

Consultation on diversions of rights of way:

(1) for the protection of sites of special scientific interest (SSSIs);

and

(2) temporary diversions for dangerous works

Schedule 6 paragraphs 12 and 16 of the Countryside and Rights of Way Act 2000 which will insert new sections 119D and 119E, and sections 135A and 135B, into the Highways Act 1980

August 2005

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1. Introduction

1.1 This consultation paper sets out the Government's proposed approach to implementing the provisions in Schedule 6 of the Countryside and Rights of Way Act 2000 (hereafter referred to as the *CROW Act*) that insert new sections 119D, 119E, 135A and 135B into the Highways Act 1980.

1.2 Sections 119D and 119E will enable a local highway authority to divert a public right of way to protect a site of special scientific interest (known as a SSSI). Sections 135A and 135B will enable an occupier to temporarily divert a right of way across their land to enable dangerous works to take place.

1.3 The legislation enables the Secretary of State to prescribe in regulations procedural matters to provide clarity in the administration of these four provisions when they are commenced. This document invites views on the approach to the proposed regulations.

1.4 These proposals relate to England only. The National Assembly for Wales have devolved responsibility for implementing these provisions in Wales.

1.5 The consultation paper is split into two sections, one dealing with SSSI diversions, the other with temporary diversions for dangerous works.

1.6 Each section identifies the main areas on which views are particularly invited. The proposed forms of applications and notices are only provisional and may be subject to change. Please set responses out in the same format as at Annex 9. This makes it much easier to analyse your views. Further advice on the handling of this consultation can be found at Annex 6.

English Nature and the Countryside Agency

1.7 One of the major changes under the Government's *Modernising Rural Delivery Programme* is the creation of a new integrated agency comprising English Nature; the Landscape, Access and Recreation Directorate of the Countryside Agency and most of Defra's Rural Development Service. Subject to the successful passage of the Natural Environment and Rural Communities Bill through Parliament, the new Agency, which will be known as "Natural England" will be formerly vested in October 2006.

2. SSSI Diversions

2.1 Overview

2.1.1 Schedule 6 of the CROW Act (paragraph 12) includes provision to insert new sections 119D and 119E into the Highways Act 1980. Once commenced these sections will give local highway authorities the power to divert, but not extinguish, relevant highways for the protection of the special interest features of land designated under the Wildlife and Countryside Act 1981 as sites of special scientific interest (known as SSSIs). The power to apply for such orders in England (to be known as SSSI diversion orders) is restricted to English Nature.

2.1.2 The highway must be in, form part of, or be adjacent to or contiguous with an SSSI¹ and be:

- A footpath, bridleway or restricted byway;
- A highway which is shown in a definitive map and statement as a footpath, a bridleway or a restricted byway but over which the public have a right of way for vehicular and all other kinds of traffic, or
- Any highway which is shown in a definitive map and statement as a byway open to all traffic².

2.1.3 The ground for making an order will be that the public use of the highway is causing, or that continued use of the highway is likely to cause, significant damage to the flora, fauna, or geological or physiographical features by reason of which the SSSI is of special interest, and that the diversion is expedient for the purpose of preventing such damage³.

2.1.4 Applications from English Nature must be accompanied by a map, an assessment of the effects of public use of the right of way on the SSSI, and any additional information as may be prescribed in regulations⁴.

2.1.5 At least 14 days before making an application English Nature must notify the following:

- Any owner, lessee or occupier of land over which the proposed order would create or extinguish a public right of way;
- And any other persons as may be prescribed; and
- The Countryside Agency.⁵

¹ s119D(1) Highways Act 1980

² s119D(2) Highways Act 1980

³ s119D(1) Highways Act 1980

⁴ s 119E(1) Highways Act 1980

⁵ The requirement to notify the Countryside Agency will become redundant once the two bodies are incorporated into Natural England.

2.1.6 Highway authorities, in considering such an application from English Nature will have in mind their statutory duty as ‘section 28G authorities’⁶, under the Wildlife and Countryside Act 1981 (as amended), to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the special interest features of SSSIs. In addition, before making or confirming an SSSI diversion order, the local highway authority or the Secretary of State will have to consider the effect which the diversion would have on public enjoyment of the highway as a whole, and whether the damage to the special interest features of the SSSI could be prevented by the making of a traffic regulation order and, if it could, whether making a TRO would cause less inconvenience to the public than diverting the highway⁷.

2.1.7 Where the council have neither confirmed the order nor submitted it to the Secretary of State for confirmation within six months of receiving the application, the Secretary of State may exercise her power to make an order without consulting the council⁸.

2.1.8 A right of way created by an SSSI diversion order may be either unconditional or subject to such limitations or conditions as may be specified in the order⁹.

2.1.9 Before determining to make an SSSI diversion order, the council may require English Nature to enter into an agreement with them to defray, or make a contribution towards, any compensation which is payable, and to pay any expenses incurred by the council in bringing the new site of the highway into a fit condition for use¹⁰.

2.2 Background

2.2.1 In England, SSSIs are notified by English Nature under section 28 of the Wildlife and Countryside Act 1981, when in their opinion an area of land “is of special interest by reason of any of its flora, fauna, or geological or physiographical features”.

2.2.2 SSSIs are nationally important and conserve and protect the best of our wildlife, geological and physiographical heritage for the benefit of present and future generations. They are a key component of the Government’s overall nature conservation strategy, set out in *Working with the Grain of Nature: A biodiversity strategy for England*. There is a Government Public Service Agreement (PSA) target to have 95% of the SSSI area in favourable or recovering condition by 2010.

⁶ These bodies are defined in section 28G(3) of the Wildlife and Countryside Act, as amended, as including any Government Department, local authority, statutory undertaker, or any other public body.

⁷ s119E(3) and s119E(4) Highways Act 1980

⁸ s120(3D) Highways Act 1980

⁹ s 119D(7) Highways Act 1980

¹⁰ s119D(8) Highways Act 1980

2.2.3 The CROW Act, which amended section 28 of the Wildlife and Countryside Act 1981, introduced new powers to protect and conserve SSSIs. It gave new and enhanced powers to English Nature to enable the positive management of SSSIs and restrict damaging activities on SSSIs; introduced new penalties for deliberate damage to SSSIs; and imposed duties on public bodies in respect of SSSIs.

2.2.4 In line with these changes, during the passage of the CROW Act it was decided that there should also be a power to divert rights of way where the public use of the highway is causing, or continued public use is likely to cause, significant damage to the special interest features of SSSIs. These powers will also ensure that the United Kingdom can meet its international obligations under the *European habitats and birds directives* and *Ramsar Convention*, as all terrestrial European and Ramsar sites are also SSSIs.

2.2.5 This is a “last resort” power to prevent significant damage to SSSIs and it is envisaged that cases will be few and far between. As a result, the impact and restriction on users of rights of way should be limited.

2.3 Scope of the new regulations

2.3.1 The procedures involved in applying for a SSSI diversion order, and in making and determining the application are largely prescribed within the legislation. This means that the supporting regulations are limited in scope. The main areas to be determined by regulation are set out below.

Notification of intention to make an application

2.3.2 The legislation requires the Secretary of State to prescribe:

- The form of notice of intention to make an application; and enables her to prescribe
- Any additional persons, other than those specified by the legislation, who should receive notification of an intention to make an application.

2.3.3 The proposed form of the notification to be set out in regulations is at Annex 1. It requires a copy of the proposed application, and any attachments that will accompany it, to be included in the notification.

2.3.4 We have not reached a view as to whether there should be any additional persons, others than those already prescribed (see paragraph 2.1.5 above), who should receive notification from English Nature of their intention to make an application. The notification is only to alert those with an interest that an application is to be made. It offers no scope for representations or objections to be made, nor does it invite views and comments.

2.3.5 English Nature have, however, undertaken to consult widely well before they decide to apply for an order. They will normally consult relevant

organisations (including rights of way user groups and nature conservation organisations) to consider the use of appropriate management measures and/or traffic regulation orders before considering an application for a SSSI diversion order. This approach is consistent with the new section 119E(3) & (4) of the Highways Act 1980 and ensures that the use of these powers to prevent significant damage to SSSIs is as a last resort.

2.3.6 In addition, if the local highway authority makes an order, it will give notice of the making of the order and allow not fewer than 28 days for representations and objections under the provisions of Schedule 6 to the Highways Act 1980 (which applies to all public path orders made under the Highways Act).

Question 1

Does the form at Annex 1 cover the scope and content of the information that should be contained in the notification of intention to apply for an SSSI order?

(please use the format at Annex 9 for your answers)

Question 2

Given English Nature's undertaking to consult widely before making an application, and the provisions already contained in Schedule 6 to the 1980 Act for notifying orders, is there a need for additional persons, other than those already specified in the legislation, who should be notified that English Nature propose to make an application?

(please use the format at Annex 9 for your answers)

Application for a SSSI diversion order

2.3.7 The legislation enables the Secretary of State to prescribe:

- The form of the application from English Nature;
- The scale of the accompanying map;
- That other information should accompany the application.

It also requires her to prescribe:

- The form of assessment of the effect of the public right of way on the SSSI.

2.3.8 The proposed form of the application to be completed by English Nature is at Annex 2. We propose to require the application to be accompanied by a map on a scale of not less than 1: 2 500, or if no such map is available, on the largest scale readily available. This is the same scale as is

currently required by public path modification procedures¹¹. What the map must show is already prescribed in the CROW Act¹².

2.3.9 The assessment of the effects of the public right of way on the SSSI with vary according to local circumstances. The information it should contain, as a minimum, is prescribed in the proposed application form at Annex 2.

2.3.10 As well as identifying any significant existing, and potential, damage to the SSSI caused by the public use of the highway, we propose to ask English Nature to specify what consideration has been given to other options apart from an SSSI diversion order, and any steps that have been taken to prevent or ameliorate the damage being caused by the public use of the highway. This does not necessarily mean that alternatives should have been attempted, or that only upon continued failure and ongoing damage might an SSSI diversion order be sought.

2.3.11 Before applying for an SSSI diversion order, English Nature must notify those bodies listed in Para 2.1.5 above of their intention to apply. We propose to require the application to the local highway authority to be accompanied by a copy of that notice. We also propose to enable English Nature to choose to submit any other information which they have available and which they consider may assist the local highway authority in deciding whether the application meets the criteria set out in the legislation. These proposals are included in the notes for guidance to accompany the application form at Annex 2.

Question 3

Does the form at Annex 2 adequately cover the scope and content of the information that should be contained in, or attached, to the application?

(please use the format at Annex 9 for your answers)

Making and confirming the SSSI Diversion Order

2.3.12 The legislation enables the Secretary of State to prescribe:

- The form of an SSSI order (to be made by the local highway authority).

2.3.13 It also prescribes that SSSI orders will be subject to the procedures set out in Schedule 6 to the Highways Act 1980 which govern the making, confirmation, and validity of all public path orders made under this Act. This enables the Secretary of State to prescribe:

¹¹ The Public Path Order Regulations 1993 (SI 1993/11)

¹² New section 119E (1)(a) of the Highways Act 1980 (as inserted by Schedule 6 of the CROW Act 2000) sets out what the map should show.

- The accompanying notices of making and confirming a SSSI diversion order, and associated procedures.

2.3.14 To make the regulations as clear and simple as possible, we do not intend to depart from the established forms for orders and notices in existing regulations relating to public path orders made by local highway authorities under the 1980 Act.¹³ We propose to set out, in similar terms, the form of SSSI diversion orders; the accompanying notices relating to the making and the confirming of orders; and the administrative procedures for orders.¹⁴ We shall also set out the time within, and the manner in which a claim for compensation can be made for loss caused by a SSSI diversion order.

Question 4

Is there any reason why Defra should depart from the established forms for orders and notices in existing regulations?

(please use the format at Annex 9 for your answers)

2.4 Recovery of costs

2.4.1 Local authorities can recover the costs of making public path orders under the Local Authorities (Recovery of Costs for Public Path Orders) Regulations (SI 1993/407).¹⁵ Guidance on the application of these Regulations is contained in *DOE circular 3/93: Recovery of Costs of Public Path and Rail Crossing Orders*.¹⁶

2.4.2 Costs can be recovered on the premise that the applicant will benefit from the stopping up or diversion of the public right of way. We have considered whether local authorities should also be able to recover their costs in making SSSI diversion orders. We have concluded that that they should not. SSSI diversion orders are different to other public path orders. They will protect our natural heritage for generations to come and will not be of private benefit to English Nature. Local authorities have already been funded for these, and for other new duties imposed by the CROW Act, and should be able to meet the costs of these orders from existing budgets.

¹³ The Public Path Orders Regulations 1993 (SI 1993/11) and Rail Crossing Extinguishment and Diversion Orders Regulations 1993 (SI 1993/9).

¹⁴ Schedule 6 of the Highways Act 1980 (as amended by the Countryside and Rights of Way 2000) will have effect as to the making, confirmation, validity and date of operation of SSSI diversion orders.

¹⁵ As amended by the Local Authorities (Charging for Overseas Assistance and Public Path Order) Regulations 1996.

¹⁶ Further guidance is contained in DOE Circular 11/1996: Recovery of Costs for Public Path and Rail Crossing Orders Amendment Regulations.

3. Temporary diversions for dangerous works

3.1 Overview

3.1.1 Schedule 6 of the CROW Act (paragraph 16) will insert new sections 135A and 135B into the Highways Act 1980. Once commenced these sections will give occupiers of land a right to temporarily divert footpaths and bridleways on their land where works of a prescribed description are likely to cause danger to users.

3.1.2 The occupier may divert an individual path or way for no more than fourteen days in any one calendar year¹⁷.

3.1.3 Any diversion must be reasonably convenient for the exercise of the public right of way. The diversion must be so indicated on the ground to not less than the minimum width, so that it is apparent to those wishing to use it¹⁸.

3.1.4 The minimum width is that within the meaning in Schedule 12A to the Highways Act 1980¹⁹. This states that where the width of the existing footpath or bridleway is proved, then the minimum width of the temporary route must be the same as the existing one. If it is not proved the “minimum width” is –

- 1 metre for a footpath which is not a field edge path.
- 1.5 metres for a footpath which is a field edge path.
- 2 metres for a bridleway which is not a field edge path.
- 3m for a bridleway which is a field edge path.

3.1.5 If an occupier wishes to temporarily divert a footpath or bridleway on to land not occupied by them, they must first obtain the consent of the occupier of that land and of any other person whose consent is needed to obtain access to it. If an occupier wants to temporarily divert a footpath or bridleway onto another highway they can only do so if a footpath is being diverted onto another footpath or bridleway, or if a bridleway is being diverted onto another bridleway²⁰.

3.1.6 These temporary diversions do not need to be approved by the highway authority, but before diverting the footpath or bridleway the occupier must:

- Give notice, in any prescribed form, at least fourteen days before the start of the diversion to the highway authority for the footpath or bridleway, and to the Countryside Agency²¹ or Countryside Council for

¹⁷ New section 135A(1) and (2) Highways Act 1980

¹⁸ New section 135A(3) Highways Act 1980

¹⁹ New section 135A(9) Highways Act 1980

²⁰ New section 135A(4) Highways Act 1980

²¹ Notification to the Countryside Agency will be to the Integrated Agency instead once the new body has been established.

Wales where the path or way is on, or is contiguous with, access land in England or Wales;

- Publish notice of the diversion in a local newspaper circulating in the area in which the footpath or bridleway is situated, in any prescribed form, at least seven days before the start of the diversion; and
- Display such notices as may be prescribed at such places, in such manner and at such times before or during the diversion²².

3.1.7 Before reverting to the original public right of way any damage to the footpath or bridleway, resulting from the works which have been carried out, must be made good, and any obstructions resulting from the works must be removed²³.

3.1.8 Failure to do so will amount to an offence liable to a fine not exceeding level 3 on the standard scale (presently £1000, but proposed to be increased to £ 3000). The highway authority may make good any damage or remove any obstruction caused by the works, and recover the amount of any expenses that they reasonably incur from the person making the diversion²⁴.

3.1.9 A person will also be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale if they:

- Make a statement on the notice to the highway authority which they know to be false, or
- Display notices, falsely purporting to be authorised to divert a footpath or bridleway, or
- Fail to comply with the requirement in the legislation to divert the highway in a manner which is reasonably convenient for the exercise of the public right of way or, where the diversion is by means of a temporary footpath or bridleway, fail to indicate the line of the temporary footpath or bridleway on the ground to not less than the minimum width that it is apparent to a member of the public wishing to use it²⁵.

3.1.10 The temporary diversion of the footpath or bridleway does not authorise any interference with the apparatus or works of any statutory undertakers²⁶. The highway authority will be under a duty to enforce the provisions in sections 135A and 135B, which they can do by prosecution.

²² New section 135A(5),(6)and (7) Highways Act 1980

²³ New section 135B(1) Highways Act 1980

²⁴ New section 135B(2) and (3) Highways Act 1980

²⁵ New section 135A(8) Highways Act 1980

²⁶ New section 135B(5)(b) Highways Act 1980

3.2 Background

3.2.1 These provisions were introduced to enable land occupiers to divert rights of way temporarily where land management operations pose a risk to the health and safety of users of footpaths or bridleways. The Government agreed, during the passage of the Countryside and Rights of Way Act 2000, to consult widely on which types of works should be prescribed before making regulations.

3.2.2 The Government's view is that temporary diversions of rights of way should be avoided wherever possible because the public is entitled to reasonable certainty that a public right of way will be available for use. However, it accepts that there may be instances where a diversion for a short period of time, where there is a real risk to health and safety, is a practical way to enable land occupiers to carry out dangerous works on, or near, to footpaths and bridleways.

3.3 Scope of the proposed new regulations

3.3.1 The legislation requires the Secretary of State to prescribe:

- The type of works for which a temporary diversion may be made²⁷.

It also enables her to prescribe:

- The form and content of the notice to the highway authority (and countryside agencies where appropriate);
- The form and content of the notice which must be published in a local newspaper; and
- What notices are to be displayed, where, in what manner, and at what times before or during the diversion²⁸.

List of prescribed works

3.3.2 Views are invited on those land management works, not already provided for elsewhere in legislation, which are likely to cause danger to users of footpaths or bridleways, and should be available as grounds for a temporary diversion.

3.3.3 The land management works already provided for in highways legislation are:

- Section 122 of the Highways Act 1980 – which gives highway authorities (or whoever is responsible for maintaining the highway) the

²⁷ New section 135A(1) Highways Act 1980

²⁸ New section 135A(7) Highways Act 1980

right to construct a temporary highway on adjoining land while repair or widening works to the existing highway are in progress.

- Section 134 of the Highways Act 1980 - which gives the occupiers of land the right to plough up the surface of a footpath or bridleway for a limited period.
- Section 135 of the Highways Act 1980 - which enables highway authorities to consent to the disturbance of the surface of a footpath or bridleway which may be caused by excavation or engineering operations on agricultural land for up to three months and to consider the temporarily diversion of the highway while the operations are taking place.

Question 5

What types or descriptions of works should the Government prescribe in regulations?

(please use the format at Annex 9 for your answers)

Notice of intention to divert a footpath or bridleway

3.3.4 The occupier must give notice to the highway authority for the footpath or bridleway at least fourteen days before the way is diverted. If the footpath is on or contiguous with access land in England notice must also be given to Countryside Agency²⁹. If it is on or contiguous with access land in Wales notice must also be given to the Countryside Council for Wales.

3.3.5 The legislation enables the Secretary of State to prescribe in regulations the form of the notice. The proposed form of this notice is at Annex 3.

Question 6

Does the form at Annex 3 adequately cover the scope and content of the information which the occupier should be required to supply?

(please use the format at Annex 9 for your answers)

²⁹ Notification to the Countryside Agency will be to the Integrated Agency instead once the new body has been established.

Notice to be published in a local newspaper

3.3.6 At least seven days before the start of the diversion the occupier must publish notice of the diversion in a local newspaper circulating in the area in which the footpath or bridleway is situated.

3.3.7 The legislation enables the Secretary of State to prescribe in regulations the form of the notice and what it should contain. The proposed form of the notice and what it should contain is at Annex 4.

Question 7

Does the form at Annex 4 adequately cover the scope and content of the information which the occupier should be required to publish in a local newspaper?

(please use the format at Annex 9 for your answers)

Notice to be displayed

3.3.8 The occupier must also display notices before or during the diversion at such places and in such manner as may be prescribed by the Secretary of State.

3.3.9 The proposed form of the notice is at Annex 5. We propose that weatherproof copies of the notice should be affixed to a conspicuous object placed at each side of the temporary diversion, and at the first point from each side of the diversion where the diverted highway is joined by another highway. As well as the effect of the diversion, we believe that it is important that anyone reading the notice knows who is responsible for the diversion, and what they should do if they have any concerns.

3.3.10 We propose to require the occupier to display the notice at least seven days before the diversion takes place until the day after it ends.

Question 8

Does the form at Annex 5 cover the scope and content of the information which the occupier should display?

(please use the format at Annex 9 for your answers)

Question 9

Should the notice be displayed in any other places? Are you happy with the proposed manner and time it should be displayed?

(please use the format at Annex 9 for your answers)

3.4 Proposed guidance

We propose to include the notes attached to the draft forms contained in the annexes to this document in regulations. We also intend to publish guidance, for occupiers wishing to make a temporary diversion, to accompany the regulations. This will set out how the process works and include copies of the forms which occupiers can use. The guidance and forms will also be downloadable from the Defra website.

Annex 1

Proposed form of notice of the intention to make an application for a SSSI diversion order and accompanying notes to be prescribed in regulations.

Form 1

HIGHWAYS ACT 1980, SECTION 119E

SSSI DIVERSION ORDER

NOTICE OF THE INTENTION TO MAKE AN APPLICATION REQUESTING A LOCAL HIGHWAY AUTHORITY TO MAKE A SSSI ORDER TO DIVERT CERTAIN HIGHWAYS FOR THE PROTECTION OF A SITE OF SPECIAL SCIENTIFIC INTEREST

[to be completed by English Nature]

To *[insert the names and addresses of notifiable bodies and persons – note 2]*

.....

Notice is hereby served of our intention to make an application to *[insert name and address of the local highway authority or highways authorities in whose area(s) the right of way is located]*

.....

.....

requesting that the highway described below is diverted for the protection of a site of special scientific interest on the grounds that;

- public use of the highway is causing, or that continued public use of the highway is likely to cause, significant damage to the flora, fauna, or geological or physiographical features by reason of which the site of special scientific interest is of special interest; and
- it is expedient that the line of the highway, or part of that line should be diverted for the purpose of preventing such damage.

Location of SSSI *[insert name and location]* – -----

This notification is accompanied by:

- a copy of the proposed application and the attachments that will accompany it.

Signed

on behalf of English Nature

Date

Contact details [*name, address and telephone number*]

.....
.....

NOTES

General

This form is to be completed by English Nature to serve notice on the persons or bodies to be notified of their intention to apply for a SSSI diversion order.³⁰ Notice must be served at least 14 days before an application is made to the local highway authority (Form 1).

1. Appropriate conservation body

Applications can only be considered from English Nature.³¹

2. Persons or bodies to be notified

English Nature must serve notice³² on Form 1 of their intention to do so on –

- a) any owner, lessee or occupier of land over which the proposed order would create or extinguish a public right of way;
- b) such other persons as may be prescribed; and
- c) the Countryside Agency.

3. Information to be enclosed with the notification

The notice (Form 1) must be accompanied by a copy of the proposed application to the local highway authority (Form 2) and the information which will accompany it.

³⁰ Section 119E(2) of the Highways Act 1980

³¹ Section 119D(12) of the Highways Act 1980

³² Section 119E(2) of the Highways Act 1980

Annex 2

Proposed form of application for a SSSI diversion order and accompanying notes to be prescribed in regulation

Form 2

HIGHWAYS ACT 1980, SECTION 119E

SSSI DIVERSION ORDER

APPLICATION REQUESTING A LOCAL HIGHWAY AUTHORITY TO MAKE A SSSI ORDER TO DIVERT CERTAIN HIGHWAYS FOR THE PROTECTION OF A SITE OF SPECIAL SCIENTIFIC INTEREST

To *[insert name and address of local highway authority]*

.....

Applicant : English Nature

An application is hereby made to divert the highway *[note 2]* described below on the grounds that:

- public use of the highway is causing, or that continued public use of the highway is likely to cause, significant damage to the flora, fauna, or geological or physiographical features by reason of which the site of special scientific interest is of special interest; and
- it is expedient that the line of the highway, or part of that line should be diverted for the purpose of preventing such damage.

Location of SSSI *[insert name and location]* –

.....

Brief description of site of existing highway *[describe position, length and width of the highway in sections, e.g. A-B, B-C etc., as indicated on the map – note 3]*

.....

.....

.....

Brief description of site of new public right of way *[describe position, length and width of the new way in sections e.g. C-D, D-E etc. as indicated on the map – note 3]*.

.....
.....
.....

Assessment of the effects of public use of the right of way on the site of special scientific interest *[note 4]* please insert details below

- a) clearly identify and assess the effects of any existing significant damage to the flora, fauna or geological or physiographical features, by reason of which the SSSI is of special interest, which has been caused by the public use of the highway;

.....
.....
.....

- b) clearly identify and assess the effects of any significant damage that continued public use of the highway is likely to cause to the flora, fauna or geological or physiographical features, by reason of which the SSSI is of special interest;

.....
.....
.....

- c) specify what consideration has been given to alternative options available and to any steps that have been taken to prevent or ameliorate the damage being or likely to be caused by the public use of the highway.

.....
.....
.....

The application must be accompanied by a copy of the notice *[Form 1]*, of the intention to make this application *[note 5]*.

English Nature may also choose to submit information which they consider would assist the local highway authority in deciding whether the application meets the criteria set out in the legislation *[note5]*. Please insert any relevant information here.

.....
.....

Signed

on behalf of English Nature

Date

Contact details [*name, address and telephone number*]

.....
.....

NOTES

General

This form is to be completed by English Nature when requesting a local highway authority to make a SSSI order to divert certain highways for the protection of a site of special scientific interest under Section 119E of the Highways Act 1980. It should be sent to the relevant highway authority not fewer than 14 days after Form 1 has been served. Form 1 gives notice of the intention to make a request for a SSSI order.

1. The applicant

Applications can be made only by English Nature.³³

2. The highway

The highway must be in, form part of, or be adjacent to or contiguous with, a site of special scientific interest.³⁴ It must also be a relevant highway for the purposes of this legislation³⁵. A relevant highway is defined as:

- a) a footpath, bridleway or restricted byway,
- b) a highway which is shown on the definitive map and statement as a footpath, a bridleway or restricted byway but over which the public have a right of way for vehicular and all other kinds of traffic, or
- c) a highway which is shown in a definitive map and statement as a byway open to all traffic,

but does not include any highway that is a trunk road or special road.

3. Map

The application must be accompanied by a map³⁶ on a scale not less than 1/2,500, or if no such map is available, on the largest scale readily available.

The map must:

- a) show the existing site of so much of the line of the highway as would be diverted if the order were made and the new site to which it would be diverted,
- b) indicate whether a new right of way would be created by order over the whole of the new site or whether some of it is already comprised in a highway, and

³³ Section 119D(12) Highways Act 1980

³⁴ Section 119D (1) Highways Act 1980

³⁵ Section 119D(2) Highways Act 1980

³⁶ Section 119E(1)(a) Highways Act 1980

- c) where some part of the new way is already so comprised, define that part.

4. Assessment of the effects of public use of the right of way

The application must be accompanied by an assessment of the effects of public use of the highway on the site of special scientific interest³⁷. This needs to comply with the prescribed form set out.

5. Other information that is required or that the applicant may choose to submit

The application must be accompanied by a copy of Form 1³⁸.

English Nature may also choose to submit information which they consider would assist the local highway authority in deciding whether the application meets the criteria set out in the legislation. The information which the council will need to consider includes:

- a) whether the damage could be prevented by making a traffic regulation order; and
- b) if so, whether the making of a traffic regulation order would cause less inconvenience to the public than that which would be caused by the diversion of the highway;
- c) whether the right of way created by the SSSI diversion order should be unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to limitations or conditions e.g. an existing gate on the new route which should remain;
- d) the impact the proposed diversion would have on public enjoyment of the right of way as a whole;
- e) the impact the coming into operation of the order would have as respects other land served by the existing public right of way; and
- f) the effect that any new public right of way created by the order would have as respects the land over which the right is created and any land held with it.

³⁷ Section 119E(1)(b) Highways Act 1980

³⁸ Section 119E(1)(c) Highways Act 1980

Annex 3

Proposed form of notice to authorities of a temporary diversion for dangerous works and accompanying notes to be prescribed in regulations.

FORM 1

HIGHWAYS ACT 1980, SECTION 135A(5)(a)

TEMPORARY DIVERSION OF A FOOTPATH OR BRIDLEWAY FOR DANGEROUS WORKS

NOTICE OF INTENTION

[To be completed by the occupier of the land – note 1]

To *[names and addresses of those who must be notified – note 2]*.

.....
.....
.....

I *[name]*

Of *[address and telephone number]*

.....

hereby serve notice of my intention to temporarily divert the highway as described below for works that are likely to cause danger to users of that highway.

Status of the highway *[note 3]*

Location of the highway identifying the part to be temporarily diverted *[note 4]*

.....

.....
Proposed dangerous works, and the prescribed description they fall within
[note 5]:
.....
.....

Start and end dates of the temporary diversion *[note 6]*

Start date (*day, month and year*)

End date (*day, month and year*)

I confirm that this diversion will not bring the total period or periods for which this or any other part of the same footpath or bridleway across my land has been diverted under Section 135A of the Highways Act to more than 14 days in the same calendar year. [Please insert start and end dates of any period or periods of diversion in the same calendar year, where appropriate].

Start date (*day, month and year*)

End date (*day, month and year*)

I am satisfied that this temporary diversion meets the conditions and requirements set out in section 135A of the Highways Act 1980 and the accompanying regulations. I have also read the guidance which accompanies the regulations.

Before the temporary diversion ceases I will make good any damage to the highway and remove any obstruction resulting from the works described above.

Signed

Date

Contact details *[name, address and telephone number]*
.....
.....

NOTES

General

Use this form to notify your intention to temporarily divert a footpath or bridleway which crosses land occupied by you while dangerous works are carried out which affect land on or near the footpath or bridleway and which are likely to cause danger to the public, and which fall within a description of works prescribed in regulations under section 135A(1).

This notice must be served at least fourteen days before commencement of the diversion³⁹. The diversion must be reasonably convenient for the exercise of the public right of way and, where the diversion is by means of a temporary footpath or bridleway, the minimum width of the new footpath or bridleway must comply with Schedule 12A of the Highways Act 1980⁴⁰. A summary is set out below.

1. The occupier

You must be the occupier of the land. You need not necessarily be the land owner or lessee.

2. Who should be notified

You must use this form to notify⁴¹ -

- a) The highway authority for the footpath or bridleway; and
- b) If the footpath or bridleway is on or contiguous with access land in England, the Countryside Agency, and
- c) If the footpath or bridleway is contiguous with access land in Wales, the Countryside Council for Wales.

You must serve this notice on the highway authority in whose area the highway lies. If the highway lies in an area served by two or more authorities you must serve notice on each of them.

[The address of where the notification to the Countryside Agency should go and where it should go to at CCW in cases where a highway in England is contiguous with access land in Wales will be added at a later date]

³⁹ Section 135A(5)(a) Highways Act 1980

⁴⁰ Section 135A(3) Highways Act 1980

⁴¹ Section 135A(6) Highways Act 1980

3. Status of the highway

The highway must be a bridleway or a footpath⁴². You cannot use this form to give notice of an intention to divert a restricted byway or a byway open to all traffic. If you are in any doubt as to the status of the highway you should contact your highway authority.

4. Location of the highway

Describe the location of the footpath or bridleway and the part which you are proposing to temporarily divert. This should be detailed enough for the persons you are notifying to be able to locate them. For example:

- describe the points where the right of way joins a metalled road or another highway nearest to and on each side of the diversion;
- give six figure Ordnance Survey grid references for these points;
- describe the section of the existing right of way you propose to temporarily close in relation to these points and give six figure Ordnance Survey grid references for the start and end of the section;
- describe the temporary new route;
- attach a sketch map or a copy or trace of the relevant Ordnance Survey map identifying the location of the highway and the proposed diversion. (Ordnance Survey copyright does not prevent you taking a copy of the relevant part of the Ordnance Survey map to attach to this form);
- give the parish name and path number if the right of way is on the definitive map.

You cannot divert a footpath or bridleway onto land not occupied by you without the consent of the occupier of that land and any other person whose consent is needed to obtain access to it. Nor can you divert a footpath onto another highway other than a footpath or bridleway, or divert a bridleway onto a highway other than a bridleway⁴³.

5. Dangerous works

[Following this consultation this section will specify the description of dangerous works which are prescribed.]

6. Date of diversion

You can only temporarily divert the highway using the powers contained in Section 135A of the Highways Act 1980 if -

- a) the period or periods for which the section of highway you are proposing to divert, and

⁴² Section 135A(1) Highways Act 1980

⁴³ Section 135A(4) Highways Act 1980

- b) the period or periods for which any other part of the same footpath or bridleway across your land has been diverted under this section

do not amount in total to more than fourteen days in any one calendar year⁴⁴.

7. Next steps

When you have completed this form you must serve it on the highway authority, and if access land is affected, on the Countryside Agency or Countryside Council for Wales, by leaving it at their offices or sending it by post. You should keep a copy of the form.

At least seven days before the commencement of the diversion you must:

- publish notice of the diversion in a local newspaper circulating in the area in which the footpath or bridleway is situated as prescribed in Form 2, and
- display notices in such manner and at such times before or during the diversion as is prescribed in Form 3.

8. Your liability

Before the diversion ceases you must make good any damage to the footpath or bridleway resulting from the works which have been carried out, and must remove any obstruction resulting from the works. If you fail to do this you will be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale⁴⁵.

The highway authority may make good any damage, or remove any obstruction caused by the works and recover the amount of any expenses that they reasonably incur from you⁴⁶.

You will also be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale if you:

- a) make a statement on this notice or on Form 2 which you know to be false, or
- b) display Form 3, falsely purporting to meet the conditions set out in the legislation, or
- c) you fail to comply with the requirement in the legislation to divert the highway in a manner which is reasonably convenient for the exercise of the public right of way, or where the diversion is by means of a temporary footpath or bridleway, you fail to indicate the line of the temporary footpath or bridleway on the ground to not less than the minimum width that it is apparent to member of the public wishing to use it⁴⁷.

⁴⁴ Section 135A(2) Highways Act 1980

⁴⁵ Sections 135B(1) and (2) Highways Act 1980

⁴⁶ Section 135B(3) Highways Act 1980

⁴⁷ Section 135A(8) Highways Act 1980

9. Minimum width of temporary footpaths and bridleways

The minimum width of a temporary footpath or bridleway means the minimum width, within the meaning of Schedule 12A of the Highways Act 1980⁴⁸, of the footpath or bridleway which is being diverted.

Where the width of the existing footpath or bridleway is proved then the minimum width of the temporary route must be the same as the existing one.

If it is not proved the “minimum width” is –

- 1 metre for a footpath which is not a field edge path
- 1.5 metres for a footpath which is a field edge path
- 2 metres for a bridleway which is not a field edge path
- 3 metres for a bridleway which is a field edge path

⁴⁸ New section 135A(9) Highways Act 1980

Annex 4

Proposed notice of temporary diversion for dangerous works and accompanying notes to be prescribed in regulations.

FORM 2

HIGHWAYS ACT 1980, SECTION 135A (5)(b)

NOTICE OF TEMPORARY DIVERSION OF A FOOTPATH OR BRIDLEWAY FOR DANGEROUS WORKS

[To be completed by the occupier of the land]

I hereby give notice of my intention to temporarily divert the highway which crosses land occupied by me to carry out works which are likely to cause danger to users of a public footpath or bridleway, as prescribed under section 135A of the Highways Act 1980.

Status of the highway

Location of the highway and the diversion
.....
.....

Description of dangerous works

Start date of diversion

End date of diversion

Notices have also been erected in the vicinity of the diversion, identifying its exact route, as prescribed by the Secretary of State for Environment, Food and Rural Affairs.

Name:

Address:
.....

The legislation does not give the public a right to make representations or objections to this temporary diversion.

Any concerns about this notice should be addressed to the occupier and to the highway authority in whose area the footpath or bridleway is situated.

NOTES

1. Use this form to publish a notice in a newspaper of your intention to temporarily divert a footpath or bridleway which crosses land occupied by you for dangerous works under section 135A of the Highways Act 1980.
2. This notice must be published at least seven days before commencement of the diversion in a local newspaper circulating in the area in which the footpath or bridleway is situated⁴⁹.
3. You should state whether the way is a footpath or bridleway and describe the location of the footpath or bridleway, and the part which you are proposing to temporarily divert. This should be detailed enough for readers to be able to locate the location of the diversion. You may wish to insert the information you gave to the highway authority when you notified them (Form 1). For help in completing this form please refer to the notes included in Form 1.
4. You are also required to display notices (Form 3) from the same date that this notice is published in the local newspaper.

⁴⁹ Section 135A(5)(b) – Highways Act 1980

Annex 5

Proposed notice of temporary diversion for dangerous works and accompanying notes to be prescribed in legislation.

FORM 3

HIGHWAYS ACT 1980, SECTION 135A(5)(c)

NOTICE OF A TEMPORARY DIVERSION OF A FOOTPATH OR BRIDLEWAY FOR DANGEROUS WORKS

[To be completed by the occupier of the land]

I hereby give notice of my intention to temporarily divert the highway which crosses land occupied by me to carry out works which are likely to cause danger to users of the footpath or bridleway as prescribed under section 135A of the Highways Act 1980.

Status of the highway

Location of the highway and the diversion
.....
.....

A map is attached identifying the location of the highway and the proposed diversion *[note 3]*.

Start date of diversion

End date of diversion

Description of dangerous works

Name:

Address:

.....

The legislation does not give the public a right to make representations or objections to this temporary diversion. Any concerns about this notice should be addressed to the occupier and to the highway authority in whose area the footpath or bridleway is situated.

NOTES

General

1. Use this form to give notice of your intention to temporarily divert a footpath or bridleway which crosses land occupied by you while dangerous works are carried out on or near the way which are likely to pose a danger to the users of the way.
2. This notice must be completed by the occupier of the land which is crossed by the footpath or bridleway and displayed by affixing a copy of it to a conspicuous object placed at each side of the temporary diversion, and at the first point from each side of the diversion where the diverted highway is joined by another highway. It should be weatherproof to ensure that it is not damaged by wind or rain, and remains clearly visible throughout the period of the diversion.
3. The notice should be detailed enough for readers to be able to locate the location of the diversion and should be accompanied by a map. This can be a sketch map or a copy or trace of the relevant Ordnance Survey map identifying the location of the highway and the proposed diversion. (Ordnance Survey copyright does not prevent you taking a copy of the relevant part of the Ordnance Survey map to attach to this form).
4. The notice should be displayed from the date on which notice (Form 2) is published, which must be at least seven days before the commencement of the diversion. Notices should be taken down the day after the period of the diversion ends.

Annex 6

Handling the consultation

1. Responses

Please send your response, by 4 November 2005 to:

Karen Lee-Bapty
Countryside (Recreation and Landscape) Division 5
Department for Environment, Food and Rural Affairs
Zone 1/01
2 The Square
Temple Quay
BRISTOL
BS1 6EB

If you wish to fax your response, please fax it to:

Fax: 0117 372 8587

If you are responding by e-mail, please send your response to:

rights.ofway@defra.gsi.gov.uk

Please send your response using only **one** of these options.

If you are responding as a representative organisation, please include in your response a summary of the people and organisations which you represent.

2. Copies of responses

Copies of responses will, following the close of the consultation, be deposited in Defra's library, where anyone may inspect them. You should say **at the beginning of your response** if you do not want your letter to be available in this way. All responses will be included in any statistical or other summary of the results.

If you submit comments in response to this consultation exercise, we may keep your name and address on a list that will be used for future consultation exercises on related issues.

3. Enquiries

Enquiries about the contents of this consultation paper should be made to:

Karen Lee-Bapty
Countryside Division 5
Department for Environment, Food and Rural Affairs
Zone 1/01
2 The Square
Temple Quay
BRISTOL
BS1 6EB
Tel: 0117 372 8211
Fax: 0117 372 8587
E-mail: Karen.lee-bapty@defra.gsi.gov.uk

4. Further copies of this consultation paper

Requests for further copies of this document should be made, quoting reference *PB 11038* to:

Defra Publications
Admail 6000
LONDON
SW1A 2XX
Tel: 0845 9556000
Fax: 020 8957 5012
E-mail: defra@iforcegroup.com

Please direct any requests for the document in another format, for example one suitable for people with visual disabilities (large print, Braille, tape etc), to the contact at **3.** above.

The consultation paper is also available on the Defra's internet site, at: <http://www.defra.gov.uk/wildlife-countryside/cl/index.htm>, and via <http://www.ukonline.gov.uk>.

We are sending copies of the consultation paper to the main national organisations in England listed in Annex 7 (and those that responded to the Government's consultation paper on improving rights of way. If you think any other organisation should see the consultation paper, please let us know.

5. Complaints or comments about this consultation paper

The consultation document has been drafted in accordance with the Cabinet Office's code of practice on national public consultations. The code aims to increase the involvement of people and groups in public consultations, minimising the burden it imposes on them, and giving them a proper time — a standard minimum period of twelve weeks — to respond. The code may be viewed on the Cabinet Office's web site at: <http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>

If you have any comments or complaints about this consultation process, other than comments on the consultation document itself, you may wish to take these up with Defra's consultation co-ordinator. He can be contacted as follows:

Daniel Barwick
Strategic Communications Unit
Department for Environment, Food and Rural Affairs
Room 7D
Nobel House
LONDON
SW1P 3HX
Tel: 020 7238 6228
E-mail: daniel.barwick@defra.gsi.gov.uk

Annex 7

List of consultees

Local authorities in England
National Park Authorities in England
Local Access Forums in England
Access Committee for England
ACES Counties Branch
Action for Blind People
Action with Communities in Rural England
ADAS
All Wheel Drive Club
Amateur Motor Cycle Association
Ancient Monuments Society
Architects & Surveyors Institute
ARROW
Assn of Council Secretaries
Assn of County Planning Officers
Assn of Professional Foresters
Assoc of Community Councils in Rural England
Association of Areas of Outstanding Natural Beauty
Association of British Riding Schools
Association of Chief Police Officers
Association of Classic Trials Clubs
Association of Conservation Officers
Association of Drainage Authorities
Association of Heads of Outdoor Education Centres
Association of Inland Navigation Authorities
Association of Larger Local Councils
Association of London Borough Planning Officers
Association of London Government
Association of Magisterial Officers
Association of Municipal Engineers
Association of National Park Authorities
Association of Professional Foresters
Association of Provincial Stipendiary Magistrates
Association of River Trusts
Association of Rover Clubs
Auto Cycle Union
Automobile Association
BAA PLC
Bampton Society
Bridleways & Riders Action Group
British Assoc for Shooting & Conservation
British Assoc of Leisure Parks
British Association of Nature Conservationists
British Canoe Union
British Coal Corporation
British Council of Organisations of Disabled People
British Deer Society
British Driving Society
British Ecological Society
British Equestrian Federation
British Gas Plc
British Holiday & Home Parks Association
British Horse Society
British Horseracing Board
British Marine Federation

British Motorcyclists Federation
British Mountaineering Council
British Nuclear Fuels PLC
British Off Road Driving Association
British Orienteering Federation
British Ornithologists' Union
British Ports Association
British Property Federation
British Schoolboy Motorcycle Association
British Shooting Sports Council
British Telecom Group Property
British Trust for Conservation Volunteers
British Trust for Ornithology
British Upland Footpath Trust
British Water
British Waterways
British Wildlife Management
BT PLC
Business in Sports and Leisure
Byways & Bridleways Trust
Campaign to Protect Rural England
Canoe-Camping Club
Caravan Club
Care for the Wild
Catholic Education Service
CCRU
Central Association Of Agricultural Valuers
Central Council of Physical Recreation
Central Science Laboratory
Centre for Accessible Environments
CHAR
Chartered Institute of Environmental Health
Chartered Institute of Building
Chemical Industries Assoc Ltd
Church of England, Archbishops' Council
Church of England Board of Education
Churches Conservation Trust
City of London Conservation Area
City of London Law Society
Civic Trust
Civil Aviation Authority
Civil Service Motoring Association
Coastal Heritage Network
Commission for Architecture and the Built Environment
Commission for New Towns
Confederation of British Industry
Confederation of Forest Industries UK Ltd
Construction Industry Council
Consumers' Association
Corporation of London
Council for British Archaeology
Council for National Parks
Council for the Protection of Rural England
Council on Tribunals
Country Land and Business Association
Countryside Agency
Countryside Alliance
Countryside Business Group
Countryside Foundation for Education
Countryside Planning & Management

Countryside Recreation Network
Countryside Restoration Trust
Countryside Rights Association
Countrywide Holidays Association
County Mobility
County Planning Officers' Society
Crown Estate Commissioners
CRS
CSS
Cyclists' Touring Club
Disability Rights Commission
Disabled Drivers Association
Disabled Off-Road Access
Disabled Persons Transport Advisory Committee
District Planning Officers' Society
Duchy of Cornwall
Duke of Edinburgh's Award
Earthkind
East Midlands RAC
Education National Interest Group
English Golf Union
English Heritage
English Historic Towns Forum
English Nature
English Partnerships
English Sports Council
English Tourist Board
Environment Agency
Environment Council
Environment Trust
Environmental Investigation Agency
Environmental Services Association
Exmoor Society
Face – UK
Farming and Rural Conservation Agency
Farming and Wildlife Advisory Group
FAVASA
Federation of Rural Community Councils
Federation of Small Businesses
Fieldfare Trust
Forest Authority
Forest Enterprise
Forestry Commission
Forestry and Timber Association
Forestry Contracting Association Ltd
Forestry Industry Committee of Great Britain
Formby Society
Forum of People with Disabilities
Forum of Private Business Association
FPD Savills
Friends of the Earth
Friends of the Lake District
Friends of the Ridgeway
Friends, Families and Travellers
Gala Research
Game Conservancy Trust
Garden History Society
Geological Society
Geologists Association
Greater London Action on Disability (GLAD)

Green Base Exchange
Green Lane Association
Green Lanes Bridleways Group
Green Lanes Environmental Action Movement
Greenpeace
Guide Association
Health and Safety Executive
Highways Agency
Historic Buildings and Monuments Commission for England
Historic Houses Association
Horticultural Trades Association
House Builders Federation
IFA Association
Improvement and Development Agency
Incorporated Society of Valuers & Auctioneers
Industrial Water Society
Inland Waterways Association
Inland Waterways Amenity Council
Inner London Magistrates' Court Service
Inst. of Environmental Management and Assessment
Institute of Chartered Foresters
Institute of Directors
Institute of Economic Affairs
Institute of Fisheries Management
Institute of Highways and Transportation
Institute of Leisure and Amenity Management
Institute of Public Rights of Way Officers
Institute of Chartered Foresters
Institution of Civil Engineers
Institution of Environmental Sciences
Institution of Water and Environmental Management
International Wildlife Coalition
ISFTPOWP
Joint Airports Committee of Local Authorities
Joint Committee of National Amenity Societies
Joint Committee on Mobility for Disabled People
Joint Committee on Mobility of Blind and Partially Sighted People
Joint Nature Conservation Committee
Joseph Nickerson Heather Foundation
Justices' Clerks Society
Land Access and Recreation Association
Land is Ours
Land Owners Group
Landscape Institute
Law Commission
Law Society
League of Venturers
Living Streets
Local Authority Valuers Assoc.
Local Government Association
Local Government Management Board
London Ecology Unit
London First
London Green Belt Council
London Regional Planning
London Transport Planning
London Transport Today
London Walking Forum
Long Distance Walkers' Association
LPGA

Magistrates' Association
Marine Conservation Society
Marine Ecology and Sailing
Mencap
Met. Planning Officers' Society
MFU/LARA
Mining Association of the UK
Moorland Association
Moorland Gamekeepers' Association
Motor Cycle Industry Association Ltd
Motorsport Facilities Unit
Mountain Leader Training Board
National Housing and Town Planning
National Assoc of Local Councils
National Association of Principal Agricultural
National Association of Waste Disposal Contractors
National Autograss Sport Association Ltd
National Caravan Council Ltd
National Caving Association
National Council for Metal Detecting
National Council for Voluntary Organisations
National Disability Council
National Farmers' Union
National Federation of Bridleway Associations
National Federation of Clay Industries
National Federation of Housing Associations
National Forest
National Gamekeepers' Organisation
National Governors' Council
National Grid Company
National Heritage Memorial Fund
National Housebuilders Federation
National House Building Council
National Joint Utilities Group
National Playing Fields Assn
National Power Plc
National Sheep Association
National Small Woods Association
National Society of Allotment and Leisure Gardeners Ltd
National Trust
National Union of Residents' Assns
National Urban Forestry Unit
Open Spaces Society
Ordnance Survey
Pathways Trust
People's Trust for Endangered Species
Pesticide Action Network UK
Planning Aid for London
Planning and Environment Bar Association
Planning Inspectorate
Planning Officers Society
Plant Life
Princes Trust
PSI
Quarry Products Association
RAC Motor Sports Association Ltd
Radar
Railtrack
Ramblers' Association
Range Rover Register

Regional Sports Fora
Rights of Way Law Review
Rights of Way Officer Trail Riders Fellowship
Rights of Way Review Committee
Rough-Stuff Fellowship
Royal Agricultural College
Royal Agricultural Society of England
Royal Commission on Historic Monuments of England
Royal Commission on Environmental Pollution
Royal Forestry Society
Royal Inst. of British Architects
Royal Inst. of Chartered Surveyors
Royal Mail Property Holdings
Royal National Institute for the Blind
Royal Society for the Prevention of Accidents
Royal Society for the Protection of Birds
Royal Town Planning Institute
Royal Veterinary College
RSNC Wildlife Trusts Partnership
RSPCA
School of Earth Sciences
Scout Association
Seatech Marine
Secondary Heads Association
Small Woods Association
Shooting Sports Trust
Society of County Secretaries
Society of County Treasurers
Society of Local Council Clerks
Society of Trusts and Estates Practitioners
South West England RAC
South East England RAC
SPAB
Sportsmans' Association
Standing Conference on Countryside Sports
Stone Walling Association of GB
Strategic Rail Authority
Sustrans
Surlingham Society
Sussex Wildlife Trust
Tenant Farmers' Association
Thames Planning & Amenities Forum
Town and County Planning Assoc
Towpath Action Group
Trades Union Congress
Trail Riders Fellowship
Transport 2000
Transport and General Workers Union
Tree Council
TUA (BBT)
Twentieth Century Society
UK 200 Group
UK Environmental Law Association
UK FPA
UK Major Posts
UK Petroleum Industry Association
UKAEA
Unison
United Kingdom Sports Council
Vauxhall Off-Road Club

Victorian Society
Walking and Cycling for Health
Water Companies Association
Wildfowl & Wetlands Trust
Wildlife and Countryside Link
Wildlife Trusts
Woodland Trust
World Wide Fund for Nature
Young People's Trust for the Environment & Nature Conservation
Youth Hostels Association (England)
Individuals and regional organisations are not listed.

Annex 8

Relevant sections of the CROW Act 2000

Schedule 6 – inserts new sections 119D and E, and sections 135A and B into the Highways Act 1980

- Diversion of certain highways for protection of sites of special scientific interest
- 119D. - (1) Subsection (3) below applies where, on an application made in accordance with this section by the appropriate conservation body, it appears to a council, as respects any relevant highway for which they are the highway authority and which is in, forms part of, or is adjacent to or contiguous with, a site of special scientific interest-
- (a) that public use of the highway is causing, or that continued public use of the highway is likely to cause, significant damage to the flora, fauna or geological or physiographical features by reason of which the site of special scientific interest is of special interest, and
 - (b) that it is expedient that the line of the highway, or part of that line should be diverted (whether on to land of the same or another owner, lessee or occupier) for the purpose of preventing such damage.
- (2) In subsection (1) "relevant highway" means-
- (a) a footpath, bridleway or restricted byway,
 - (b) a highway which is shown in a definitive map and statement as a footpath, a bridleway or a restricted byway but over which the public have a right of way for vehicular and all other kinds of traffic, or
 - (c) any highway which is shown in a definitive map and statement as a byway open to all traffic,
- but does not include any highway that is a trunk road or special road.
- (3) Where this subsection applies, the council may, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,-
- (a) create, as from such date as may be specified in the order, any such-
 - (i) new footpath, bridleway or restricted byway, or
 - (ii) in a case falling within subsection (2)(b) or (c) above, new highway over which the public have a right of way for vehicular and all other kinds of traffic,

as appears to the council requisite for effecting the diversion, and

(b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (6) below, the public right of way over so much of the way as appears to the council to be requisite for the purpose mentioned in subsection (1)(b) above.

(4) An order under this section is referred to in this Act as an "SSSI diversion order".

(5) An SSSI diversion order shall not alter a point of termination of the highway-

(a) if that point is not on a highway, or

(b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it.

(6) Where it appears to the council that work requires to be done to bring the new site of the highway into a fit condition for use by the public, the council shall-

(a) specify a date under subsection (3)(a) above, and

(b) provide that so much of the order as extinguishes (in accordance with subsection (3)(b) above) a public right of way is not to come into force until the local highway authority for the new highway certify that the work has been carried out.

(7) A right of way created by an SSSI diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.

(8) Before determining to make an SSSI diversion order, the council may require the appropriate conservation body to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,-

(a) any compensation which may become payable under section 28 above as applied by section 121(2) below,

(b) to the extent that the council are the highway authority for the highway, any expenses which they may incur in bringing the new site of the highway into fit condition for use for the public, or

(c) to the extent that the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by section 119E(6) below.

(9) The Secretary of State shall not confirm an SSSI diversion order, and a council shall not confirm such an order as an unopposed order, unless he, or as the case may be, they are satisfied that the conditions in subsection (1)(a) and (b) are satisfied, and that it is expedient to confirm the order having regard to the effect which-

(a) the diversion would have on public enjoyment of the right of way as a whole;

(b) the coming into operation of the order would have as respects other land served by the existing public right of way; and

(c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,

so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (8)(a) above.

(10) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of SSSI diversion orders.

(11) This section has effect subject to section 119E below.

(12) In this section-

"the appropriate conservation body" means-

(a) as respects England, English Nature, and

(b) as respects Wales, the Countryside Council for Wales;

"site of special scientific interest" has the same meaning as in the Wildlife and Countryside Act 1981.

Provisions
supplementary
to section
119D.

119E. - (1) An application under section 119D above shall be in such form as may be prescribed and shall be accompanied by-

(a) a map, on such scale as may be prescribed,-

(i) showing the existing site of so much of the line

of the highway as would be diverted if the order were made and the new site to which it would be diverted,

(ii) indicating whether a new right of way would be created by the order over the whole of the new site or whether some of it is already comprised in a highway, and

(iii) where some part of the new site is already so comprised, defining that part,

(b) by an assessment in the prescribed form of the effects of public use of the right of way on the site of special scientific interest, and

(c) by such other information as may be prescribed.

(2) At least fourteen days before making an application under section 119D above, the appropriate conservation body shall give a notice in the prescribed form of their intention to do so-

(a) to any owner, lessee or occupier of land over which the proposed order would create or extinguish a public right of way;

(b) to such other persons as may be prescribed; and

(c) in the case of English Nature, to the Countryside Agency.

(3) A council, in determining whether it is expedient to make or confirm an SSSI diversion order, and the Secretary of State, in determining whether to confirm such an order, shall, in particular, have regard to the following questions-

(a) whether the council would be able to prevent damage of the kind referred to in section 119D(1) above by making a traffic regulation order, and

(b) if so, whether the making of a traffic regulation order would cause less inconvenience to the public than that which would be caused by the diversion of the highway.

(4) The Secretary of State, in determining whether it is expedient to make an SSSI diversion order under section 120(3) below in a case where by virtue of section 22(4) of the Road Traffic Regulation Act 1984 he has power to make a traffic regulation order shall, in particular, have regard to the following questions-

(a) whether he would be able to prevent damage of the kind referred to in section 119D(1) above by making a traffic regulation order, and

(b) if so, whether the making of a traffic regulation order

would cause less inconvenience to the public than that which would be caused by the diversion of the highway.

(5) An SSSI diversion order shall be in such form as may be prescribed and shall contain a map, on such scale as may be prescribed,-

(a) showing the existing site of so much of the line of the highway as is to be diverted by the order and the new site to which it is to be diverted,

(b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a highway, and

(c) where some part of the new site is already so comprised, defining that part.

(6) Section 27 above (making up of new footpaths and bridleways) applies to a highway created by an SSSI diversion order with the substitution-

(a) for references to a footpath or bridleway of references to a footpath, a bridleway, a restricted byway or a highway over which the public have a right of way for vehicular and all other kinds of traffic,

(b) for references to a public path creation order, of references to an SSSI diversion order, and

(c) for references to section 26(2) above, of references to section 120(3) below.

(7) Neither section 27 nor section 36 above is to be regarded as obliging a highway authority to provide on any highway created by an SSSI diversion order a metalled carriage-way.

(8) In this section-

"the appropriate conservation body" has the same meaning as in section 119D above;

"prescribed" means prescribed by regulations made by the Secretary of State;

"site of special scientific interest" has the same meaning as in the Wildlife and Countryside Act 1981;

"traffic regulation order" means an order under section 1 or 6 of the Road Traffic Regulation Act 1984."

"Temporary diversion for dangerous works.

135A. - (1) Where works of a prescribed description are likely to cause danger to users of a footpath or bridleway which passes over any land, the occupier of the land may, subject to the provisions of this section, temporarily divert-

(a) so much of the footpath or bridleway as passes over that land, and

(b) so far as is requisite for effecting that diversion, so much of the footpath or bridleway as passes over other land occupied by him.

(2) A person may not under this section divert any part of a footpath or bridleway if-

(a) the period or periods for which that part has been diverted under this section, and

(b) the period or periods for which any other part of the same footpath or bridleway passing over land occupied by him has been diverted under this section,

amount in aggregate to more than fourteen days in any one calendar year.

(3) Where a person diverts a footpath or bridleway under this section-

(a) he shall do so in a manner which is reasonably convenient for the exercise of the public right of way, and

(b) where the diversion is by means of a temporary footpath or bridleway, he shall so indicate the line of the temporary footpath or bridleway on the ground to not less than the minimum width that it is apparent to members of the public wishing to use it.

(4) This section does not authorise a person-

(a) to divert a footpath or bridleway on to land not occupied by him without the consent of the occupier of that land and of any other person whose consent is needed to obtain access to it,

(b) to divert a footpath onto a highway other than a footpath or bridleway, or

(c) to divert a bridleway onto a highway other than a bridleway.

(5) The person by whom a footpath or bridleway is diverted under this section shall-

(a) at least fourteen days before the commencement of the diversion, give notice of the diversion in accordance with subsection (6) below,

(b) at least seven days before the commencement of the diversion, publish notice of the diversion in a local newspaper circulating in the area in which the footpath or bridleway is situated, and

(c) display such notices as may be prescribed at such places, in such manner and at such times before or during the diversion as may be prescribed.

(6) Notice under subsection (5)(a) above shall be given-

(a) to the highway authority for the footpath or bridleway,

(b) if the footpath or bridleway is on or contiguous with access land in England, to the Countryside Agency, and

(c) if the footpath or bridleway is on or contiguous with access land in Wales, to the Countryside Council for Wales.

(7) A notice under subsection (5)(a), (b) or (c) above shall be in such form and contain such information as may be prescribed.

(8) If a person-

(a) in a notice which purports to comply with the requirements of subsection (5)(a) or (b) above, makes a statement which he knows to be false in a material particular,

(b) by a notice displayed on or near a footpath or bridleway, falsely purports to be authorised under this section to divert the footpath or bridleway, or

(c) in diverting a footpath or bridleway under this section, fails to comply with subsection (3) above,

he shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(9) In this section-

"access land" has the same meaning as in Part I of the Countryside and Rights of Way Act 2000;

"minimum width" in relation to a temporary footpath or bridleway, means the minimum width, within the meaning of Schedule 12A to this Act, of the footpath or bridleway diverted;

"prescribed" means prescribed by regulations made by

the Secretary of State.

Temporary diversion for dangerous works: supplementary.

135B. - (1) The person by whom a footpath or bridleway is diverted under section 135A above shall, before the diversion ceases to be authorised by that section, make good any damage to the footpath or bridleway resulting from the works mentioned in subsection (1) of that section, and remove from the footpath or bridleway any obstruction resulting from those works.

(2) Any person who fails to comply with the duty imposed on him by subsection (1) above is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(3) The highway authority may make good any damage, or remove any obstruction, in respect of which any person has failed to comply with that duty and recover from that person the amount of any expenses reasonably incurred by them in or in connection with doing so.

(4) Paragraph 3(1) of Schedule 12A to this Act does not apply in relation to any disturbance of the surface of a footpath or bridleway which subsection (1) above requires any person to make good; but paragraphs 7 and 8 of that Schedule apply for the purposes of subsection (3) above as if-

(a) references to the authority were references to the highway authority,

(b) references to the work were references to work carried out under subsection (3) above in relation to a footpath or bridleway, and

(c) references to the relevant land were references to the land over which the footpath or bridleway passes.

(5) The diversion of a footpath or bridleway under section 135A above does not-

(a) affect the liability of any person for anything done in relation to the path or way otherwise than for the purposes of or in consequence of the works mentioned in subsection (1) of that section, or

(b) authorise any interference with the apparatus or works of any statutory undertakers.

(6) Without prejudice to section 130 (protection of public rights of way) above, it is the duty of the highway authority to enforce the provisions of section 135A and this section."

Annex 9

Response form: Consultation on diversions of rights of way:

- (1) for the protection of sites of special scientific interest (SSSIs); and**
- (2) temporary diversions for dangerous works**

Name:	Telephone number:
Organisation (where appropriate):	Address:

Your response:

(1) SSSI Diversions

<p>Q1. Does the form at Annex 1 adequately cover the scope and content of the information that should be contained in the notification of intention to apply for an SSSI order?</p>	
<p>Q2. Given English Nature's undertaking to consult widely before making an application, and the provisions already contained in Schedule 6 to the 1980 Act for notifying orders, is there a need for additional persons, other than those already specified in legislation, who should be notified that English Nature propose to make an application?</p>	
<p>Q3. Does the form at Annex 2 adequately cover the scope and content of the information that should be contained in, or attached to, the application?</p>	
<p>Q4. Is there any reason why Defra should depart from the established forms for orders and notices in existing regulations?</p>	

(2) Temporary Diversions for Dangerous Works

<p>Q5. What types or descriptions of works should the Government prescribe in regulations?</p>	
<p>Q6. Does the form at Annex 3 adequately cover the scope and content of the information which the occupier should be required to supply?</p>	
<p>Q7. Does the form at Annex 4 adequately cover the scope and content of the information which the occupier should be required to publish in a local newspaper?</p>	
<p>Q8. Does the form at Annex 5 cover the scope and content of the information which the occupier should display?</p>	
<p>Q9. Should the notice be displayed in any other places? Are you happy with the proposed manner and time it should be displayed?</p>	

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