



# Town and Country Planning Act 1990

## 1990 CHAPTER 8

### PART X

#### HIGHWAYS

##### *Orders made by Secretary of State*

#### **247 Highways affected by development: orders by Secretary of State.**

- (1) The Secretary of State may by order authorise the stopping up or diversion of any highway [<sup>F1</sup>outside Greater London] if he is 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, or
  - (b) by a government department.
- (2) Such an order may make such provision as appears to the Secretary of State to be necessary or expedient for the provision or improvement of any other highway [<sup>F2</sup>outside Greater London].
- [<sup>F3</sup>(2A) The council of a London borough may by order authorise the stopping up or diversion of any highway within the borough, or within another London borough if the council of that borough consents, if it is 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, or
  - (b) by a government department.
- (2B) Such an order may make such provision as appears to the council to be necessary or expedient for the provision or improvement of any other highway within the borough.]
- (3) [<sup>F4</sup>An order under subsection (1) or (2A)] may direct—
  - (a) that any highway provided or improved by virtue of it shall for the purposes of the <sup>M1</sup>Highways Act 1980 be a highway maintainable at the public expense;
  - (b) that the Secretary of State, or any county council, [<sup>F5</sup>county borough council,] metropolitan district council or London borough council specified in the order

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or, if it is so specified, the Common Council of the City of London, shall be the highway authority for that highway;

- (c) in the case of a highway for which the Secretary of State is to be the highway authority, that the highway shall, on such date as may be specified in the order, become a trunk road within the meaning of the Highways Act 1980.

[<sup>F6</sup>(3A) An order under subsection (2A) may not provide that—

- (a) the Secretary of State,  
 (b) Transport for London, or  
 (c) a London borough other than the one whose council is making the order,

shall be the highway authority for a highway unless the Secretary of State, Transport for London or the council, as the case may be, so consents.]

(4) An order made under this section may contain such incidental and consequential provisions as appear to the Secretary of State [<sup>F7</sup>or the council of the London borough] to be necessary or expedient, including in particular—

- (a) provision for authorising the Secretary of State [<sup>F7</sup>or the council of the London borough], or requiring any other authority or person specified in the order—
- (i) to pay, or to make contributions in respect of, the cost of doing any work provided for by the order or any increased expenditure to be incurred which is attributable to the doing of any such work; or
- (ii) to repay, or to make contributions in respect of, any compensation paid by the highway authority in respect of restrictions imposed under section 1 or 2 of the <sup>M2</sup>Restriction of Ribbon Development Act 1935 in relation to any highway stopped up or diverted under the order;
- (b) provision 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.

(5) An order may be made under this section authorising the stopping up or diversion of any highway which is temporarily stopped up or diverted under any other enactment.

(6) The provisions of this section shall have effect without prejudice to—

- (a) any power conferred on the Secretary of State [<sup>F8</sup>or a London borough] by any other enactment to authorise the stopping up or diversion of a highway;
- (b) the provisions of Part VI of the <sup>M3</sup>Acquisition of Land Act 1981; or
- (c) the provisions of section 251(1).

#### Textual Amendments

- F1** Words in s. 247(1) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 3(2)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch. 1**
- F2** Words in s. 247(2) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 3(3)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch**
- F3** S. 247(2A)(2B) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 3(4)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F4** Words in s. 247(3) substituted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 3(5)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F5** Words in s. 247(3)(b) inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 24(9)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**
- F6** S. 247(3A) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 3(6)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**

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- F7** Words in s. 247(4) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 3(7)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F8** Words in s. 247(6)(a) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 3(8)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**

#### Marginal Citations

- M1** 1980 c. 66.  
**M2** 1935 c. 67.  
**M3** 1981 c. 67.

## 248 Highways crossing or entering route of proposed new highway, etc.

- (1) This section applies where—
- planning permission is granted under Part III for constructing or improving, or the Secretary of State proposes to construct or improve, a highway (“the main highway”); and
  - another highway crosses or enters the route of the main highway or is, or will be, otherwise affected by the construction or improvement of the main highway.

- (2) Where this section applies [<sup>F9</sup>and the place where the other highway crosses or enters the route of the main highway or is otherwise affected is outside Greater London], if it appears to the Secretary of State expedient to do so—
- in the interests of the safety of users of the main highway; or
  - to facilitate the movement of traffic on the main highway,
- he may by order authorise the stopping up or diversion of the other highway.

- [<sup>F10</sup>(2A) Where this section applies and the place where the other highway crosses or enters the route of the main highway or is otherwise affected is within a London borough, if it appears to the council of that borough expedient to do so—
- in the interests of the safety of users of the main highway; or
  - to facilitate the movement of traffic on the main highway,
- it may by order authorise the stopping up or diversion of the other highway.]

- (3) Subsections (2) [<sup>F11</sup>and (2B)] to (6) of section 247 shall apply to an order under this section as they apply to an order under that section, taking the reference in [<sup>F12</sup>subsections (2) and (2B)] of that section to any other highway as a reference to any highway other than that which is stopped up or diverted under this section and the references in subsection (3) to a highway provided or improved by virtue of an order under that section as including a reference to the main highway.

#### Textual Amendments

- F9** Words in s. 248(2) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 4(2)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F10** S. 248(2A) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 4(3)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F11** Words in s. 248(3) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 4(4)(a)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F12** Words in s. 248(3) substituted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 4(4)(b)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**

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## 249 Order extinguishing right to use vehicles on highway.

(1) This section applies where—

- (a) a local planning authority by resolution adopt a proposal for improving the amenity of part of their area, and
- (b) the proposal involves the public ceasing to have any right of way with vehicles over a highway in that area, being a highway which is neither a trunk road <sup>[F13]</sup>, a GLA road] nor a road classified as a principal road.

(2) <sup>[F14]</sup>Where the public is to cease to have such a right of way at a place outside Greater London,] the Secretary of State may, on an application by a local planning authority who have so resolved, by order provide for the extinguishment of any right which persons may have to use vehicles on that highway.

<sup>[F15]</sup>(2A) Where—

- (a) the public is to cease to have such a right of way at a place within a London borough, and
- (b) the conditions mentioned in subsection (2B)(a) or (b) are satisfied,

the council of that borough may by order provide for the extinguishment of any right which persons may have to use vehicles on that highway.

(2B) The conditions are that—

- (a) the council is a local planning authority for the place where the right of way is to cease and it resolves that the right should be extinguished, or
- (b) another authority is a local planning authority for that place and, having resolved to do so, it applies to the council of the borough for the right to be extinguished.]

(3) An order under subsection (2) <sup>[F16]</sup>or (2A)] may include such provision as the Secretary of State <sup>[F17]</sup>or, as the case may be, the council of the London borough] (after consultation with every authority who are a local planning authority for the area in question and 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.

(4) Such provision as is mentioned in subsection (3) may be framed by reference to—

- (a) particular descriptions of vehicles, or
- (b) particular persons by whom, or on whose authority, vehicles may be used, or
- (c) the circumstances in which, or the times at which, vehicles may be used for particular purposes.

(5) No provision contained in, or having effect under, any enactment, being a 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 under subsection (2) <sup>[F18]</sup>or (2A)] has effect, where the use is permitted in accordance with provisions of the order included by virtue of subsection (3).

(6) If any authority who are a local planning authority for the area in which a highway to which an order under subsection (2) <sup>[F19]</sup>or (2A)] relates is situated apply to the Secretary of State <sup>[F20]</sup>or, as the case may be, the council of the borough] in that behalf, <sup>[F21]</sup>the Secretary of State or council] may by order revoke that order, and, if <sup>[F22]</sup>the order is revoked], any right to use vehicles on the highway in relation to which the

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order was made which was extinguished by virtue of the order under that subsection shall be reinstated.

- (7) Such an order as is mentioned in subsection (6) may make provision requiring the removal of any obstruction of a highway resulting from the exercise of powers under Part VIIA of the <sup>M4</sup>Highways Act 1980.
- (8) Before making an application under subsection (2) [<sup>F23</sup>, (2A)] or (6) the local planning authority shall consult with the highway authority (if different) and any other authority who are a local planning authority for the area in question.
- (9) Subsections (2) [<sup>F24</sup>, (2B)], (3), (4) and (6) of section 247 shall apply to an order under this section as they apply to an order under that section.

#### Textual Amendments

- F13** Words in s. 249(1)(b) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 5(2)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F14** Words in s. 249(2) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 5(3)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F15** S. 249(2A)(2B) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 5(4)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F16** Words in s. 249(3) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 5(5)(a)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F17** Words in s. 249(3) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 5(5)(b)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F18** Words in s. 249(5) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 5(6)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F19** Words in s. 249(6) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 5(7)(a)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F20** Words in s. 249(6) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 5(7)(b)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F21** Words in s. 249(6) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 5(7)(c)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F22** Words in s. 249(6) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 5(7)(d)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F23** Words in s. 249(8) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 5(8)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F24** Words in s. 249(9) inserted (3.7.2000) by virtue of 1999 c. 29, s. 270, **Sch. 22 para. 5(9)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**

#### Modifications etc. (not altering text)

- C1** S. 249: power to apply (with modifications) conferred by Local Government, Planning and Land Act 1980 (c. 65, SIF 123:1), s. 149(3)(b), **Sch. 29 Pt. II para. 6** as substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 44(13)**
- C2** S. 249: power to modify conferred (10.11.1993) by 1993 c. 28, s. **171(3)(b)**; S.I. 1993/2762, **art. 3**
- C3** S. 249 applied (with modifications) (7.6.2004) by The Milton Keynes (Urban Area and Planning Functions) Order 2004 (S.I. 2004/932), art. 5, **Sch. para. 6** (with arts. 6, 7)  
S. 249 applied (with modifications) (12.10.2005) by The Thurrock Development Corporation (Planning Functions) Order 2005 (S.I. 2005/2572), **art. 5** (with arts. 6, 7)  
S. 249 applied (with modifications) (31.10.2005) by The London Thames Gateway Development Corporation (Planning Functions) Order 2005 (S.I. 2005/2721), **art. 6**

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S. 249 applied (with modifications) (6.4.2006) by [The West Northamptonshire Development Corporation \(Planning Functions\) Order 2006 \(S.I. 2006/616\)](#), [art. 6](#)

S. 249 applied (with modifications) (7.9.2006) by [The Olympic Delivery Authority \(Planning Functions\) Order 2006 \(S.I. 2006/2185\)](#), [art. 6](#)

**Marginal Citations**

**M4** 1980 c. 66.

**250 Compensation for orders under s. 249.**

- (1) Any person who, at the time of an order under section 249(2) [<sup>F25</sup>, (2B)] 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 on whose application the order was made in respect of—
  - (a) any depreciation in the value of his interest which is directly attributable to the order; and
  - (b) any other loss or damage which is so attributable.

<sup>F26</sup>(2) .....

- (3) A claim for compensation under this section shall be made to the local planning authority on whose application the order was made within the prescribed time and in the prescribed manner.
- (4) For the purpose of assessing any such compensation the rules set out in section 5 of the <sup>M5</sup>Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (5) Where an interest in land is subject to a mortgage—
  - (a) any compensation to which this section applies which is payable in respect of depreciation of the value of that interest shall be assessed as if the interest were not subject to the mortgage;
  - (b) a claim for any such compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
  - (c) no compensation to which this section applies shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
  - (d) any compensation to which this section applies which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee (or, if there is more than one mortgagee, to the first mortgagee) and shall in either case be applied by him as if it were proceeds of sale.
- (6) Except in so far as may be otherwise provided by any regulations made under this Act, any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal.
- (7) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 shall apply subject to any necessary modifications and to the provisions of any regulations made under this Act.

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#### Textual Amendments

- F25** Words in s. 250(1) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 6(2)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F26** S. 250(2) repealed (27.7.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 32, 84(6), Sch. 7 para. 39, **Sch. 19 Pt. I** (with s. 84(5)); S.I. 1992/1630, art. 2, Schs. 1, 2 (with art. 3(1))

#### Modifications etc. (not altering text)

- C4** S. 250: power to modify conferred (10.11.1993) by 1993 c. 28, s. 171(3)(b); S.I. 1993/2762, **art. 3**

#### Marginal Citations

- M5** 1961 c. 33.

## 251 Extinguishment of public rights of way over land held for planning purposes.

- (1) 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 Secretary of State may by order extinguish any public right of way over the land if he is 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) In this section any reference to the acquisition or appropriation of land for planning purposes shall be construed in accordance with section 246(1) as if this section were in Part IX.
- (3) Subsection (1) shall also apply (with the substitution of a reference to the Broads Authority for the reference to the local authority) in relation to any land within the Broads which is held by the Broads Authority and which was acquired by, or vested in, the Authority for any purpose connected with the discharge of any of its functions.

#### Modifications etc. (not altering text)

- C5** S. 251: power to apply (with modifications) conferred by Local Government, Planning and Land Act 1980 (c. 65, SIF 123:1), s. 149(3)(b), **Sch. 29 Pt. II para. 7** as substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 44(13)**
- C6** S. 251 restricted (17.7.1992) by S.I. 1992/1492, **reg. 15(5)**  
S. 251: power to modify conferred (10.11.1993) by 1993 c. 28, s. 171(3)(b); S.I. 1993/2762, **art. 3**
- C7** S. 251 applied (with modifications) (7.6.2004) by The Milton Keynes (Urban Area and Planning Functions) Order 2004 (S.I. 2004/932), art. 5, **Sch. para. 7** (with arts. 6, 7)  
S. 251 applied (with modifications) (12.10.2005) by The Thurrock Development Corporation (Planning Functions) Order 2005 (S.I. 2005/2572), **art. 5** (with arts. 6, 7)  
S. 251 applied (with modifications) (31.10.2005) by The London Thames Gateway Development Corporation (Planning Functions) Order 2005 (S.I. 2005/2721), **art. 6**  
S. 251 applied (with modifications) (6.4.2006) by The West Northamptonshire Development Corporation (Planning Functions) Order 2006 (S.I. 2006/616), **art. 6**  
S. 251 applied (with modifications) (7.9.2006) by The Olympic Delivery Authority (Planning Functions) Order 2006 (S.I. 2006/2185), **art. 6**
- C8** S. 251(1) extended (19.9.1995) by 1995 c. 25, ss. 65(7), 125(2), **Sch. 8 para. 2(3)(a)** (with ss. 7(6), 115, 117, Sch. 8 para. 7)

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## 252 Procedure for making of orders.

- (1) Before making an order under section 247, 248, 249 or 251 the Secretary of State [<sup>F27</sup>or, as the case may be, the council of a London borough] shall publish in at least one local newspaper circulating in the relevant area, and in the London Gazette, a notice—
  - (a) stating the general effect of the order;
  - (b) specifying a place in the relevant area where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of 28 days from the date of the publication of the notice (“the publication date”); and
  - (c) stating that any person may within that period by notice to the Secretary of State [<sup>F28</sup>or, as the case may be, the council of the London borough] object to the making of the order.
- (2) Not later than the publication date, the Secretary of State [<sup>F29</sup>or, as the case may be, the council of the London borough] shall serve a copy of the notice, together with a copy of the draft order and of any relevant map or plan—
  - (a) on every local authority in whose area any highway or, as the case may be, any land to which the order relates is situated, and
  - [<sup>F30</sup>(aa) on any National Park authority which is the local planning authority for the area in which any highway or, as the case may be, any land to which the order relates is situated, and]
  - (b) on any water, sewerage, hydraulic power or electricity undertakers or [<sup>F31</sup>public gas transporter] having any cables, mains, sewers, pipes or wires laid along, across, under or over any highway to be stopped up or diverted, or, as the case may be, any land over which a right of way is proposed to be extinguished, under the order.
- (3) Not later than the publication date, the Secretary of State [<sup>F32</sup>or, as the case may be, the council of the London borough] shall also cause a copy of the notice to be displayed in a prominent position at the ends of so much of any highway as is proposed to be stopped up or diverted or, as the case may be, of the right of way proposed to be extinguished under the order.
- (4) If before the end of the period of 28 days mentioned in subsection (1)(b) an objection is received by the Secretary of State [<sup>F33</sup>or, as the case may be, the council of the London borough,] from any local authority [<sup>F34</sup>National Park authority] or undertakers or [<sup>F31</sup>public gas transporter] on whom a notice is required to be served under subsection (2), or from any other person appearing to [<sup>F35</sup>to the Secretary of State or, as the case may be, the council] to be affected by the order, and the objection is not withdrawn, then
  - [<sup>F36</sup>(a) in a case where the Secretary of State is proposing to make an order, he shall cause a local inquiry to be held unless subsection (5) applies, or
  - (b) in a case where the council of a London borough is proposing to make an order, it shall notify the Mayor of London of the objections and shall cause a local inquiry to be held unless subsection (5A) applies.]
- (5) If, in a case where [<sup>F37</sup>the Secretary of State is proposing to make an order and] the objection is made by a person other than such a local authority or undertakers or [<sup>F31</sup>transporter], the Secretary of State is satisfied that in the special circumstances of the case the holding of such an inquiry is unnecessary he may dispense with the inquiry.

[<sup>F38</sup>(5A) In a case where—



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- (a) the council of a London borough is proposing to make the order,
- (b) the council has under subsection (4)(b) notified the Mayor of London of the objections, and
- (c) none of the objections notified is made by such a local authority or undertakers or transporter as are mentioned in that subsection,

the Mayor of London shall decide whether, in the special circumstances of the case, the holding of such an inquiry is unnecessary, and if he decides that it is unnecessary he shall so notify the council which may dispense with the inquiry.]

- (6) Subsections (2) to (5) of section 250 of the <sup>M6</sup>Local Government Act 1972 (local inquiries: evidence and costs) shall apply in relation to an inquiry caused to be held by the Secretary of State [<sup>F39</sup>or the council of a London borough] under subsection (4).

[<sup>F40</sup>(6A) In their application to an inquiry caused to be held by the council of a London borough—

- (a) subsection (4) of section 250 of the Local Government Act 1972 shall be treated as if—
  - (i) for the reference to a Minister there were substituted a reference to the council of a London borough,
  - (ii) for the reference to him there were substituted a reference to the council,
  - (iii) for the reference to he there were substituted a reference to the council acting with the consent of the Mayor of London, and
  - (iv) for the references to the Minister there were substituted references to the council of the London borough, and
- (b) subsection (5) of that section shall be treated as if—
  - (i) for the reference to the Minister there were substituted a reference to the council of a London borough, and
  - (ii) the power to make an order as to the costs of parties were subject to a requirement to act with the consent of the Mayor of London.]

- (7) Where publication of the notice mentioned in subsection (1) takes place on more than one day, the references in this section to the publication date are references to the latest date on which it is published.

- (8) [<sup>F41</sup>Where the Secretary of State is proposing to make an order,] after considering any objections to the order which are not withdrawn and, where a local inquiry is held, the report of the person who held the inquiry, the Secretary of State may, subject to subsection (9), make the order either without modification or subject to such modifications as he thinks fit.

[<sup>F42</sup>(8A) Where the council of a London borough is proposing to make an order, after—

- (a) considering any objections to the order which are not withdrawn, and
- (b) where a local inquiry is held—
  - (i) considering the report of the person who held the inquiry, and
  - (ii) obtaining the consent of the Mayor of London to the making of the order,

the council may, subject to subsection (9), make the order either without modification or subject to such modification as it thinks fit.]

- (9) Where—

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- (a) the order contains a provision requiring any such payment, repayment or contribution as is mentioned in section 247(4)(a); and
  - (b) objection to that provision is duly made by an authority or person who would be required by it to make such a payment, repayment or contribution; and
  - (c) the objection is not withdrawn,
- the order shall be subject to special parliamentary procedure.
- (10) Immediately after the order has been made, the Secretary of State [<sup>F43</sup>or, as the case may be, the council of the London borough] shall publish, in the manner specified in subsection (1), a notice stating that the order has been made and naming a place where a copy of the order may be seen at all reasonable hours.
- [<sup>F44</sup>(10A) Nothing in subsection (2) shall require the council of a London borough to serve anything on itself.]
- (11) Subsections (2), (3) and (7) shall have effect in relation to a notice under subsection (10) as they have effect in relation to a notice under subsection (1).
- (12) In this section—
- “the relevant area”, in relation to an order, means the area in which any highway or land to which the order relates is situated;
- “local authority” means the council of a county, [<sup>F45</sup> county borough,]district, parish [<sup>F46</sup>, community] or London borough, [<sup>F47</sup>a police authority established under [<sup>F48</sup>section 3 of the Police Act 1996][<sup>F49</sup>the Metropolitan Police Authority]. . . ] a joint authority established by Part IV of the <sup>M7</sup>Local Government Act 1985, [<sup>F50</sup>the London Fire and Emergency Planning Authority] a housing action trust established under Part III of the <sup>M8</sup>Housing Act 1988 [<sup>F51</sup>, the Residuary Body for Wales (Corff Gweddilliol Cymru)] and the parish meeting of a <sup>F52</sup>. . . parish not having a separate parish council;
- and in subsection (2)—
- (i) the reference to water undertakers shall be construed as including a reference to the National Rivers Authority, and
  - (ii) the reference to electricity undertakers shall be construed as a reference to holders of licences under section 6 of the <sup>M9</sup>Electricity Act 1989 who are entitled to exercise any power conferred by paragraph 1 of Schedule 4 to that Act.

#### Textual Amendments

- F27** Words in s. 252(1) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 7(2)(a)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F28** Words in s. 252(1) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 7(2)(b)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F29** Words in s. 252(2) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 7(3)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F30** S. 252(2)(aa) inserted (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10 para. 32(7)(a)** (with ss. 7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, **art. 2(1)**
- F31** Words in s. 252(2)(b)(4)(5) substituted (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 18(1)(a)(b)(c)**; S.I. 1996/218, **art. 2**
- F32** Words in s. 252(3) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 7(4)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**

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- F33** Words in s. 252(4) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 7(5)(a)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F34** Words in s. 252(4) inserted (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10 para. 32(7)(b)** (with ss. 7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, **art. 2(1)**
- F35** Words in s. 252(4) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 7(5)(b)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F36** S. 252(4)(a)(b) substituted (3.7.2000) for words in s. 252(5) by 1999 c. 29, s. 270, **Sch. 22 para. 7(5)(c)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F37** Words in s. 252(5) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 7(6)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F38** S. 252(5A) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 7(7)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F39** Words in s. 252(6) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 7(8)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F40** S. 252(6A) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 7(9)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F41** Words in s. 252(8) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 7(10)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F42** S. 252(8A) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 7(11)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F43** Words in s. 252(10) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 7(12)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F44** S. 252(10A) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 7(13)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F45** Words in the definition of "local authority" in s. 252(12) inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 24(10)(a)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**
- F46** Words in the definition of "local authority" in s. 252(12) inserted (1.10.1995) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 24(10)(b)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/2490, art. 4(1), **Sch. 2**
- F47** Words in the definition of "local authority" in s. 252(12) inserted (1.10.1994 for specified purposes and otherwise 1.4.1995) by 1994 c. 29, s. 43, **Sch. 4 Pt. II para. 63**; S.I. 1994/2025, **art. 6(1)(2)(g)** (with art. 6(6)); S.I. 1994/3262, art. 4(1), **Sch.**
- F48** Words in the definition of "local authority" in s. 252(12) substituted (22.8.1996) by 1996 c. 16, ss. 103(1), 104(1), **Sch. 7 Pt. I para. 1(2)(ze)**
- F49** Words in the definition of "local authority" in s. 252(12) inserted (3.7.2000) by 1999 c. 29, s. 325, **Sch. 27 para. 65** (with Sch. 12 para. 9(1)); S.I. 2000/1648, art. 2, **Sch.**
- F50** Words in the definition of "local authority" in s. 252(12) inserted (3.7.2000) by 1999 c. 29, s. 328(8), **Sch. 29 para. 57** (with Sch. 12 para. 9(1)); S.I. 2000/1094, **art. 4(h)**
- F51** Words in the definition of "local authority" in s. 252(12) inserted (5.7.1994) by 1994 c. 19, ss. 39, 66(2)(b), **Sch. 13 para. 32** (with ss. 54(5)(7), Sch. 17 paras. 22(1), 23(2))
- F52** Word in the definition of "local authority" in s. 252(12) repealed (8.11.1995) by 1995 c. 44, s. 1(1), **Sch. 1 Pt. VI**

#### Modifications etc. (not altering text)

- C9** S. 252 modified (1.4.1995) by S.I. 1995/401, art. 18, **Sch. para. 2(b)**

#### Marginal Citations

- M6** 1972 c. 70.  
**M7** 1985 c. 51.  
**M8** 1988 c. 50.  
**M9** 1989 c. 29.

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## 253 Procedure in anticipation of planning permission.

### (1) Where—

- (a) the Secretary of State [<sup>F53</sup>or the council of a London borough] would, if planning permission for any development had been granted under Part III, have power to make an order under section 247 or 248 authorising the stopping up or diversion of a highway in order to enable that development to be carried out, and

- (b) subsection (2), (3) or (4) applies,

then, notwithstanding that such permission has not been granted, the Secretary of State [<sup>F54</sup>or, as the case may be, the council of the London borough] may publish notice of the draft of such an order in accordance with section 252.

### (2) This subsection applies where the relevant development is the subject of an application for planning permission and either—

- (a) that application is made by a local authority [<sup>F55</sup>National Park authority] or statutory undertakers <sup>F56</sup>. . . ; or
- (b) that application stands referred to the Secretary of State in pursuance of a direction under section 77; or
- (c) the applicant has appealed to the Secretary of State under section 78 against a refusal of planning permission or of approval required under a development order [<sup>F57</sup>or a local development order] or against a condition of any such permission or approval.

### (3) This subsection applies where—

- (a) the relevant development is to be carried out by a local authority [<sup>F55</sup>National Park authority] or statutory undertakers and requires, by virtue of an enactment, the authorisation of a government department; and
- (b) the developers have made an application to the department for that authorisation and also requested a direction under section 90(1) that planning permission be deemed to be granted for that development.

### (4) This subsection applies where the council of a county, [<sup>F58</sup>county borough,] metropolitan district or London borough [<sup>F59</sup>a National Park authority] or a joint planning board certify that they have begun to take such steps, in accordance with regulations made by virtue of section 316, as are required to enable them to obtain planning permission for the relevant development.

### (5) Section 252(8) shall not be construed as authorising the Secretary of State [<sup>F60</sup>or the council of a London borough] to make an order under section 247 or 248 of which notice has been published by virtue of subsection (1) until planning permission is granted for the development which occasions the making of the order.

#### Textual Amendments

**F53** Words in s. 253(1) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 8(2)(a)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**

**F54** Words in s. 253(1) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 8(2)(b)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**

**F55** Words in s. 253(2)(a)(3)(a) inserted (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10 para. 32(8)(a)** (with ss. 7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, **art. 2(1)**

**F56** Words in s. 253(2)(a) repealed (31.10.1994) by 1994 c. 21, s. 67, Sch. 9 para. 39(1), **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**

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- F57** Words in s. 253(2)(c) inserted (6.8.2004 for specified purposes, 10.5.2006 for E. so far as not already in force, 30.4.2012 for W. so far as not already in force) by **Planning and Compulsory Purchase Act 2004 (c. 5), s. 40(2)(j)** (with s. 111); S.I. 2004/2097, art. 2; S.I. 2006/1061, art. 2(a); S.I. 2012/1100, art. 2
- F58** Words in s. 253(4) inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 24(11)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**
- F59** Words in s. 253(4) inserted (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10 para. 32(8)(b)** (with ss. 7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, **art. 2(1)**
- F60** Words in s. 253(5) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 8(3)** (with Sch. 12 para. 9(1)); S.I. 2000/801, **art. 2(2)(c)**

## **254 Compulsory acquisition of land in connection with highways.**

- (1) The Secretary of State, or a local highway authority on being authorised by the Secretary of State to do so, may acquire land compulsorily—
- (a) for the purpose of providing or improving any highway which is to be provided or improved in pursuance of an order under section 247, 248 or 249 or for any other purpose for which land is required in connection with the order; or
  - (b) for the purpose of providing any public right of way which is to be provided as an alternative to a right of way extinguished under an order under section 251.
- (2) The <sup>M10</sup>Acquisition of Land Act 1981 shall apply to the acquisition of land under this section.

### **Marginal Citations**

**M10** 1981 c. 67.

## **255 Concurrent proceedings in connection with highways.**

- (1) In relation to orders under sections 247, 248 and 249, regulations made under this Act may make provision for securing that any proceedings required to be taken for the purposes of the acquisition of land under section 254 (as mentioned in subsection (1) (a) of that section) may be taken concurrently with any proceedings required to be taken for the purposes of the order.
- (2) In relation to orders under section 251, regulations made under this Act may make provision for securing—
- (a) that any proceedings required to be taken for the purposes of such an order may be taken concurrently with any proceedings required to be taken for the purposes of the acquisition of the land over which the right of way is to be extinguished; or
  - (b) that any proceedings required to be taken for the purposes of the acquisition of any other land under section 254 (as mentioned in subsection (1)(b) of that section) may be taken concurrently with either or both of the proceedings referred to in paragraph (a).

## **256 Telecommunication apparatus: orders by Secretary of State.**

- (1) Where—

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- (a) in pursuance of an order under section 247, 248 or 249 a highway is stopped up or diverted or, as the case may be, any right to use vehicles on that highway is extinguished; and
- (b) immediately before the date on which the order came into force there was under, in, on, over, along or across the highway any [<sup>F61</sup>electronic communications apparatus] kept installed for the purposes of [<sup>F62</sup>an electronic communications code network] ,
- the operator of that [<sup>F63</sup>network] shall have the same powers in respect of the apparatus as if the order had not come into force.
- (2) Notwithstanding subsection (1), any person entitled to land over which the highway subsisted shall be entitled to require the alteration of the apparatus.
- (3) Where—
- (a) any such order provides for the improvement of a [<sup>F64</sup>highway for which the Secretary of State is not the highway authority], and
- (b) immediately before the date on which the order came into force there was under, in, on, over, along or across the highway any [<sup>F61</sup>electronic communications apparatus] kept installed for the purposes of [<sup>F62</sup>an electronic communications code network] ,the local highway authority shall be entitled to require the alteration of the apparatus.
- (4) Subsection (3) does not have effect so far as it relates to the alteration of any apparatus for the purpose of [<sup>F65</sup>major highway works, major bridge works or major transport works within the meaning of Part III of the New Roads and Street Works Act 1991].
- (5) Paragraph 1(2) of the [<sup>F66</sup>electronic communications code](alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of this section as it applies for the purposes of that code.
- (6) Paragraph 21 of the [<sup>F66</sup>electronic communications code](restriction on removal of [<sup>F61</sup>electronic communications apparatus]) shall apply in relation to any entitlement conferred by this section to require the alteration, moving or replacement of any [<sup>F61</sup>electronic communications apparatus] as it applies in relation to an entitlement to require the removal of any such apparatus.

#### Textual Amendments

- F61** Words in s. 256 substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by [Communications Act 2003 \(c. 21\)](#), ss. 406, 411, [Sch. 17 para. 103\(1\)\(c\)\(2\)\(c\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), [2\(1\)](#), [Sch. 1](#) (with transitional provisions in [arts. 3-6](#)); S.I. 2003/3142, arts. 1(2), [3\(2\)](#) (with art. 11)
- F62** Words in s. 256 substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by [Communications Act 2003 \(c. 21\)](#), ss. 406, 411, [Sch. 17 para. 103\(1\)\(c\)\(2\)\(b\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), [2\(1\)](#), [Sch. 1](#) (with transitional provisions in [arts. 3-6](#)); S.I. 2003/3142, arts. 1(2), [3\(2\)](#) (with art. 11)
- F63** Word in s. 256 substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by [Communications Act 2003 \(c. 21\)](#), ss. 406, 411, [Sch. 17 para. 103\(1\)\(c\)\(2\)\(e\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), [2\(1\)](#), [Sch. 1](#) (with transitional provisions in [arts. 3-6](#)); S.I. 2003/3142, arts. 1(2), [3\(2\)](#) (with art. 11)
- F64** Words in s. 256(3) substituted (1.11.1991) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para. 126\(1\)\(2\)](#); S.I. 1991/2288, art. 3, [Sch.](#)

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- F65** Words in s. 256(4) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para. 126\(1\)\(3\)](#); S.I. 1992/2984, art. 2(2), [Sch. 2](#)
- F66** Words in s. 256 substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by [Communications Act 2003 \(c. 21\)](#), ss. 406, 411, [Sch. 17 para. 103\(1\)\(c\)\(2\)\(a\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), [2\(1\)](#), [Sch. 1](#) (with transitional provisions in [arts. 3-6](#)); S.I. 2003/3142, arts. 1(2), [3\(2\)](#) (with art. 11)

### *Orders by other authorities*

## **257 Footpaths [<sup>F67</sup>, [bridleways and restricted byways](#)] affected by development: orders by other authorities.**

- (1) Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath [<sup>F68</sup>, [bridleway or restricted byway](#)] if they are satisfied that it is necessary to do so in order to enable development to be carried out—
- in accordance with planning permission granted under Part III, or
  - by a government department.
- (2) An order under this section may, if the competent authority are satisfied that it should do so, provide—
- 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;
  - for authorising or requiring works to be carried out in relation to any footpath [<sup>F68</sup>, [bridleway or restricted byway](#)] for whose stopping up or diversion, creation or improvement provision is made by the order;
  - 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 any such footpath [<sup>F68</sup>, [bridleway or restricted byway](#)];
  - for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.
- (3) An order may be made under this section authorising the stopping up or diversion of a footpath [<sup>F68</sup>, [bridleway or restricted byway](#)] which is temporarily stopped up or diverted under any other enactment.
- (4) In this section “competent authority” means—
- in the case of development authorised by a planning permission, the local planning authority who granted the permission or, in the case of a permission granted by the Secretary of State, who would have had power to grant it; and
  - in the case of development carried out by a government department, the local planning authority who would have had power to grant planning permission on an application in respect of the development in question if such an application had fallen to be made.

### **Textual Amendments**

- F67** Words in s. 257 sidenote substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), [Sch. 1 Pt. 1](#) (see [S.I. 2006/1172](#), art. 2(a)-(d) (with art. 3) and [S.I. 2006/1279](#), art. 2(a)-(d) (with art. 3))

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**F68** Words in s. 257(1)(2)(b)(c)(3) substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), **Sch. 1 Pt. 1** (see [S.I. 2006/1172](#), art. 2(a)-(d) (with art. 3) and [S.I. 2006/1279](#), art. 2(a)-(d) (with art. 3))

#### Modifications etc. (not altering text)

- C10** S. 257 modified by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 5, **Sch. 3 para. 8(1)**
- C11** Ss. 257-261 applied (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), reg. 2(1), **Sch. Pt. 1** (see [S.I. 2006/1172](#), art. 2(a)-(d) (with art. 3) and [S.I. 2006/1279](#), art. 2(a)-(d) (with art. 3))

## 258 Extinguishment of public rights of way over land held for planning purposes.

- (1) 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, then, subject to section 259, the local authority may by order extinguish any public right of way over the land, being a footpath <sup>F69</sup>, bridleway or restricted byway], if they are satisfied—
  - (a) that an alternative right of way has been or will be provided; or
  - (b) that the provision of an alternative right of way is not required.
- (2) In this section any reference to the acquisition or appropriation of land for planning purposes shall be construed in accordance with section 246(1) as if this section were in Part IX.
- (3) Subsection (1) shall also apply (with the substitution of a reference to the Broads Authority for the reference to the local authority) in relation to any land within the Broads which is held by the Broads Authority and which was acquired by, or vested in, the Authority for any purpose connected with the discharge of any of its functions.

#### Textual Amendments

**F69** Words in s. 258(1) substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), **Sch. 1 Pt. 1** (see [S.I. 2006/1172](#), art. 2(a)-(d) (with art. 3) and [S.I. 2006/1279](#), art. 2(a)-(d) (with art. 3))

#### Modifications etc. (not altering text)

- C12** S. 258: power to apply (with modifications) conferred by [Local Government, Planning and Land Act 1980 \(c. 65, SIF 123:1\)](#), s. 149(3)(b), **Sch. 29 Pt. II para. 8** as substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, **Sch. 2 para. 44(13)**
- C13** S. 258: power to modify conferred (10.11.1993) by 1993 c. 28, s. 171(3)(b); [S.I. 1993/2762](#), **art. 3**
- C14** S. 258 applied (with modifications) (7.6.2004) by [The Milton Keynes \(Urban Area and Planning Functions\) Order 2004 \(S.I. 2004/932\)](#), art. 5, **Sch. para. 8** (with arts. 6, 7)
- S. 258 applied (with modifications) (12.10.2005) by [The Thurrock Development Corporation \(Planning Functions\) Order 2005 \(S.I. 2005/2572\)](#), **art. 5** (with arts. 6, 7)
- S. 258 applied (with modifications) (31.10.2005) by [The London Thames Gateway Development Corporation \(Planning Functions\) Order 2005 \(S.I. 2005/2721\)](#), **art. 6**
- S. 258 applied (with modifications) (6.4.2006) by [The West Northamptonshire Development Corporation \(Planning Functions\) Order 2006 \(S.I. 2006/616\)](#), **art. 6**



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- C15** Ss. 257-261 applied (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), reg. 2(1), **Sch. Pt. 1** (see S.I. 2006/1172, art. 2(a)-(d) (with art. 3) and S.I. 2006/1279, art. 2(a)-(d) (with art. 3))  
S. 258 applied (with modifications) (7.9.2006) by [The Olympic Delivery Authority \(Planning Functions\) Order 2006 \(S.I. 2006/2185\)](#), **art. 6**
- C16** S. 258(1) extended (19.9.1995) by 1995 c. 25, ss. 65(7), 125(2), **Sch. 8 para. 2(3)(a)** (with ss. 7(6), 115, 118, Sch. 8 para. 7)

## **259 Confirmation of orders made by other authorities.**

- (1) An order made under section 257 or 258 shall not take effect unless confirmed by the Secretary of State or unless confirmed, as an unopposed order, by the authority who made it.
- (2) The Secretary of State shall not confirm any such order unless satisfied as to every matter as to which the authority making the order are required under section 257 or, as the case may be, section 258 to be satisfied.
- (3) The time specified—
  - (a) in an order under section 257 as the time from which a footpath [<sup>F70</sup>, bridleway or restricted byway] is to be stopped up or diverted; or
  - (b) in an order under section 258 as the time from which a right of way is to be extinguished,shall not be earlier than confirmation of the order.
- (4) Schedule 14 shall have effect with respect to the confirmation of orders under section 257 or 258 and the publicity for such orders after they are confirmed.

### **Textual Amendments**

- F70** Words in s. 259(3)(a) substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), **Sch. 1 Pt. 1** (see S.I. 2006/1172, art. 2(a)-(d) (with art. 3) and S.I. 2006/1279, art. 2(a)-(d) (with art. 3))

### **Modifications etc. (not altering text)**

- C17** Ss. 257-261 applied (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), reg. 2(1), **Sch. Pt. 1** (see S.I. 2006/1172, art. 2(a)-(d) (with art. 3) and S.I. 2006/1279, art. 2(a)-(d) (with art. 3))

## **260 Telecommunication apparatus: orders by or on application of other authorities.**

- (1) This section applies where—
  - (a) any order is made by a local authority under section 258(1), or on the application of a local authority under section 251(1), which extinguishes a public right of way; or
  - (b) any order is made by a competent authority under section 257 which authorises the stopping up or diversion of a footpath [<sup>F71</sup>, bridleway or restricted byway],

and at the time of the publication of the notice required by section 252(1) or, as the case may be, paragraph 1 of Schedule 14 any [<sup>F72</sup>electronic communications apparatus]

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was kept installed for the purposes of [<sup>F73</sup>an electronic communications code network] under, in, on, over, along or across the land over which the right of way subsisted.

- (2) In subsection (1) “competent authority” has the same meaning as in section 257 and in the following provisions of this section references to the authority are to the authority who made the order or, as the case may be, to the authority on whose application it was made.
- (3) The power of the operator of [<sup>F74</sup>the electronic communications code network] to remove the apparatus—
  - (a) shall, notwithstanding the making of the order, be exercisable at any time not later than the end of the period of three months from the date on which the right of way is extinguished or authorised to be stopped up or diverted; and
  - (b) if before the end of that period the operator of the [<sup>F75</sup>network] has given notice to the authority of his intention to remove the apparatus or a part of it, shall be exercisable in respect of the whole or, as the case may be, that part of the apparatus after the end of that period.
- (4) The operator of the [<sup>F75</sup>network] may by notice given in that behalf to the authority not later than the end of that period abandon the [<sup>F72</sup>electronic communications apparatus] or any part of it.
- (5) Subject to subsection (4), the operator of the [<sup>F75</sup>network] shall be deemed at the end of that period to have abandoned any part of the apparatus which the operator has then neither removed nor given notice of his intention to remove.
- (6) The operator of the [<sup>F75</sup>network] shall be entitled to recover from the authority the expense of providing, in substitution for the apparatus and any other [<sup>F72</sup>electronic communications apparatus] connected with it which is rendered useless in consequence of the removal or abandonment of the first-mentioned apparatus, any [<sup>F76</sup>electronic communications apparatus] in such other place as the operator may require.
- (7) Where under the previous provisions of this section the operator of the [<sup>F75</sup>network] has abandoned the whole or any part of any [<sup>F72</sup>electronic communications apparatus] , that apparatus or that part of it shall vest in the authority and shall be deemed, with its abandonment, to cease to be kept installed for the purposes of [<sup>F73</sup>an electronic communications code network] .
- (8) As soon as reasonably practicable after the making of any such order as is mentioned in paragraph (a) or (b) of subsection (1) in circumstances in which that subsection applies in relation to the operator of [<sup>F73</sup>an electronic communications code network] , the person by whom the order was made shall give notice to the operator of the making of the order.
- (9) Subsections (5) and (6) of section 256 apply for the purposes of this section as they apply for the purposes of that section.

#### Textual Amendments

- F71** Words in s. 260(1)(b) substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), **Sch. 1 Pt. 1** (see [S.I. 2006/1172](#), art. 2(a)-(d) (with art. 3) and [S.I. 2006/1279](#), art. 2(a)-(d) (with art. 3))
- F72** Words in s. 260 substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by [Communications Act 2003 \(c. 21\)](#), ss. 406, 411, **Sch. 17 para. 103(1)(d)(2)(c)** (with transitional

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- provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)
- F73** Words in s. 260 substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 103(1)(d)(2)(b)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)
- F74** Words in s. 260 substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 103(1)(d)(2)(d)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)
- F75** Words in s. 260 substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 103(1)(d)(2)(e)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)
- F76** Words in s. 260 substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 103(1)(c)(2)(c)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)

#### **Modifications etc. (not altering text)**

- C18** S. 260 applied (25.11.1998 for specified purposes otherwise 3.7.2000) by 1998 c. 45, s. 23, **Sch. 6**, para. 16(2); S.I. 1998/2952, **art. 2(1)**; S.I. 2000/1173, **art. 2(2)(c)**
- C19** Ss. 257-261 applied (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), reg. 2(1), **Sch. Pt. 1** (see S.I. 2006/1172, art. 2(a)-(d) (with art. 3) and S.I. 2006/1279, art. 2(a)-(d) (with art. 3))
- C20** S. 260(1) extended (19.9.1995) by 1995 c. 25, ss. 65(7), 125(1), **Sch. 8 para. 2(3)(a)**

### *Temporary highway orders: mineral workings*

## **261 Temporary stopping up of highways for mineral workings.**

- (1) Where the Secretary of State [<sup>F77</sup>or the council of a London borough] is satisfied—
- that an order made by him [<sup>F78</sup>or, as the case may be, the council] under section 247 for the stopping up or diversion of a highway is required for the purpose of enabling minerals to be worked by surface working; and
  - that the highway can be restored, after the minerals have been worked, to a condition not substantially less convenient to the public,
- the order may provide for the stopping up or diversion of the highway during such period as may be prescribed by or under the order and for its restoration at the expiration of that period.
- (2) Where a competent authority within the meaning of section 257 are satisfied—
- that an order made by them under that section for the stopping up or diversion of a footpath [<sup>F79</sup>, bridleway or restricted byway] is required for the purpose of enabling minerals to be worked by surface working; and
  - that the footpath [<sup>F79</sup>, bridleway or restricted byway] can be restored, after the minerals have been worked, to a condition not substantially less convenient to the public,
- the order may provide for the stopping up or diversion of the footpath [<sup>F79</sup>, bridleway or restricted byway] during such period as may be prescribed by or under the order and for its restoration at the expiration of that period.

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- (3) Without prejudice to the provisions of section 247 or 257, any such order as is authorised by subsection (1) or (2) may contain such provisions as appear to the Secretary of State [<sup>F80</sup>, the council of the London borough or] the competent authority [<sup>F81</sup>(as the case may be)] to be expedient—
- (a) for imposing upon persons who, apart from the order, would be subject to any liability with respect to the repair of the original highway during the period prescribed by or under the order a corresponding liability in respect of any highway provided in pursuance of the order;
  - (b) for the stopping up at the expiry of that period of any highway so provided and for the reconstruction and maintenance of the original highway;
- and any provision included in the order in accordance with subsection (4) of section 247 or subsection (2) of section 257 requiring payment to be made in respect of any cost or expenditure under the order may provide for the payment of a capital sum in respect of the estimated amount of that cost or expenditure.
- (4) In relation to any highway which is stopped up or diverted by virtue of an order under section 247 or 248, sections 271 and 272 shall have effect—
- (a) as if for references to land which has been acquired as there mentioned and to the acquiring or appropriating authority there were substituted respectively references to land over which the highway subsisted and to the person entitled to possession of that land; and
  - (b) as if references in subsection (5) of each of those sections to a local authority or statutory undertakers included references to any person (other than a Minister) who is entitled to possession of that land,
- and sections 275 to 278 shall have effect accordingly.
- (5) Subsection (4) shall not apply to land constituting the site of a highway in respect of which opencast planning permission (within the meaning of section 51 of the <sup>M11</sup>Opencast Coal Act 1958) has been granted.

#### Textual Amendments

- F77** Words in s. 261(1) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 9(2)(a)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F78** Words in s. 261(1) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 9(2)(b)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F79** Words in s. 261(2) substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), **Sch. 1 Pt. 1** (see S.I. 2006/1172, art. 2(a)-(d) (with art. 3) and S.I. 2006/1279, art. 2(a)-(d) (with art. 3))
- F80** Words in s. 261(3) substituted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 9(3)(a)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F81** Words in s. 261(3) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 9(3)(b)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**

#### Modifications etc. (not altering text)

- C21** S. 261 extended (19.9.1995) by 1995 c. 25, ss. 65(7), 125(2), **Sch. 8 para. 2(3)(a)**
- C22** Ss. 257-261 applied (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), reg. 2(1), **Sch. Pt. 1** (see S.I. 2006/1172, art. 2(a)-(d) (with art. 3) and S.I. 2006/1279, art. 2(a)-(d) (with art. 3))

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**Marginal Citations**

**M11** 1958 c. 69.

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