



Town and Country Planning Act 1968

1968 CHAPTER 72

PART VI

MISCELLANEOUS CHANGES IN PLANNING LAW

Stopping-up and diversion of highways

89 Transfer of Ministerial functions as to stopping-up etc. of footpaths and bridleways.

- (1) Section 153 of the principal Act (power of Minister of Transport to make orders authorising the stopping-up or diversion of highways in order to enable development to be carried out) shall be amended in accordance with this section.
- (2) The power conferred on the Minister of Transport by section 153(1) of the principal Act to make an order authorising the stopping-up or diversion of a highway, where he is satisfied that it is necessary to do so in order to enable development to be carried out as mentioned in that subsection, shall, in the case of a footpath or bridleway, be exercisable also by the Minister of Housing and Local Government where that Minister is so satisfied; and the Minister of Transport shall not make an order under that subsection in the case of a footpath or bridleway unless, at the time when he first publishes notice of the order in accordance with section 154(1) of the principal Act, it appears to him to be necessary for the said purpose also to authorise the stopping-up or diversion of some other highway, not being a footpath or bridleway.
- (3) Subsection (2) of the said section 153 shall not apply to an order made thereunder by the Minister of Housing and Local Government; but an order so made may make such provision as appears to the Minister to be necessary or expedient for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped-up or diverted, or for the improvement of an existing highway for such use.
- (4) In relation to an order made by the Minister of Housing and Local Government under section 153 of the principal Act, subsection (3) of that section and section 154 of the Act (procedure and publicity for orders under section 153) shall apply with the substitution of references to that Minister for references to the Minister of Transport;

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and in subsections (4) and (5) of section 153 references to the latter shall be construed as including references to the former.

- (5) In section 32 of the Mineral Workings Act 1951 (power of Minister of Transport to make temporary stopping-up or diversion order in connection with surface working of minerals),—
- (a) in subsection (1), after the words " Minister of Transport " there shall be inserted the words " or the Minister of Housing and Local Government "; and
 - (b) in subsection (2), after the words " Minister of Transport " there shall be inserted the words " or the Minister of Housing and Local Government, as the case may be ".
- (6) In this Act, " footpath " and " bridleway " have the same meanings as in the Highways Act 1959.
- (7) Nothing in this section applies to or affects an order made by the Minister of Transport before the commencement of this section, or an order with respect to which he has, before that commencement, published in the London Gazette the notice required by section 154(1) of the principal Act.
- (8) This section shall not apply to Wales.

90 Procedure for making orders for stopping-up and diverting highways.

- (1) Where the responsible Minister would, if planning permission for any development had been granted under Part III of the principal Act, have power to make an order under section 153(1) of that Act authorising the stopping-up or diversion of a highway in order to enable that development to be carried out, then, notwithstanding that such permission has not been granted, that Minister may, in the circumstances specified in subsections (2) to (4) below, publish notice of the draft of such an order in accordance with section 154 of that Act (procedure in relation to orders under section 153).
- (2) The responsible Minister may publish such a notice as aforesaid where the relevant development is the subject of an application for planning permission and either—
- (a) that application is made by a local authority or statutory undertakers or the National Coal Board; or
 - (b) that application stands referred to the Minister of Housing and Local Government or the Secretary of State in pursuance of a direction under section 22 of the principal Act; or
 - (c) the applicant has appealed to the Minister of Housing and Local Government or the Secretary of State under section 23 of that Act against a refusal of planning permission or of approval required under a development order, or against a condition of any such permission or approval.
- (3) The responsible Minister may publish such a notice as aforesaid where—
- (a) the relevant development is to be carried out by a local authority, statutory undertakers or the National Coal Board and requires, by virtue of an enactment, the authorisation of a government department; and
 - (b) the developers have made application to the department for that authorisation and also requested a direction under section 41 of the principal Act or, in the case of the National Coal Board, under section 2 of the Opencast Coal Act 1958, that planning permission be deemed to be granted for that development.

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- (4) The responsible Minister may publish such a notice as aforesaid where the council of a county or county borough, the Greater London Council, the council of a London borough, a joint planning board, or the Inner London Education Authority certify that they have begun to take such steps, in accordance with regulations made by virtue of section 42 of the principal Act (application of planning control to local planning authorities), as are requisite in order to enable them to obtain planning permission for the relevant development.
- (5) Section 154(4) of that Act (power of responsible Minister to make an order under section 153 after considering any relevant objections and report) shall not be construed as authorising the responsible Minister to make an order under section 153(1) of that Act of which notice has been published by virtue of subsection (1) above until planning permission is granted for the development which occasions the making of the order.
- (6) In this section " the responsible Minister " means, except in relation to Wales,—
 - (a) in relation to an order authorising the stopping-up or diversion of a footpath or bridleway only, the Minister of Housing and Local Government; and
 - (b) otherwise the Minister of Transport;and, in relation to Wales, means the Secretary of State.

91 New powers to authorise stopping-up and diversion of highways.

- (1) If planning permission is granted under Part III of the principal Act for constructing or improving, or the responsible Minister proposes to construct or improve, a highway (hereafter in this section referred to as " the main highway "), that Minister may by order authorise the stopping-up or diversion of any other highway which crosses or enters the route of the main highway or which is, or will be, otherwise affected by the construction or improvement of the main highway, if it appears to that Minister expedient to do so—
 - (a) in the interests of the safety of users of the main highway ; or
 - (b) to facilitate the movement of traffic on the main highway.
- (2) In this section, " the responsible Minister " means, except in relation to Wales, the Minister of Transport and, in relation to Wales, the Secretary of State.
- (3) Sections 153(2) to (5), 154, 156, 157 and 158 of the principal Act (ancillary provisions, provisions as to compulsory acquisition of land in connection with highways and provisions as to telegraphic lines) and section 90 above shall apply in relation to an order under this section as they apply in relation to an order made by the Minister of Transport under section 153(1) of that Act with the substitution in the said sections of the principal Act for references to that Minister and the said section 153(1) of references to the responsible Minister (as defined by subsection (2) above) and this section.
- (4) In section 32(3) of the Mineral Workings Act 1951 (rights of statutory undertakers in respect of their apparatus where order made under section 153 of principal Act), after the reference to the said section 153 there shall be inserted an alternative reference to this section.

92 Conversion of highway into footpath or bridleway.

- (1) The provisions of this section shall have effect where a local planning authority by resolution adopt a proposal for improving the amenity of part of their area, being a

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proposal which involves a highway in that area (being a highway over which the public have a right of way with vehicles, but not a trunk road or a road classified as a principal road for the purposes of advances under section 235 of the Highways Act 1959) being changed to a footpath or bridleway.

- (2) The responsible Minister may, on an application made by the local planning authority after consultation with the highway authority (if different), by order provide for the extinguishment of any right which persons may have to use vehicles on that highway.
- (3) An order made under subsection (2) of this section may include such provision as the responsible Minister (after consultation with the highway authority) thinks fit for permitting the use on the highway of vehicles (whether mechanically propelled or not) in such cases as may be specified in the order, notwithstanding the extinguishment of any such right as is mentioned in that subsection; and any such provision may be framed by reference to particular descriptions of vehicles, or to particular persons by whom, or on whose authority, vehicles may be used, or to the circumstances in which, or the times at which, vehicles may be used for particular purposes.
- (4) No statutory provision prohibiting or restricting the use of footpaths, footways or bridleways shall affect any use of a vehicle on a highway in relation to which an order made under subsection (2) above has effect, where the use is permitted in accordance with provisions of the order included by virtue of subsection (3) above.
- (5) Any person who, at the time of an order under subsection (2) of this section coming into force, has an interest in land having lawful access to a highway to which the order relates shall be entitled to be compensated by the local planning authority in respect of any depreciation in the value of his interest which is directly attributable to the order and of any other loss or damage which is so attributable.

In this subsection " lawful access " means access authorised by planning permission granted under the principal Act or the Town and Country Planning Act 1947, or access in respect of which no such permission is necessary.

- (6) A claim for compensation under subsection (5) above shall be made to the local planning authority within the time and in the manner prescribed by regulations under the principal Act.
- (7) Sections 153(2), (3) and (5), 154, 156, 157 and 158 of the principal Act (provisions ancillary to section 153(1), provisions as to compulsory acquisition of land in connection with highways, and provisions as to telegraphic lines) shall apply in relation to an order under this section, as they apply in relation to an order under section 153(1) of that Act, with the substitution for references to the Minister of Transport and that section of references to the responsible Minister and this section.
- (8) The responsible Minister may, on an application made by the local planning authority after consultation with the highway authority (if different) by order revoke an order made by him in relation to a highway under subsection (2) above ; and the effect of the order shall be to reinstate any right to use vehicles on the highway, being a right which was extinguished by virtue of the order under the said subsection.
- (9) Subsection (8) above shall not be taken as prejudicing any provision of the principal Act enabling orders to be varied or revoked.
- (10) In this section—
 - (a) " the responsible Minister " means, except in relation to Wales, the Minister of Transport and, in relation to Wales, the Secretary of State ; and

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- (b) " statutory provision " means a provision contained in, or having effect under, any enactment.

93 Provision of amenity for highway reserved to pedestrians.

- (1) Where in relation to a highway an order has been made under subsection (2) of section 92 of this Act, a competent authority may carry out and maintain any such works on or in the highway, or place on or in it any such objects or structures, as appear to them to be expedient for the purposes of giving effect to the order or of enhancing the amenity of the highway and its immediate surroundings or to be otherwise desirable for a purpose beneficial to the public.
- (2) The powers exercisable by a competent authority under this section shall extend to laying out any part of the highway with lawns, trees, shrubs and flower-beds and to providing facilities for recreation or refreshment.
- (3) A competent authority may so exercise their powers under this section as to restrict the access of the public to any part of the highway, but shall not so exercise them as—
- (a) to prevent persons from entering the highway at any place where they could enter it before the order under section 92 was made ; or
 - (b) to prevent the passage of the public along the highway; or
 - (c) to prevent normal access by pedestrians to premises adjoining the highway ; or
 - (d) to prevent any use of vehicles which is permitted by an order made under the said section 92 and applying to the highway; or
 - (e) to prevent statutory undertakers from having access to any works of theirs under, in, on, over, along or across the highway.
- (4) An order under subsection (8) of the said section 92 may make provision requiring the removal of any obstruction of the highway resulting from the exercise by a competent authority of their powers under this section.
- (5) The competent authorities for the purposes of this section are—
- (a) the councils of counties, county boroughs and county districts; and
 - (b) in Greater London, the Greater London Council and the councils of London boroughs ;
- but such an authority shall not exercise any powers conferred by this section unless they have obtained the consent of the local planning authority and the highway authority (in a case where they are themselves not that authority).

94 Powers for local authorities analogous to s.153 of principal Act.

- (1) Subject to section 96 below, a competent authority may by order authorise the stopping-up or diversion of any footpath or bridleway if they are satisfied that it is necessary to do so in order to enable development to be carried out—
- (a) in accordance with planning permission granted under Part III of the principal Act or the enactments replaced by that Part of the Act; or
 - (b) by a government department.
- (2) The competent authorities for the purposes of this section are—
- (a) the local planning authority ; and

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- (b) in relation to development for which planning permission was granted by another authority to whom had been delegated the power of granting it, that other authority.
- (3) An order under this section may, if the competent authority are satisfied that it should do so, provide—
 - (a) for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing highway for such use;
 - (b) for authorising or requiring works to be carried out in relation to any footpath or bridleway for whose stopping-up or diversion, creation or improvement, provision is made by the order ;
 - (c) for the preservation of any rights of statutory undertakers in respect of apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across any such footpath or bridleway ;
 - (d) for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.
- (4) The powers of a competent authority under this section shall include power to make an order authorising the stopping-up or diversion of a footpath or bridleway which is temporarily stopped up or diverted under any other enactment.
- (5) Section 32(1) and (2) of the Mineral Workings Act 1951 (power of Ministers to make temporary order for stopping-up or diversion of highway in connection with working of surface minerals) shall apply to an order made by a competent authority under this section as it applies to an order made by a Minister under section 153 of the principal Act, with the substitution—
 - (a) for references to Ministers, of references to a competent authority for the purposes of this section; and
 - (b) for the reference in subsection (2) to section 153(3) of the principal Act, of a reference to subsection (3) of this section.

95 Extinguishment of footpaths etc. over land held for planning purposes.

- (1) Subject to section 96 below, where any land has been acquired or appropriated for planning purposes and is for the time being held by a local authority for the purposes for which it was acquired or appropriated, the authority may by order extinguish any public right of way over the land, being a footpath or bridleway, if they are satisfied that an alternative right of way has been or will be provided, or that the provision of an alternative right of way is not required.
- (2) Any reference in subsection (1) above to the acquisition of land for planning purposes is a reference to the acquisition thereof under section 68 or 71 of the principal Act or section 28 of this Act; and any reference to the appropriation of land for planning purposes is a reference to the appropriation thereof for purposes for which land can, or could have been, acquired under those sections.

96 Confirmation, validity, etc. of orders under ss.94 and 95.

- (1) An order under section 94 or 95 of this Act shall not take effect unless confirmed by the Minister, or unless confirmed, as an unopposed order, by the authority who made it.

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- (2) The Minister shall not confirm any such order unless satisfied as to every matter of which the authority making the order are required under section 94 or 95 (as the case may be) to be satisfied.
- (3) The time specified—
 - (a) in an order under section 94 above as the time from which a footpath or bridleway is to be stopped up or diverted; or
 - (b) in an order under section 95 above as the time from which a right of way is to be extinguished,shall not be earlier than confirmation of the order.
- (4) Schedule 7 to this Act shall have effect with respect to the confirmation of orders under section 94 or 95 of this Act and the publicity for such orders after they are confirmed.

97 Miscellaneous amendments of Part IX of principal Act.

- (1) It is hereby declared for the avoidance of doubt that the incidental and consequential provisions which may be included in an order under section 153 of the principal Act or section 91 or 92 above by virtue of section 153(3) of that Act shall include provisions providing for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across the highway to which the order relates.
- (2) In section 154(1)(b) and (3) of the principal Act (periods for inspecting and objecting to a draft order under section 153) for the words " three months " there shall be substituted the words " twenty-eight days ".
- (3) Subsections (2) to (5) of section 290 of the Local Government Act 1933 (evidence and costs at local inquiries) shall apply in relation to an inquiry caused to be held by any Minister of the Crown under the said section 154(3) as they apply in relation to an inquiry caused to be held by a department under subsection (1) of the said section 290, with the substitution for the references to a department of references to that Minister.