

**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. Defra

Full text (including notes to the annexes) can be viewed on

<http://www.defra.gov.uk/corporate/consult/rightsofway-diversions/index.htm>

The consultation seeks views on the procedures for dealing with new powers to divert rights of way.

**SUMMARY - SSSIs**

- Schedule 6 of the CROW Act (paragraph 12) includes provision to insert new sections 119D and 119E into the Highways Act (1980). Local highway authorities will have power to divert a public right of way to protect Sites of Special Scientific Interest (SSSIs). The power to apply for these orders (SSSI diversion orders) rests solely with English Nature and it is anticipated use will be as a 'last resort'.
- Grounds for making the order are that public use is causing or likely to cause "significant damage to the flora, fauna, geological or physiological features" of the SSSI.

**Proposed Process**

- 14 days before making an application English Nature has to *notify* the owner, lessee or occupier, any other relevant persons as may be prescribed and the Countryside Agency. English Nature has undertaken to consult widely prior to application with user groups and other organisations.  
**Are there additional persons who should be *notified* in addition to the above and those previously specified in legislation (such as Parish Councils)?**
- English Nature has to provide a map (ideally 1:2500 or larger), an assessment of the effects of use and any extra information, as determined by the Secretary of State, such as steps previously considered to prevent damage. The new right of way may have no conditions attached to it or may be subject to limitations.  
**Do Annexes 1 and 2 (attached) adequately cover the scope and content of information to be submitted?**
- The highway authority will need to consider their duties to conserve and enhance SSSIs, the effect of the diversion on public enjoyment and whether a Traffic Regulation Order could otherwise prevent damage to the SSSI.

- The highway authority has six months to confirm or submit the order to the Secretary of State. Otherwise the Secretary of State may determine.
- The highway authority will give notice of the making of the order and allow at least 28 days for representations and objections under Schedule 6 of the Highways Act 1980.
- Defra has concluded that, in the interests of protecting the natural heritage, local authorities will not be able to recover costs and should be able to meet the cost from existing budgets.
- The SSSI diversion orders will use existing and established forms for public path orders.

**Is there any reason why Defra should not use the established forms?**

### **SUMMARY – temporary diversions for dangerous works**

- Schedule 6 of the CROW Act (paragraph 16) will insert new sections 135A and 135B into the Highways Act 1980. Occupiers of land will have a right to divert footpaths and bridleways on a *temporary* basis (up to fourteen days each year for each right of way) when works are likely to cause a danger to users.
- Currently permitted diversions, allowable under the Highways Act 1980, include repair or widening works to existing highways, ploughing up of the surface, excavation or engineering works.  
**What additional land management works, not currently provided for in legislation, should be grounds for a temporary diversion?  
What types or descriptions of works should the Government prescribe?**
- Any diversion should be reasonably convenient and to minimum widths and with the consent of any other person, if not the applicant.

### **Proposed process, to be prescribed by the Secretary of State**

- Notify the highway authority and the Countryside Agency (if on, or adjacent to, access land) 14 days before the start of the diversion.  
**Do the forms in Annexes 3 and 4 adequately cover the scope and content of the information the occupier should supply?**
- Publish notice of the diversion in the local newspaper, at least seven days prior to the start of the diversion.
- Display notices, starting seven days beforehand, giving the name of the person responsible and a contact for concerns. Weatherproof notices at each end of the temporary diversion and at the first point where the diverted highway joins another highway are proposed.  
**Does Annex 5 adequately cover the information the occupier should supply? Should it be displayed in any other place?  
Should it be displayed for any other time?**
- Before reverting to the original route, any damage must be made good. (Otherwise liable to a fine)

***Guidance for occupiers will be published.***

# 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]*

.....  
.....

## 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]* –

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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*]

.....  
.....

# 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]  
.....  
.....

## 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 situated<sup>49</sup>.

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.

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<sup>49</sup> 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.