

COUNTRYSIDE AND RIGHTS OF WAY ACT 2000

EXPLANATORY NOTES

INTRODUCTION

Part II: Public Rights of Way and Road Traffic

Commentary on sections

Section 57 and Schedule 6: Creation, stopping up and diversion of highways

105. *Section 57* introduces *Schedule 6*. The Schedule contains a number of amendments to the Highways Act 1980 relating to the creation, stopping up and diversion of footpaths, bridleways and certain other highways. The main changes produced by the Schedule include:
- the conferring on owners and occupiers of land used for agriculture, forestry or the breeding or keeping of horses of a right to apply to a local authority for the making of a public path extinguishment order or a public path diversion order,
 - a new power for local authorities to make orders stopping up or diverting footpaths, bridleways (and certain other highways) for the purpose of preventing crime,
 - a similar power for local authorities to stop up or divert footpaths, bridleways (and certain other highways) in cases where they cross school premises for the purpose of protecting pupils and staff at the school, and a right for the proprietor of a school to apply for such an order.
 - a new power for local authorities to make orders stopping up or diverting footpaths, bridleways (and certain other highways) for the purpose of protecting SSSIs, and
 - a new power for the occupier of any land crossed by a footpath or bridleway to divert it temporarily for up to fourteen days a year in a case where dangerous works are being carried out.
106. *Paragraphs 1, 6 and 9(5)* of Schedule 6 relate to orders made under sections 26, 118, and 119 of the Highways Act 1980 creating, extinguishing or diverting footpaths and bridleways. They require:
- (a) the Secretary of State or the National Assembly for Wales, when deciding to confirm or make such an order; and
 - (b) a local authority, when deciding whether to confirm such an order,
- to have regard to any material provision of a rights of way improvement plan for the area which includes land over which a footpath or bridleway would be created or extinguished.
107. *Paragraph 2* of Schedule 6 substitutes a new section 29 in the Highways Act 1980. Under the existing section 29, councils are required to have due regard to the needs of agriculture and forestry in the exercise of certain functions in respect of the creation, stopping up and diversion of footpaths and bridleways. New section 29 preserves that

*These notes refer to the Countryside and Rights of Way Act
2000 (c.37) which received Royal Assent on 30 November 2000*

requirement but the definition of “agriculture” is extended to encompass the breeding or keeping of horses and an additional duty to have due regard to the desirability of conserving flora, fauna and geological and physiographical features is introduced.

108. *Paragraph 3* relates to section 31 of the Highways Act 1980. Under section 31 highways may be created through deemed dedication on the basis that public use, as of right, of a way for 20 years and without interruption creates a presumption that the owner dedicated the way as a highway. Section 31(6) provides a method for an owner of land to negate, in advance, the presumption of dedication which arises after 20 years’ use. A landowner may deposit, with the relevant local authority, a map and statement showing all the ways which he admits are dedicated as highways on his land and thereafter lodge a declaration within six years of that date that no additional ways have been dedicated over his land. He may deposit further declarations every six years or fewer years thereafter. The effect of the deposit is, in the absence of evidence to the contrary, to negate for the period between declarations being lodged the presumption to dedicate new highways which may arise from long user under section 31. Paragraph 3 of Schedule 6 extends the period for making declarations from six years to ten years.
109. *Paragraph 4* of Schedule 6 provides for a register of deposited maps and statements and lodged declarations to be kept by local authorities and made available for public inspection free of charge.
110. *Paragraph 5* of Schedule 6 amends the Highways Act 1980 to ensure that highways created in consequence of special diversion orders and SSSI diversion orders become maintainable at the public expense.
111. *Paragraphs 7, 9(4) and 10* of Schedule 6 amend the Highways Act 1980 to allow an owner, lessee, or occupier of agricultural and other types of land to apply to a council for the making of an order under section 118 or 119 of the 1980 Act closing or diverting a footpath or bridleway which crosses their land. Land managers currently wishing to secure the diversion or extinguishment of a footpath or bridleway across their land may request a council to make orders under section 118 or 119. If the authority declines, the Secretary of State may be requested to use his reserve powers, but in practice these powers are rarely used.
112. *New sections 118ZA(2) and (3) and 119ZA(4) and (5)* allow for regulations to be made prescribing the form in which an application should be made and what charges may be payable. *Subsection (6) of section 118ZA* enables a council to require an applicant to enter into an agreement to make a contribution towards any compensation that may become payable as a result of a closure of a footpath or bridleway. This parallels current provisions in section 119 of the 1980 Act. *Sections 118ZA(8) and 119ZA(9)* require a council to give the applicant notice of its decision in writing and set out its reasons. There is provision (*in sections 118ZA(7) and 119ZA (8) respectively*) to enable an applicant to request the Secretary of State or the National Assembly for Wales to direct a council to decide an application if the council has not done so within four months of receiving it. Sections 118 and 119 (which confer power to make the orders concerned) are not substantively altered and so the criteria for the making and confirmation of the orders remain unchanged.
113. *Paragraphs 8 and 12* of the Schedule insert new sections 118B, 118C, 119B, 119C, 119D and 119E into the Highways Act 1980.
114. *New sections 118B, 118C, 119B and 119C* empower local highway authorities to make special extinguishment and special diversion orders for closing or diverting footpaths, bridleways, restricted byways and byways open to all traffic. In areas which have been designated by the Secretary of State or the National Assembly for Wales by order, the new powers may be exercised for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community. An extinguishment or diversion order may only be made for this purpose if premises near a right of way are affected by high levels of crime and the existence of the highway is facilitating the persistent commission

*These notes refer to the Countryside and Rights of Way Act
2000 (c.37) which received Royal Assent on 30 November 2000*

of offences. The special diversion and extinguishment order powers are also available to protect staff and pupils where rights of way cross school grounds. The local highway authority is required to consult the police authority for the area before making a special extinguishment order or special diversion order for either purpose. These powers are not confined to areas designated by the Secretary of State or the National Assembly for Wales.

115. *Subsection (7)* of section 119B prevents a diversion from creating a cul-de-sac. *Subsection (8)* provides for the extinguishment of the existing way, under a special diversion order, to be delayed until the local highway authority certifies that any necessary work to the new way has been carried out. *Subsection (9)* allows conditions to be attached to a right of way created by a diversion. *Subsection (14)* applies the provisions of section 27 of the Highways Act 1980, which relate to the making up of new rights of way, to a diversion made under section 119B.
116. *Sections 118B(9) and 119B(12)* provide for the form of orders to be prescribed by regulations. *Sections 118B(10) and 119B(13)* apply the provisions of Schedule 6 to the Highways Act 1980 which sets out the procedure to be followed for making and confirming closure and diversion orders.
117. The confirming authority (that is, the local highway authority in the case of unopposed orders, otherwise the Secretary of State or the National Assembly for Wales) must be satisfied as to certain matters, in particular whether a diversion or extinguishment order would be expedient, and including, for proposed extinguishments, the availability of an alternative route or the practicability of diverting the existing way instead. In addition, the confirming authority is to consider whether an order in respect of a designated area is consistent with any statutory crime and disorder strategy for that area. In the case of an order relating to a school, the authority is to consider what other security measures have been or could be taken and whether it is likely that the coming into operation of the order would result in a substantial improvement in the security of the school in question. Account is also to be taken of the effect which closure would have on any land served by the right of way in question.
118. *New sections 118C and 119C* give a right to school proprietors to apply to a local highway authority for orders to divert or close footpaths, bridleways, restricted byways and byways open to all traffic where these cross school grounds. (The term “proprietor”, in relation to a school, has the same meaning as in the Education Act 1996: see paragraph 15(b) of the Schedule.)
119. *New sections 119D and 119E* empower highway authorities, following an application from English Nature (EN) or the Countryside Council for Wales (CCW), to make SSSI diversion orders diverting footpaths, bridleways, restricted byways and byways open to all traffic for the protection of sites of special scientific interest (SSSIs) designated under the Wildlife and Countryside Act 1981 if public use of the highway is causing or is likely to cause significant damage to the SSSI in question. EN or CCW must give fourteen days’ advance notice of their application to any owner, occupier or lessee of land where the existing right of way or the diverted right of way is or would be sited. The Secretary of State and the National Assembly for Wales are given powers to make regulations prescribing the form of applications and other requirements for notice. Before making an SSSI diversion order, the highway authority must consider whether the damage could be prevented by the making of a traffic regulation order and whether such an order would cause less inconvenience to the public than a diversion. Diversion orders under these new sections may not be confirmed until the confirming authority has considered the effects of the diversion on public enjoyment of the right of way and the effects on the land affected by the diversion. *Subsection (6)* of 119D provides for the extinguishment of the existing way to be delayed until the local highway authority certifies that any necessary work to the new way has been carried out. The Secretary of State is given powers to make regulations prescribing the form of applications and requirements for notice.

*These notes refer to the Countryside and Rights of Way Act
2000 (c.37) which received Royal Assent on 30 November 2000*

120. *Paragraphs 9(1) and 11* of the Schedule amend the Highways Act 1980 so that where a diversion order is made under section 119 or section 119A of that Act, the coming into force of that part of the order which extinguishes a section of a public right of way can be delayed until the local highway authority certifies that any necessary work on the new way has been carried out.
121. *Paragraph 13* of Schedule 6 amends section 120 of the 1980 Act inserting references to special extinguishment orders, special diversion orders and SSSI diversion orders. It empowers the Secretary of State or the National Assembly for Wales to make such orders and to require applicants for orders to enter into agreements with the relevant highway authority relating to compensation and expenses.
122. *Paragraph 14* of Schedule 6 makes consequential amendments to section 121 of the 1980 Act. It also makes a further amendment enabling the “appropriate Minister” to appoint any person to determine whether a statutory undertaker has unreasonably withheld consent to the extinguishment of a right of way over land where their apparatus is located or which is used by statutory undertakers for their undertaking.
123. *Paragraph 15 of Schedule 6* inserts new sections 121A, 121B, 121C, 121D and 121E into the Highways Act 1980. These new sections relate to applications under the new sections 118ZA, 118C, 119ZA and 119C. *Section 121A* enables regulations to be made, for example requiring the applicant to certify certain matters and to give notice of their application. It creates offences relating to false or misleading certificates. *Section 121B* relates to councils keeping a register of the applications made under the new sections 118ZA, 118C, 119ZA and 119C. It specifies that such registers must be available for inspection by the public free of charge at all reasonable hours, and allows for regulations to be made about the form and content of registers and when information may be removed from them. *Section 121C* allows councils to refuse to determine applications when appeals regarding similar applications have been refused or where the Secretary of State or the National Assembly for Wales has otherwise refused to confirm a similar order. *Section 121D* sets out the types of decisions which applicants may appeal to the Secretary of State or the Assembly against and the circumstances where rights of appeal do not apply. *Section 121E* sets out the powers and duties of the Secretary of State and the Assembly in relation to appeals against local authorities’ decisions on applications under the foregoing provisions. It ensures that diversion orders made on appeal do not come into effect where any consents required have not been obtained for works to make up the new way or to provide any necessary facilities. It also gives the Secretary of State and the Assembly powers to make regulations governing appeals procedures, compensation and charges. The provisions of Schedule 6 to the 1980 Act relating to objections, hearings and public inquiries apply in these appeal cases.
124. *Paragraph 16* of Schedule 6 inserts two new sections, 135A and 135B, into the Highways Act 1980.
125. *New section 135A* enables the occupier of any land to temporarily divert a footpath or bridleway which passes over that land where works, which are to be prescribed in regulations made by the Secretary of State or the National Assembly for Wales, are likely to cause danger to users of the right of way. *Subsection (1)* prevents a temporary diversion from affecting the line of a footpath or bridleway on another’s land, so that an occupier of other land does not become landlocked by a diversion. *Subsection (2)* limits the period during which an occupier may divert a right of way under this new section to no more than 14 days in any one calendar year per footpath or bridleway located on that person’s land. *Subsection (3)* requires the occupier to ensure that the diversion is reasonably convenient for the exercise of the right of way and that the line of the diversion is indicated on the ground to not less than the path’s or way’s minimum width. These widths are to be ascertained in accordance with Schedule 12A of the 1980 Act. *Subsection (4)* prevents a person from being able to divert a right of way on to land occupied by another person without that person’s consent. It also prevents the diversion of a footpath on to a highway other than a footpath or bridleway and the diversion of

*These notes refer to the Countryside and Rights of Way Act
2000 (c.37) which received Royal Assent on 30 November 2000*

a bridleway on to highway other than a bridleway. *Subsections (5) and (6)* require the occupier to give the local highway authority at least 14 days notice of a diversion; to publish a notice of the diversion in a local newspaper at least 7 days before it takes effect; and to display such notices at such times and in such places as may be prescribed in regulations. If the footpath or bridleway passes over or is contiguous with land to which the public have access under Part I of the Bill, the occupier is required to give 14 days notice to the Countryside Agency or the Countryside Council for Wales, as the case may be. *Subsection (7)* provides that notices under subsection (5) are to be in such form, and contain such information, as may be prescribed in regulations made by the Secretary of State or the National Assembly for Wales. *Subsection (8)* creates offences of making a false statement in a notice; of displaying a notice on or near a footpath or bridleway falsely purporting that the diversion is authorised under section 135A; or of diverting a right of way without complying with the requirements in subsection (3).

126. *New section 135B* requires a person diverting a footpath or bridleway to make good, before the diversion ceases to be authorised, any damage caused by the prescribed works to the right of way and also requires that person to remove any obstruction which may have been caused by the works. *Subsection (2)* creates an offence of failing to comply with these requirements. *Subsection (3)* empowers the highway authority to make good any damage or remove any obstruction, if the person concerned fails to do so. This subsection also entitles the highway authority to recover, from that person, the reasonable expenses they may have incurred in carrying out the works. *Subsection (4)* applies paragraphs 7 and 8 of Schedule 12A to the Highways Act 1980. These provide powers for a person duly authorised by the highway authority to enter on to land for the purpose of carrying out any works under subsection (3) and contain provisions in respect of service of a notice on the occupier. *Subsection (5)* provides that a person's liability for doing anything to a footpath or bridleway other than for the purpose authorised by the new section 135A shall not be affected. It also prohibits a person diverting a right of way under section 135A from interfering with the apparatus or works of any statutory undertakers. *Subsection (6)* places a duty on the highway authority for the footpath or bridleway to enforce the provisions of the two new sections. This is without prejudice to the authority's general duty under section 130 of the Highways Act 1980 to prevent, as far as possible, a highway from being obstructed.
127. *Paragraphs 17 to 21* of Schedule 6 make amendments to the Highways Act 1980 which are consequential on the new provisions about special extinguishment orders, special diversion orders and SSSI diversion orders.
128. *Paragraph 22* amends section 344 of the Highways Act 1980 so as to prevent new sections 135A and 135B from taking effect in the Isles of Scilly except by order made by the Secretary of State after consultation with the Council of the Isles.
129. *Paragraph 23* of Schedule 6 makes related amendments to Schedule 6 to the Highways Act 1980. *New paragraph 2A* of that Schedule requires the Secretary of State or the National Assembly for Wales to arrange a public inquiry or hearing if requested to do so by an authority or appellant before making or confirming an order on an appeal. *New paragraph 2ZA* of that Schedule requires a council which has made an order following an application under new section 118ZA or 119ZA to give the applicant written notice of their decision to confirm the order (if unopposed) or submit it to the Secretary of State or the Assembly for confirmation (if opposed). If the council has not made a decision within 2 months of the end of the period for representations on the order, the Secretary of State or the Assembly may, on request from the applicant, direct them to do so.
130. *Paragraph 24* of Schedule 6 adds *new Schedule 12ZA* to the Highways Act 1980, which sets out the procedures relating to the determination of disputes under section 121 on the issue of whether a statutory undertaker has unreasonably withheld its consent to an order.
131. *Paragraphs 25 and 26* make consequential amendments to legislation relating to the functions of the Broads Authority and National Park authorities.