
Changes to legislation: *Countryside and Rights of Way Act 2000, Paragraph 15 is up to date with all changes known to be in force on or before 25 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*

SCHEDULES

SCHEDULE 6

AMENDMENTS RELATING TO CREATION, STOPPING UP AND DIVERSION OF HIGHWAYS

PART I

AMENDMENTS OF HIGHWAYS ACT 1980

15 After section 121 of the 1980 Act there is inserted—

“121A Regulations with respect to applications for orders.

- (1) The Secretary of State may by regulations make provision as respects applications under section 118ZA, 118C, 119ZA or 119C above—
 - (a) requiring the applicant to issue a certificate as to the interests in, or rights in or over, the land to which the application relates and the purpose for which the land is used,
 - (b) requiring the applicant to give notice of the application to such persons as may be prescribed,
 - (c) requiring the applicant to certify that any requirement of regulations under this section has been complied with or to provide evidence that any such requirement has been complied with,
 - (d) as to the publicising of any application,
 - (e) as to the form, content and service of such notices and certificates, and
 - (f) as to the remission or refunding in prescribed circumstances of the whole or part of any prescribed charge.
- (2) If any person—
 - (a) issues a certificate which purports to comply with any requirement imposed by virtue of subsection (1) above and contains a statement which he knows to be false or misleading in a material particular; or
 - (b) recklessly issues a certificate which purports to comply with any such requirement and contains a statement which is false or misleading in a material particular,he shall be guilty of an offence.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Notwithstanding section 127 of the Magistrates’ Courts Act 1980 (limitation of time for taking proceedings) summary proceedings for an offence under this section may be instituted at any time within three years after the commission of the offence.

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121B Register of applications.

- (1) Every council shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect to applications under section 118ZA, 118C, 119ZA or 119C above.
- (2) The register shall contain such information as may be prescribed with respect to the manner in which such applications have been dealt with.
- (3) Regulations may make provision for the register to be kept in two or more parts, each part containing such information relating to applications under section 118ZA, 118C, 119ZA or 119C above as may be prescribed.
- (4) Regulations may make provision—
 - (a) for a specified part of the register to contain copies of applications and of the maps submitted with them, and
 - (b) for the entry relating to any application, and everything relating to it, to be removed from any part of the register when the application (including any appeal to the Secretary of State) has been finally disposed of (without prejudice to the inclusion of any different entry relating to it in another part of the register).
- (5) Every register kept under this section shall be available for inspection by the public free of charge at all reasonable hours.
- (6) In this section—

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Secretary of State.

121C Cases where council may decline to determine applications.

- (1) A council may decline to determine an application under section 118ZA, 118C, 119ZA or 119C above if, within the period of three years ending with the date on which the application is received, the Secretary of State—
 - (a) has refused to make an order on an appeal under section 121D(1)(a) below in respect of a similar application, or
 - (b) has refused to confirm an order which is similar to the order requested.
- (2) Before declining under subsection (1) above to determine an application under section 118C or 119C above, the council shall consider whether since the previous decision of the Secretary of State was made the risks referred to in subsection (1)(b)(i) to (iv) of section 118B or of section 119B have substantially increased.
- (3) A council may decline to determine an application under section 118ZA, 118C, 119ZA or 119C above if—
 - (a) in respect of an application previously made to them under that section which is similar to the current application or relates to any of the land to which the current application relates, the council have not yet determined whether to make a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order, or

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- (b) the council have made a similar order or an order which relates to any of the land to which the current application relates but no final decision as to the confirmation of the order has been taken.
- (4) For the purposes of this section an application or order is similar to a later application or order only if they are, in the opinion of the council determining the later application, the same or substantially the same, but an application or order may be the same or substantially the same as a later application or order even though it is made to or by a different council.

121D Right of appeal to Secretary of State in respect of applications for orders.

- (1) Subject to the provisions of this section, where, in relation to an application made under section 118ZA, 118C, 119ZA or 119C above, the council to which the application was made—
- (a) refuse to make an order on the application,
 - (b) refuse to confirm as an unopposed order an order made on the application, or
 - (c) refuse to submit to the Secretary of State an order which is made on the application and against which any representation or objection has been duly made and not withdrawn,
- the applicant may, by giving notice to the Secretary of State, appeal to the Secretary of State.
- (2) Subsection (1)(a) above does not confer any right to appeal to the Secretary of State where—
- (a) the council have no power to make the order requested without the consent of another person and that consent has not been given, or
 - (b) the reason, or one of the reasons, for the refusal to make the order is that the applicant has refused to enter into an agreement required by the council—
 - (i) in the case of a public path extinguishment order, under subsection (6) of section 118ZA above,
 - (ii) in the case of a special extinguishment order, under that subsection as applied by section 118C(2) above,
 - (iii) in the case of a public path diversion order, under section 119(5) above,
 - (iv) in the case of a special diversion order, under section 119C(3) above.
- (3) Paragraph (b) of subsection (1) above does not confer any right to appeal to the Secretary of State in a case where the council has no power to confirm the order without the consent of another person and that consent has not been given; and paragraph (c) of that subsection does not confer any right to appeal to the Secretary of State in a case where, if the order had been unopposed, the council would have had no power to confirm it without the consent of another person and that consent has not been given

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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—
 - (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—

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- (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.
- (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—

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(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.”

Commencement Information

II Sch. 6 para. 15 in force at 21.11.2005 for specified purposes for W. by S.I. 2005/1314, art. 4(b)(ii)

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

- Blanket amendment words substituted by [S.I. 2011/1043 art. 34](#)

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

- s. 15(1)(e) and word inserted by [2023 asc 3 Sch. 13 para. 179](#)
- s. 55A inserted by [2015 c. 20 s. 20](#)
- s. 56A inserted by [2015 c. 20 s. 21](#)
- s. 56B inserted by [2015 c. 20 s. 22\(1\)](#)