

Status: This version of this provision is prospective.

Changes to legislation: *Highways Act 1980, Section 121E is up to date with all changes known to be in force on or before 17 April 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) View outstanding changes*



Highways Act 1980

1980 CHAPTER 66

PART VIII

STOPPING UP AND DIVERSION OF HIGHWAYS AND STOPPING UP OF MEANS OF ACCESS TO HIGHWAYS

Stopping up and diversion of highways

PROSPECTIVE

[^{F1}121E Determination of appeals.

- (1) Where an appeal to the Secretary of State is brought under section 121D(1)(a) above, the Secretary of State shall—
 - (a) prepare a draft of a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order under section 120(3) above giving effect to the application and containing such other provisions as, after consultation with such persons as he thinks fit, the Secretary of State may determine,
 - (b) give notice of the draft order in accordance with paragraph 1(2) of Schedule 6 to this Act, and
 - (c) subject to subsection (6) below and to paragraph 2 of that Schedule, determine whether to make the order (with or without modifications) under section 120(3) above.
- (2) Where an appeal to the Secretary of State is brought under section 121D(1)(b) or (c) above, the order made on the application shall be treated as having been submitted to him for confirmation (with or without modifications).
- (3) Where an appeal to the Secretary of State is brought under section 121D(1) above, the Secretary of State may not make or confirm a public path diversion order or special diversion order if it appears to him that—

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- (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,
 - (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.

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- (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.]

Textual Amendments

F1 S. 121E inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 15**

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Changes and effects yet to be applied to :

- s. 121E(1) words inserted by [2015 c. 20 s. 23\(4\)](#)
- s. 121E(8)(j) words substituted by [2015 c. 20 s. 25\(5\)](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 79(15)(aa) inserted by [2023 asc 3 Sch. 13 para. 54\(b\)](#)
- s. 90B(1A) inserted by [2015 c. 20 Sch. 10 para. 15\(3\)](#)
- s. 90C(2)(2A) substituted for s. 90C(2) by [2015 c. 20 Sch. 10 para. 16\(3\)](#)
- s. 90FA inserted by [2015 c. 20 Sch. 10 para. 20](#)
- s. 118ZA(5)(a) words inserted by [2015 c. 20 s. 25\(3\)](#)
- s. 120(3ZA) inserted by [2000 c. 37 Sch. 6 para. 13\(6\)](#)
- s. 121E(1A)(1B) inserted by [2015 c. 20 s. 23\(5\)](#)
- s. 146(6) inserted by [2015 c. 20 s. 24\(6\)\(d\)](#)
- s. 147(1A) inserted by [2015 c. 20 s. 24\(3\)](#)
- s. 147(5A) inserted by [2015 c. 20 s. 24\(5\)](#)
- s. 203(2)(b)(ia) inserted by [S.I. 2023/908 reg. 6\(2\)\(b\)](#)
- s. 219(1)(a)(i)(ii) inserted by [S.I. 2023/908 reg. 6\(3\)](#)
- s. 220(1A) inserted by [S.I. 2023/908 reg. 6\(4\)\(b\)](#)
- s. 223(1A) inserted by [S.I. 2023/908 reg. 6\(5\)\(b\)](#)
- s. 223(5A) inserted by [S.I. 2023/908 reg. 6\(5\)\(d\)](#)
- s. 223(5B)-(6) s. 223(6) renumbered as s. 223(5B)(6) by [S.I. 2023/908 reg. 6\(5\)\(e\)](#)
- s. 322(5)(ab) inserted by [2004 c. 18 s. 64\(2\)](#)
- s. 325(2B) inserted by [2015 c. 20 Sch. 10 para. 21](#)
- Sch. 6 para. 1(3ZA) inserted by [2015 c. 20 Sch. 7 para. 8\(2\)\(b\)](#)
- Sch. 6 para. 2(2ZA)-(2ZE) inserted by [2015 c. 20 Sch. 7 para. 8\(3\)](#)
- Sch. 6 para. 2(4) inserted by [2015 c. 20 Sch. 7 para. 8\(4\)](#)
- Sch. 6 para. 2(5)(6) inserted by [2015 c. 20 Sch. 7 para. 8\(5\)](#)
- Sch. 6 para. 2ZZA inserted by [2015 c. 20 Sch. 7 para. 8\(6\)](#)
- Sch. 6 para. 4A(2) inserted by [2015 c. 20 Sch. 7 para. 8\(7\)\(c\)](#)
- Sch. 6 para. 5(ba) inserted by [2015 c. 20 Sch. 7 para. 8\(8\)](#)
- Sch. 6 para. 4A(1) words renumbered as Sch. 6 para. 4A(1) by [2015 c. 20 Sch. 7 para. 8\(7\)\(a\)](#)
- Sch. 6 para. 4A(1) words substituted by [2015 c. 20 Sch. 7 para. 8\(7\)\(b\)](#)
- Sch. 6 Pt. 1 para. 2B(4) inserted by [2015 c. 20 s. 25\(6\)](#)