



THE DEPARTMENT
OF TRANSPORT

Local Authority Circular 1/97
(Department of Transport)

The Chief Executive

Highways Authorities and their
Agency Authorities in England

London Borough Councils

HIGHWAYS ACT 1980 : ORDERS UNDER SECTION 14 OF THE HIGHWAYS ACT 1980
AND OPPOSED ORDERS UNDER SECTION 124 OF THAT ACT.

1. The Department has prepared the attached Notes for Guidance, and specimen order forms, to assist local authorities making orders under s14, and s124, of the Highways Act 1980.
2. It is intended to supplement the Notes from time to time by more detailed advice notes covering specific drafting points, or other issues, about the making of s14 Orders.
3. Circular Roads 51/71, 64/72, 9/75 and 5/81 are hereby cancelled.

Highways Act 1980

NOTES ON THE PREPARATION, PUBLICATION AND
SUBMISSION OF:-

SIDE ROADS ORDERS, UNDER SECTION 14,
FOR HIGHWAY SCHEMES RELATING TO
CLASSIFIED ROADS; AND

OPPOSED ORDERS FOR CLOSURE OF PRIVATE
MEANS OF ACCESS TO PREMISES, UNDER
SECTION 124, WHERE THE ACCESS IS LIKELY
TO CAUSE A DANGER TO, OR INTERFERE
UNREASONABLY WITH, TRAFFIC ON THE
HIGHWAY.

FOR WHICH THE SECRETARY OF STATE FOR TRANSPORT IS
THE CONFIRMING AUTHORITY.

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SECTION 1 - SECTION 14 (s14) ORDERS FOR CLASSIFIED ROADS

PART 1 - GENERAL

1. POWERS

Highways works

- 1.1 An order under section 14 ("a s14 Order") of the Highways Act 1980 ("the Act") may authorise a highway authority for a classified road to stop up, divert, improve, raise, lower or otherwise alter a highway that crosses or enters the route of the classified road. The power extends to works being carried out on highways which will be "otherwise affected" by the construction or improvement of the classified road. Section 14 also provides for the construction of new highways for purposes concerned with any such alterations or related purposes. An order can authorise the construction of a highway for temporary purposes and provision can be made in the order for such a highway to be closed after a specified period.

Private means of access to premises

- 1.2 Section 125 of the Act provides that a s14 Order may authorise the highway authority to stop up private means of access to premises and to provide new means of access to premises.

Bridges over and Tunnels under Navigable Watercourses

- 1.3 Where alterations to side roads or provision of new means of access to premises under section 125 involve the construction of a bridge over, or tunnel under, a navigable watercourse, section 106(4) of the Act provides for authority to construct the bridge, or tunnel, to be included in the s14 Order. A highway authority may otherwise opt to obtain the authority for the bridge, or tunnel, by including it in a "scheme" under section 106(3) of the Act. It should be noted that such a scheme (under section 106(3)) is the only means by which a highway authority can obtain the authority which it requires to construct a bridge, or tunnel, which is to carry the ASSOCIATED classified road. Provision cannot be made for the construction of a classified road in a s14 Order and consequently s106(4) cannot be utilised to provide in the order for the construction of a bridge or a tunnel for the classified road over or under a navigable watercourse.

Diversion of Navigable Watercourses

- 1.4 Section 108(5) provides the authority, which a highway authority requires, to divert a navigable watercourse by its inclusion in a s14 Order where such diversion is necessary because of the classified road or its side roads works.

Land acquisition/sequence of orders

- 1.5 Land acquisition powers associated with the construction or improvement of highways, whether in respect of the classified road or its side roads, or the provision of new means of access to premises, are contained in sections 239 and 240 of the Act.
- 1.6 Highway authorities are asked to bear in mind the proper order of precedence of s14 Orders and related compulsory purchase orders. Where a compulsory purchase order provides "for the construction and improvement of highways and the provision of new means of access to premises in pursuance of the (Side Roads) Order 199 ", then it is essential that the compulsory purchase order be made and sealed after - not before - the s14 Order is made.
- 1.7 It is the precise statement of the s14 Order provisions which allows highway authorities to rely upon it as a definitive purpose, and obviate the need to repeat all of the s14 Order works as individual purposes in the compulsory purchase order. To depend on the s14 Order in this way, that order must have legal foundation by its making and sealing before the compulsory purchase order comes into being. Compulsory purchase orders which do not observe this requirement are rendered fundamentally deficient and cannot be confirmed until supplementary, or renewed, compulsory purchase order action is taken up by the highway authority.

2. CLASSIFICATION OF ROADS

- 2.1 The expression "classified road" is defined in section 329 of the Act as one which is classified in accordance with section 12 of that Act.
- 2.2 Where the classified road is a proposed new highway, or highways, its classification should be obtained before making the s14 Order. Applications for classification should be made to the Department of Transport at the appropriate regional Government Office.

3. CLASSIFIED ROAD WORKS

- 3.1 Section 24 of the Act provides for the construction of new highways by local highway authorities, subject of course to the requisite planning permission being obtained.
- 3.2 Where the proposed highway works are by way of an "improvement" of an existing highway, then local highway authorities have general powers available to them, under Part V of the Act, to carry out such works. More commonly, such improvement is likely to involve widening of a highway (section 72 of the Act) and/or raising or lowering the level of the highway (section 77 of the Act). In planning terms, such works fall within the provisions mentioned in paragraph 4.6 below.

- 3.3 It is these powers, together with any requisite planning permission, which give authority for construction and/or improvement of the classified road itself, not the s14 Order.

4. PLANNING PERMISSION

- 4.1 Where planning permission is required for a classified road or for its side road highway works, then the Secretary of State for Transport will not confirm a s14 Order until that planning application has been determined.
- 4.2 The absence of planning permission at the time an application for confirmation of a s14 Order is made, will not preclude it from proceeding through its normal statutory process, including the holding of any Inquiry into the s14 Order. If necessary, joint Inquiries into a planning application (were that decided upon) and a s14 Order can be held, together with any related compulsory purchase order Inquiry.
- 4.3 The local highway authority should advise the Secretary of State of the position on planning permission when it makes its application for confirmation of the s14 Order. It is appropriate for this information to be included in the Statement of Reasons required for the side roads order so that the position is brought to the attention of those served a copy of the order documents, and to the public, who may seek to inspect them on deposit.
- 4.4 It is clearly important therefore to determine whether the scheme involves the construction of a new highway or is a scheme for the improvement of an existing highway. In many cases the distinction is obvious but cases do arise (particularly where the scheme includes the significant realignment of an existing highway) in which it may be difficult to ascertain whether the scheme does involve the construction of a new length(s) of highway.
- 4.5 The proper criterion to be applied in all cases is that indicated in the wording of the description in Part 13 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995. This states that where all the projected works are to be carried out on land outside but adjoining the boundary of an existing highway the case is one involving the improvement of an existing highway only, but where works are to be carried out on other land so that, when the scheme is complete, there will be non-highway land between the projected works and the existing highway, then on that length the works should be regarded as works for the construction of a new highway. In the case of the latter specific grant of planning permission will be required.
- 4.6 Where classified road and/or side roads works are by way of highway improvement(s), the local highway authority should

state the planning status of those works also. This will be by way of such works falling to be considered under:-

- (a) section 55(2)(b) of the Town and Country Planning Act 1990; that is to say "the carrying out on land within the (existing) boundaries of a road by a local highway authority of any works required for or incidental to the maintenance or improvement of the road". These are works which do not amount to "development" and for which planning permission is not required; and/or
- (b) Part 13 of Schedule 2 to the Town and Country Planning General Permitted Development Order SI 1995 No 418 ("the 1995 GDO"). That is to say "the carrying out by a local highway authority on land outside but adjoining the boundary of an existing highway of works required for or incidental to the maintenance or improvement of the highway", which are works which have, by virtue of the 1995 GDO, been granted planning permission as "permitted development".

4.7 Illustrations showing the considered differences between "improvement" and "new construction" are given in Appendix III.

5. USE OF SECTION 14 PROVISIONS

Definitions of highways

5.1 In formulating its s14 Order proposals a local highway authority should recognise that, any new highway which it may propose to construct, as a side road, will only fall within one of the following categories:-

- (a) as a "road" (all-purpose highway), being a highway over which the public have rights of way on foot and with vehicles, and over which they may exercise an animal that can use a bridleway;
- (b) as a "bridleway", being a highway over which the public have a right of way on foot and a right of way on horseback or leading a horse, with or without a right of way to drive animals of any description along the highway. There is no other right of way on a bridleway, save under the Countryside Act 1968 (Section 30) which affords rights to ride a pedal cycle on a bridleway provided that cyclists give way to pedestrians and persons on horseback (unless expressly prohibited by order or byelaw);
- (c) as a "cycle track", being a highway over which the public have a right of way on pedal cycles, with or without a right of way on foot. When including a cycle track as a new highway in a s14 Order it should be specified as being with, or without, a right of way on foot; or

- (d) as a "footpath", being a highway over which the public have a right of way on foot only.
- 5.2 Local highway authorities should ensure that, in the context of individual new highways, it is only such expressions which are used. Use of phrases such as "cycleway", "footway" etc, or any other expression not referred to in (a)-(d) would in such context be incorrect.
- 5.3 There are, however, other ancient highways which a local highway authority may find itself having to deal with in relation to classified road works:-
- (i) Road Used as a Public Path (RUPP), often shown on the definitive map as Carriage-Road used mainly as a Bridleway (CRB), or Carriage-Road used mainly as a Footpath (CRF); or
- (ii) Byway Open to All Traffic (BOAT).
- 5.4 Such highways, as well as their other rights, afford public rights of way for vehicular traffic. In terms of improvement of such highways, in a s14 Order, this may not be of significance, as it does not affect the rights of way of the highway concerned. In terms of stopping up of such a highway, however, the local highway authority in formulating its proposals, and the Secretary of State for Transport in considering their confirmation, would need to have regard to the requirements of s14(6) of the Act, namely that another reasonably convenient route (for all traffic types afforded rights over the stopped up highway) is available or will be provided before that highway is stopped up.
- 5.5 The local highway authority needs to make clear what existing and/or proposed highway(s) are intended to satisfy this requirement (in its Statement of Reasons, or elsewhere) when submitting its s14 Order proposals.

Stopping up highways and private means of access to premises

a. Highways

- 5.6 Highways legislation is considered to recognise the existence, construction, improvement, maintenance etc (and otherwise the ability to prohibit or restrict use of, or impose speed restrictions, under the authority of an order under the Road Traffic Regulation Act 1984) of highways as relating to "individual" and quite distinct highways with specific rights of way (see definitions in 5.1 and 5.3 above).
- 5.7 Accordingly, local highway authorities are required to fulfil the duty, imposed on them under section 130 of the Act, to assert and protect public rights to the use and enjoyment of any highway consistent with those rights.

- 5.8 While lawyers have differing views on whether or not more than one highway can exist at any one time on the same plane, there is no doubt that separate highways may exist on different levels, for example a footpath, bridleway or cycle track on a bridge over, or in underpass of, an all-purpose highway; or two all-purpose highways placed on separate levels in such a way.
- 5.9 Where, therefore, an existing highway crosses or enters a new highway, in the same plane, or crosses or enters the projected works of a highway improvement, it is sensible practice that the existing highway should be stopped up. In this way (in the case of works to a classified road by recourse to the use of s14 powers) the legal position will be put beyond doubt. The existing highway rights will be stopped up or diverted to make way for the new or improved highway.
- 5.10 Local highway authorities are, in adopting this approach, considered to be acting consistently with their duty under section 130 of the Act. In doing so they will also eliminate any doubt that may arise in future over the area, or areas, of highway concerned.
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- 5.11 In addition to stopping up highways which are crossed by, or which enter, the classified road, a local highway authority may propose that certain side road connections will cease. Stopping up would, in those cases, extend over that length of highway (outside the classified road confines) which will no longer continue.
- 5.12 Where any existing side road is, under the proposals, to take on a different status from its present one then that length of side road should be stopped up in the order, with the new highway, of that different status, included as a new highway to be constructed. For example, an all-purpose side road which is to become a footpath or bridleway and which will involve works of construction consistent with its proposed new found status.
- 5.13 Section 14 does not confer any authority for merely "downgrading", or in some cases "upgrading", rights of way associated with a particular highway. Highway authorities should bear this in mind when formulating their s14 Order proposals and include such works as detailed above in a s14 Order.
- 5.14 It should also be remembered that there will be a requirement to acquire the land necessary for any new highway proposed over a stopped up highway, in a compulsory purchase order if needs be. Such land when freed from its existing highway rights at the time of stopping up (which precedes the construction of any new highway thereover) will in absence of proof of title revert to the sub-soil owner. In order to construct the new highway, that land will, therefore, need to be secured, by acquisition from, or dedication by, that land owner for the new highway purpose.

b. Private means of access to premises

- 5.15 Where, in consequence of the classified road works, any recognisable private means of access, from a highway to premises, (premises in this context including land and buildings) will be severed, then provision should be included for stopping up that access where it is crossed by the route of the new or improved classified road.
- 5.16 The stopping up recommended at 5.15 above will remove the private rights of access, over the length severed, to the premises concerned. Any replacement access proposals should also be included in the order (see 5.23 to 5.27 below).
- 5.17 Certain accesses from a highway to premises may only have recognisable features such as a field gate, with no identifiable track extending from it. Where such accesses are to be removed in consequence of the classified road works, provision should be included for stopping up that access, over a nominal length from the highway with which it connects, to make clear the intention of its removal.
- 5.18 It is important for local highway authorities to remember that where private means of access to premises presently exist from a highway which is itself to be stopped up, then those accesses should also be stopped up as provisions of the order. It is not sufficient for the highway only to be stopped up. The parties concerned with such accesses should be left in no doubt of their removal and be given statutory entitlement to service of notice under paragraph 3 of Schedule 1 to the Act.
- 5.19 Additionally, not unlike his duty in respect of highways, the Secretary of State must be satisfied, under section 125(3) of the Act, that where stopping up of an access is proposed, either no access to premises is reasonably required, or that other reasonably convenient means of access to the premises is available or will be provided. He can only make such judgement, as can those directly affected make any representation in that regard, if existing accesses are included in the order to be stopped up, and the new proposals detailed, or an explanation is given in the Statement of Reasons if no alternative is proposed.

Construction of new highways and improvement of existing highways as side road works to the classified road.

- 5.20 The powers available to local highway authorities to construct new highways and to improve existing highways (see 3.1 to 3.3 above) can also be used for side roads works. Therefore, it is not necessary for a local highway authority to seek authority to carry out such works by way of a s14 Order. It is necessary, however where the local highway authority propose to improve or alter a highway or highways of another highway authority.

- 5.21 Nevertheless, local highway authorities are strongly encouraged to include "all" works of improvement, construction etc in respect of side roads, in a s14 Order. In doing so the public, and the Secretary of State who is being asked to confirm the order, are given a complete picture of the proposals.
- 5.22 More importantly, such works of new construction and/or highway improvement to side roads are very often associated with providing another reasonably convenient alternative route for a highway, or highways, which are to be stopped up in accordance with section 14(6) of the Act. (See para 5.4 above). Their inclusion in the s14 Order, therefore, is likely to avoid unnecessary enquiries from the public, and the Secretary of State for Transport, about how the requirements of section 14(6) of the Act are to be satisfied.

Provision of new means of access to premises

- 5.23 Local highway authorities have general powers to provide new means of access to premises (under section 129 of the Act). ~~Where it is proposed to provide new means of access to premises in connection with classified road proposals, these should be shown in the order.~~
- 5.24 This course is suggested irrespective of whether or not the access is to replace one which is being stopped up. For example, where the local highway authority is providing additional accesses from, and in consequence of severance of certain premises by the classified road.
- 5.25 If it is a local highway authority's intention, in every case of stopping up an access, to satisfy the criterion of section 125(3) of the Act by providing a new means of access to premises, then the Secretary of State needs to be satisfied not only that the local highway authority is willing to provide such an access, but that it is in a legal position to do so. This applies equally to any new means of access to premises the local highway authority may propose in its scheme to counter the effects of severance of premises.
- 5.26 Sometimes (usually for design reasons) it is necessary for a new means of access to be laid out in a particular manner on a particular line, on land which is not owned by the local highway authority. In such circumstances, the Secretary of State could only be satisfied that the requirements of section 125(3) of the Act have been met if the local highway authority has already obtained agreement, from the land owner, to enter upon that land for provision of the access, or if such land was included in an associated compulsory purchase order which he is being asked to consider simultaneously.
- 5.27 Similarly, in cases where any new means of access is proposed over land in ownership other than that of the premises to which the new access is to be provided, the

Secretary of State could only be satisfied that this was a reasonably convenient access if the owner of those premises were to be granted legally enforceable private rights of way over the land to be traversed by the access. Usually, in such circumstances, the local highway authority will need to include such land in a compulsory purchase order for the purpose of providing the new access; as prospective land owner (if the compulsory purchase order were to be confirmed) it could then grant those third party rights.

Illustrations of the use of s14 provisions

5.28 Local highway authorities may find the illustrations and comments contained in Appendix III useful by way of practical examples of the issues covered by this section.

6. OTHER ASPECTS OF SECTION 14

- 6.1 Section 14 Orders of the Act are made by the local highway authority for the classified road and submitted to the Secretary of State for Transport for confirmation. The procedure for publication of the made order, submission to the Secretary of State and service of notice is set out in Schedule 1 to the Act.
- 6.2 As mentioned in paragraph 5.4, the Secretary of State cannot confirm an order authorising the stopping up of a highway unless he is satisfied that another reasonably convenient route is available or will be provided before the highway is stopped up.
- 6.3 Similarly, as mentioned in paragraph 5.19, the Secretary of State cannot confirm an order authorising the stopping up of a private means of access to premises unless he is satisfied that no access to the premises is reasonably required, or that another reasonably convenient means of access to the premises is available or will be provided. In practice it is considered that few cases will fall into the former category. It may apply, however, where the whole of the premises concerned are to be absorbed by the Scheme proposals and its acquisition included in an associated Compulsory Purchase Order.
- 6.4 An order under sections 14 and 106(4) will be subject to special parliamentary procedure where there is a sustained objection, from the navigation authority or water authority, on the grounds that the bridge or tunnel authorised by the order is likely to obstruct or impede the performance of their statutory functions, or interfere with the reasonable requirements of navigation over the waters affected.

PART 2 - THE ORDER : PREPARATION AND PUBLICATION

7. GENERAL

- 7.1 To assist local highway authorities specimen orders (Forms A and B) are provided at Section 3.
- 7.2 Further advice and guidance on specific and complex or unusual drafting points can be obtained from the Department of Transport, Local Authority Orders, Wellbar House, Gallowgate, Newcastle upon Tyne NE1 4TD. It is expected, however, that advice will be needed only in such circumstances. The Department is not resourced to provide a facility for the routine clearance of draft orders; for which local highway authorities should have access to their own legal advice.
- 7.3 Any advice or guidance provided by the Department is without prejudice to the Secretary of State's consideration of made Orders submitted to him for confirmation.

8. THE ORDER

- 8.1 It is important that the classified road definition in the Order is accurate, and as clear as possible. (This is to enable the Secretary of State to establish that the Order provisions are accurate and consistent with it.)
- 8.2 Having been defined, the s14 Order can then seek no authority for works of the classified road (see paragraphs 3.1 to 3.3 for how such authority is obtained). The classified road should be illustrated by a unique symbol on the plan(s), identified in the plan symbols key, and its boundaries should be clearly identifiable throughout. This is particularly important where the classified road intersects, or encroaches upon, side roads as it is in these circumstances where the local highway authority will need to formulate its s14 Order provisions for stopping up highways etc.
- 8.3 Schedule descriptions of highways and private means of access to premises which are to be stopped up should be accurate and readily understood. Use of "approximately" in measurements is considered inappropriate and should not be necessary. Measurements should be taken from a common point on highways and accesses (which is stated in the order rather than in each schedule description); eg "from the centre line of its junction with".
- 8.4 It is suggested that descriptions of stopped up highways etc will be more readily identifiable by the public if referenced to other existing highways or accesses; eg "the A123 from a point 140 metres north of the centre point of its junction with the B123 northwards for a distance of 20 metres".

- 8.5 In cases where the classified road is far removed from the existing highway network, this may not be practicable. In such cases, reference may have to be made to the (defined) classified road, eg "Footpath No 1 where it is crossed by the classified road [,a distance of 20 metres]".
- 8.6 In describing private means of access to premises to be stopped up, the description should include reference to the highway from which the access extends (even if the access is not being stopped up from that highway source) and all premises which the access serves ie "access from the A123 to Nos 1, 2 and 3 Briar Cottages", "access from Smith Lane to Orchard Farm, where that access is crossed by the classified road".
- 8.7 In certain cases, for example where the access is not removed from its highway source but severed elsewhere along its route, it may be appropriate to give a measurement of the access to be stopped up. The latter description in 8.6 above is such an example, but a measurement is not essential as "where the access is crossed by the classified road", identifies where the access would be severed.
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- 8.8 The Department recommends use of either Form A or Form B (see Section 3). These allow for highways which are to be improved to be named in the Schedule, for new highways to be identified by the reference letters given to such highways on the plan(s), and for new means of access to premises to be identified by the reference numbers given to such accesses on the plan(s).
- 8.9 These s14 Order provisions should only be included in the Schedule by description when it is absolutely necessary; eg so that the s14 Order can be treated as an "event order" in accordance with the Wildlife and Countryside Act 1981, or where complexity of the route necessitates it. Otherwise any inaccuracy in description may create problems, and perhaps fundamental deficiency in the order. Whatever means local highway authorities use to include these provisions they should be consistent with Article 1 of the s14 Order (see Forms A & B in Section 3). It is not appropriate for instance, in respect of highways to be improved, for some to be named and others to be described; nor in respect of highways or accesses to be constructed or provided, for some to be identified by reference letter, or reference number, and others to be described.
- 8.10 Use of Form A, requires that reference letters and numbers of new highways and new means of access, respectively, be placed opposite descriptions of the stopped up highways and accesses in which connection they are being provided. It is considered that this will offer a better public understanding of the relationship between the two, and what role such new highways or accesses have in fulfilling the requirements of s14(6) and section 125(3) of the Act (see paragraphs 6.2 and 6.3 above).

9. THE PLAN(S) (See Appendix II for Plan Symbols to be used)

- 9.1 Plans should be to a scale of not less than 1/2500, with a key plan of 1/10,000 if a number of site plans are necessary. A north marker should be clearly shown on each plan. Where there is more than one plan they should be bound into a plan folio bearing the title of the s14 Order, a legend of the symbols used (see Appendix II), the Council's seal, date and seal number. It should state the contents of the folio (key plan and site plan 1 to ...). The scale should be marked on every plan, and on every inset (except where the scale for the inset is no different from the base plan scale). The use of insets can be particularly useful where order provisions overlap. Where a single plan is involved it should bear the title of the s14 Order, and contain a legend of the symbols used (see Appendix II).
- 9.2 All reference points, landmarks, highways, premises, OS Field Numbers, etc given or used in any of the descriptions contained in the schedule(s) to an order should be clearly marked on the site plan(s), for cross reference purposes. ~~Where a description includes a reference to OS Field~~ numbers, the description should also state or refer to the sheet numbers of the Ordnance Survey maps on which those field numbers appear. The Ordnance Survey map reference should quote the edition of the map.
- 9.3 The Special Road (Schemes) and Highway Orders (Procedure) Regulations (SI 1993 No 169), made pursuant to sections 324(2) and 324(3) of the Act, should be noted. Regulation 4(2) provides that the centre line of a new highway constructed in pursuance of a s14 Order is to be shown on a plan.
- 9.4 It is not expected that the provisions relating to deviation (section 324(3) and Regulation 5 of the 1993 Regulations) will be of any great relevance in the case of s14 Orders. If, however, deviation is to be included, the limits of deviation permitted by the order should be shown by the manner prescribed in Regulation 5, ie by broken lines placed at an appropriate distance on each side of the centre line, or by descriptive statement written on or attached to the plans.
- 9.5 Where the s14 Order provides for a bridge over or tunnel under navigable waters a plan and specifications will be required (see section 107(4) of the Act):-

For a Bridge -

showing the position and dimensions of the proposed bridge including its spans, headways, the waterways and, in the case of a swing-bridge such provisions as the Minister considers expedient for regulating its operation;

For a Tunnel - showing the position and dimensions of the proposed tunnel including its depth below the bed of the navigable waters.

The requirements here are the same as for section 106(3). (See Circular Roads 50.72.)

- 9.6 The plans and specifications should be included in a separate schedule to the order. The Secretary of State has no power to modify orders where such fundamental detail is omitted.
- 9.7 Where a navigable watercourse is to be diverted in connection with the provision of a bridge or tunnel then the bridge/tunnel plan should also show, by outlining and annotation, the existing channel of the watercourse and the proposed new channel. Where a navigable watercourse is otherwise to be diverted in connection with the classified road or other highways works the new and existing channel should be shown outlined and annotated, on the appropriate site plan, by inset if these details would be obscured by other features.
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- 9.8 If the navigable bridge/tunnel crossing proposed is of "tidal" navigable waters, or works of diversion relate to tidal waters, the local highway authority will require additional consent under section 34 of the Coast Protection Act 1949 (as amended by section 36 of the Merchant Shipping Act 1988). Section 34 consent applications should be submitted to Department of Transport, Ports Division 2, Floor 1, Great Minster House, 76 Marsham Street, SW1P 4DR, who should also be advised at the earliest possible stage of any such schemes.
- 9.9 All related authorities and consents will normally be determined at the same time as the s14 Order. This is to avoid the possibility of an early decision on one matter prejudicing a later one.

10. THE PUBLIC NOTICE

- 10.1 As mentioned in paragraph 6.1 above the requirements relating to notice of making a s14 Order are set out in Part I of Schedule 1 to the Act. Notice of making should be served on those persons specified in the head or heads of the Table set out at the end of paragraph 3 of the Schedule. A specimen notice is attached at Form D (Section 3).
- 10.2 Local highway authorities are advised to ensure that notices are served on the parties well in advance of the publication of the notice in the press (see paragraph 10.3 below), and must be served no later than the publication date. Failure to serve notices in advance of the publication date can only be remedied by full re-publication of notice and re-start of the objection period (see paragraph 13.3 below).

- 10.3 Notice must be published in the London Gazette and at least one local newspaper. It must, in addition, be displayed, in accordance with paragraph 4 to Schedule 1 of the Act, at the end of each highway proposed to be stopped up or diverted.

11. STATEMENT OF REASONS

- 11.1 It is recommended that, as in the case of local highway authority compulsory purchase orders, a Statement of Reasons is prepared by the order making authority. This should explain the proposals in terms easily understood by the public. (Statement of Reasons may be drafted so that they can also serve as the Statement of Case required by Rule 16 of the Highways (Inquiries Procedure) Rules 1994 (SI 1994 No 3263)).

12. PUBLICITY

- 12.1 Local highway authorities are empowered by Schedule 1, Part III, paragraph 17 to give the proposals in the s14 Order such publicity over and above the statutory requirements as appears to the local highway authorities to be desirable. The Department considers that additional publicity is worthwhile, particularly in relation to potentially contentious schemes.
- 12.2 Consequently, the Department will expect local highway authorities, in the spirit of Schedule 1, Part III paragraph 17, to take measures designed to bring their proposals fully to the attention of the public generally and, in particular, those persons directly affected by the order.

13. THE OBJECTION PERIOD

- 13.1 Under Part I of Schedule 1 to the Act, the objection period must be a minimum of 6 weeks from the date of the notice mentioned in paragraph 10.3 above. In deciding the length of time to be allowed the Department suggests that account be taken of factors such as the scope of the proposals, extent of likely public interest and the incidence of general and local holidays.
- 13.2 Paragraph 17 of Schedule 1 should be borne in mind here as the Department will not expect the minimum period to be regarded as the norm. If, in the opinion of the Secretary of State, an inadequate period has been allowed, he may ask the local highway authority to consider extending the period.
- 13.3 Paragraph 5 of Schedule 1 provides for the extension of the objection period. Local highways authorities should note that the provisions of paragraphs 5 and 6 require that Notice be re-published and also re-served on all persons on whom it was originally served (although not with a copy of the order and map previously served).

14. SUBMITTING A S14 ORDER

- 14.1 In general, the procedure for confirming s14 Orders will follow those used for confirming local highway authorities compulsory purchase orders.
- 14.2 Two sealed orders and plans, and the public notice, should be sent to the Department of Transport, Local Authority Orders, Wellbar House, Gallowgate, Newcastle upon Tyne NE1 4TD, preferably just before the order is published. If the order is not to be submitted before that date, the public notice to be published must be worded accordingly, ie "the order is about to be submitted to the Secretary of State", rather than the order has been submitted.....". The documents should be accompanied by a letter, requesting confirmation of the order, together with the further documents listed at Appendix I to this circular, as soon as those documents become available.
- 14.3 The Local Authority Orders section will acknowledge receipt of the order.

PART 3 - OBJECTIONS, PUBLIC INQUIRIES, CONFIRMATION

15. OBJECTIONS

- 15.1 Objections and representations received by the Secretary of State will be copied to local highway authorities at the end of the objection period. All objections will be considered before a decision is taken by the Secretary of State on s14 Order applications. The Secretary of State will decide whether a public local inquiry should first be held to consider the objections.
- 15.2 A public inquiry must be held if there are unresolved objections from certain statutory bodies. In other cases the Secretary of State may dispense with such an inquiry if he is satisfied that in the circumstances an inquiry is unnecessary, although this will normally be an exception.

16. PUBLIC INQUIRIES

- 16.1 The Secretary of State will appoint an independent inspector to conduct the inquiry. The local highway authority will be responsible for all other administrative arrangements such as finding a suitable venue. Costs of the arrangements will be met by the authority as will the inspector's fees and expenses.
- 16.2 The arrangements for the inquiry will follow those laid down in the Highways (Inquiries Procedure) Rules (SI 1994 No 3263) and, if held concurrently into a Compulsory Purchase Order application, the Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules (SI 1990 No 512).

17. CONFIRMATION

- 17.1 Confirmation will usually be by endorsement of the sealed copy of the s14 Order. The s14 Order may be confirmed with or without modification, or in part only whilst a decision is deferred to the remaining part.

SECTION 2 - SECTION 124 (s124) ORDERS

18. GENERAL

- 18.1 Section 124 of the Act enables local highway authorities to stop up by order a private means of access from a highway to any premises where it is considered that the private means of access is likely to cause a danger to, or interfere unreasonably with, traffic on the highway. It should be noted, however, that the danger or interference must relate to conditions on the existing highway rather than those arising as a result of highway construction or improvement.
- 18.2 A s124 Order must be made by the local highway authority and a specimen order form is included at Form C. If there are objections to the s124 Order it must be submitted to the Secretary of State for Transport for confirmation. Where no such objections are made, or all such objections are withdrawn within the required objection period then the s124 Order may be confirmed by the local highway authority.
- 18.3 Before confirming a s124 Order, there is a general requirement for the confirming authority (whether it be the local highway authority or Secretary of State) to be satisfied that either no access to the premises from the highway in question is reasonably required or that another reasonably convenient means of access to the premises is available or will be provided. (See Section 124(3) of the Act).

19. PROCEDURES

- 19.1 The procedures for making a s124 Order are detailed in "The Stopping up of Accesses to Premises (Procedure) Regulations (SI 1971 No 1707)". Although the Regulations refer to the Highways Act 1971 they are still applicable to s124 Orders under the Highways Act 1980.
- 19.2 The Regulations require the publication in a local newspaper of a notice of the making of the s124 Order by the local highway authority (a specimen notice of making a s124 Order included at Form E). A copy of the notice must be served on the owner(s) and occupier(s) of the premises affected, and must give a minimum 28 day objection period. Where the stopping up of a means of access to premises involves the provision of a new means of access, to those premises, it is necessary for the route of the new means of access to be shown on the order plan. The owner and occupier of the land across which the new route will run

must (if different from the owner and occupier of the affected premises) be served with a copy of the notice.

20. SUBMISSION TO THE SECRETARY OF STATE

20.1 If an objection by the owner, lessee or occupier of the affected premises to a s124 Order, made by a local highway authority, is received by that authority within the objection period and that objection is not withdrawn then the s124 Order must be submitted to the Secretary of State for determination. The following documents should be included:-

- i) the original sealed s124 Order together with two copies (1 certified);
- ii) the original and two copies of any objection and of all correspondence which the authority has had with any objector since receipt of the objection;
- (iii) in a case where the authority desires modifications to be made to the order, three copies of a statement of those modifications and of the authority's reason for making them

and must at the same time notify each objector in writing of the action which it has taken.

20.2 Before the Secretary of State confirms a s124 Order, made by a local highway authority, he is required to consider any objections submitted to him by the order making authority and any proposals for modifying the order. He may, if considered necessary, convene a local inquiry in connection with the order and must consider the report of the person who held the inquiry.

20.3 Schedule 2 paragraph 1 of the Act has effect as to the validity and date of coming into force of a s124 Order, both where the s124 Order is confirmed by the Secretary of State and where it is confirmed by the local highway authority. In both instances notice of confirmation is required to be served on the owners and occupiers of the premises and affected land and published in the local press (a sample Notice of Confirmation of a s124 Order is included at Form F).

SECTION 3 - SPECIMEN S14 AND S124 ORDERS

SPECIMEN S14 ORDER (SINGLE SCHEDULE)

Form A

HIGHWAYS ACT 1980

The Council
(.....toClassified Road).
(Side Roads [and other Works]) Order 19..

The ⁶..... Council
make this Order in exercise of their powers under sections [6],
[8], 14 and 125³ of the Highways Act 1980 and all other powers
enabling them in that behalf:-

1. (1) The Council are authorised in relation to the classified
road at in the County of to:

- (a) improve the length[s] of highway named in the Schedule
to this Order and shown on the Site Plan by cross
hatching;
- (b) stop up [the][each] length of highway described in the
Schedule and shown on the Site Plan by zebra hatching;
- (c) construct a new highway along [the][each] route whose
centre line is shown on the Site Plan by an unbroken
black line surrounded by stipple;
- (d) stop up [the] [each] private means of access to
premises described in the said Schedule and shown on
the Site Plan by a solid black band; and
- (e) provide new means of access to premises along
[the][each] route] [or] [at [the][each] location]
shown on the plan by thin diagonal hatching.

(2)⁴ Where a new highway is to be constructed [⁵wholly or
partly] along the same route as a new access [⁵or part of one],
that new highway shall be created subject to the private rights
over that new access.

(3) Each new highway is given a reference letter on the
Site Plan, which is also placed in the said Schedule, and will
be a road [⁵unless the word ["footpath", "bridleway" or "cycle
track" appears beneath its reference letter in the Schedule, in
which case it will be a [⁵footpath, bridleway or cycle track]
⁵[(as the case may be)]. Each new access is given a number on
the Site Plan, which is also placed in the said Schedule.

(4) Where a new highway is to be constructed or a new
access is to be provided in connection with the stopping up of
a length of highway or private means of access described in the
said Schedule, its reference letter or number (as the case may
be) is placed in the said Schedule opposite the description of
that length.

(5) The Site Plan shows the works indicated in the said Schedule and the route of the classified road in relation to those works.

2⁷. The new highway[s] given the reference letter[s] [&.....] in the said Schedule and on the Site Plan, with [in each case] the words "temporary highway" placed in brackets beneath, [is] [a] [are] highway[s] to be constructed for temporary purposes, and the Council are authorised to close [that] [each] temporary highway at the end of seven days from posting a notice at each end of the temporary highway [concerned] to indicate that it is no longer needed for public use.

3⁸. Each new highway shall be transferred to the Council, from the date on which the Council notify the said Council that the new highway has been completed and it is open for through traffic.

4. Where immediately before a length of highway is stopped up in pursuance of this Order there is under, in, on, over, along or across that highway any apparatus of statutory undertakers or any telecommunications code system operator then, subject to section 21 of the Highways Act 1980, those undertakers, or that operator, as the case may be, shall have the same rights as respects that apparatus as they had immediately before the stopping up took place.

5. In this Order:

(a) ⁹distances are measured along the route of the relevant highway [³or private means of access to premises, as the case may be];

(b) "the classified road"

- means [the
to Classified Road (A) (B)
(C)]

[the highway which the
Council propose to construct
[improve] from
to]

[and which is a highway/
proposed highway which has
been classified by the
Secretary of State for
Transport as a principal road
for purposes of the
enactments and instruments
which refer to highways
classified as principal
roads.]

[and which is a
highway/proposed highway
which is a classified road in
accordance with section 12 of
the Highways Act 1980];

"the Council"	-	means the Council;
"improvement"	-	in relation to a highway includes raising, lowering or otherwise altering that highway, and "improved" shall be construed accordingly;
"new access"	-	means a means of access to premises authorised by this Order to be provided;
"new highway"	-	means a highway authorised by this Order to be constructed and "new highways" shall be construed accordingly;
"the Site Plan"	-	means [a] [the] Site Plan [contained in the plan folio] numbered ... marked "The Council (..... to..... Classified Road) (Side Roads [and other works]) Order 19...", sealed with the Common Seal of the Council and deposited at the offices of the Council at; a duplicate has been deposited in the Offices of the Secretary of State for Transport.

THE SCHEDULE

Locality -

Highway[s] to be improved

Acacia Avenue

The Carlton-on-Trent - Ossington Road

Mill Lane

Highway[s] to be stopped up

Reference letter(s) of new highway[s]

The whole of River Street

-

Meadow Way from its junction with
the western boundary of the classified
road to its junction with Norwell Road
(a distance of ... metres)

A

Footpath No. 1 (Mallington) -

B

(a) for 100 metres westwards from
the eastern boundary of the classified road,
and

Footpath

(b) from its junction with Norwell Road
to the northern side of the new highway
given the reference letter A on the Site
Plan (a distance of ... metres)

D
Temporary
Highway

Bridleway No 6 (Eatwell, for 81 metres
from its junction with Mill Lane)

E
Bridleway

Private means of access to be stopped up

Reference number(s) of new accesses

Access from [highway no & name]
to the Red House, between
the boundaries of the classified road

1

Access to OS field No. 3557, for 35
metres eastwards from its junction
with Green Lane.

2 & 3

Given under the Common Seal of the Council on the
..... day of 199

The Common Seal of the
Council was hereunto affixed
in the presence of:

..... Chairman of the Council

..... Secretary to the Council.

HIGHWAYS ACT 1980

The Council
(.....to Classified Road).

(Side Roads [and other Works]) Order 19 ..

The⁶ Council make this Order in exercise of their powers under section [6], [8], 14, 106¹, 108², and 125³ of the Highways act 1980 and all other powers enabling them in that behalf:-

1. (1) The Council are authorised in relation to the classified road at in the County of to :-

- (a) improve the length[s] of highway named in the Schedules and shown on the corresponding Site Plan by cross hatching;
- (b) stop up [the][each] length of highway described in the Schedules and shown on the corresponding Site Plan by zebra hatching;
- (c) construct a new highway along [the][each] route whose centre line is shown on a Site Plan by an unbroken black line surrounded by stipple;
- (d) stop up [the] [each] private means of access to premises described in the Schedules and shown on the corresponding Site Plan by a solid black band; and
- (e) provide new means of access to premises along [the][each] route] [or] [at [the][each] location] shown on a Site Plan by thin diagonal hatching.

(2)⁴ Where a new highway is to be constructed [⁵wholly or partly] along the same route as a new access [⁵or part of one], that new highway shall be created subject to the private rights over that new access,

(3) Each new highway is given a reference letter on a Site Plan, which is also placed in the respective Schedule, and will be a road [⁵unless the word ["footpath", "bridleway" or "cycle track" appears beneath its reference letter in that Schedule, in which case it will be a [footpath, bridleway or cycle track]