

Preparing and Making
Bridge/Tunnel Schemes
under s106 of the Highways Act 1980
and Orders under s108 for the
Diversion of Navigable Waters

**NOTES ON THE PREPARATION,
PUBLICATION AND SUBMISSION OF:**

- i) SCHEMES UNDER SECTION 106(3) OF THE HIGHWAYS ACT 1980 FOR THE
CONSTRUCTION OF BRIDGES OVER OR TUNNELS UNDER NAVIGABLE
WATERS AS PART OF A HIGHWAY OR PROPOSED HIGHWAY

- ii) ORDERS UNDER SECTION 108 OF THE HIGHWAYS ACT 1980 FOR THE
DIVERSION OF NAVIGABLE WATERCOURSES IN CONNECTION WITH THE
CONSTRUCTION AND/OR IMPROVEMENT OF HIGHWAYS AND/OR THE
PROVISION OF NEW MEANS OF ACCESS TO PREMISES FROM A HIGHWAY

FOR WHICH THE SECRETARY OF STATE FOR THE ENVIRONMENT, TRANSPORT
AND THE REGIONS IS THE CONFIRMING AUTHORITY

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PREAMBLE

1. Many highway construction and/or improvement proposals involve the carrying out of works affecting watercourses. The highway proposals may make it necessary for a watercourse to be bridged or for it to be diverted.
2. Where a watercourse is navigable (ie subject to public rights of navigation) the watercourse is in reality a water highway. Any unauthorised interference with navigation on the waterway may therefore constitute a public nuisance and, in the absence of statutory authority, may be actionable as such. It is important therefore, when local highway authorities are proposing to carry out works to navigable waterways, as a consequence of highway proposals, that they obtain the relevant statutory authority to do so under powers contained in the Highways Act 1980 ("the Act").
3. There may be occasions, when preparing proposals, where local highway authorities will encounter waterways, particularly canals, which appear abandoned or non-navigable. In such cases highway authorities are strongly advised to consult, as early as possible, one or both of the following to establish the exact status of the waterway concerned:-
 - 1) DETR, Inland Waterways Branch
5/D9 Ashdown House
123 Victoria Street
London SW1E 6DE; and
 - 2) British Waterways
Willow Grange
Church Road
Watford WD1 3QA.

POWERS

Bridge/Tunnels

4. Section 106(3) of the Act provides local highway authorities with the authority to construct bridges over or tunnels under a navigable watercourse. Such authority is given by way of a Scheme made by the relevant local highway authority and confirmed by the Secretary of State.
5. If a bridge or tunnel is being constructed by a local highway authority as part of a new **special road** authority can be given by a Scheme under s16 of the Act citing s106(2). On the other hand, if the bridge or tunnel is being constructed as part of a new **side road** in connection with a local highway authority classified road construction/improvement proposals it can be authorised by an Order under s14 of the Act citing s106(4) (see Local Authority Circular 1/97), and if the construction is part of a new side road in connection with a local highway authority special road, it can be authorised by an Order under s18 of the Act citing s106(4). However, where the bridge or tunnel carries the associated classified road a Scheme under s106(3) is the appropriate means of obtaining authority to construct the bridge or tunnel.

DIVERSION OF NAVIGABLE WATERCOURSES

6. Similarly, s108(1) of the Act may authorise a local highway authority to divert a navigable waterway in connection with highway and highway related proposals. Such authority is obtained by way of an Order made by the relevant local highway authority and confirmed by the Secretary of State. (In this context diversion is generally understood to involve alteration to the line of the watercourse itself rather than simply diverting the water flow which may occur as a result of the construction of bridge supports or abutments).
7. Section 108(4) of the Act makes it possible to include in a Scheme or Order, which provides for the construction of a bridge over or tunnel under navigable waters, provision for the diversion of the watercourse in connection with the construction of the bridge or tunnel. This would permit, for example, a watercourse to be diverted so that the bridge could cross it at right angles.
8. Section 108(5) also makes it possible to provide, in a s14 or s18 Order, for the diversion of a navigable watercourse in connection with highway works. This enables cases where the diversion of the navigable watercourse is not associated with the construction of a bridge or tunnel to be dealt with without the need for separate authority.
9. Whilst there are likely to be cases where diversions of watercourses can be dealt with under s108(1) in most instances it will be more convenient to deal with the diversion within a s14 Order rather than seek separate and distinct authority (see Local Authority Circular 1/97). In addition, s108(6) of the Act makes it clear that a Scheme or Order authorising diversion of a navigable watercourse can also authorise the diversion of any towing path or way adjacent to the watercourse.

TIDAL WATERS

10. Where Schemes or Orders contain proposals for bridges or tunnels affecting tidal waters separate authority from the Secretary of State is required under s34 of the Coast Protection Act 1949. Application for such authority should be made to the Department of the Environment, Transport and the Regions, Ports Division 2, Great Minster House, 76 Marsham Street, London SW1P 4DR. Ports Division should be advised at the earliest possible stage of any such Scheme or Order.

PROCEDURES

11. The procedures applicable to the making of a Scheme under s106(3) of the Act are those detailed at Parts II and III of Schedule 1 to the Act. The procedures applicable to Orders under s108 are those detailed at Parts I and III. In both cases the procedures require that Notice be served on the Environment Agency and every navigation authority. Where there is an unwithdrawn objection to a Scheme, under s106(3), from the Environment Agency or navigation authority on the ground that the bridge or tunnel is likely to obstruct or impede the performance of their functions or to interfere with the reasonable requirements of navigation, the Scheme will be subject to special parliamentary procedure (see s107 of the Act).

EARLY CONSULTATION

12. The procedural provisions of Parts I and II of Schedule 1 to the Act provide formal safeguards for persons and authorities whose interests are likely to be affected. However, local highway authorities who propose to make Schemes or Orders affecting navigable waterways will recognise the importance of full consultation with all such persons and authorities as early as possible before the Scheme or Order is made and published.
13. Prior consultations can lead to explanations or agreed adjustments which obviate the need for formal objections or diminish their scope. This in turn may reduce difficulty and delay in formal proceedings. Drainage authorities, water authorities, cable and telecommunication operators and statutory undertakers are particular examples.
14. It is desirable therefore for promoting authorities to undertake such consultation before making a Scheme or Order. The Secretary of State will require that, when a Scheme or Order is submitted for confirmation, the promoting authority should state what water and drainage authorities and statutory undertakers are likely to be affected; that they (and in every case telecommunication operators) have been given prior notification; and what attitude they have expressed towards the Scheme or Order.

SPECIMEN FORMS

15. At Appendix I(A) is a model form for a Scheme under s106 and at Appendix I(B) is an Order under s108 authorising a promoting authority to construct a bridge over a navigable waterway and to divert a navigable watercourse respectively. In a case where the construction of a bridge or tunnel also involves the diversion of a watercourse it will be necessary to include in the Scheme the reference to s108(4) of the Act in the citation of enabling powers and also Article 2. However, if no diversion is involved then such reference need not be included.

PLANS

16. Promoting authorities may experience difficulty in relation to the plans and specifications for a bridge/tunnel Scheme. The statutory requirements for plans and specifications are given in s107(2) of the Act. This states that the Scheme shall include "such plans and specifications as may be necessary to indicate the position and dimensions of the proposed bridge including spans, headways and waterways". Similar requirements apply under s107(3) to a tunnel and include its depth below the bed of the navigable waters.
17. The most accurate practice is to include the plans and schedule to the Scheme itself. This is how the example at Appendix I(A) is drafted. The inclusion can be achieved by photographic reduction of a larger plan in order to produce a small plan which (without being folded) can be bound up in the Scheme document. Where more than one plan is used these should, wherever possible, be reproduced on one sheet. It is important to remember to remove ratio scales from the plans prior to photographic reduction. The scale shown on the plans must be true to the plans themselves, consequently the use of linear scales is advised.

18. It is normally convenient to have two plans - a plan showing the position of the proposed bridge/tunnel with reference to the properties in the immediate vicinity and also a plan showing the profile of the bridge/tunnel. On this latter plan it is usual to show the dimensions of the spans, the waterways and the headways and in the case of tunnels their depth below the bed of the navigable waters.
19. 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 to be diverted by authority of an Order under s108(1), the new and existing channel should be shown, outlined and annotated, on the appropriate site plan. This is unless they would be obscured by other features, in which case a separate site plan should be used.
20. If it is not convenient for plans to be dealt with in the manner suggested above, there is no legal impediment to the use of a deposited plan. However, in that event, the wording must be altered and the place of deposit stated in the Scheme.

SPECIMEN NOTICE OF MAKING

21. Specimen Notices for the making of Schemes under s106 and Orders under s108 are given at Appendix II(A) and II(B) respectively. Notice of making should not be published or served by the promoting authority until they have arranged the deposit and sent the relevant documents to the Department of the Environment, Transport and the Regions, Local Authority Orders Section, Wellbar House, Gallowgate, Newcastle upon Tyne NE1 4TD. A list of supporting documents which should accompany the relevant application is given at Appendix III(A) and III(B) respectively.

CONFIRMATION

22. Schemes under s106 will be confirmed by way of a Statutory Instrument ("SI"), confirmation is not effected by a sealed endorsement of the Scheme itself. Confirmation of an Order under s108(1) however is effected by a sealed endorsement of the Order.
23. A specimen s106 SI is given at Appendix IV. The form of the SI, for the confirmation of s106 Schemes, has been settled so as to follow normal statutory instrument practice and to produce an instrument which will meet the requirements of special parliamentary procedure in those cases where such procedure is applicable. The SI therefore has been drafted on the basis that the full text of the Scheme will be set out in the Schedule to the SI. This text will include the bridge/tunnel specifications and also, where they are part of the Scheme, the bridge/tunnel plans. Where the plans are deposited plans, they will be referred to as such in the SI.
24. The text appearing in the Schedule to the SI will incorporate all modifications made on confirmation. Where the modifications entail alterations to the original plans in the Scheme schedule a new plan, incorporating all the alterations, will be prepared. This will be given the same title as that appearing on the original plan but with the word 'modified' in brackets at the end.

25. Where modifications have been made on confirmation, the particulars of the Council's sealing and attestation will be omitted from the material appearing in the schedule to the confirmation SI, as what appears in the schedule will differ from the contents of the document sealed by the Council.
26. In this way the SI will be in a form suitable for special parliamentary procedure. Whilst such an occurrence will be unusual for s106 Schemes, it is considered wise to adopt a form which will easily fit in with that procedure.
27. Article 1 in the confirmation SI (about the operative date of the Scheme) is included in alternative versions in the attached specimen. The first alternative applies in all cases where the Scheme is not subject to special parliamentary procedure. The second alternative applies when the Scheme is subject to that procedure. No provision about the operative date of the confirmation instrument itself will be included. This is because there is no power in the Act to confirm retrospectively or prospectively. The confirmation is given when the SI is executed and it takes effect in a manner laid down in Schedule 2 to the Act.
28. Where modifications have been made on confirmation, an explanatory note will be added at the end of the SI indicating the general nature of the modifications. In practice it will probably be convenient to put the original Scheme and plan on deposit along with the modified plan, so that interested persons can see exactly what changes have been made.
29. Where special parliamentary procedure is applicable, there will be an explanatory note containing the statement that the date of the coming into operation of the Scheme is the date applicable under section 4 or 6 of the Statutory Orders (Special Procedure) Act 1945. The actual section number of the 1945 Act will be left blank until the special parliamentary procedure is complete, because it will not be known until then. When the procedure is complete the section number of the 1945 Act will be written in.
30. The Public Notice of Confirmation will be published by the Department (see paragraph 1 of Schedule 2 to the Act) in all cases. In special parliamentary procedure cases the notice will be published before the procedure under the Statutory Orders (Special Procedure) Act 1945 is begun. Specimen copies of confirmation Notices for both s106 Schemes and s108(1) Orders are contained in Appendix V(A) and V(B) respectively.

CONCLUSION

31. The foregoing paragraphs of this Note and the model forms deal with the construction of a bridge or tunnel to carry a new highway over/under a navigable watercourse. It is not entirely clear that a s106 Scheme is required when the bridge or tunnel is constructed in connection with the improvement of an existing highway as opposed to the construction of a new highway. Section 92 of the Act deals specifically with the reconstruction of a bridge on the same site or on a new site within 183 metres (200 yds) of the old site and it is arguable that this renders a s106 Scheme unnecessary. However, making a s106 Scheme in such circumstances can do no harm and it is considered that a s106 Scheme will always be desirable if the

construction of a bridge or tunnel over/under navigable waters in connection with an improvement scheme will in any way cause a greater interference with navigation than the existing bridge or tunnel. If a s106 Scheme is used in these cases, the forms will need some adaptation.

32. In addition, the Note and in particular model forms have, to a large degree, been drafted with bridge construction in mind. However, it must be emphasised that they are equally applicable to tunnels under navigable watercourses. In a case involving the construction, by a local highway authority, of a tunnel under a navigable watercourse the various forms should be amended so as to substitute for the reference to a bridge a reference to a tunnel. The plans and specifications in the Scheme should show the position and dimensions of the proposed tunnel and its depth below the bed of the navigable waters.
33. For routine clearance of draft s106 Schemes local highway authorities should obtain advice from their own legal departments. Further advice and guidance on specific and complex or unusual drafting points may be obtained from the Department of the Environment, Transport and the Regions, Local Authority Orders Section, Wellbar House, Gallowgate, Newcastle upon Tyne, NE1 4TD. Any advice or guidance provided by the Department would be without prejudice to the Secretary of State's consideration of Schemes when made and submitted for confirmation.

Specimen section 106(3) Scheme made by a Local Highway Authority

THE COUNCIL OF
(..... BRIDGE) SCHEME 20 ..

NOTES

The Council of
..... (hereinafter referred to as "the
Council") make this Scheme in exercise of their powers under
section 106(3) [and section 108(4)] of the Highways Act 1980
and of all other powers enabling them in that behalf-

*[Include only where Scheme
includes diversion of part of
navigable waters also.]*

1. The Council are authorised to construct over the
navigable waters of the River / Canal the bridge
specified in the Schedule to this Scheme as part of the highway
which they are proposing to construct/improve between
..... and in the Borough of
..... in the said County.

[2. The Council are also authorised in connection with the
construction of the said bridge to divert the part of the navigable
watercourse specified in the said Schedule in the manner shown
in that Schedule].

*[Include only where Scheme
includes diversion of part of
navigable waters also.]*

2/3. This Scheme may be cited as the Council
of (..... Bridge) Scheme 20 ..

Given under the common seal of the Council on the
day of 20..

THE COMMON SEAL of the)
Council was hereunto affixed)
in the presence of)

Chairman of the Council
Clerk to the Council
Chief Legal Officer

THE SCHEDULE TO THE SCHEME

PLANS AND SPECIFICATIONS OF THE BRIDGE

[Here set out the bridge specifications and plan/s, with plan showing diversion of watercourse where necessary. The plan/s and specifications included in the Schedule must indicate the position and dimensions of the proposed bridge including the spans, headways and waterways. Normally there will be a plan showing the position of the bridge in relation to the surrounding area and a plan showing the general design of the bridge on which are marked the dimensions (including the headways and waterways). If diversion of the watercourse is involved, it is likely to be convenient to mark the old channel and the new channel on the plan which shows the position of the bridge. Where any of the foregoing particulars are shown on a deposited plan (ie a plan which is not bound up with the scheme document itself), then the Schedule should include a sentence stating that the relevant particulars are shown on a plan or plans numbered marked with the title of the Scheme, sealed with the Common Seal of the Council and deposited at stated addresses (which should include the address of the offices of the Council), a copy being also deposited at the office of the Secretary of State.]

A typical layout of the Schedule might be -

THE SCHEDULE TO THE SCHEME

PLAN AND SPECIFICATIONS OF THE BRIDGE

The location and general design of the Bridge are shown on the plans/ numbered/and marked "The Council of (..... Bridge) Scheme 20 .., "sealed with the Common Seal of the Council and deposited at (the offices of the Council and of the Secretary of State for the Environment, Transport and the Regions) [see previous notes - this sentence to be included only when the plan/s are not bound up with the Scheme itself and are included as separate sealed deposited plans.]

POINTS OF COMMENCEMENT AND TERMINATION

From a point on the south bank of the River, metres east of [include definitive land marks to clearly define commencement point. Highway junctions are often appropriate].

To a point on the north bank of the River, metres west of [include definitive land marks to clearly define termination point. Highway junctions are often appropriate].

SPAN(S)

A single span of metres.

HEADWAY

Not less than metres above *[use definitive point of reference]* the mean high water spring tide level (MHWS) of metres AOD. *[It is vital that the headway measurement is given from a point in relation to the waterway itself not for instance some feature on the Riverbank. If the headway varies over the waterway from the point of reference used, the 'minimum' headway measurement should be included, ie not less than or a minimum headway of]*

WATERWAY

A minimum clear navigable waterway of metres.

OVERALL DIMENSIONS -

[often included by Councils to complete overall illustration of Scheme, although not essential.]

The Bridge will be metres wide overall and will carry a metre wide single carriageway, with a metre wide hard strip and a footway of metres width on either side.

[Note - Where practicable the text of the specifications should be added to the plan and the plan headed 'The Schedule to the Scheme'.]

Specimen section 108(1) Order made by
a Local Highway Authority

THE COUNCIL of
(..... to ROAD)
(DIVERSION OF RIVER/CANAL) ORDER 20..

The Council of make this Order in exercise of their powers under section 108(1) of the Highways Act 1980 and of all other powers enabling them in that behalf -

1. The Council are authorised, in connection with the [construction/ improvement/alteration of the Road][provision of a new means of access to premises at from the Road] [provision of a maintenance compound at] [provision of a service area atfor use by users of the Motorway (a special road for which the Council are the special road authority)], to divert the part of the navigable watercourse described in the Schedule to this Order and shown on the deposited plan [and also the towing path adjacent to that part] in the manner indicated in that Schedule and shown on that plan.

2. In this Order-

"the Council"

means the Council
of

"the deposited plan"

means the plan numbered
..... marked "The
..... Council of
..... (.....
to Road) (Diversion
of River/Canal)
Order 20 ..", sealed with the Common
Seal of the Council and deposited at the
Offices of the Council at
A certified copy is also deposited at the
Department of the Environment,
Transport and the Regions.

3. This Order may be cited as the Council of
..... (..... to Road) (Diversion of
..... River/Canal) Order 20..

Given under the Common Seal of the Council 20..

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

)

)

)

.....

THE SCHEDULE

1. Length of watercourse to be diverted

The length of watercourse to be diverted is the..... River/Canal between a point *[describe]* and a point *[describe]*. This length is shown in outline and is marked "Length to be filled in" on the deposited plan.

2. New Length of watercourse to be provided

The new length of watercourse to be provided is a length between the two points described above. It is shown in outline and marked "New Length" on the deposited plan. The minimum width of the new length shall be..... metres and its minimum depth shall be metres through its entire length.

3. Length of towing path to be diverted and new length to be provided

The length of towing path to be diverted is a length adjacent to and on the [south] side of the length of watercourse described in paragraph 1 of this Schedule. It extends from *[describe point]* to *[describe point]* and is shown by zebra hatching on the deposited plan and its centre line is marked there by a black band.

Specimen Notice of Making by LHA of a section 106(3) Scheme
(to be published in London Gazette and local newspaper)

THE COUNCIL OF
HIGHWAYS ACT 1980
THE COUNCIL OF
(..... BRIDGE) SCHEME 20..

THE COUNCIL OF hereby give notice that they have made and submitted to the Secretary of State for the Environment, Transport and the Regions for confirmation, a Scheme under section[s] 106(3) [and 108(4)] of the Highways Act 1980 authorising the Council to construct as part of the new/improved highway between and in the a bridge over the navigable waters of the river/canal [and, in connection therewith, to divert the said river/canal].

COPIES of the Scheme and of the relevant plans and specifications may be inspected free of charge at all reasonable hours from [see Note A below] 20 .. to [see Note B below] 20.. at the offices of the Council and [here state further places of inspection (if any) in the area] and at the Department of the Environment, Transport and the Regions, Wellbar House, Gallowgate, Newcastle upon Tyne NE1 4TD.

ANY PERSON may not later than [see Note B below] 20 .. object to the confirmation of the Scheme by notice to the Secretary of State for the Environment, Transport and the Regions, Local Authority Orders, Wellbar House, Gallowgate, Newcastle upon Tyne, NE1 4TD stating the grounds of objection.

..... 20 .. Secretary to the Council

[The above will need adaptation in particular cases. Notes A and B below must be strictly followed -

- (A) *Insert the date of the first publication of the Notice.*
- (B) *Insert a date not earlier than 43 days after the date of the last publication of the Notice.]*

Specimen Notice of Making section 108(1)
Order by Local Highway Authority

THE COUNCIL OF
HIGHWAYS ACT 1980

The Council of (..... to
..... Road) (Diversion of
River/Canal) Order 20..

THE Council of hereby
give notice that they have made, and submitted to the Secretary of State for the
Environment, Transport and the Regions for confirmation, an Order under section 108(1)
of the Highways Act 1980 for authorising the Council, in connection with their scheme
for *[here briefly describe highway scheme]*, to divert the navigable waters of the
..... River/ Canal at *[and also to divert the adjacent
towing path]*.

COPIES of the Order and of the relevant plans may be inspected free of charge at
all reasonable hours from *[see Note A below]* 20.. to *[see Note B
below]* 20.. at the offices of the Council at,
at *[here state further places of deposit (if any) in the area]*, and at the Department of the
Environment, Transport and the Regions, Local Authority Orders, Wellbar House,
Gallowgate, Newcastle upon Tyne, NE1 4TD.

ANY PERSON may not later than *[see Note B below]* 20.. object to the
confirmation of the Order by notice to the Secretary of State for the Environment,
Transport and the Regions, Local Authority Orders, Wellbar House, Gallowgate,
Newcastle upon Tyne, NE1 4TD stating the grounds of objection.

..... 20.. Secretary to the Council

*[The above will need adaptation in particular cases. Notes A and B below must be strictly
followed:-*

- (A) *Insert the date of the first publication of the Notice.*
- (B) *Insert a date not earlier than 43 days after the date of the last publication
of the Notice.]*

Document Checklist for
Schemes made under section 106(3)
of the Highways Act 1980
for highways Bridge or Tunnel crossings of navigable waters

- (i) at least 2 SEALED SCHEMES WITH INCORPORATED PLAN/S (SEALED PLAN/S IF PLANS ARE "DEPOSITED PLANS", IE NOT BOUND AS PART OF THE SCHEME);
- (ii) at least 3 COPIES OF SEALED SCHEME WITH INCORPORATED PLAN/S (OR DEPOSITED PLAN/S);
- (iii) typed copy of the PUBLIC NOTICE of making of the Scheme, which will be published in the Local Newspaper/s and the London Gazette;
- (iv) a copy of the PRESS CUTTING OF THE PUBLIC NOTICE of making of the Scheme from Local Newspaper/s used and the London Gazette. Cuttings should clearly identify the names of the newspapers in which they were published and the date/s of publication;
- (v) a certificate/statement confirming the statutory requirements in relation to service of notice of the Scheme - as laid down in paragraph 11 of Schedule 1 of the Highways Act 1980 - have been complied with;
- (vi) an original (not copy) negative of each plan comprised in the Scheme - for reproduction purposes in Statutory Instrument preparation should the Scheme be confirmed. Negatives should be submitted rolled in a plan tube (not folded), to ensure proper reproduction quality;
- (vii) a statement on the position on planning permission for the highway to be constructed or the highway to be improved which the Bridge or Tunnel will carry, or under what authoritative order power such highway works will be achieved. The Secretary of State will not confirm a Scheme before a decision has been made on associated planning applications. These may however be under consideration concurrently with Scheme applications and may in some cases feature in joint inquiries proceedings;
- (viii) a detailed ENGINEERING DRAWING of the highways proposals associated with the Bridge/Tunnel scheme and of the Scheme specifications; and
- (ix) a statement as to whether the navigable waters to be crossed by the Scheme are tidal waters which will require consent to be given under section 34 of the Coast Protection Act 1949 to the carrying out of the Bridge/Tunnel works. If this is the case the Council should advise if consent has been given, or has been applied for. The Secretary of State will not confirm a Scheme where section 34 consent is required until a decision has been taken on that consent.

Order under section 108(1) : Documentation Required

- (i) 2 SEALED ORDERS AND PLAN/S;
- (ii) 4 COPIES OF SEALED ORDER AND PLAN/S;
- (iii) typed copy of the PUBLIC NOTICE of making of the Order, which will be published in the Local Newspaper/s and the London Gazette;
- (iv) a copy of each PRESS CUTTING OF THE PUBLIC NOTICE of making of the Order from local Newspaper/s used and the London Gazette. Cuttings should identify clearly the names of the newspapers in which they were published and the date/s of publication;
- (v) 2 copies of Statement of Reasons FOR MAKING THE ORDER;
- (vi) a copy of the COUNCIL'S RESOLUTION TO MAKE THE ORDER;
- (vii) A CERTIFICATE/STATEMENT CONFIRMING THE STATUTORY REQUIREMENTS in relation to the publication and service of notice of the Order - as laid down in Part 1 of Schedule 1 of the Highways Act 1980 - have been complied with;
- (viii) a detailed ENGINEERING DRAWING of the proposals contained in the Order (minimum scale 1:2500, 1:1250 preferred in complex cases);
- (ix) where no Compulsory Purchase Order has been submitted, either a statement that such an Order will be submitted or details of the authority which the Council has obtained to gain entry onto the land needed for the classified road and the associated highway works;
- (x) statement on the position of planning permission if not included in Statement of Reasons.

Specimen section 106(3) Scheme Confirmation Instrument

STATUTORY INSTRUMENTS

20 No

HIGHWAYS, ENGLAND AND WALES

The Council of
 (..... Bridge) Scheme 20..
 Confirmation Instrument 20..
 Made 20..
 Coming into force in accordance with article 1

The Secretary of State for the Environment, Transport and the Regions makes this Instrument in exercise of powers conferred by section[s] 106(3) [and 108(4)] of the Highways Act 1980 (a) and now vested in him (b) and of all other powers enabling him in that behalf-

1. This Instrument may be cited as the Council of (..... Bridge) Scheme 20 .. Confirmation Instrument 20 .. and shall come into force [on the date on which notice that it has been confirmed is first published in accordance with paragraph 1 of Schedule 2 to the Highways Act 1980] [on the date fixed in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965(c)*].

2. The Council of (..... Bridge) Scheme 20 .. ("the Scheme") is hereby confirmed [with modifications] [without modifications].

3. The Scheme as confirmed is set out in the Schedule hereto (including the plan(s)) and copies of the Scheme with its accompanying plan(s) [as modified] are deposited at the offices of the Department of the Environment, Transport and the Regions, Great Minster House, 76 Marsham Street, London SW1P 4DR and at the offices of the Council of at

Signed by authority of the Secretary of State

..... 20 ..

Regional Director
 Government Office
 for the North East

(a) 1980 c.66. (b) S.I. 1997/2971. [(c) 1945 c.18. 1965 c.43*]

* This option for SPP cases only

THE SCHEDULE

The Council of
(..... Bridge) Scheme 20 ..

[Here will be set out the full text of the Scheme (including any Schedules) - incorporating all modifications made on confirmation. If the bridge plans are part of the Scheme, then an appropriate photographic reduction of these plans will be included in the Schedule. If however, they have been treated by the Scheme as deposited plans, then they will be treated in the same way in the confirmation instrument.]

**Specimen Notice of Confirmation of a section 106(3) Scheme
by the Secretary of State**

(to be published in London Gazette and local newspaper)

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS
HIGHWAYS ACT 1980

The Council of
(..... Bridge) Scheme 20 ..

THE SECRETARY OF STATE for the Environment, Transport and the Regions hereby gives notice that he has confirmed [with modifications] the above Scheme which was made by the Council of under section[s] 106(3) [and 108(4)] of the Highways Act 1980 and which, as confirmed, authorises the Council to construct as part of the new/improved highway between and a bridge over the navigable waters of the river/canal [and in connection with the construction of that bridge to divert the said river/canal].

COPIES of the Scheme (as confirmed) and of the relevant plans and specifications may be inspected free of charge at all reasonable hours at the offices of the Council of and at the Department of the Environment, Transport and the Regions, Wellbar House, Gallowgate, Newcastle upon Tyne NE1 4TD.

COPIES of the instrument of confirmation of the Scheme, which is entitled "The Council of (..... Bridge) Scheme 20 .. Confirmation Instrument 20 .." and which contains a copy of the Scheme as confirmed, can be purchased, price either through booksellers or direct from Government bookshops (The Stationery Office).

ANY PERSON aggrieved by the Scheme and desiring to question the validity thereof, or of any provision contained therein, on the ground that it is not within the powers of the Highways Act 1980 or on the ground that any requirement of that Act, or of any regulations made thereunder, has not been complied with in relation to the Scheme, may, within six weeks from the [see note below] apply to the High Court for the suspension or quashing of the Scheme or of any provision contained therein.

..... 20.,

[Note:- In ordinary cases in the space in the last paragraph above, the date of the first publication of the notice of confirmation will be inserted. Where the Scheme is subject to special parliamentary procedure, the final paragraph will read as follows:-

"THE SCHEME as confirmed, being subject to special parliamentary procedure, will become operative as provided by the Statutory Orders (Special Procedure) Act 1945. Except in a case where the Scheme is confirmed by an Act of Parliament under section 6 of the Act, any person aggrieved by the Scheme and desiring to question the validity thereof, or of any provision contained therein, on the ground that it is not within powers of the Highways Act 1980 or on the ground that any requirement of that Act, or of any regulations made thereunder, has not been complied with in relation to the Scheme, may, within six weeks of the date on which the Scheme becomes operative as aforesaid, apply to the High Court for the suspension or quashing of the Scheme or of any provision contained therein".]

Specimen Notice of Confirmation of a section 108(l)
Order by the Secretary of State

(to be published in London Gazette and local newspaper)

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

HIGHWAYS ACT 1980

The Council of
(..... to Road)
(Diversion of River/Canal) Order 20 ..

THE SECRETARY OF STATE for the Environment, Transport and the Regions hereby gives notice that he has confirmed [with modifications] the above Order which was made by the Council of under section 108(l) of the Highways Act 1980 and which, as confirmed, provides for authorising the Council, in connection with their scheme for [here briefly describe highway scheme], to divert the navigable waters of the River/Canal at [and also to divert the adjacent towing path].

COPIES of the Order, as confirmed, and of the relevant plans have been deposited and may be inspected free of charge at all reasonable hours at the offices of the Council at and at the Department of the Environment, Transport and the Regions, Wellbar House, Gallowgate, Newcastle upon Tyne NE1 4TD.

ANY PERSON aggrieved by the Order and desiring to question the validity thereof, or of any provision contained therein, on the ground that it is not within the powers of the Highways Act 1980 or on the ground that any requirement of that Act or of any regulations made thereunder has not been complied with in relation to the Order, may, within 6 weeks of the [here insert the date of the first publication of the notice of confirmation] apply to the High Court for the suspension or quashing of the Order or any provision contained therein.

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..... 20 ..