9 (1) Subject to paragraph 10, this paragraph applies where—
- (a) a notice has been given under old section 28(5)(a) before the substitution date;
  - (b) on the substitution date neither of the conditions set out in old section 28(6) (a) and (b) is fulfilled; and
  - (c) on the substitution date four months have expired since the notice under old section 28(5)(a) was given,

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but even if those conditions are fulfilled, this paragraph does not apply in relation to operations specified in a notice under section 29(4)(a) on any land if immediately before the substitution date an order under section 29 was in effect in relation to that land.

- (2) Where this paragraph applies, but subject to sub-paragraph (7), the prohibition in section 28E(1) on carrying out, or causing or permitting to be carried out, an operation does not apply in relation to an operation specified in the notice under old section 28(5)(a).
  - (3) Where this paragraph applies, the Nature Conservancy Council may, on or after the substitution date, give a notice (a “stop notice”) to every owner and occupier of the land to which the stop notice is to apply.
  - (4) A stop notice is to specify—
    - (a) the date on which it is to take effect;
    - (b) the operations to which it applies; and
    - (c) the land to which it applies,and must contain a notice of the right of the person to whom the stop notice is given to appeal against it in accordance with paragraph 11, and a notice of the effect of sub-paragraph (8).
  - (5) The date on which a stop notice is to take effect may not be sooner than the end of the period of three days beginning with the date the stop notice is given, unless the Council consider that there are special reasons which justify a shorter period, and a statement of those reasons is included with the stop notice.
  - (6) The operations to which a stop notice may apply are all or any of the operations specified in the notice under old section 28(5)(a).
  - (7) From the date on which the stop notice takes effect, sub-paragraph (2) of this paragraph ceases to apply in relation to the operations specified in the stop notice on the land to which the stop notice applies.
  - (8) Where the Council give a stop notice, they shall make a payment to any owner or occupier of the land who suffers loss because of it.
  - (9) The amount of a payment under sub-paragraph (8) is to be determined by the Council in accordance with guidance given and published by the Ministers (within the meaning of section 50).
  - (10) Section 50(3) applies to the determination of the amount of a payment under sub-paragraph (8) as it applies to the determination of the amount of payments under that section.
  - (11) This paragraph ceases to apply, in relation to any operation specified in the notice referred to in sub-paragraph (1)(a) except an operation to which a stop notice applies, if the operation has not begun before the end of the period of—
    - (a) three years beginning with the substitution date; or
    - (b) in a case falling within paragraph 10(2) or (3), three years beginning immediately after the expiry of the period of one month or longer referred to there.
- 10 (1) An agreement under old section 28(6A) in effect immediately before the substitution date has effect from the substitution date as an agreement that paragraph 9 is not

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to apply in relation to the operation which is the subject of the agreement; and, accordingly, paragraph 9 does not apply in relation to that operation (as regards both the owner and the occupier of the land).

- (2) Where a notice has been given under old section 28(6B) before the substitution date, paragraph 9 has effect, in relation to the operation in question, as if for the period mentioned in paragraph 9(1)(c) there were substituted the period of one month from the giving of the notice or (if a longer period is specified in the notice) that longer period.
  - (3) If after an agreement has taken effect as mentioned in sub-paragraph (1) the relevant person (whether a party to the agreement or not) gives the Nature Conservancy Council written notice that he wishes to terminate the agreement, then as from the giving of the notice paragraph 9 has effect, in relation to the operation in question (as regards both the owner and the occupier of the land), as if for the period mentioned in paragraph 9(1)(c) there were substituted the period of one month from the giving of the notice or (if a longer period is specified in the notice) that longer period.
  - (4) In sub-paragraph (3), “relevant person” has the same meaning as in old section 28(6C).
- 11
- (1) A person to whom a stop notice is given may by notice appeal against it to the Secretary of State, but meanwhile it remains in effect.
  - (2) Section 28F(3) to (11) shall apply in relation to such an appeal as they apply in relation to an appeal against a decision to withdraw a consent (see section 28F(1)(d)), but with the following modifications—
    - (a) as if, in section 28F(3), for paragraphs (a) and (b) and the following words “or, in either case,” there were substituted “ within the period of two months beginning with the date of the stop notice, or ”; and
    - (b) as if, for section 28F(5), there were substituted—
 

“(5) On determining the appeal, the Secretary of State may quash or affirm the stop notice; and if he affirms it, he may do so either in its original form or with the removal from it of such operations as he thinks fit, or in relation to such reduced area of land as he thinks fit.”
- 12
- (1) The Nature Conservancy Council may, by notice given to every owner and occupier of land to which a stop notice applies, vary a stop notice by removing any operation to which it applies or reducing the area of land to which it applies.
  - (2) Where after giving a stop notice—
    - (a) the Council consent to an operation to which the stop notice applies;
    - (b) an operation to which it applies becomes one which may be carried out under the terms of an agreement under section 16 of the National Parks and Access to the <sup>M70</sup>Countryside Act 1949 or section 15 of the <sup>M71</sup>Countryside Act 1968; or
    - (c) an operation to which it applies becomes one which may be carried out in accordance with a management scheme under section 28J or a management notice under section 28K,

the stop notice shall be deemed to be varied accordingly by the removal from the stop notice of the operation in question in relation to the land to which the consent, agreement or management scheme or notice relates.

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#### Marginal Citations

M70 1949 c. 97.

M71 1968 c. 41.

#### *Modification of operation of section 28F*

- 13 (1) Section 28F(1)(a) does not apply to a refusal of a consent under old section 28(6)(a).  
(2) Section 28F(1)(b) does not apply to consents taking effect as mentioned in paragraph 8(1)(b).

#### *Modification of operation of section 28H*

- 14 Section 28H does not apply in relation to operations which have already begun on the date section 28H comes into force.

#### *Section 29*

- 15 Paragraphs 16 and 17 apply where, immediately before the coming into force of paragraph 2 of Schedule 9 to this Act, there is in effect an order applying section 29(3) to any land (“the relevant land”).
- 16 (1) If the relevant land is not included in a site of special scientific interest, section 28E applies to it as if it were (and accordingly section 28P(1) applies also); and references in section 28E to a notification under section 28(1)(b) shall be construed as references to an order under section 29.
- (2) Whether or not the relevant land is included in a site of special scientific interest, a notice given under section 29(4)(a) has effect as if it were a notice given under section 28E(1)(a), except as provided in paragraph 17.
- (3) Whether or not the relevant land is included in a site of special scientific interest, a consent given under section 29(5)(a) has effect as if it were a consent given under section 28E(3)(a), and in relation to such a consent section 28E has effect as if for subsections (7) and (8) there were substituted—
- “(7) A notice under subsection (6) must include a notice of—
- (a) the Council’s reasons for withdrawing or modifying the consent;
  - (b) the rights of appeal under section 28F;
  - (c) the effect of subsection (9); and
  - (d) the effect of section 28M.”
- 17 (1) This paragraph applies where—
- (a) a notice has been given under section 29(4)(a) before the repeal of section 29 by paragraph 2 of Schedule 9 to this Act;
  - (b) on the date on which paragraph 2 of Schedule 9 to this Act comes into force, neither of the conditions set out in section 29(5)(a) and (b) is fulfilled; and
  - (c) on that date the period mentioned in paragraph (c) of section 29(5) (or in that paragraph as it has effect by virtue of section 29(6) or (7)) has expired.
- (2) Where this paragraph applies, but subject to paragraph 9(7) as it has effect by virtue of sub-paragraph (3) of this paragraph, the prohibition in section 28E(1) on carrying

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out, or causing or permitting to be carried out, an operation does not apply in relation to an operation specified in the notice under section 29(4)(a).

- (3) Paragraphs 9(3) to (11) and 11 of this Schedule apply also in relation to this paragraph, but as if—
- (a) in those provisions references to a notice under old section 28(5)(a) were to a notice under section 29(4)(a); and
  - (b) the reference to “sub-paragraph (2)” in paragraph 9(7) were to sub-paragraph (2) of this paragraph.
- 18 (1) This paragraph applies where—
- (a) as a result of the coming into force of paragraph 2 of Schedule 9 to this Act, a local inquiry or a hearing (as mentioned in paragraph 4(1)(a) and (b) respectively of Schedule 11 to the 1981 Act) comes to an end, and
  - (b) an owner or occupier of land in relation to which an order under section 29 has been made has incurred expense in connection with opposing the order at the local inquiry or hearing.
- (2) If this paragraph applies, the Nature Conservancy Council shall (subject to sub-paragraph (3)) pay a person’s expenses referred to in paragraph (1)(b) to the extent that they are reasonable.
- (3) The Council need not pay any such expenses unless the person—
- (a) applies to the Council for such a payment; and
  - (b) satisfies the Council that he has incurred the expenses.

#### *Compensation and grants*

- 19 (1) Despite its repeal by paragraph 2 of Schedule 9 to this Act, section 30 (compensation where order made under section 29) continues to apply in connection with an order made under section 29 before the coming into force of that paragraph.
- (2) After the repeal of section 29 by that paragraph, section 32 (duties of agriculture Ministers with respect to areas of special scientific interest) continues to apply, in relation to an application under that section relating to land to which section 29(3) applied immediately before its repeal, as if that land were included in a site of special scientific interest.

#### *Offences and restoration orders*

- 20 (1) Section 28P does not have effect in relation to an offence committed before the substitution date, but old section 28 or, as the case may be, section 29, has effect instead.
- (2) In relation to an offence under section 29, section 31 as it had effect before the coming into force of paragraph 3 of Schedule 9 to this Act shall continue to apply.

#### *Powers of entry*

- 21 Section 51 (powers of entry) has effect on and after the substitution date as if, in subsection (1), after paragraph (m) there were inserted—
- “(n) to determine whether or not to give or vary a stop notice;”,



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and as if, in subsection (2)(a), after “paragraphs (a) to (k)” there were inserted “and paragraph (n)”.

#### *Service of notices*

- 22 Section 70A (service of notices) applies in relation to notices given under this Schedule as it applies in relation to notices and other documents required or authorised to be served or given under the 1981 Act.

### SCHEDULE 12

Section 81(1).

#### AMENDMENTS RELATING TO PART I OF WILDLIFE AND COUNTRYSIDE ACT 1981

- 1 In section 1(5) of the 1981 Act (offence of intentional disturbance of wild birds) after “intentionally” there is inserted “or recklessly”.
- 2 In section 3 of that Act (areas of special protection) in subsection (1)(c) for “the offender shall be liable to a special penalty” there is substituted “the offence shall be treated as falling within section 7(3A)”.
- 3 In section 6 of that Act (sale etc. of live or dead wild birds, eggs etc.), in subsection (2) the words from “who is not” to “Secretary of State” are omitted.
- 4 (1) In section 7 of that Act (registration etc. of certain captive birds), in subsection (3) (a), for “for which a special penalty is provided” there is substituted “which falls within subsection (3A)”.
- (2) After subsection (3) of that section there is inserted—
- “(3A) The offences falling within this subsection are—
- (a) any offence under section 1(1) or (2) in respect of—
- (i) a bird included in Schedule 1 or any part of, or anything derived from, such a bird,
- (ii) the nest of such a bird, or
- (iii) an egg of such a bird or any part of such an egg;
- (b) any offence under section 1(5) or 5;
- (c) any offence under section 6 in respect of—
- (i) a bird included in Schedule 1 or any part of, or anything derived from, such a bird, or
- (ii) an egg of such a bird or any part of such an egg;
- (d) any offence under section 8.”.
- 5 In section 9 of that Act (protection of certain wild animals)—
- (a) in subsection (4) after “intentionally” there is inserted “or recklessly”, and
- (b) after that subsection there is inserted—
- “(4A) Subject to the provisions of this Part, if any person intentionally or recklessly disturbs any wild animal included in Schedule 5 as—
- (a) a dolphin or whale (cetacea), or
- (b) a basking shark (cetorhinus maximus),
- he shall be guilty of an offence.”

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- 6 In section 16(3) of that Act (power to grant licences) for “and (4)” there is substituted “, (4) and (4A)”.
- 7 In section 19 of that Act (enforcement of Part I), in subsection (3) for the words from “suspecting that” to “has been committed” there is substituted “suspecting that an offence under this Part has been committed”.
- 8 After that section there is inserted—

**“19ZA Enforcement: wildlife inspectors.**

- (1) In this Part, “wildlife inspector” means a person authorised in writing by the Secretary of State under this subsection.
- (2) An authorisation under subsection (1) is subject to any conditions or limitations specified in it.
- (3) A wildlife inspector may, at any reasonable time and (if required to do so) upon producing evidence that he is authorised—
- (a) enter and inspect any premises for the purpose of ascertaining whether an offence under section 6, 9(5) or 13(2) is being, or has been, committed on those premises;
  - (b) enter and inspect any premises where he has reasonable cause to believe that any birds included in Schedule 4 are kept, for the purpose of ascertaining whether an offence under section 7 is being, or has been, committed on those premises;
  - (c) enter any premises for the purpose of ascertaining whether an offence under section 14 is being, or has been, committed on those premises;
  - (d) enter and inspect any premises for the purpose of verifying any statement or representation which has been made by an occupier, or any document or information which has been furnished by him, and which he made or furnished—
    - (i) for the purposes of obtaining (whether for himself or another) a relevant registration or licence, or
    - (ii) in connection with a relevant registration or licence held by him.
- (4) In subsection (3)—
- (a) paragraphs (a) and (b) do not confer power to enter a dwelling except for purposes connected with—
    - (i) a relevant registration or licence held by an occupier of the dwelling, or
    - (ii) an application by an occupier of the dwelling for a relevant registration or licence; and
  - (b) paragraph (c) does not confer any power to enter a dwelling.
- (5) A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 9(5), 13(2) or 14 is being, or has been, committed in respect of any specimen, require any person who has the specimen in his possession or control to make it available for examination by the inspector.
- (6) Any person who has in his possession or control any live bird or other animal shall give any wildlife inspector acting in the exercise of powers conferred

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by this section such assistance as the inspector may reasonably require for the purpose of examining the bird or other animal.

- (7) Any person who—
- (a) intentionally obstructs a wildlife inspector acting in the exercise of powers conferred by subsection (3) or (5), or
  - (b) fails without reasonable excuse to give any assistance reasonably required under subsection (6),
- shall be guilty of an offence.
- (8) Any person who, with intent to deceive, falsely pretends to be a wildlife inspector shall be guilty of an offence.
- (9) In this section—
- “relevant registration or licence” means—
- (a) a registration in accordance with regulations under section 7(1), or
  - (b) a licence under section 16 authorising anything which would otherwise be an offence under section 6, 7, 9(5), 13(2) or 14; and
- “specimen” means any bird, other animal or plant or any part of, or anything derived from, a bird, other animal or plant.

#### **19ZB Power to take samples.**

- (1) A constable who suspects with reasonable cause that a specimen found by him in the exercise of powers conferred by section 19 is one in respect of which an offence under this Part is being or has been committed may require the taking from it of a sample of blood or tissue in order to determine its identity or ancestry.
- (2) A constable who suspects with reasonable cause that an offence under this Part is being or has been committed in respect of any specimen (“the relevant specimen”) may require any person to make available for the taking of a sample of blood or tissue any specimen (other than the relevant specimen) in that person’s possession or control which is alleged to be, or which the constable suspects with reasonable cause to be, a specimen a sample from which will tend to establish the identity or ancestry of the relevant specimen.
- (3) A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 9(5), 13(2) or 14 is being or has been committed, require the taking of a sample of blood or tissue from a specimen found by him in the exercise of powers conferred by section 19ZA(3)(a) to (c) in order to determine its identity or ancestry.
- (4) A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 9(5), 13(2) or 14 is being or has been committed in respect of any specimen (“the relevant specimen”), require any person to make available for the taking of a sample of blood or tissue any specimen (other than the relevant specimen) in that person’s possession or control which is alleged to be, or which the wildlife inspector suspects with reasonable cause to be, a specimen a sample from which will tend to establish the identity or ancestry of the relevant specimen.

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- (5) No sample from a live bird, other animal or plant shall be taken pursuant to a requirement under this section unless the person taking it is satisfied on reasonable grounds that taking the sample will not cause lasting harm to the specimen.
- (6) No sample from a live bird or other animal shall be taken pursuant to such a requirement except by a veterinary surgeon.
- (7) Where a sample from a live bird or other animal is to be taken pursuant to such a requirement, any person who has possession or control of the specimen shall give the person taking the sample such assistance as he may reasonably require for that purpose.
- (8) A constable entering premises under section 19(2), and any wildlife inspector entering premises under section 19ZA(3), may take with him a veterinary surgeon if he has reasonable grounds for believing that such a person will be required for the exercise on the premises of powers under subsections (1) to (4).
- (9) Any person who—
- (a) intentionally obstructs a wildlife inspector acting in the exercise of the power conferred by subsection (3),
  - (b) fails without reasonable excuse to make available any specimen in accordance with a requirement under subsection (2) or (4), or
  - (c) fails without reasonable excuse to give any assistance reasonably required under subsection (7),
- shall be guilty of an offence.
- (10) In this section—
- (a) “specimen” has the same meaning as in section 19ZA, and
  - (b) in relation to a specimen which is a part of, or is derived from, a bird, other animal or plant, references to determining its identity or ancestry are to determining the identity or ancestry of the bird, other animal or plant.”
- 9 (1) In section 20 of that Act (time limit for summary prosecution of certain offences under Part I)—
- (a) subsection (1) is omitted, and
  - (b) in subsection (2) for “an offence to which this section applies” there is substituted “ an offence under this Part ”.
- (2) Sub-paragraph (1) does not have effect in relation to any offence committed before the commencement of this paragraph.
- 10 (1) Section 21 of that Act (penalties, forfeitures etc. for offences under Part I) is amended as follows.
- (2) For subsections (1) to (3) there is substituted—
- “(1) Subject to subsection (5), a person guilty of an offence under any of sections 1 to 13 or section 17 shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.”
- (3) In subsection (4)—

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- (a) in paragraph (a) for the words from “to a fine” to the end there is substituted “ to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both ”, and
- (b) in paragraph (b) for “to a fine” there is substituted “ to imprisonment for a term not exceeding two years or to a fine, or to both ”.

(4) After subsection (4) there is inserted—

“(4A) Except in a case falling within subsection (4B), a person guilty of an offence under section 19ZA(7) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4B) A person guilty of an offence under subsection (7) of section 19ZA in relation to a wildlife inspector acting in the exercise of the power conferred by subsection (3)(c) of that section shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(4C) A person guilty of an offence under section 19ZA(8) shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(4D) A person guilty of an offence under section 19ZB(9) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

(5) In subsection (5) the words “, (2) or (3)” are omitted.

(6) Sub-paragraphs (1) to (5) and the repeal by this Act of provisions of the 1981 Act relating to special penalties do not have effect in relation to any offence committed before the commencement of this paragraph.

11 In section 24 of that Act (functions of the Nature Conservancy Councils), in subsection (4) for paragraph (c) there is substituted—

“(c) any wildlife inspector.”

12 In section 27 of that Act (interpretation of Part I), in subsection (1) after the definition of “wild plant” there is inserted—

““wildlife inspector” has the meaning given by section 19ZA(1).”

F913 .....

**Textual Amendments**

**F9** Sch. 12 para. 13 repealed (1.10.2002) by 2002 c. 30, s. 107, Sch. 8; S.I. 2002/2306, art. 2(g)(iii)(h)

*Status: Point in time view as at 13/02/2004.*

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## SCHEDULE 13

Section 86(2).

### AREAS OF OUTSTANDING NATURAL BEAUTY: CONSERVATION BOARDS

#### *Interpretation*

- 1 In this Schedule—
- “an English conservation board” means a conservation board for an area of outstanding natural beauty in England;
- “the relevant order”, in relation to a conservation board, means—
- (a) the order under section 86 establishing that board,
  - (b) any order under that section relating to that board, or
  - (c) any order made in relation to that board in exercise of the power to amend an order under that section.

#### **Commencement Information**

**I33** Sch. 13 para. 1 wholly in force at 1.5.2001; Sch. 13 para. 1 not in force at Royal Assent see s. 103(3); Sch. 13 para. 1 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 13 para. 1 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

#### *Status and constitution of conservation boards*

- 2 A conservation board shall be a body corporate.

#### **Commencement Information**

**I34** Sch. 13 para. 2 wholly in force at 1.5.2001; Sch. 13 para. 2 not in force at Royal Assent see s. 103(3); Sch. 13 para. 2 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 13 para. 2 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

- 3 (1) A conservation board shall consist of—
- (a) such number of local authority members as may be specified in the relevant order,
  - (b) such number of members to be appointed by the Secretary of State or the National Assembly for Wales as may be so specified, and
  - (c) in the case of an English conservation board, such number of parish members as may be so specified.
- (2) The numbers specified in the relevant order for any conservation board in relation to the membership of the board must be such that—
- (a) the number of local authority members is at least 40 per cent. of the total number of members, and
  - (b) in the case of an English conservation board, the number of parish members is at least 20 per cent. of the total number of members.

*Status: Point in time view as at 13/02/2004.*

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#### Commencement Information

**I35** Sch. 13 para. 3 wholly in force at 1.5.2001; Sch. 13 para. 3 not in force at Royal Assent see s. 103(3); Sch. 13 para. 3 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 13 para. 3 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

#### *Local authority members*

- 4 (1) The local authority members of a conservation board shall be appointed in accordance with the provisions of the relevant order.
- (2) The relevant order must provide either—
- (a) for the local authority members to be appointed by such of the local authorities for areas wholly or partly comprised in the area of outstanding natural beauty as may be specified in or determined under the order (“the relevant councils”), or
  - (b) for the local authority members to be appointed by such of the relevant councils as may be determined in accordance with a scheme contained in the relevant order.
- (3) A person shall not be appointed as a local authority member of a conservation board unless he is a member of a local authority the area of which is wholly or partly comprised in the relevant area of outstanding natural beauty; and, in appointing local authority members of a conservation board, a local authority shall have regard to the desirability of appointing members of the authority who represent wards, or (in Wales) electoral divisions, situated wholly or partly within the relevant area of outstanding natural beauty.
- (4) Subject to the following provisions of this Schedule and to the provisions of the relevant order, where a person who qualifies for his appointment by virtue of his membership of any local authority is appointed as a local authority member of a conservation board—
- (a) he shall hold office from the time of his appointment until he ceases to be a member of that authority; but
  - (b) his appointment may, before any such cessation, be terminated for the purposes of, and in accordance with, sections 15 to 17 of the <sup>M72</sup>Local Government and Housing Act 1989 (political balance).
- (5) Sub-paragraph (4)(a) shall have effect so as to terminate the term of office of a person who, on retiring from any local authority, immediately becomes such a member again as a newly elected councillor; but a person who so becomes a member again shall be eligible for re-appointment to the conservation board.
- (6) The appointment of any person as a local authority member of a conservation board may provide that he is not to be treated for the purposes of sub-paragraph (4) as qualifying for his appointment by virtue of his membership of any local authority other than that specified in the appointment.
- (7) In paragraph 2(1) of Schedule 1 to the Local Government and Housing Act 1989 (bodies to which appointments have to be made taking account of political balance), after paragraph (ba) there is inserted—
- “(bb) a conservation board established by order under section 86 of the Countryside and Rights of Way Act 2000;”.

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#### **Commencement Information**

**I36** Sch. 13 para. 4 wholly in force at 1.5.2001; Sch. 13 para. 4 not in force at Royal Assent see s. 103(3); Sch. 13 para. 4 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 13 para. 4 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

#### **Marginal Citations**

**M72** 1989 c. 42.

#### *Parish members*

- 5 (1) The parish members of an English conservation board shall be appointed in accordance with the provisions of the relevant order, by—
- (a) the parish councils for parishes the whole or any part of which is comprised in the relevant area of outstanding natural beauty, and
  - (b) the parish meetings of any of those parishes which do not have separate parish councils.
- (2) A person shall not be appointed as a parish member of an English conservation board unless he is—
- (a) a member of the parish council for a parish the whole or any part of which is comprised in the relevant area of outstanding natural beauty, or
  - (b) the chairman of the parish meeting of a parish—
    - (i) which does not have a separate parish council, and
    - (ii) the whole or any part of which is comprised in the relevant area of outstanding natural beauty.
- (3) Subject to the following provisions of this Schedule and to the provisions of the relevant order, where a person who qualifies for his appointment by virtue of his membership of a parish council is appointed as a parish member of an English conservation board, he shall hold office from the time of his appointment until he ceases to be a member of that parish council.
- (4) Subject to the following provisions of this Schedule and to the provisions of the relevant order, where a person who qualifies for his appointment by virtue of his being the chairman of a parish meeting is appointed as a parish member of an English conservation board, he shall hold office from the time of his appointment until he ceases to be the chairman of that parish meeting.
- (5) Sub-paragraph (3) or (4) shall not have effect so as to terminate the term of office of a person who retires from a parish council, or ceases to be the chairman of a parish meeting, until such time as may be determined by the Secretary of State or the National Assembly for Wales in accordance with the relevant order.
- (6) A person who—
- (a) on retiring from a parish council, or
  - (b) on ceasing to be the chairman of a parish meeting,
- becomes a member of the parish council again as a newly elected councillor or, as the case may be, is elected to succeed himself as chairman of any parish meeting is eligible for re-appointment to the conservation board at the time mentioned in sub-paragraph (5).



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#### Commencement Information

**I37** Sch. 13 para. 5 wholly in force at 1.5.2001; Sch. 13 para. 5 not in force at Royal Assent see s. 103(3); Sch. 13 para. 5 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 13 para. 5 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

#### *Members appointed by the Secretary of State or the National Assembly for Wales*

- 6
- (1) Before appointing any person as a member of a conservation board, the Secretary of State shall consult the Agency.
  - (2) Before appointing any person as a member of a conservation board, the National Assembly for Wales shall consult the Council.
  - (3) Subject to the following provisions of this Schedule and to the provisions of the relevant order, a person appointed as a member of a conservation board by the Secretary of State or the National Assembly for Wales—
    - (a) shall hold office for such period of not less than one year nor more than three years as may be specified in the terms of his appointment; but
    - (b) on ceasing to hold office shall be eligible for re-appointment.
  - (4) The term of office of a person appointed by the Secretary of State or the National Assembly for Wales to fill such a vacancy in the membership of a conservation board as occurs where a person appointed by the Secretary of State or the Assembly ceases to be a member of the board before the end of his term of office may be for a period of less than one year if it is made to expire with the time when the term of office of the person in respect of whom the vacancy has arisen would have expired.
  - (5) Subject to the provisions of this Schedule and of the relevant order, a member of a conservation board appointed by the Secretary of State or the National Assembly for Wales shall hold office in accordance with the terms of his appointment.

#### Commencement Information

**I38** Sch. 13 para. 6 wholly in force at 1.5.2001; Sch. 13 para. 6 not in force at Royal Assent see s. 103(3); Sch. 13 para. 6 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 13 para. 6 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

#### *Chairman and deputy chairman*

- 7
- (1) The members of a conservation board shall elect, from amongst their members, both a chairman and a deputy chairman of the board.
  - (2) Subject to sub-paragraphs (3) and (4), the chairman and deputy chairman of a conservation board shall be elected for a period not exceeding one year; but a person so elected shall, on ceasing to hold office at the end of his term of office as chairman or deputy chairman, be eligible for re-election.
  - (3) A person shall cease to hold office as chairman or deputy chairman of a conservation board if he ceases to be a member of the board.

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- (4) Where a vacancy occurs in the office of chairman or deputy chairman of a conservation board, it shall be the duty of the members of that board to secure that the vacancy is filled as soon as possible.

**Commencement Information**

**I39** Sch. 13 para. 7 wholly in force at 1.5.2001; Sch. 13 para. 7 not in force at Royal Assent see s. 103(3); Sch. 13 para. 7 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 13 para. 7 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

*Audit*

- 8 In Schedule 2 to the Audit Commission Act 1998 (accounts subject to audit) in paragraph 1 after paragraph (j) there is inserted—  
 “(jj) a conservation board established by order under section 86 of the Countryside and Rights of Way Act 2000;”.

**Commencement Information**

**I40** Sch. 13 para. 8 wholly in force at 1.5.2001; Sch. 13 para. 8 not in force at Royal Assent see s. 103(3); Sch. 13 para. 8 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 13 para. 8 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

SCHEDULE 14

Section 87(6).

SUPPLEMENTAL POWERS OF CONSERVATION BOARDS

*Interpretation*

- 1 In this Schedule—  
 “common”, “disposal” and “open space” have the same meaning as in the <sup>M73</sup>Town and Country Planning Act 1990;  
 “relevant order” has the same meaning as in Schedule 13.

**Commencement Information**

**I41** Sch. 14 para. 1 wholly in force at 1.5.2001; Sch. 14 para. 1 not in force at Royal Assent see s. 103(3); Sch. 14 para. 1 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 14 para. 1 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

**Marginal Citations**

**M73** 1990 c. 8.

*Status: Point in time view as at 13/02/2004.*

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### *Power to acquire land*

- 2 (1) For the purposes of any of their functions under this or any other enactment, a conservation board may acquire by agreement any land, whether situated inside or outside their area of outstanding natural beauty.
- (2) The reference in sub-paragraph (1) to acquisition by agreement is a reference to acquisition for money or money's worth as purchaser or lessee.

#### **Commencement Information**

**I42** Sch. 14 para. 2 wholly in force at 1.5.2001; Sch. 14 para. 2 not in force at Royal Assent see s. 103(3); Sch. 14 para. 2 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 14 para. 2 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

### *Power to dispose of land*

- 3 Subject to paragraphs 4 to 6 and to the provisions of the relevant order, a conservation board may dispose, in any manner they wish, of land which is held by them but no longer required by them for the purposes of their functions.

#### **Commencement Information**

**I43** Sch. 14 para. 3 wholly in force at 1.5.2001; Sch. 14 para. 3 not in force at Royal Assent see s. 103(3); Sch. 14 para. 3 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 14 para. 3 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

- 4 (1) Except with the consent of the Secretary of State (as respects England) or the National Assembly for Wales (as respects Wales), a conservation board may not—
- (a) dispose under paragraph 3 of land which consists of or forms part of a common, or formerly consisted of or formed part of a common, and is managed by a local authority in accordance with a local Act,
  - (b) dispose under paragraph 3 of land, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.
- (2) For the purposes of this paragraph a disposal of land is a disposal by way of a short tenancy if it consists—
- (a) of the grant of a term not exceeding seven years, or
  - (b) of the assignment of a term which at the date of the assignment has not more than seven years to run.

#### **Commencement Information**

**I44** Sch. 14 para. 4 wholly in force at 1.5.2001; Sch. 14 para. 4 not in force at Royal Assent see s. 103(3); Sch. 14 para. 4 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 14 para. 4 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

- 5 A conservation board may not dispose under paragraph 3 of any land consisting of or forming part of an open space unless before disposing of the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is

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situated, and consider any objections to the proposed disposal which may be made to them.

**Commencement Information**

**I45** Sch. 14 para. 5 wholly in force at 1.5.2001; Sch. 14 para. 5 not in force at Royal Assent see s. 103(3); Sch. 14 para. 5 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 14 para. 5 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

- 6 Section 128 of the <sup>M74</sup>Local Government Act 1972 (consents to land transactions by local authorities) applies in relation to a conservation board as if a conservation board were a principal council and as if paragraphs 3 to 5 were contained in Part VII of that Act.)

**Commencement Information**

**I46** Sch. 14 para. 6 wholly in force at 1.5.2001; Sch. 14 para. 6 not in force at Royal Assent see s. 103(3); Sch. 14 para. 6 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 14 para. 6 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

**Marginal Citations**

**M74** 1972 c. 70.

*Provisions as to charges*

- 7 In section 152(2) of the <sup>M75</sup>Local Government and Housing Act 1989 (provisions as to charges), after paragraph (ja) there is inserted—  
 “(jb) a conservation board established by order under section 86 of the Countryside and Rights of Way Act 2000;”  
 and section 151 of that Act (power to amend existing provisions as to charges) shall have effect as if references to an existing provision included references to any such provision as applied by or under Part IV of this Act.

**Commencement Information**

**I47** Sch. 14 para. 7 wholly in force at 1.5.2001; Sch. 14 para. 7 not in force at Royal Assent see s. 103(3); Sch. 14 para. 7 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 14 para. 7 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

**Marginal Citations**

**M75** 1989 c. 42.

*Status: Point in time view as at 13/02/2004.*

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## SCHEDULE 15

Section 93.

### AREAS OF OUTSTANDING NATURAL BEAUTY: CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS

#### PART I

##### CONSEQUENTIAL AMENDMENTS

###### *National Parks and Access to the Countryside Act 1949 (c. 97)*

- 1 In section 1 of the National Parks and Access to the Countryside Act 1949 (the Countryside Agency and the Countryside Council for Wales), in subsection (2)(a) after “National Parks or” there is inserted “ under the Countryside and Rights of Way Act 2000 ”.

#### Commencement Information

**I48** Sch. 15 para. 1 wholly in force at 1.5.2001; Sch. 15 para. 1 not in force at Royal Assent see s. 103(3); Sch. 15 para. 1 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 1 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

- 2 In section 112(2) of that Act (provisions not applying to Epping Forest and Burnham Beeches), for “eighty-seven” there is substituted “ eighty-nine ”.

#### Commencement Information

**I49** Sch. 15 para. 2 wholly in force at 1.5.2001; Sch. 15 para. 2 not in force at Royal Assent see s. 103(3); Sch. 15 para. 2 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 2 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

- 3 In section 114(1) of that Act (interpretation), for the definition of “area of outstanding natural beauty” there is substituted—

““area of outstanding natural beauty” means an area designated under section 82 of the Countryside and Rights of Way Act 2000;”.

#### Commencement Information

**I50** Sch. 15 para. 3 wholly in force at 1.5.2001; Sch. 15 para. 3 not in force at Royal Assent see s. 103(3); Sch. 15 para. 3 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 3 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

###### *Harbours Act 1964 (c. 40)*

- 4 In Schedule 3 to the Harbours Act 1964, in paragraph 1, in paragraph (i) of the definition of “sensitive area” for “section 87 of the National Parks and Access to the Countryside Act 1949” there is substituted “ section 82 of the Countryside and Rights of Way Act 2000 ”.

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**Commencement Information**

**I51** Sch. 15 para. 4 wholly in force at 1.5.2001; Sch. 15 para. 4 not in force at Royal Assent see s. 103(3); Sch. 15 para. 4 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 4 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

*Highways Act 1980 (c. 66)*

- 5 In section 105A of the 1980 Act (environmental impact assessments), in subsection (6), for paragraph (e) there is substituted—
- “(e) an area of outstanding beauty designated as such under section 82 of the Countryside and Rights of Way Act 2000.”

**Commencement Information**

**I52** Sch. 15 para. 5 wholly in force at 1.5.2001; Sch. 15 para. 5 not in force at Royal Assent see s. 103(3); Sch. 15 para. 5 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 5 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

*Derelict Land Act 1982 (c. 42)*

- 6 In section 1 of the Derelict Land Act 1982 (powers of Secretary of State), in subsection (11), in the definition of “area of outstanding natural beauty” for “section 87 of the National Parks and Access to the Countryside Act 1949” there is substituted “ section 82 of the Countryside and Rights of Way Act 2000 ”.

**Commencement Information**

**I53** Sch. 15 para. 6 wholly in force at 1.5.2001; Sch. 15 para. 6 not in force at Royal Assent see s. 103(3); Sch. 15 para. 6 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 6 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

*Road Traffic Regulation Act 1984 (c. 27)*

- 7 In section 22 of the Road Traffic Regulation Act 1984 (traffic regulation for special areas in the countryside), at the end of subsection (1)(a)(ii) there is inserted “ designated as such under section 82 of the Countryside and Rights of Way Act 2000 ”.

**Commencement Information**

**I54** Sch. 15 para. 7 wholly in force at 1.5.2001; Sch. 15 para. 7 not in force at Royal Assent see s. 103(3); Sch. 15 para. 7 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 7 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

*Housing Act 1985 (c. 68)*

- 8 In section 37 of the Housing Act 1985 (restriction on disposal of dwelling-houses in National Parks, etc), in subsection (1)(b) for “section 87 of the National Parks

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and Access to the Countryside Act 1949” there is substituted “ section 82 of the Countryside and Rights of Way Act 2000 ”.

#### Commencement Information

**I55** Sch. 15 para. 8 wholly in force at 1.5.2001; Sch. 15 para. 8 not in force at Royal Assent see s. 103(3); Sch. 15 para. 8 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 8 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

- 9 In section 157 of that Act (restriction on disposal of dwelling-houses in National Parks, etc), in subsection (1)(b) for “section 87 of the National Parks and Access to the Countryside Act 1949” there is substituted “ section 82 of the Countryside and Rights of Way Act 2000 ”.

#### Commencement Information

**I56** Sch. 15 para. 9 wholly in force at 1.5.2001; Sch. 15 para. 9 not in force at Royal Assent see s. 103(3); Sch. 15 para. 9 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 9 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

#### *Town and Country Planning Act 1990 (c. 8)*

- 10 In section 87 of the Town and Country Planning Act 1990 (exclusion of certain descriptions of land or development from a simplified planning zone), in subsection (1)(d) for “section 87 of the National Parks and Access to the Countryside Act 1949” there is substituted “ section 82 of the Countryside and Rights of Way Act 2000 ”.

#### Commencement Information

**I57** Sch. 15 para. 10 wholly in force at 1.5.2001; Sch. 15 para. 10 not in force at Royal Assent see s. 103(3); Sch. 15 para. 10 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 10 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

#### *Environmental Protection Act 1990 (c. 43)*

- 11 In section 130 of the Environmental Protection Act 1990 (countryside functions of Countryside Council for Wales), in subsection (2)(a) after “National Parks or” there is inserted “ under the Countryside and Rights of Way Act 2000 ”.

#### Commencement Information

**I58** Sch. 15 para. 11 wholly in force at 1.5.2001; Sch. 15 para. 11 not in force at Royal Assent see s. 103(3); Sch. 15 para. 11 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 11 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

#### *Water Industry Act 1991 (c. 56)*

- 12 In section 156 of the Water Industry Act 1991 (restriction on disposals of land), in subsection (8), in paragraph (a) of the definition of “area of outstanding natural

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beauty or special scientific interest”, for “for the purposes of the National Parks and Access to the Countryside Act 1949” there is substituted “ under section 82 of the Countryside and Rights of Way Act 2000 ”.

#### Commencement Information

**I59** Sch. 15 para. 12 wholly in force at 1.5.2001; Sch. 15 para. 12 not in force at Royal Assent see s. 103(3); Sch. 15 para. 12 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 12 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

#### *Environment Act 1995 (c. 25)*

13 In Schedule 13 to the Environment Act 1995 (review of old mineral planning permissions), in paragraph 2(4)(c) for “section 87 of the National Parks and Access to the Countryside Act 1949” there is substituted “ section 82 of the Countryside and Rights of Way Act 2000 ”.

#### Commencement Information

**I60** Sch. 15 para. 13 wholly in force at 1.5.2001; Sch. 15 para. 13 not in force at Royal Assent see s. 103(3); Sch. 15 para. 13 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 13 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

#### *Housing Act 1996 (c. 52)*

14 In section 13 of the Housing Act 1996 (restriction on disposal of houses in National Parks, etc), in subsection (1)(b) for “section 87 of the National Parks and Access to the Countryside Act 1949” there is substituted “ section 82 of the Countryside and Rights of Way Act 2000 ”.

#### Commencement Information

**I61** Sch. 15 para. 14 wholly in force at 1.5.2001; Sch. 15 para. 14 not in force at Royal Assent see s. 103(3); Sch. 15 para. 14 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 14 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

## PART II

### TRANSITIONAL PROVISIONS

15 In this Part “commencement” means the commencement of section 82.

#### Commencement Information

**I62** Sch. 15 para. 15 wholly in force at 1.5.2001; Sch. 15 para. 15 not in force at Royal Assent see s. 103(3); Sch. 15 para. 15 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 15 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)



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- 16 Any order under section 87 of the 1949 Act (designation of areas of outstanding natural beauty) which is in force immediately before commencement is to be taken to have been made under section 82 in accordance with the provisions of Part IV of this Act, and may be amended or revoked by an order under that section.

**Commencement Information**

- I63** Sch. 15 para. 16 wholly in force at 1.5.2001; Sch. 15 para. 16 not in force at Royal Assent see s. 103(3); Sch. 15 para. 16 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 16 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

- 17 Any reference in any instrument or document (whenever made) to designation as an area of outstanding natural beauty under section 87 of the 1949 Act or to an order under that section is, in relation to any time after commencement, to be taken to be a reference to designation as such an area under section 82 or to an order under that section.

**Commencement Information**

- I64** Sch. 15 para. 17 wholly in force at 1.5.2001; Sch. 15 para. 17 not in force at Royal Assent see s. 103(3); Sch. 15 para. 17 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 17 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

- 18 Anything done before commencement in connection with a proposed order under section 87 of the 1949 Act is, as from commencement, to be taken to have been done in connection with a proposed order under section 82.

**Commencement Information**

- I65** Sch. 15 para. 18 wholly in force at 1.5.2001; Sch. 15 para. 18 not in force at Royal Assent see s. 103(3); Sch. 15 para. 18 in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(e); Sch. 15 para. 18 in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(g)

SCHEDULE 16

Section 102.

REPEALS

PART I

ACCESS TO THE COUNTRYSIDE

**Commencement Information**

- I66** Sch. 16 Pt. I partly in force; Sch. 16 Pt. I not in force at Royal Assent see s. 103(3); Sch. 16 Pt. I in force for certain purposes for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(k); Sch. 16 Pt. I in force for certain purposes for W. at 1.5.2001 by S.I. 2001/1410, art. 2(m)

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Chapter	Short title	Extent of repeal
1925 c. 20.	The Law of Property Act 1925.	Section 193(2).
1949 c. 97.	The National Parks and Access to the Countryside Act 1949.	Sections 61 to 63. In section 111A(3)(a), the words “61 to 63,”.
1972 c. 70.	The Local Government Act 1972.	In Schedule 17, paragraphs 35 and 35A.
1980 c. 65.	The Local Government, Planning and Land Act 1980.	In Schedule 3, paragraph 6.
1985 c. 51.	The Local Government Act 1985.	In Schedule 3, paragraph 5(9).
1990 c. 43.	The Environmental Protection Act 1990.	In Schedule 8, in paragraph 1(8), the words “62(1) and”.
1994 c. 19.	The Local Government (Wales) Act 1994.	In Schedule 6, paragraph 13.

## PART II

### PUBLIC RIGHTS OF WAY AND ROAD TRAFFIC

#### Commencement Information

**I67** Sch. 16 Pt. II partly in force; Sch. 16 Pt. II not in force at Royal Assent see s. 103(3); Sch. 16 Pt. II in force for certain purposes for E. at 30.1.2001 and in force for certain further purposes for E. at 1.4.2001 by S.I. 2001/114, art. 2(1)(g)(2)(l) (with art. 3); Sch. 16 Pt. II in force for certain purposes for W. at 1.5.2001 by S.I. 2001/1410, art. 2(n)(o) (with art. 3)

Chapter	Short title	Extent of repeal
1980 c. 66.	The Highways Act 1980.	Section 134(5).
1981 c. 69.	The Wildlife and Countryside Act 1981.	Section 54. Section 56(5). In section 57(1), the words “on such scale as may be so prescribed,”. In Schedule 15, paragraph 9.
1984 c. 27.	The Road Traffic Regulation Act 1984.	In section 22(1)(a), the words “(other than Greater London)” and, at the end of paragraph (vi), the word “or”.
1992 c. 42.	The Transport and Works Act 1992.	In Schedule 2, paragraphs 5(2), (4)(a), (d) and (e), (6) and (7), 6(2)(b) and 10(4)(a).

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## PART III

### SITES OF SPECIAL SCIENTIFIC INTEREST

#### Commencement Information

**I68** Sch. 16 Pt. III wholly in force at 1.5.2001; Sch. 16 Pt. III not in force at Royal Assent see s. 103(3); Sch. 16 Pt. III in force for E. at 30.1.2001 by S.I. 2001/114, art. 2(1)(d)(ii); Sch. 16 Pt. III in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(p)

Chapter	Short title	Extent of repeal
1958 c. 51.	The Public Records Act 1958.	In Schedule 1, in Part II of the Table in paragraph 3, the entry relating to the Nature Conservancy Council for England.
1964 c. 40.	The Harbours Act 1964.	In Schedule 3, in the definition of “sensitive area”, paragraph (b).
1965 c. 74.	The Superannuation Act 1965.	In section 39(1), in paragraph 7, the words “The Nature Conservancy Council for England.”.
1967 c. 13.	The Parliamentary Commissioner Act 1967.	In Schedule 2, the entry “Nature Conservancy Council for England”.
1970 c. 30.	The Conservation of Seals Act 1970.	Section 10(4)(c) and the following word “or”.
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part III, the entry “Any member of the Nature Conservancy Council for England or the Countryside Council for Wales in receipt of remuneration.”.
1980 c. 66.	The Highways Act 1980.	Section 105A(6)(c).
1981 c. 69.	The Wildlife and Countryside Act 1981.	Sections 29 and 30. In section 32(1), the words “or land to which section 29(3) applies”. In section 67(2), the word “29.”. In Schedule 11, in each of paragraphs 7(2) and 8, the words “29 or”.
1985 c. 31.	The Wildlife and Countryside (Amendment) Act 1985.	Section 2.

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1985 c. 59.	The Wildlife and Countryside (Service of Notices) Act 1985.	Section 1(2).
1988 c. 4.	The Norfolk and Suffolk Broads Act 1988.	In Schedule 3, paragraph 31(1).
1990 c. 43.	The Environmental Protection Act 1990.	In Schedule 9, paragraph 11(9) to (11).
1996 c. 47.	The Trusts of Land and Appointment of Trustees Act 1996.	In Schedule 3, paragraph 20 and the heading preceding it.

## PART IV

### WILDLIFE

#### Commencement Information

**I69** Sch. 16 Pt. IV wholly in force at 1.5.2001; Sch. 16 Pt. IV not in force at Royal Assent see s. 103(3); Sch. 16 Pt. IV in force for E. at 30.1.2001 by S.I. 2001/114, art. 2(1)(d)(ii); Sch. 16 Pt. IV in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(p)

Chapter	Short title	Extent of repeal
1981 c. 69.	The Wildlife and Countryside Act 1981.	<p>In section 1, subsection (4) and, in subsection (5), the words “and liable to a special penalty”.</p> <p>In section 5(1), the words “and be liable to a special penalty”.</p> <p>In section 6, in subsection (2) the words from “who is not” to “Secretary of State”, and subsections (4) and (7) to (10).</p> <p>In section 7, in subsection (1) the words “and be liable to a special penalty”, and subsections (6) and (7).</p> <p>In section 8, in subsections (1) and (3) the words “and be liable to a special penalty”.</p> <p>Section 14(5) and (6).</p> <p>In section 17 the words “(2) or”.</p> <p>Section 20(1).</p> <p>In section 21(5) the words “(2) or (3)”.</p>

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1997 c. 55.	The Birds (Registration Charges) Act 1997.	Section 1(1).
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## PART V

### AREAS OF OUTSTANDING NATURAL BEAUTY

#### Commencement Information

**I70** Sch. 16 Pt. V wholly in force at 1.5.2001; Sch. 16 Pt. V not in force at Royal Assent see s. 103(3); Sch. 16 Pt. V in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(m); Sch. 16 Pt. V in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(q)

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Chapter	Short title	Extent of repeal
1949 c. 97.	The National Parks and Access to the Countryside Act 1949.	Sections 87 and 88.
1990 c. 43.	The Environmental Protection Act 1990.	In Schedule 8, paragraph 1(12).
1995 c. 25.	The Environment Act 1995.	In Schedule 10, paragraph 2(7).

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## PART VI

### OTHER

#### Commencement Information

**I71** Sch. 16 Pt. VI wholly in force at 1.5.2001; Sch. 16 Pt. VI not in force at Royal Assent see s. 103(3); Sch. 16 Pt. VI in force for E. at 1.4.2001 by S.I. 2001/114, art. 2(2)(m); Sch. 16 Pt. VI in force for W. at 1.5.2001 by S.I. 2001/1410, art. 2(q)

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Chapter	Short title	Extent of repeal
1981 c. 69.	The Wildlife and Countryside Act 1981.	In section 39(1), the words “both in the countryside and”.

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**Status:**

Point in time view as at 13/02/2004.

**Changes to legislation:**

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