Dear Sir

HIGHWAYS ACT 1971: SECTION 40
VEHICLE CROSSINGS OVER FOOTWAYS AND VERGES

SUMMARY: Guidance is given on the operation of Section 40 of the Highways Act 1971 which deals with vehicles crossing over kerbed footways or verges.

1. This circular consolidates and amends Circular Roads 5/72 and 23/72 which are cancelled.

2. In the main, S40 provides highway authorities with means of securing that frontagers play their part in protecting verges and footways from damage by vehicles which already habitually cross to gain access to premises. Only when development of fronting premises is involved (see para 4 below) can account be taken of the effect of expected future movements in and out of those premises.

3. An authority can either control the offending movements by imposing conditions limiting, for example, the frequency of such movements or the weights or other dimensions of vehicles which may cross the verge to gain access; or it may provide, at the frontager’s expense, a suitable made-up crossing. It may not invoke these powers to replace, strengthen or improve a made-up crossing except:-

   i. when the crossing was constructed after 17 January 1972 other than under S40 or

   ii. in the special circumstances described in paragraph 4 below. Nor can conditions be imposed on the use of any made-up crossing.

4. When the premises concerned are being or are to be developed in accordance with granted or deemed planning permission, the special provisions in sub-sections 3, 4 and 9 may apply. Broadly they are:-

   a. that the expected effects of the development may be taken into account in applying S40;

   b. that an existing made-up crossing may be improved where the development makes this necessary;

   c. that deceleration and acceleration lanes may, if the proposed development makes them necessary, be incorporated into the design of a crossing; and

   d. that, by arrangement, the developer may be allowed to undertake the works involved.

5. A new vehicle crossing which is the subject of a notice under S40 should, in its design and construction, be such as it is reasonable to require the owner or occupier to provide so as to prevent damage to the verge or footway and enable access to the premises to be obtained safely and without undue interference with traffic on the highway. The need for adequate drainage and the safety of pedestrians and users of any cycle track affected by the access should also be taken into account. Useful guidance on design considerations will be found in the manuals “Roads in Urban Areas” (particularly paragraphs 1. 2.1; 9.6;
10.2; 10.3-5) and "Layout of Roads in Rural Areas" (particularly paragraph 3.44 and Chapter 4); and on pavement design, and construction and specification standards in Road Note 29, in the Department's Specification for Road and Bridge Works, 1976 edition, in BS 340; but the circumstances of each case must determine what standards are appropriate. A highway authority may at its own expense undertake, in association with what is described in the notice and carried out at the frontager's expense, more elaborate works or additional measures (eg change in lighting, signs or street furniture) as highway conditions demand.

6. Each notice served under S40 should advise the person on whom it is served how and when and on what grounds he may lodge formal objection. Notices (except those under S40(1)(b) must also state the effect of S40(7). A copy of every notice issued by a local highway authority and of every objection received thereto should be sent without delay to the office of the Regional Controller (Roads and Transportation) who should also be notified as soon as any such objection is formally withdrawn. Before deciding whether or not to confirm a notice which is subject to an objection which has not been withdrawn, the Secretary of State may wish his representative to inspect the site in the presence of representatives of the local highway authority and of the objector.

7. When applying the provisions of S.40 highway authorities are invited to use the enclosed 'standard' notices which are designed for use as follows:-

VC1 (LA) - to be served on the owner and occupier by the highway authority when exercising its powers under Section 40(1)(a) [non-trunk road].

VC2 (LA) - to be served on the owner and occupier by the highway authority when exercising its powers under Section 40(1)(b) [non-trunk road].

VC3 (LA) - to be served on the owner and occupier by the highway authority when exercising its powers under Section 40(3) [non-trunk road].

VC1 (TR) - to be served on the owner and occupier by the Agent Authority when exercising, on his behalf, the Secretary of State's powers under Section 40(1)(a) [trunk road].

VC2 (TR) - to be served on the owner and occupier by the Agent Authority when exercising, on his behalf, the Secretary of State's powers under Section 40(1)(b) [trunk road].

VC3 (TR) - to be served by the Regional Controller (Roads and Transportation) when exercising the Secretary of State's powers under Section 40(3) [trunk road].

It will be seen that it is envisaged that the complete text of Schedule 3 to the Highways Act 1971 should be set out on each form.

8. Highway authorities are reminded of the need, when service Notices VC1 (LA), VC3 (LA) and VC1 (TR), to furnish the owner and occupier with an estimate of the cost of the works proposed. It is suggested that the estimate either be included in the Schedule to the Notice or referred to separately in a covering letter.

Yours faithfully

K P LEARY
Assistant Secretary

Any enquiry on this circular should be made to H S Division - 01-212 7104 or 7105

Distribution enquiries on this circular should be made to HPL Division - 01-212-4944
HIGHWAYS ACT 1971-SECTION 40
VEHICLE CROSSINGS OVER FOOTWAYS AND VERGES

To:-

Of:-

WHEREAS you, being the owner/occupier* of the premises known as adjoining or having access to the Trunk Road (which is a highway maintainable at the public expense) habitually take or permit be taken a mechanically propelled vehicle across the kerbed footway/verge* in that highway to or from those premises:

NOW THEREFORE the Secretary of State for Transport as the highway authority for the above-mentioned highway (acting by his agent authority the Council), hereby gives you notice that he proposes, in exercise of his powers under section 40(1) of the Highways Act 1971, to execute the works for the construction of a vehicle crossing over the said footway/verge* which are specified in the Schedule to this notice.

WHEN this notice has become effective, the Secretary of State may execute the said works (subject to any modifications thereto made by him when confirming this notice) and may recover from the owner or occupier of the said premises the expenses reasonably incurred by him in so doing.

WITHIN 28 days from the date of the service of this notice upon you you may by notice in writing to the Secretary of State at the office of his Regional Controller (Roads & Transportation) at object to this notice on any of the grounds specified in paragraph 1 of Schedule 3 to the Highways Act 1971 which are appropriate. The grounds of your objection must be stated. A copy of Schedule 3 to the said Act is set out in the Note at the end of this notice.

IF you object to this notice in the manner indicated above and the objection is not withdrawn, this notice will not become effective until it has been confirmed by the Secretary of State. In any other case this notice will become effective at the expiration of the said period of 28 days.

Dated the 19 .

……………………………………………………...
Chief Executive …………………………... Council

THE SCHEDULE

[Here set out particulars of works. A plan showing where the works are to be executed will probably be needed. If so, the Schedule would contain a reference to the plan].

NOTE

[Here set out text of Schedule 3 to the 1971 Act].

*Delete as necessary.
VC2 (TR) (Notice to owner and occupier - habitual user - imposition of conditions - trunk road)

HIGHWAYS ACT 1971-SECTION 40
VEHICLE CROSSINGS OVER FOOTWAYS AND VERGES

To:-

Of:-

WHEREAS, you, being the owner/occupier* of the premises known as adjoining or having access to the Trunk Road (which is a highway maintainable at the public expense) habitually take or permit be taken a mechanically propelled vehicle across the kerbed footway/verge* in that highway to or from those premises:

NOW THEREFORE the Secretary of State for Transport, as the highway authority for the above-mentioned highway, (acting by his agent authority the Council), gives you notice that in exercise of his powers under section 40(1) of the Highways Act 1971 he hereby imposes on the use of the said footway/verge* as a crossing for vehicles the conditions specified in the Schedule to this notice.

WITHIN 28 days from the date of the service of this notice upon you you may by notice in writing to the Secretary of State at the office of his Regional Controller (Roads & Transportation) at object to this notice on any of the grounds specified in paragraph 1 of Schedule 3 to the Highways Act 1971 which are appropriate. The grounds of your objection must be stated. A copy of Schedule 3 to the said Act is set out in the Note at the end of this notice.

IF you object to this notice in the manner indicated above and the objection is not withdrawn, this notice will not become effective until it has been confirmed by the Secretary of State. In any other case this notice will become effective at the expiration of the said period of 28 days.

IT is an offence, punishable by a fine not exceeding £20, or in the case of a second or subsequent offence, by a fine not exceeding £50, knowingly to use or to permit to be used the said footway/verge* in contravention of any condition hereby imposed.

Dated the 19 .

……………………………………………………...
Chief Executive …………………………... Council

T H E   S C H E D U L E

[Here set out the conditions, which must be reasonable]

N O T E

[Here set out text of Schedule 3 to the 1971 Act]

*Delete as necessary.
VC3 (TR) (Notice to owner and occupier permitted development - construction/alteration of crossing - trunk road)

HIGHWAYS ACT 1971-SECTION 40
VEHICLE CROSSINGS OVER FOOTWAYS AND VERGES

To:

Of:

WHEREAS planning permission was granted on 19 for development (containing ) on the premises known as

AND WHEREAS it appears to the Secretary of State for Transport, who is the highway authority for the Trunk Road (a highway maintainable at the public expense), that the said development makes it necessary to construct/improve/alter* a crossing over the kerbed footway/the verge* in that highway so as to provide an access for mechanically propelled vehicles to or from the carriageway of that highway from or to premises adjoining or having access to that highway.

NOW THEREFORE the Secretary of State for Transport as the highway authority for the above-mentioned highway, hereby gives you notice as the owner/occupier* of the premises specified above that he proposes, in exercise of his powers under section 40(3) of the Highways Act 1971, to execute the works for the construction/alteration* of the crossing which are specified in the Schedule to this notice.

WHEN this notice has become effective, the Secretary of State may execute the said works (subject to any modifications thereto made by him when confirming this notice) and may recover from the owner or occupier of the said premises the expenses reasonably incurred by him in so doing.

WITHIN 28 days from the date of the service of this notice upon you you may by notice in writing to the Secretary of State at the office of his Regional Controller (Roads & Transportation) at object to this notice on any of the grounds specified in paragraph 1 of Schedule 3 to the Highways Act 1971 which are appropriate. The grounds of your objection must be stated. A copy of Schedule 3 to the said Act is set out in the Note at the end of this notice.

IF you object to this notice in the manner indicated above and the objection is not withdrawn, this notice will not become effective until it has been confirmed by the Secretary of State. In any other case this notice will become effective at the expiration of the said period of 28 days.

YOUR attention is drawn to the provisions of section 40(9) of the Highways Act 1971 which entitle the person who is carrying out, or who proposes to carry out, the development mentioned above to offer to execute the works specified in this notice and which, empower the Secretary of State to authorise that person to execute those works in accordance with plans approved by him. Any offer to execute the said works should be made in writing to the Secretary of State at the office of this Regional Controller (Roads & Transportation) mentioned above.

Dated the 19 .

Signed by authority of the Secretary of State

Regional Controller (Roads & Transportation)

*Delete as necessary.
THE SCHEDULE

[Here specify the works. Refer to a plan, if necessary. If a plan is used, it should be referred to in this Schedule].

NOTE

[Here set out the text of Schedule 3 to the 1971 Act].
To:-

Of:-

WHEREAS, you, being the owner/occupier* of the premises known as 

having access to the 

(which is a highway maintainable at the public expense), habitually take or permit to be taken a mechanically propelled vehicle across the kerbed footway/verge* in that highway to or from those premises:

NOW THEREFORE Council, as the highway authority for the above-mentioned highway, hereby give you notice that they propose, in exercise of their powers under section 40(1) of the Highways Act 1971, to execute the works for the construction of a vehicle crossing over the said footway/verge* which are specified in the Schedule to this notice.

WHEN this notice has become effective, the Council may execute the said works (subject to any modifications thereto made by the Secretary of State) and may recover from the owner or occupier of the said premises the expenses reasonably incurred by them in so doing.

WITHIN 28 days from the date of the service of this notice upon you you may by notice in writing to the Council at 

object to this notice on any of the grounds specified in paragraph 1 of Schedule 3 to the Highways Act 1971 which are appropriate. The grounds of your objection must be stated. A copy of Schedule 3 to the said Act is set out in the Note at the end of this notice.

IF you object to this notice in the manner indicated above and the objection is not withdrawn, this notice will not become effective until it has been confirmed by the Secretary of State for Transport. In any other case this notice will become effective at the expiration of the said period of 28 days.

Dated the 19 .

……………………………………………………...
Chief Executive …………………………... Council

THE SCHEDULE

[Here set out particulars of works. A plan showing where the works are to be executed will probably be needed. If so, the Schedule would contain a reference to the plan].

NOTE

[Here set out text of Schedule 3 to the 1971 Act].

*Delete as necessary.
VC2 (LA)  (Notice to owner and occupier - habitual user - imposition of conditions - local highway authority)

HIGHWAYS ACT 1971-SECTION 40

VEHICLE CROSSINGS OVER FOOTWAYS AND VERGES

To:-

Of:-

WHERES, you, being the owner/occupier* of the premises known as adjoining or having access to the (which is a highway maintainable at the public expense), habitually take or permit to be taken a mechanically propelled vehicle across the kerbed footway/verge* in that highway to or from those premises:

NOW THEREFORE the Council, as the highway authority for the above-mentioned highway, give you notice that in exercise of their powers under section 40(1) of the Highways Act 1971 they hereby impose on the use of the said footway/verge* as a crossing for vehicles the conditions specified in the Schedule to this notice.

WITHIN 28 days from the date of the service of this notice upon you you may by notice in writing to the Council at object to this notice on any of the grounds specified in paragraph 1 of Schedule 3 to the Highways Act 1971 which are appropriate. The grounds of your objection must be stated. A copy of Schedule 3 to the said Act is set out in the Note at the end of this notice.

IF you object to this notice in the manner indicated above and the objection is not withdrawn, this notice will not become effective until it has been confirmed by the Secretary of State for Transport. In any other case this notice will become effective at the expiration of the said period of 28 days.

IT is an offence, punishable by a fine not exceeding £20, or in the case of a second or subsequent offence, by a fine not exceeding £50, knowingly to use or to permit to be used the said footway/verge* in contravention of any condition hereby imposed.

Dated the 19 .

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

Chief Executive ........................................ Council

THE SCHEDULE

[Here set out the conditions, which must be reasonable].

NOTE

[Here set out text of Schedule 3 to the 1971 Act].

*Delete as necessary.
VC3 (LA) (Notice to owner and occupier - permitted development - construction/alteration of crossing - local highway authority)

HIGHWAYS ACT 1971-SECTION 40
VEHICLE CROSSINGS OVER FOOTWAYS AND VERGES

To:-

Of:-

WHEREAS planning permission was granted on 19
for development (consisting of )
on the premises known as

AND WHEREAS it appears to the Council, who are the highway authority for (a highway maintainable at the public expense) that the said development makes it necessary to construct/improve/alter* a crossing over the kerbed footway/the verge* in that highway so as to provide an access for mechanically propelled vehicles to or from the carriageway of that highway from or to premises adjoining or having access to that highway:

NOW THEREFORE the said Council, as the highway authority for the above-mentioned highway, hereby gives you notice as the owner/occupier* of the premises specified above that they propose, in exercise of their powers under section 40(3) of the Highways Act 1971, to execute the works for the construction/alteration* of the crossing which are specified in the Schedule to this notice.

WHEN this notice has become effective, the Council may execute the said works (subject to any modifications thereto made by the Secretary of State) and may recover from the owner or occupier of the said premises the expenses reasonably incurred by them in so doing.

WITHIN 28 days from the date of the service of this notice upon you you may by notice in writing to the Council at object to this notice on any of the grounds specified in paragraph 1 of Schedule 3 to the Highways Act 1971 which are appropriate. The grounds of your objection must be stated. A copy of Schedule 3 to the said Act is set out in the Note at the end of this notice.

IF you object to this notice in the manner indicated above and the objection is not withdrawn, this notice will not become effective until it has been confirmed by the Secretary of State for Transport. In any other case this notice will become effective at the expiration of the said period of 28 days.

YOUR attention is drawn to the provisions of section 40(9) of the Highways Act 1971 which entitle the person who is carrying out, or who proposes to carry out, the development mentioned above to offer to execute the works specified in this notice and which empower the Council to authorise that person to execute those works in accordance with plans approved by them. Any offer to execute the said works should be made in writing to the Council at their address mentioned above.

Dated the 19 .

……………………………………………………...
Chief Executive …………………………... Council

THE SCHEDULE

[Here specify the works. Refer to a plan, if necessary. If a plan is used it should be referred to in this Schedule]

NOTE

[Here set out text of Schedule 3 to the 1971 Act].

*Delete as necessary.