

**DEPARTMENT FOR ENVIRONMENT, FOOD AND  
RURAL AFFAIRS**

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*Defra Circular 1/2003*

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***February 2003***

**GUIDANCE FOR LOCAL HIGHWAY  
AUTHORITIES:**

**ON CRIME PREVENTION ON PUBLIC RIGHTS  
OF WAY – DESIGNATION OF AREAS**

**SECTIONS 118B AND 119B HIGHWAYS ACT 1980**

**The Background**

The new powers arise from the long-standing criticism from MPs and councillors that some back alleys, on some urban housing estates, provide an easy means of access for crime and disorder or for offenders to evade the police while no longer having a real purpose for local citizens. Existing procedures make it very difficult for closure to be achieved, and local people find it difficult to understand the bureaucratic obstacles to a common sense closure. At the same time there have been real fears that any new closure power might be misused, for instance to remove rights of way in rural areas or where there is no need for a useful alley or pathway to be lost to the public. This guidance complements the provisions of the Countryside and Rights of Way Act 2000 and sets out how the different interests can be balanced

**1. The purpose of this guidance**

1.1 This guidance provides policy advice to local highway authorities in England to assist them in the formulation of a submission to the Secretary of State advocating the inclusion of an area, or areas in a designation order(s). (The guidance is also directed at district councils in county areas, in the circumstances outlined in paragraph 4.2). These designation orders will be made by the Secretary of State under section 118B(1)(a) of the Highways Act 1980 (as inserted by Paragraph 8 Schedule 6 of the Countryside and Rights of Way Act 2000)<sup>1</sup> for the purposes of sections 118B and 119B of the Highways Act 1981 (as inserted by the 2000 Act).

1.2 This guidance has been prepared as a result of a wide ranging public consultation exercise including all local authorities and police authorities in England, the Local Government Association, the Association of Chief Police Officers and a range of organisations with an interest in rights of way. This guidance is non-statutory: it reflects the Department's policy approach to designating areas but is not provided for under statute.

1.3 A copy of sections 118B and 119B of the Highways Act 1980 is attached at Annex 1.

## **2. Description of the new powers**

2.1 Paragraphs 8 and 12 of Schedule 6 of the 2000 Act insert new sections 118B and 119B into the Highways Act 1980, which enable highway authorities to close (special extinguishment order) or divert (special diversion order) rights of way for the purposes of crime prevention. Sections 118B and 119B will also enable a highway authority to close or divert a right of way that crosses school land, if necessary, for the purpose of protecting pupils or staff.

2.2 While the schools powers will be available throughout England, under the requirements of sections 118B and 119B highway authorities will only be able to close or divert rights of way for the purposes of crime prevention within areas that are designated by the Secretary of State by order (or orders). The designation orders will take the form of statutory instruments, subject to the negative resolution procedure in Parliament. The National Assembly for Wales is responsible for designating areas in Wales.

2.3 The legislation provides the Secretary of State with discretion to designate areas to enable highway authorities to make stopping up or diversion orders to prevent or reduce crime, which would otherwise disrupt the life of the community. It does not provide any further provision on the selection of areas for designation, nor the geographical unit/extent of an area to be included in a designation order. It will be appreciated the purpose of the designation order is to identify those areas within which the order making powers will be available. Special extinguishment and diversion orders made within such

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<sup>1</sup> Hereafter referred to as the '2000 Act'

designated areas will also need to meet further specific conditions and considerations set out in the legislation and summarised below.

2.4 The following is a brief summary of the legislative conditions and considerations (in relation to crime prevention) that apply to section 118B; section 119B is broadly the same.

- A highway authority may only make an order in an area which has been designated by the Secretary of State by order [section 118B(1)(a)].
- The section only applies where it is expedient, for the purpose of preventing or reducing crime, which would otherwise disrupt the life of the community, that the highway should be stopped up [section 118B(1)(a)].
- It must appear to the local highway authority that the following **conditions** are satisfied:
  - that premises adjoining or adjacent to the highway are affected by high levels of crime [section 118B(3)(a)]; and
  - that the existence of the highway is facilitating the persistent commission of criminal offences [section 118B(3)(b)].
- before making a special extinguishment order, the highway authority shall consult the police authority for the area in which the highway lies [section 118B(6)]. We also intend to require in procedural regulations that the highway authority give notice of the making of an order to the local fire authority.
- the highway authority (or Secretary of State) shall not confirm a special extinguishment order unless the conditions above are satisfied and it is expedient to confirm the order having regard to all the circumstances, in particular;
  - the extent to which the special extinguishment order is consistent with any strategy for the reduction of crime and disorder under section 6 of the Crime and Disorder Act 1998 [section 118B(7)(a)];
  - 
  - the availability of a reasonably convenient alternative route [section 118B(7)(b)]; and
  - 
  - the effect which the extinguishment would have as respects land served by the highway [section 118(7)(c)].

2.5 Any person may object to a special extinguishment/diversion order, and opposed orders will be referred to the Secretary of State to decide, with the opportunity for a hearing or inquiry.

### 3. Context of the new provisions

3.1 In general, rights of way do not cause or facilitate crime. We do not intend to use the fear of crime as a means of restricting ways which are important to the majority of law-abiding people who use them. The provisions are focused on and limited to combating crime that is expressly facilitated by the use of certain rights of way, specifically in areas where ways can generate high levels of opportunistic crime. Particular problems have been identified and raised by MPs, councillors and members of the public in relation to some local authority housing estates and the networks of alleys between homes. There are many locations where patterns of use have changed, and the alleys are no longer used regularly – a factor which would make a proposed closure less controversial.

3.2 Highway authorities and their partners sometimes want to block up the ends of back alleys (known in different parts of the country as entries, ginnels, gulleys, backways, snickets, passages, paths and walks, among other names), which are the focus of drug dealing and other crime. Many back alleys were originally designed to let tradesmen and refuse collectors get along the rear of properties. They may not have been a security problem when the properties were built – usually in times when homes were constantly occupied. But now when crime and social patterns have changed significantly entry through the back of the house is one of the main means of access in domestic burglaries.

3.3 Where these back alleys provide no right of way to any person other than the immediate residents i.e. private rights of way, many local authorities run ‘alleygating’ schemes to mitigate serious problems attributed to the existence of the back alley. Such schemes enable the alleys to be gated for security, at either end, with the consent of all the residents. But difficulties arise where these back alleys may carry public rights of passage.<sup>2</sup> A legal closure/diversion is required before any interference with the passage of the public over such a highway. Prior to the new provisions in sections 118B and 119B, there has been no power to close public rights of way on the basis of crime prevention. This has left highway authorities powerless to act even in cases where back alleys are facilitating high levels of crime where they are public rights of way.

3.4 The Government considers that these powers will be particularly important in enabling the closure or diversion of those back (or side) alleys, which are public rights of way, where they are demonstrably the source of crime in built up areas, particularly housing estates. In practice, if a footpath is the only means of access to the rear of a terrace of properties, it may well be

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<sup>2</sup> These arise where a right of way has been dedicated to the public. Dedication can be express but the common law recognises that an inference of dedication can arise, for example, where the landowner has allowed the public to use the way or path. Since 1932 (the now repealed Rights of Way Act 1932) uninterrupted public use for 20 years or more can give rise to a presumption of dedication unless there is sufficient evidence to show the landowner had no intention to dedicate (s.31(1) Highways Act 1980).

easier to demonstrate whether the way itself is facilitating persistent crime, than in an open rural setting, where there might be a number of means of access to premises. The rationale behind the formulation of these powers was to assist in strictly urban areas, where the existence of rights of way was frustrating efforts to curb crime, but the clause was amended to recognise that there may be circumstances in which there should be the potential to apply the powers to other areas. However the Government envisages the powers will only be used in exceptional circumstances. The use of the designation order will ensure the powers can be specifically and properly targeted to those areas where real problems exist.

3.5 Because of the potential effect of the powers, assurances were given during the passage of these provisions through Parliament that the intention was for the closure and diversion orders to be used sparingly by local highway authorities, and not as a first response to tackling crime. There is a need to strike a balance by protecting communities from crime while avoiding unnecessary interference to the public rights of passage. These powers are not a means to enable unnecessary loss of historic rights of way. Local networks of off road routes can provide people with an important means to make short journeys, away from busy traffic, and offer opportunities for exercise and informal recreation near to where they live.<sup>3</sup> Highway authorities will need to consider how these networks can be improved when preparing their Rights of Way Improvement Plans.<sup>4</sup>

**3.6 Where the new powers are used, the closure or diversion should significantly reduce the opportunity to commit offences and increase the security and well being of residents. The powers should be particularly helpful in areas which are the subject of comprehensive neighbourhood renewal initiatives, such as the New Deal for Communities programme, and high levels of crime are undermining attempts to address wider problems within the neighbourhood.**

3.7 Once a legal closure or diversion order is made, this new legislation does not prescribe the physical means to effect the closure. The means employed will be dependent on ownership of the land and discussion at local level. We understand that, where alleys are stopped up under the current provisions in sections 116 and 118 of the Highways Act 1980, it is usually done by bricking up the entrances, taking the alley into owners gardens or alleygating i.e. erecting gates at each, for the use of residents, services etc only. It is important that action is taken quickly after the legal order takes effect to reduce crime and deter further deterioration.

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<sup>3</sup> Guidance to local authorities on promoting the benefits of walking is contained in 'Encouraging Walking: Advice to local authorities', which may be viewed on the DfT website at: <http://www.local-transport.dft.gov.uk/walking/index.htm>

<sup>4</sup> The Government's Guidance to Local Highway Authorities on the preparation of Rights of Way Improvement Plans' may be viewed on the DEFRA website at: <http://www.defra.gov.uk/wildlife-countryside/cl/publicrow.htm>

3.8 Policy responsibility for crime prevention measures such as alleygating rests with the Home Office. Further information about where you can go to for information on alleygating is given at the end of this advice note, in Annex 2.

## **4. Approach to designating areas**

4.1 The Secretary of State in exercising the powers to designate areas under section 118B (1)(a), will consider submissions from highway authorities on the inclusion of areas in a designation order(s). Highway authorities should coordinate submissions drawing on local knowledge of their own as well as that of local partners, including the local crime reduction partnerships, the local superintendent of police and (in non-unitary authority areas) the council which has local housing responsibility. It is also an opportunity for local authorities to demonstrate part of their corporate response to crime and disorder under section 17 of the Crime and Disorder Act 1998.<sup>5</sup>

4.2 The Secretary of State will also consider submissions from district councils in county areas, where a district council takes the view that a submission is necessary, but the highway authority is minded not to act. In such circumstances a district council (or a Crime and Disorder Reduction Partnership) may seek to formulate a submission to the Secretary of State. The submission should be routed through the highway authority, prior to being sent to the Secretary of State in order to provide an opportunity for the highway authority to comment on the extent to which they support the submission, or recommend against the Secretary of State making a designation.

4.3 The process of designating areas is concerned with establishing whether an area is sufficiently vulnerable to crime arising from the presence of rights of way to justify such a designation. Although all submissions for designation will be considered, the Government generally believes a primary consideration must be that highway authorities are able to demonstrate (in any submission to have an area included in a designation order) that:

- a) there are rights of way in the area in question, that are demonstrable causes of a persistent crime problem; and
- b) the realistic alternative options to tackle the causes of problems have been examined, prior to the decision to make a submission to the Secretary of State under the terms of this guidance.

4.4 A highway authority should only consider an area for inclusion in a designation order if the given area has rights of way where the conditions set out in the legislation for the exercise of the powers might potentially be met.

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<sup>5</sup> Section 17 places a duty on each authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Accordingly the procedure set out below, for the formulation of a submission, is based broadly on the conditions in the primary legislation for special extinguishment /diversion orders. **It should be noted this basis of reference does not mean that inclusion of an area in the designation order will negate any need to consider the requirements of s118B/119B for the purposes of making a specific special extinguishment/diversion order.**

4.5 Highway authorities should clearly describe the boundary of the area for inclusion in the designation order by street or road names and where appropriate other geographical features. This information should be supported by a map or digitally captured at a scale of 1:10 000 (or larger). More information about this is given in section 5.15. Whilst the size of the area may vary it should be small enough to target the areas with severe problems. If more than one area is to be targeted within the authority they should be identified separately and the application should set out the grounds on which each designation is sought.

## **5. Procedure**

**5.1 The following section provides a guide to the information which will assist the Secretary of State in assessing the suitability for inclusion of an area in a designation order**

### **Formulating a submission**

#### (a) Overview: Assessing the need

5.2 A decision on whether a highway authority wishes to make a submission to the Secretary of State concerning the inclusion of an area in a designation order should be taken with the assistance of the local Crime and Disorder Reduction Partnerships. Highway authorities should consider whether the area has significant recurrent problems of crime arising from rights of way and the effects of those problems on the community. Consideration should be given to the nature and scale of the problems, including the extent to which realistic alternative solutions have been implemented or deemed impractical. Such areas may typically suffer from an excess of repeat victimisation where particular households suffer disproportionate risk of multiple crimes.

5.3 Authorities must support their assessment with local information which might include police data and/or analysis of recorded crimes and incidents, and/or evidence of community surveys/consultations; also information from local insurance contacts, crime prevention panels and neighbourhood watch co-ordinators.

5.4 Paragraphs 5.5 – 5.8 outline a consultation framework for highway authorities in formulating a submission and paragraphs 5.9 – 5.15 provide more specific guidance on the issues to be considered and included in the submission to the Secretary of State. Paragraph 5.16 provides a summary checklist of all these issues.

## (b) Consultation

5.5 The success of the new powers under sections 118B and 119B will depend on good working relationships between all interested parties. Dealing with local problems of crime resulting from rights of way cannot fall to any one group or organisation and the involvement of the community as a whole is essential in moving towards a solution.

5.6 It must be remembered that where a specific special extinguishment/diversion order is made under sections 118B or 119B there will be full opportunity for detailed consideration and objections, which if unresolved, may result in a hearing or public inquiry. The legislation also provides for statutory consultation with the police authority for the area, and regard must be had to any crime and disorder strategy prepared for the area.<sup>6</sup>

5.7 Where there is a two-tier system of county and district councils, the county council will generally be the highway authority and should ensure consultation on a submission takes place with the district authority (who have certain powers in relation to highways). Elsewhere the highway authority will be the unitary authority or in Greater London, the London borough councils. In particular, local housing and planning authorities, which will be at district or unitary level, should play an active role in the consultation process.

5.8 The new powers are part of an integrated response to reducing crime and disorder in local areas and highway authorities are expected to consult on formulation of a submission with the local Crime and Disorder Reduction Partnerships.<sup>7</sup> Highway authorities will have to decide in the light of their local knowledge who else they should consult, but they should include fire authorities, who may be able to help with information about crime levels and access needs. There may be other individuals or groups who have a useful contribution to make such as local residents, neighbourhood partnerships and rights of way user groups. The process of dialogue and discussion within the local community can sometimes bring forward an alternative solution, and discussions at a local level to consider how these problems could be solved should have been pursued before making a submission for designation.

## (c) Specific issues to be addressed

*(i) Nature of problem: What crimes are occurring on rights of way (serious and others)?*

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<sup>6</sup> Statutory consultation with the police authority is required by sections 118B(6) and 119B(6); and regard should be had to the extent the order is consistent with any strategy for the reduction of crime and disorder under sections 118B(7)(a) and 119B(10)(a).

<sup>7</sup> The Crime and Disorder Act 1998 provides for the establishment by local authorities and the police of crime and disorder reduction partnerships in all local authority areas. From 1 April 2003, police authorities and all fire authorities will be statutory members of the partnership



5.9 Authorities should consider and explain what types of crimes are occurring in the area to be designated in relation to rights of way, and provide an indication of their seriousness. Crimes categories considered generally to concern the public most are robbery, domestic burglary and vehicle crime.<sup>8</sup> Arson, railway crime, real fear of assault/robbery for pedestrians and drug dealing and taking may also be serious and relevant concerns. There are also other (relatively) less serious offences, which although in isolation may not constitute serious crime, can cumulatively cause significant problems. The submission should seek to provide details on these offences, which could include anti social activities such as noise and disturbing behaviour, fly tipping of rubbish, dog fouling and graffiti. These might not provide sufficient evidence of the need for an area to be designated, but can help to paint an accurate picture of the number and extent of problems it faces.

*(ii) Location of problem: Are the rights of way adjacent to/adjoining premises?*

5.10 Consideration should be given to whether the area has significant problems arising from rights of way that back onto properties, providing the offender an opportunity to operate unseen. Crimes may be identified as being committed in a certain way, such as burglars using the rear of premises to gain entry. Problems on rights of way and other means of access generally occur in areas where there are particular concentrations of certain types of housing, for example terracing, where there may be networks of footpaths for offenders to approach, and exit after burglary. Poorly designed estates may offer limited opportunity for natural surveillance; the layout often makes properties that aren't overlooked (such as those with higher rear boundary walls), vulnerable.

*(iii) Occurrence of problem: Are some rights of way being used for crime?*

5.11 Authorities should demonstrate that rights of way are being used to commit crimes. The local Crime and Disorder Reduction Partnerships will have made an assessment of the levels of crime and disorder.

*(iv) Effect of problem: Are those rights of way causing disruption to the local community and reducing its quality of life?*

5.12 Authorities should identify the issues which the local community, and in particular vulnerable groups, such as the elderly, raise as concerns and how those impact on the quality of life in their community. The issue raised may be a combination of the perception of crime and the reality of incidents which occur. As indicated in para 3.1, these measures are intended to focus on crime which is expressly facilitated by the use of certain rights of way. The local Crime and Disorder Reduction Partnership is required to carry out an audit of crime and disorder in its area and should be able to advise on levels

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<sup>8</sup> The Home Office Public Service Agreement (PSA) targets identify reduction of robbery in our principal cities by 14% by 2005; domestic burglary by 25%, with no local authority area having a rate more than 3 times the national average by 2005 and vehicle crime by 30% by 2004.

of actual recorded or reported crime. Findings which show that the perception of the level of crime does not match the reality does not mean that highway authorities may take no further action. Instead options such as the Home Zone initiative should be considered in conjunction with the Crime and Disorder Reduction Partnership and constituent agencies. Any information supplied in support of applications for designation should be evidence based

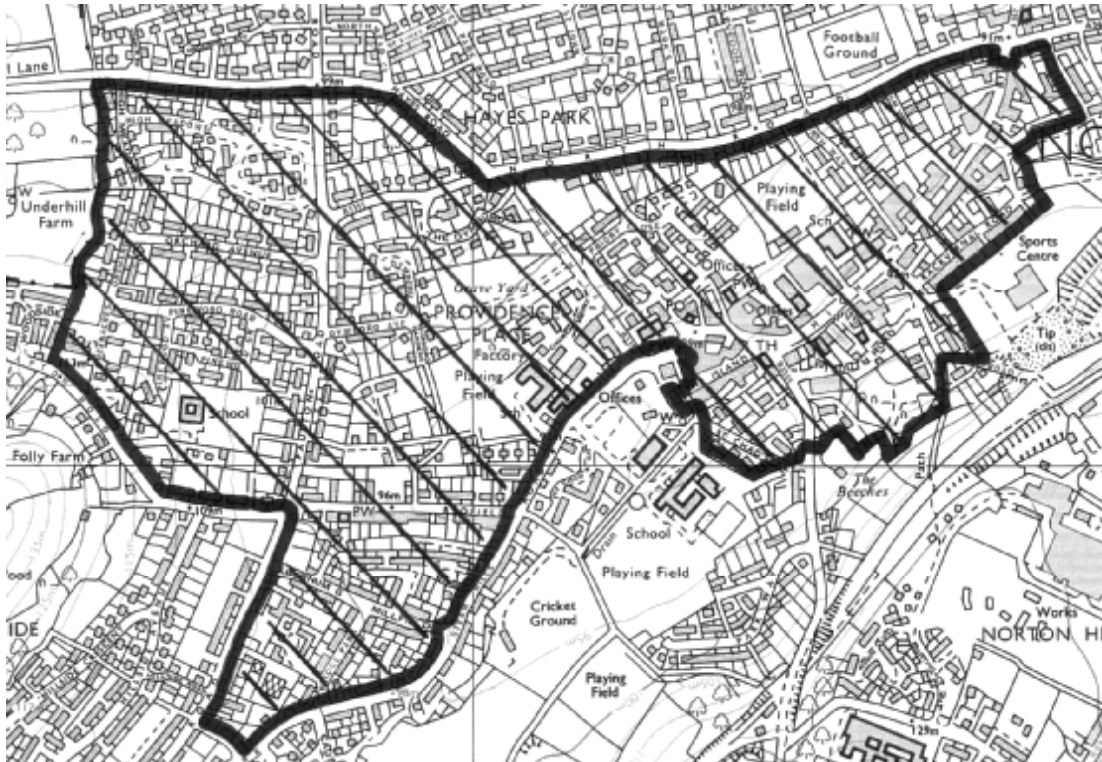
*(v) Mitigation of problem: what other methods have been considered and/or tried to reduce crime on or adjacent to rights of way (with particular reference to recommendations of the Statutory Crime and Disorder Reduction Partnerships)?*

5.13 It is essential that the submission should be consistent with the approach to tackling problems of crime and disorder recommended by the local Crime and Disorder Reduction Partnership. Active and well-managed environments can help to discourage criminal and anti social behaviour. Local authorities are encouraged towards positive management such as steps to clean up and carry out repairs on problem rights of way, consideration of the use of lighting/street furniture and other environmental improvements, use of anti social behaviour orders, setting up neighbourhood watch schemes and other schemes to encourage informal surveillance.

*(vi) Other matters: Are there any further issues relevant to putting the submission in context?*

5.14 An authority may, if it considers appropriate, refer to a number of wider issues. These matters will not necessarily be directly relevant, but may assist in putting a submission in the context of other difficult issues in the area. Examples of these considerations might be the levels of social exclusion in the area, or the existence of government or local schemes/initiatives (for instance, neighbourhood renewal schemes) to assist wider problems in the community.

*(vii) Mapping the area.*



5.15 Applications should be accompanied by a map or digital file captured at the scale 1:10 000 (or larger) which clearly identifies the area to be included within the designation order. To enable the area to be easily identified it should be shaded or hatched (if manual) as in the example above. The map should be annotated to define clearly and unambiguously the boundary of the area to be designated. The line drawn should indicate the external boundary of the area and that land up to the outer edge of the line will be included within the area.

## Summary Checklist

5.16 The following provides a summary of the main issues and considerations to be included in a submission:

- The area proposed for inclusion in the designation order with map [paragraphs 4.5, 5.2 and 5.15].
- Description of consultation with the Crime and Disorder Reduction Partnerships, district authorities (where there are two tiers of local government), police and other interested parties [paragraphs 5.5 – 5.8]. To what extent do the consultees support the submission?
- An explanation of the crime and disorder occurring on rights of way or as a consequence of their existence [paragraph 5.9]. What types of serious crime are occurring? What other offences are being committed?

- Evidence that problem rights of way in the area to be designated are adjacent to/adjoining premises (in particular concentrations of housing) [paragraph 5.10].
- Evidence that some rights of way have been used for crime and that there is vulnerability to repeat offending [paragraphs 5.11].
- An indication of how rights of way are causing a disruption to the local community [paragraph 5.12]. What issues concern the local residents most? To what extent is the quality of life diminished? Are specific vulnerable groups significantly affected?
- What alternative measures have been considered or taken to mitigate problems [paragraph 5.13].
- Reference to any other matter(s) which may assist in putting the submission in context [paragraph 5.14].
- Matters in the submission should be verified by reference to a number of information sources, such as the police (data/analysis of recorded crime and/or incident logs); crime prevention panels; community surveys/consultations, and local insurance contacts [paragraph 5.3].

## **Forwarding the submission**

5.17 Submissions should be forwarded to the Rights of Way Policy Branch at Zone 1/01, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6EB, with a map (or a floppy disc containing the digital map), or be sent via e-mail to: [rights.ofway@defra.gsi.gov.uk](mailto:rights.ofway@defra.gsi.gov.uk). The submission should contain the name and address of a point of contact who should be clearly identified on submitted papers. The named contact will receive an acknowledgement within 15 working days.

## **Availability of Submissions**

5.18 All submissions will be made available for public inspection at the Department's library in Whitehall Place, London and available to Parliament through the House libraries. It is also important that submissions should be made available at a local level. Highway authorities are urged to make reasonable provision for public inspection of their submission and to consider putting it on their websites.

# **6. Next stages**

## **Phasing of designation orders**

6.1 It is intended to adopt a phased approach to the making of designation orders. The first designation order(s) will be prepared on the basis of consideration of submissions received within 12 weeks from the issue of this

guidance. Submissions received by this date will be considered with a view to identifying the areas where the need for the new powers is an immediate priority.

6.2 The Secretary of State proposes to review the first designation order not less than 3 years from the order being made,. This review will provide an opportunity for the Department to assess the operation of the provisions, taking stock of any lessons learned. It will also ensure that proper account is taken of changing crime patterns. It is envisaged that the review of the designation order may result in amendment to, or revocation of, that order. This period will, in the majority of cases, provide reasonable opportunity for highway authorities to make the special extinguishment and diversion orders they consider necessary. If there is a need for any given area to continue to be included in the designation order after the three year period, it is anticipated the relevant highway authority will need to make a further submission to the Secretary of State.

6.3 Areas for which submissions have been made, but are not included in the first designation order, will be further reconsidered in a follow up order, in conjunction with any submissions received after the 12-week period. The date of the follow up order will be determined by an assessment of the nature and level of responses received. The follow up order will be subject to a similar review process. Applications received after this will be considered as and when they are received.

## **Notification to highway authorities of a designation order**

6.4 A designation order is made by a statutory instrument subject to the negative resolution procedure in Parliament. Prior to a designation order being laid before Parliament, a draft copy will be sent for information to all highway authorities.

6.5 It is intended the commencement of a designation order will be publicised by the Department. The powers will be available to highway authorities in the areas that are listed in the order from the date the statutory instrument comes into force.

## **Enquiries**

6.6 Enquiries about this guidance should be addressed to:

Rights of Way Policy Branch (CYD5)  
Countryside (Recreation and Landscape) Division  
Defra  
Zone 1/01  
Temple Quay House  
2 The Square

Temple Quay  
Bristol  
BS1 6EB

Telephone: 0117 372 8379  
Fax: 0117 372 8587

Email: [rights.ofway@defra.gsi.gov.uk](mailto:rights.ofway@defra.gsi.gov.uk)

## **Annex 1**

### **Terms of the legislation**

Sections 118B and 119B of Highways Act 1980 (as inserted by 2000 Act)

#### **Stopping up of certain highways for purposes of crime prevention, etc.**

118B. - (1) This section applies where it appears to a council-

(a) that, as respects any relevant highway for which they are the highway authority and which is in an area designated by the Secretary of State by order for the purposes of this section, the conditions in subsection (3) below are satisfied and it is expedient, for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, that the highway should be stopped up, or

(b) that, as respects any relevant highway for which they are the highway authority and which crosses land occupied for the purposes of a school, it is expedient, for the purpose of protecting the pupils or staff from-

(i) violence or the threat of violence,

(ii) harassment,

(iii) alarm or distress arising from unlawful activity, or

(iv) any other risk to their health or safety arising from such activity,

that the highway should be stopped up.

(2) In subsection (1) above "relevant highway" means-

(a) any footpath, bridleway or restricted byway,

(b) any 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 a highway that is a trunk road or a special road.

(3) The conditions referred to in subsection (1)(a) above are-

(a) that premises adjoining or adjacent to the highway are affected by high levels of crime, and

(b) that the existence of the highway is facilitating the

persistent commission of criminal offences.

(4) Where this section 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, extinguish the public right of way over the highway.

(5) An order under subsection (4) above is in this Act referred to as a "special extinguishment order".

(6) Before making a special extinguishment order, the council shall consult the police authority for the area in which the highway lies.

(7) The Secretary of State shall not confirm a special extinguishment order made by virtue of subsection (1)(a) above, 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 (3) above are satisfied, that the stopping up of the highway is expedient as mentioned in subsection (1)(a) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to-

(a) whether and, if so, to what extent the order is consistent with any strategy for the reduction of crime and disorder prepared under section 6 of the Crime and Disorder Act 1998,

(b) the availability of a reasonably convenient alternative route or, if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the highway under section 119B below rather than stopping it up, and

(c) the effect which the extinguishment of the right of way would have as respects land served by the highway, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

(8) The Secretary of State shall not confirm a special extinguishment order made by virtue of subsection (1)(b) above, 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 stopping up of the highway is expedient as mentioned in subsection (1)(b) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to-

(a) any other measures that have been or could be taken for improving or maintaining the security of the school,

(b) whether it is likely that the coming into operation of the order will result in a substantial improvement in that security,

(c) the availability of a reasonably convenient alternative route or, if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the highway under section 119B below rather than stopping it



up, and

(d) the effect which the extinguishment of the right of way would have as respects land served by the highway, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

(9) A special extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be prescribed, defining the land over which the public right of way is thereby extinguished.

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

**Diversion of certain highways for purposes of crime prevention, etc.**

119B. - (1) This section applies where it appears to a council-

(a) that, as respects any relevant highway for which they are the highway authority and which is in an area designated by the Secretary of State by order under section 118B(1)(a) above, the conditions in subsection (3) below are satisfied and it is expedient, for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, 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), or

(b) that, as respects any relevant highway for which they are the highway authority and which crosses land occupied for the purposes of a school, it is expedient, for the purpose of protecting the pupils or staff from-

(i) violence or the threat of violence,

(ii) harassment,

(iii) alarm or distress arising from unlawful activity, or

(iv) any other risk to their health or safety arising from such activity,

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).

(2) In subsection (1) above "relevant highway" means-

(a) any footpath, bridleway or restricted byway,

(b) any 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 a highway that is a trunk road or a special

road.

(3) The conditions referred to in subsection (1)(a) above are-

(a) that premises adjoining or adjacent to the highway are affected by high levels of crime, and

(b) that the existence of the highway is facilitating the persistent commission of criminal offences.

(4) Where this section 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 (8) below, the public right of way over so much of the highway as appears to the council to be requisite for the purpose mentioned in paragraph (a) or (b) of subsection (1) above.

(5) An order under subsection (4) above is in this Act referred to as a "special diversion order".

(6) Before making a special diversion order, the council shall consult the police authority for the area in which the highway is situated.

(7) A special 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.

(8) 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 (4)(a) above, and

(b) provide that so much of the order as extinguishes (in accordance with subsection (4)(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.

(9) A right of way created by a special 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.

(10) The Secretary of State shall not confirm a special diversion order made by virtue of subsection (1)(a) above, 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 (3) above are satisfied, that the diversion of the highway is expedient as mentioned in subsection (1)(a) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to-

- (a) whether and, if so, to what extent the order is consistent with any strategy for the reduction of crime and disorder prepared under section 6 of the Crime and Disorder Act 1998,
- (b) the effect which the coming into operation of the order would have as respects land served by the existing public right of way, and
- (c) the effect which 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 contained in section 28 above as applied by section 121(2) below.

(11) The Secretary of State shall not confirm a special diversion order made by virtue of subsection (1)(b) above, 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 diversion of the highway is expedient as mentioned in subsection (1)(b) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to-

- (a) any other measures that have been or could be taken for improving or maintaining the security of the school,
- (b) whether it is likely that the coming into operation of the order will result in a substantial improvement in that security,
- (c) the effect which the coming into operation of the order would have as respects land served by the existing public right of way, and
- (d) the effect which 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 (c) and (d) above the Secretary of State or, as the case may be, the council

shall take into account the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

(12) A special diversion order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so 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.

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

(14) Section 27 above (making up of new footpaths and bridleways) applies to a highway created by a special 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 a special diversion order, and

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

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

## **Annex 2**

### **Further information on alleygating**

1. Guidance on the practical issues that need to be addressed when considering alleygating are in the Home Office Briefing Note 2/01 "Installing Alleygates: Practical Lessons from Burglary Prevention projects", which may be viewed on the Home Office website at:

<http://www.homeoffice.gov.uk/rds/prgbriefpubs1.html>.

2. Additional research on alleygating from the findings of Reducing Burglary Initiative will be published in summer 2003 and will be available on the Home Office website <http://www.homeoffice.gov.uk> .

3. The Crime Reduction Website also has useful information on alleygating, which can be viewed at: <http://www.crimereduction.gov.uk/gating.htm>