



# Highways Act 1980

## 1980 CHAPTER 66

### PART XI

#### MAKING UP OF PRIVATE STREETS

##### *Introductory*

#### **203 Interpretation of Part XI**

- (1) In this Part of this Act (and elsewhere in this Act) " the private street works code " means sections 205 to 218 below; and " the advance payments code " means sections 219 to 225 below.
- (2) In this Part of this Act " private street" means a street that is not a highway maintainable at the public expense, and—
  - (a) includes any land that is deemed to be a private street by virtue of a declaration made under section 232 below, and
  - (b) for the purpose of the application of the advance payments code or section 229 below in relation to any building, includes—
    - (i) any land shown as a proposed street on plans deposited with respect to that building either under building regulations or on an application for planning permission under the Town and Country Planning Act 1971, and
    - (ii) any land which, if work for the erection of that building had been commenced, would have become part of an existing highway by virtue of section 188(6) above;

but the fact that a part of a street is a highway maintainable at the public expense does not prevent any other part of it from being a part of a private street for the purposes of this Part of this Act.

- (3) In this Part of this Act—
  - " contributory place " has the same meaning as in section 343 of the Public Health Act 1936 ;

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" fronting " includes adjoining, and " front" is to be construed accordingly;

" industrial premises " means premises used or designed or suitable for use for the carrying on of any such process or research as is specified in section 66(1) of the Town and Country Planning Act 1971, and includes premises used for purposes ancillary to the carrying on of any such process or research ;

" local Act " includes a provisional order confirmed by Parliament and the confirming Act so far as it relates to that order;

" paving, metalling and flagging " includes all methods of making a carriageway or footway ;

" place of public religious worship " means a place of public religious worship which belongs to the Church of England or to the Church in Wales (within the meaning of the Welsh Church Act 1914), or which is for the time being certified as required by law as a place of religious worship ;

" street works " means any works for the sewerage, levelling, paving, metalling, flagging, channelling and making good of a street, and includes the provision of proper means for lighting a street;

" street works authority " means—

- (a) as respects a street outside Greater London, the council of the county in which the street is situated,
- (b) as respects a street in a London borough, the council of the borough, and
- (c) as respects a street in the City, the Common Council.

- (4) For the purposes of the advance payments code and of section 229 below, the frontage of a building or proposed building on a street shall be deemed to be the frontage that the building itself and any land occupied or, as the case may be, proposed to be occupied, with the building and for the purposes of it has or will have on the street.
- (5) In ascertaining a majority in number of owners for the purposes of any provision of this Part of this Act, joint owners are to be treated as one owner.

## **204 Purposes and application of private street works code and advance payments code**

- (1) The private street works code has effect for securing the execution of street works in private streets anywhere in England or Wales.
- (2) The advance payments code has effect for securing payment of the expenses of the execution of street works in private streets adjacent to new buildings, and applies—
  - (a) in all outer London boroughs ;
  - (b) in all areas in counties in which the advance payments code in the Highways Act 1959 (which is replaced by the advance payments code in this Act) was in force immediately before 1st April 1974 ; and
  - (c) in any parish or community in which the advance payments code in the Highways Act 1959 was, after 1st April 1974, adopted in accordance with Schedule 14 to that Act, or in which the advance payments code is adopted in accordance with Schedule 15 to this Act.

*The private street works code*

**205 Street works in private streets**

- (1) Where a private street is not, to the satisfaction of the street works authority, sewered, levelled, paved, metalled, flagged, channelled, made good and lighted, the authority may from time to time resolve with respect to the street to execute street works and, subject to the private street works code, the expenses incurred by the authority in executing those works shall be apportioned between the premises fronting the street.
- (2) Where the authority resolve to execute street works with respect to a part only of the street (other than a part extending for the whole of the length of the street), the expenses incurred by them in executing the works shall be apportioned only between the premises fronting the length of the street which constitutes or comprises that part.
- (3) Where an authority have passed a resolution under subsection (1) above, the proper officer of the council shall prepare—
  - (a) a specification of the street works referred to in the resolution, with any necessary plans and sections,
  - (b) an estimate of the probable expenses of the works, and
  - (c) a provisional apportionment apportioning the estimated expenses between the premises liable to be charged with them under the private street works code ;and the specification, plans, sections, estimate and provisional apportionment shall comprise the particulars specified in paragraphs 1 to 4 of Schedule 16 to this Act and shall be submitted to the authority, who may by a further resolution (hereafter in the private street works code referred to as " the resolution of approval") approve them with or without modification or addition as they think fit.
- (4) If, in the case of a street outside Greater London, the street works referred to in the resolution under subsection (1) above include the sewerage of the street, the proper officer of the county council shall, when preparing the specification required by subsection (3) above, consult the council of the district in which the street works are to be carried out.
- (5) After the resolution of approval has been passed, a notice containing the particulars specified in paragraph 5 of Schedule 16 to this Act shall—
  - (a) be published once in each of 2 successive weeks in a local newspaper circulating in the area of the street works authority, and
  - (b) be posted in a prominent position in or near to the street to which the resolution relates once at least in each of 3 successive weeks, and
  - (c) within 7 days from the date of the first publication under paragraph (a) above, be served on the owners of the premises shown in the provisional apportionment as liable to be charged ;and during one month from the said date a copy of the resolution of approval, and the approved documents or copies of them certified by the proper officer of the council, shall be kept deposited and open to inspection free of charge at all reasonable hours at the offices of the street works authority and also, in the case of a street outside Greater London, at the offices of the council of the district in which the street concerned is situated.
- (6) Where a notice is served on an owner of premises under subsection (5)(c) above it shall be accompanied by a statement of the sum apportioned on those premises by the provisional apportionment.

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## **206 Incidental works**

A street works authority may include in street works to be executed under the private street works code with respect to a street any works which they think necessary for bringing the street, as regards sewerage, drainage, level, or other matters, into conformity with any other streets, whether maintainable at the public expense or not, including the provision of separate sewers for the reception of sewage and of surface water respectively.

## **207 Provisional apportionment of expenses**

- (1) In a provisional apportionment of expenses of street works under the private street works code, the apportionment of expenses between the premises liable to be charged with them shall, subject to the provisions of this section, be made according to the frontage of the respective premises.
- (2) The street works authority may, if they think just, resolve that in settling the apportionment regard shall be had to the following considerations:—
  - (a) the greater or less degree of benefit to be derived by any premises from the street Works;
  - (b) the amount and value of any work already done by the owners or occupiers of any premises.
- (3) The authority may—
  - (a) if they think just, include in the apportionment any premises which do not front the street, but have access to it through a court, passage, or otherwise, and which will, in the opinion of the authority, be benefited by the works, and
  - (b) fix, by reference to the degree of benefit to be derived by those premises, the amount to be apportioned on them.

## **208 Objections to proposed works**

- (1) Within one month from the date of the first publication of a notice under section 205(5) (a) above, an owner of premises shown in a provisional apportionment of expenses as liable to be charged with any part of the expenses of executing street works with respect to a private street or a part of a private street may, by notice to the street works authority, object to their proposals on any of the following grounds:—
  - (a) that the alleged private street is not a private street or, as the case may be, that the alleged part of a private street is not a part of a private street;
  - (b) that there has been some material informality, defect or error in, or in respect of, the resolution, notice, plans, sections or estimate ;
  - (c) that the proposed works are insufficient or unreasonable;
  - (d) that the estimated expenses of the proposed works are excessive;
  - (e) that any premises ought to be excluded from or inserted in the provisional apportionment;
  - (f) that the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection or, where the provisional apportionment is made with regard to other considerations than frontage, in respect of the degree of benefit to be derived by any premises, or of the amount or value of any work already done by the owner or occupier of premises.

- (2) Where premises are owned jointly by 2 or more persons, a notice under subsection (1) above may be given on behalf of those persons by one of their number, if he is authorised in writing by a majority of them to do so.

## **209 Hearing and determination of objections**

- (1) If an objection is made under section 208 above within the period there specified, and is not withdrawn, the street works authority may, after the expiration of that period, apply to a magistrates' court to appoint a time for hearing and determining all objections so made within that period, and shall serve on the objectors notice of the time and place so appointed.
- (2) At the hearing the court shall hear and determine the objections in the same manner as nearly as may be as if the authority were proceeding summarily against the objectors to enforce payment of a sum of money summarily recoverable.

The court may quash in whole or in part or may amend the resolution of approval, specification, plans, sections, estimate and provisional apportionment, or any of them, on the application either of an objector or of the authority, and may also, if it thinks fit, adjourn the hearing and direct further notices to be given.

- (3) The costs of any proceedings before a magistrates' court in relation to objections under the private street works code are in the discretion of the court, and the court may, if it thinks fit, direct that the whole or a part of any costs ordered to be paid by an objector or objectors are to be paid in the first instance by the authority, and charged as part of the expenses of the works on the premises of the objector, or, as the case may be, on the premises of the objectors in such proportions as may appear just.

## **210 Power to amend specification, apportionment, etc.**

- (1) Subject to the provisions of this section, the street works authority may from time to time amend the specification, plans, sections, estimate and provisional apportionment for any street works proposed under section 205 above.
- (2) If the street works authority propose to amend the estimate so as to increase the amount of it, then, before the amendment is made, a notice containing the particulars specified in paragraph 6 of Schedule 16 to this Act shall—
  - (a) be published once in each of 2 successive weeks in a local newspaper circulating in the area of the street works authority, and
  - (b) be posted in a prominent position in or near to the street to which the resolution of approval relates once at least in each of 3 successive weeks, and
  - (c) within 7 days from the date of the first publication under paragraph (a) above, be served on the owners of the premises shown in the provisional apportionment as liable to be charged;

and, during one month from the said date, a document certified by the proper officer of the council giving details of the amendment of the estimate and of the consequential amendment of the provisional apportionment shall be kept deposited and open to inspection free of charge at all reasonable hours at the offices of the street works authority and also, in the case of a street outside Greater London, at the offices of the council of the district in which the street concerned is situated.

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- (3) Where a notice is served on an owner of premises under subsection (2)(c) above it shall be accompanied by a statement of the sum apportioned on those premises by the provisional apportionment as proposed to be amended.
- (4) Within one month from the date of the first publication of a notice under subsection (2) (a) above, objections may be made and, if made, shall be heard and determined in like manner, and subject to the like provisions with respect to the persons entitled to be heard and otherwise, as objections under section 208 above.

## **211 Final apportionment and objections to it**

- (1) When any street works to be executed under the private street works code have been completed, and the expenses of them ascertained, the proper officer of the council shall make a final apportionment by dividing the expenses in the same proportions as those in which the estimated expenses were divided in the original or amended provisional apportionment, as the case may be, and notice of the final apportionment shall be served on the owners of the premises affected by it.
- (2) Within one month from the date on which notice of the final apportionment is served on him, the owner of any premises shown in the apportionment as liable to be charged may, by notice to the authority, object to the apportionment on the following grounds, or any of them:—
  - (a) that there has been an unreasonable departure from the specification, plans and sections ;
  - (b) that the actual expenses have without sufficient reason exceeded the estimated expenses by more than 15 per cent.;
  - (c) that the apportionment has not been made in accordance with this section

Objections under this section shall be determined in the like manner, and subject to the like provisions with respect to the persons entitled to be heard and otherwise, as objections to the provisional apportionment.
- (3) The final apportionment, subject to any amendment made to it by a court on the hearing of objections to it under this section, is conclusive for all purposes.

## **212 Recovery of expenses and charge thereof on premises**

- (1) A street works authority may from time to time recover from the owner for the time being of any premises in respect of which any sum is due for expenses of street works the whole or any portion of that sum together with interest at such reasonable rates as the authority may determine from the date of the final apportionment.
- (2) The sum apportioned on any premises by the final apportionment or, as the case may be, by that apportionment as amended by a court, together with interest from the date of the final apportionment is, until recovered, a charge on the premises and on all estates and interests therein.
- (3) A street works authority, for the purpose of enforcing a charge under subsection (2) above before it is registered under the Local Land Charges Act 1975, have the same powers and remedies under the Law of Property Act 1925 and otherwise as if they were mortgagees by deed having powers of sale and lease and of appointing a receiver.
- (4) A street works authority may by order declare the expenses apportioned on any premises by a final apportionment made by the proper officer of the council or, as the

case may be, by that apportionment as amended by a court, to be payable by annual instalments within a period not exceeding 30 years, together with interest from the date of the final apportionment; and any such instalment and interest, or any part thereof, may be recovered from the owner or occupier for the time being of the premises.

Schedule 13 to this Act applies in relation to any sum paid by an occupier of premises under this subsection.

### **213 Power for limited owners to borrow for expenses**

The owners of any premises, if they are persons who under the Compulsory Purchase Act 1965 are empowered to sell and convey or release lands, may charge those premises with—

- (a) such sum as may be necessary to defray the whole or a part of any expenses which the owners of, or any other person in respect of, those premises for the time being are liable to defray under the private street works code, and
- (b) the expenses of making such a charge;

and, for securing the repayment of that sum with interest, may mortgage the premises to any person advancing that sum so, however, that the principal due on any such mortgage shall be repaid by equal yearly or half-yearly payments within 20 years.

### **214 Financial provisions**

- (1) A street works authority shall keep separate accounts of all money expended and recovered by them in the execution of the private street works code.
- (2) A street works authority may from time to time borrow money for the purpose of providing temporarily for expenses of street works in private streets.
- (3) If the whole or a part of a loan raised in respect of expenses of street works is outstanding at the date when any sum is recovered in respect of the expenses of those street works under section 212 above, the sum so recovered shall be applied in repayment of the loan.

### **215 Exemption for place of public religious worship**

- (1) The incumbent or minister, or trustee, of a place of public religious worship is not liable to expenses of street works under the private street works code as the owner of that place, or of a churchyard or burial ground attached to it, and the proportion of expenses in respect of which an exemption is allowed under this section shall be borne by the street works authority.
- (2) No such expenses as aforesaid are to be deemed—
  - (a) to be a charge on such a place, or churchyard or burial ground, or
  - (b) to subject such a place, or churchyard or burial ground, to distress, execution or other legal process.

### **216 Certain railways and canals not to be chargeable with expenses**

- (1) No railway undertakers or canal undertakers shall be deemed to be owners or occupiers for the purposes of the private street works code of land upon which a street wholly or partly fronts if the land has no direct communication with the street and at the time

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of the laying out of the street was used solely as part of their line of railway, canal, or siding, station, towing path, or works—

- (a) by the undertakers, or
  - (b) in a case where the rights of other railway or canal undertakers in respect of the land under section 22 of the Private Street Works Act 1892, are vested in the undertakers, by those other railway undertakers or canal undertakers.
- (2) The amount of any expenses incurred by a street works authority under the private street works code which, but for subsection (1) above, the undertakers would be liable to pay shall be paid to the authority by the owners of the other premises included in the final apportionment in such proportion as may be settled by the proper officer of the council.
- (3) If the undertakers subsequently make a communication with the street, they shall pay to the authority the amount of the expenses which, but for subsection (1) above, the undertakers or such other undertakers as aforesaid would in the first instance have been liable to pay, and the authority shall divide among the owners for the time being of the other premises included in the final apportionment the amount so paid by the undertakers, less the costs and expenses attendant upon the division, in such proportion as may be settled by the proper officer of the council.
- (4) This section does not apply to a street existing at the date when the Private Street Works Act 1892 or the code of 1892 under the Highways Act 1959, as the case may be, first became applicable in the area in which the street is situated.

#### **217 Objections only to be made as provided by private street works code**

No objection which could be made under any provision of the private street works code shall be made in any proceeding or manner otherwise than as provided by that code.

#### **218 Saving for Thames Water Authority and Port of London Authority**

Nothing in the private street works code affects property or works of the Thames Water Authority on the shores of the river Thames, or of the Port of London Authority on those shores, or renders either of those authorities liable to charges in respect of any such property or works.

#### *The advance payments code*

#### **219 Payments to be made by owners of new buildings in respect of street works**

- (1) Subject to the provisions of this section, where—
- (a) it is proposed to erect a building for which plans are required to be deposited with the local authority in accordance with building regulations, and
  - (b) the building will have a frontage on a private street in which the street works authority have power under the private street works code to require works to be executed or to execute works,

no work shall be done in or for the purpose of erecting the building unless the owner of the land on which it is to be erected or a previous owner thereof has paid to the street works authority, or secured to the satisfaction of that authority the payment to them of, such sum as may be required under section 220 below in respect of the cost of street works in that street.



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- (2) If work is done in contravention of subsection (1) above, the owner of the land on which the building is to be erected and, if he is a different person, the person undertaking the erection of the building is guilty of an offence and liable to a fine not exceeding £100, and any further contravention in respect of the same building constitutes a new offence and may be punished accordingly.

Proceedings under this subsection shall not be taken by any person other than the street works authority

- (3) Where the person undertaking the erection of the building is not the owner of the land on which it is to be erected and is charged with an offence under subsection (2) above, it shall be a defence for him to prove that he had reasonable grounds for believing that the sum required under section 220 below had been paid or secured by the owner of the land in accordance with subsection (1) above.

- (4) This section does not apply—

- (a) where the owner of the land on which the building is to be erected will be exempt, by virtue of a provision in the private street works code, from liability to expenses incurred in respect of street works in the private street in question;
- (b) where the building proposed to be erected will be situated in the curtilage of, and be appurtenant to, an existing building;
- (c) where the building is proposed to be erected in a parish or community and plans for the building were deposited with the district council or, according to the date of deposit, the rural district council before the date on which the New Streets Act 1951, or the advance payments code (either in this Act or in the Highways Act 1959) was applied in the parish or community or, as the case may require, in the part of the parish or community in which the building is to be erected ;
- (d) where an agreement has been made by any person with the street works authority under section 38 above providing for the carrying out at the expense of that person of street works in the whole of the street or a part of the street comprising the whole of the part on which the frontage of the building will be, and for securing that the street or the part thereof, on completion of the works, will become a highway maintainable at the public expense ;
- (e) where the street works authority, being satisfied that the whole of the street or such a part thereof as aforesaid is not, and is not likely within a reasonable time to be, substantially built-up or in so unsatisfactory a condition as to justify the use of powers under the private street works code for securing the carrying out of street works in the street or part thereof, by notice exempt the building from this section;
- (f) where the street works authority, being satisfied that the street is not, and is not likely within a reasonable time to become, joined to a highway maintainable at the public expense, by notice exempt the building from this section;
- (g) where the whole street, being less than 100 yards in length, or a part of the street not less than 100 yards in length and comprising the whole of the part on which the frontage of the building will be, was on the material date built-up to such an extent that the aggregate length of the frontages of the buildings on both sides of the street or part constituted at least one half of the aggregate length of all the frontages on both sides of the street or part;
- (h) where (in a case not falling within paragraph (g) above) the street works authority, being satisfied that the whole of the street was on the material date substantially built-up, by notice exempt the building from this section;

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- (i) where the building is proposed to be erected on land belonging to, or in the possession of—
  - (i) the British Railways Board, the British Transport Docks Board, the British Waterways Board, the London Transport Executive, the National Freight Corporation (as far as included in this paragraph by paragraph 15(a) of Schedule 23 to this Act) or any wholly-owned subsidiary (within the meaning of the Transport Act 1968) or joint subsidiary (within the meaning of section 51(5) of that Act) of any of those bodies;
  - (ii) the council of a county, district or London borough, the Greater London Council or the Common Council;
  - (iii) the Commission for the New Towns or a new town development corporation;
- (j) where the building is to be erected by a company the objects of which include the provision of industrial premises for use by persons other than the company, being a company the constitution of which prohibits the distribution of the profits of the company to its members, and the cost of the building is to be defrayed wholly or mainly by a government department ;
- (k) where the street works authority, being satisfied—
  - (i) that more than three-quarters of the aggregate length of all the frontages on both sides of the street, or of a part of the street not less than 100 yards in length and comprising the whole of the part on which the frontage of the building will be, consists, or is at some future time likely to consist, of the frontages of industrial premises, and
  - (ii) that their powers under the private street works code are not likely to be exercised in relation to the street, or to that part of it, as the case may be, within a reasonable time,

by resolution exempt the street, or that part of it, from this section.

- (5) Where a sum has been paid or secured under this section by the owner of the land in relation to a building proposed to be erected on it, and thereafter a notice is served under subsection (4) above exempting the building from this section, or a resolution is passed under paragraph (k) of that subsection exempting the street or part of a street on which the building will have a frontage from this section, the street works authority shall refund that sum to the person who is for the time being owner of the land or shall release the security, as the case may be.

Where the said sum was paid, and after the payment but before the service of the said notice or the passing of the said resolution, as the case may be, the land in respect of which it was paid was divided into 2 or more parts each having a frontage on the private street in question, the sum is to be treated for the purposes of this subsection as apportioned between the owners of the land according to their respective frontages.

- (6) For the purposes of this section " the material date " is—
- (a) in relation to a building proposed to be erected in an area which before 1st April 1974 was a rural district or a contributory place within a rural district, the date on which the New Streets Act 1951 or the advance payments code (either in this Act or in the Highways Act 1959) was applied in that area;
  - (b) in relation to a building proposed to be erected any where else, 1st October 1951.

## **220 Determination of liability for, and amount of, payments**

- (1) In a case to which section 219 above applies the street works authority shall, within 6 weeks from the passing of any required plans relating to the erection of a building deposited with them or, in a case to which subsection (2) below applies, with the district council, serve a notice on the person by or on whose behalf the plans were deposited requiring the payment or the securing under section 219 above of a sum specified in the

In this subsection and subsection (2) below " required plans " means plans required to be deposited with the local authority in accordance with building regulations.

- (2) Where (outside Greater London) the advance payments code is in force in the whole or any part of a district, the district council, in any case to which section 219 above may be applicable, shall within one week from the date of the passing of any required plans deposited with them relating to the erection of a building in an area in which that code is in force inform the street works authority that the plans have been passed.
- (3) Subject to the provisions of this section, the sum to be specified in a notice under subsection (1) above is such sum as, in the opinion of the street works authority, would be recoverable under the private street works code in respect of the frontage of the proposed building on the private street if the authority were then to carry out such street works in the street as they would require under that code before declaring the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense.

In this subsection a reference to a street does not include a reference to a part of a street, except to a part which the street works authority think fit to treat as constituting a separate street for the purposes of this subsection and which comprises the whole of the part on which the frontage of the building will be.

- (4) If, at any time after the service of a notice under subsection (1) above, the street works authority—
- (a) are of opinion that the sum specified in the notice exceeds such sum as in their opinion would be recoverable as mentioned in subsection (3) above if they were then to carry out such street works as are so mentioned, or
  - (b) are of opinion that no sum would be so recoverable,

they may, by a further notice, served on the person who is for the time being owner of the land on which the building is to be, or has been, erected, substitute a smaller sum for the sum specified in the notice served under subsection (1) above or, as the case may be, intimate that no sum falls to be paid or secured.

This subsection does not apply where a sum has been paid or secured in compliance with a notice served under subsection (1) above and the case is one in which the authority have power to make a refund or release under section 221(1) below.

- (5) Where, under a local Act, the erection of buildings on land having a frontage on a new street is prohibited until works for the construction or sewerage of the street have been carried out in accordance with byelaws, the amount of the sum to be specified in a notice served under this section shall be calculated as if those works had been carried out.
- (6) Where a notice is served on any person under this section (other than a notice intimating that no sum falls to be paid or secured) that person or, if he is a different person, the owner of the land on which the building is to be, or has been, erected,

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may, not later than one month from the date of the service of the notice, appeal to the Minister and the Minister may substitute a smaller sum for the sum specified by the street works authority.

On an appeal under this subsection, the Minister shall give the appellant an opportunity of being heard before a person appointed by the Minister.

- (7) Where a sum has been paid or secured in compliance with a notice served under subsection (1) above and a notice is subsequently served under subsection (4) above substituting a smaller sum for the sum specified in the first-mentioned notice or intimating that no sum falls to be paid or secured, the street works authority—
- (a) if the sum was paid, shall refund the amount of the excess or, as the case may be, the whole sum to the person who is for the time being owner of the land on which the building is to be, or has been, erected;
  - (b) if the sum was secured and the person whose property is security for the payment of it is for the time being owner of that land, shall release the security to the extent of the excess or, as the case may be, the whole security;
  - (c) if the sum was secured and the person whose property is security for the payment of it is not for the time being owner of that land, shall pay to that owner an amount equal to the excess or, as the case may be, the whole sum, and are entitled to realise the security for the purpose of recovering the amount so paid.
- (8) Where land in respect of which a sum has been paid or secured in compliance with a notice under subsection (1) above is subsequently divided into 2 or more parts so that 2 or more owners would, if street works were carried out, incur liability in respect of it, the sum is to be treated as apportioned between those owners according to their respective frontages and, if the sum was secured and the security is the property of one only of those owners, the street works authority—
- (a) are required under subsection (7)(b) above to release the security only to the extent of the amount apportioned to that owner, and
  - (b) are entitled to realise the security for the purpose of recovering the amount or amounts paid to the other owner or owners under subsection (7)(c) above.
- (9) Where a security is realised for the purpose of recovering an amount paid by a street works authority under subsection (7)(c) above, and the sum produced by realising the security exceeds the amount so paid, the amount of the excess shall be held by the authority and dealt with under the advance payments code as if it had been an amount paid under section 219 above on the date on which the security was realised.

## **221 Refunds etc. where work done otherwise than at expense of street works authority**

- (1) Where—
- (a) a sum has been paid or secured under section 219 above by the owner of land in respect of the cost of street works to be carried out in the private street on which that land has a frontage, and
  - (b) any street works are subsequently carried out in the private street in respect of that frontage to the satisfaction of but otherwise than at the expense of the street works authority,

the authority may refund to the person at whose expense the works are carried out the whole or such proportion of that sum or, as the case may be, release the whole or such part of the security, as in their opinion represents the amount by which the liability of

the owner of that land in respect of street works has been reduced as a result of the carrying out of the street works in question.

Where the person at whose expense the works are carried out is not the person who is for the time being owner of that land no refund or release shall be made under this subsection unless the owner has been notified of the proposal to make the refund or release and has been afforded an opportunity of making representations to the street works authority in relation to it.

- (2) Where any land which has a frontage on a private street, and in respect of which a sum has been paid or secured under section 219 above, is subsequently divided into 2 or more parts each having a frontage on that private street, the sum is to be treated as apportioned between the owners thereof according to their respective frontages, and subsection (1) above has effect accordingly.
- (3) Where—
  - (a) a sum has been paid or secured under section 219 above by the owner of land in respect of the cost of street works to be carried out in the private street on which that land has a frontage, and
  - (b) thereafter the street works authority enter into an agreement with any person under section 38 above providing for the carrying out at the expense of that person of street works in respect of that frontage,that agreement may also provide for the refund of the said sum or a part of it either without interest or with interest at such rate as may be specified in the agreement, or for the release of the whole or a part of the security, as the case may be.

## **222 Sums paid or secured to be in discharge of further liability for street works**

- (1) Where a sum has been paid or secured under section 219 above by the owner of land in respect of the cost of street works to be carried out in the private street on which that land has a frontage, the liability of that owner or any subsequent owner of that land in respect of the carrying out of street works in that street under the private street works code ("the street works liability ") is, as respects that frontage, to be deemed to be discharged to the extent of the sum so paid or secured.
- (2) If, when the street is declared to be a highway which for the purposes of this Act is a highway maintainable at the public expense, the said sum is found to exceed the total street works liability in respect of that frontage or there is no such liability because the street was not made up at the expense of the street works authority, the street works authority—
  - (a) if the sum was paid, shall refund the amount of the excess or, as the case may be, the whole sum to the person who is for the time being owner of the land;
  - (b) if the sum was secured and the person whose property is security for the payment of it is for the time being owner of the land, shall release the security to the extent of the excess or, as the case may be, the whole security;
  - (c) if the sum was secured and the person whose property is security for the payment of it is not for the time being owner of the land, shall pay to that owner an amount equal to the excess or, as the case may be, the whole sum, and are entitled to realise the security for the purpose of recovering the amount so paid.
- (3) Where land in respect of which a sum has been paid or secured under section 219 above is subsequently divided into 2 or more parts so that 2 or more owners incur or

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would incur the street works liability, the sum is to be treated as apportioned between those owners according to their respective frontages, and if the sum was secured and the security is the property of one only of those owners the street works authority—

- (a) are required under subsection (2)(b) above to release the security only to the extent to which the amount apportioned to that owner exceeds his street works liability or, as the case may be, to the extent of the whole of that amount, and
  - (b) are entitled to realise the security for the purpose of recovering the amount or amounts paid to the other owner or owners under subsection (2)(c) above.
- (4) Where any refund, release or payment has been made under section 220(7) above, or under section 221 above, the foregoing provisions of this section have effect as if for references therein to a sum paid or secured there were substituted references to any sum remaining paid or secured.

### **223 Determination to cease to have effect when plans not proceeded with**

- (1) Where, on the occasion of the deposit of plans for the erection of a building, the amount to be paid or secured under section 219 above has been determined under section 220 above, and subsequently—
- (a) the local authority, under section 66 of the Public Health Act 1936, declare the deposit of the plans to be of no effect, or
  - (b) before any work has been done in or for the purpose of erecting the building the owner gives notice to the local authority of his intention not to proceed with the building,

the said determination and any payment made or security given in accordance with it are, unless there have already been carried out or commenced in the street under the private street works code street works in respect of which the owner of the land on which the building was to be erected is liable, of no effect for the purposes of this Part of this Act.

- (2) Where by virtue of subsection (1) above a determination is of no effect and a sum has been paid or security given in accordance with it, the street works authority—
- (a) if the sum was paid, shall refund it to the person who is for the time being owner of the land ;
  - (b) if the sum was secured and the person whose property is security for the payment of it is for the time being owner of the land, shall release the security;
  - (c) if the sum was secured and the person whose property is security for the payment of it is not for the time being owner of the land, shall pay to that owner an amount equal to the said sum, and are entitled to realise the security for the purpose of recovering the amount so paid.
- (3) Where land in respect of which a sum has been paid or secured as mentioned in subsection (2) above is subsequently divided into 2 or more parts so that 2 or more owners would, if street works were carried out, incur liability in respect thereof, the sum is to be treated as apportioned between those owners according to their respective frontages and, if the sum was secured and the security is the property of one only of those owners, the street works authority—
- (a) are required under subsection (2)(b) above to release the security only to the extent of the amount apportioned to that owner, and
  - (b) are entitled to realise the security for the purpose of recovering the amount or amounts paid to the other owner or owners under subsection (2)(c) above.

- (4) Where any refund, release or payment has been made under section 220(7) above, or under section 221 above, subsections (2) and (3) above have effect as if for references in those subsections to a sum paid and security given there were substituted references to, respectively, any sum remaining paid and any remaining security.
- (5) Where—
- (a) a person notifies the local authority in accordance with subsection (1)(b) above of his intention not to proceed with the building and by reason thereof a determination is of no effect, and
  - (b) subsequently notice is given to the local authority by the owner of the land that he intends to proceed with the building in accordance with the plans as originally deposited,
- the notice to be served under subsection (1) of section 220 above by the street works authority shall, in lieu of being served as required by that subsection, be served on him within one month from the date of the service of the notice of his intention to proceed with the building, and section 220 has effect accordingly.
- (6) Where the advance payments code is in force in the whole or any part of a district, the district council, in any case to which this section may be applicable, shall within one week inform the county council of the happening of any of the following events:—
- (a) the making of any declaration that the deposit of plans relating to the erection of a building is of no effect,
  - (b) the giving of any notice by an owner of his intention not to proceed with a building, and
  - (c) the giving of any notice by an owner of his intention to proceed with the building in accordance with the plans as originally deposited.

## **224 Certain matters to be local land charges**

- (1) The matters specified in subsection (2) below are local land charges.
- (2) The matters referred to in subsection (1) above are:—
- (a) notices served by a street works authority under section 220(1) or (4) above ;
  - (b) determinations by the Minister under section 220(6) above;
  - (c) payments made and securities given under section 219 above;
  - (d) notices served under subsection (4)(e), (f) or (h) of section 219 above exempting a building from that section;
  - (e) resolutions passed under subsection (4)(k) of section 219 above exempting a street or a part of a street from that section ; and
  - (f) refunds made and releases of securities granted under section 221, 222 or 223 above.
- (3) As respects any matter that is a local land charge by virtue of this section, the street works authority for the street concerned are, notwithstanding anything in section 5(4) of the Local Land Charges Act 1975, to be treated as the originating authority for the purposes of that Act.

## **225 Interest on sums paid under advance payments code**

- (1) Any sum paid by the owner of land to a street works authority under section 219 above, in so far as it continues to be held by the authority, carries simple interest at

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the appropriate rate from the date of payment until such time as the sum or a part of it remaining so held—

- (a) falls to be set off under section 222 above against the liability of the owner of the land in respect of the carrying out of street works; or
- (b) falls to be refunded in full under the provisions of the advance payments code; and the interest shall be held by the authority until that time and dealt with under those provisions as if it formed part of the said sum.

This subsection does not apply to any sum in so far as it is repaid under any such agreement as is referred to in section 221(3) above.

- (2) For the purposes of the advance payments code interest on any sum held by a street works authority shall be calculated in respect of each financial year during which it accrues at the appropriate rate prevailing at the commencement of that financial year.
- (3) In this section " the appropriate rate " means the rate at the material time determined by the Treasury in respect of local loans for periods of 10 years on the security of local rates (being a determination under section 6(2) of the National Loans Act 1968, and subject to any relevant direction under the said section 6(2)).

### *General*

#### **226 Power to vary width of carriageway and footway on making up a private street**

- (1) A street works authority may include in street works done in relation to a street under the private street works code a variation of the relative widths of the carriageway and of the footway or footways of the street.
- (2) No greater charge shall be imposed on a person by reason of any such variation than could have been imposed in respect of a carriageway or footway of the width prescribed for a new street of the same class by a byelaw or enactment with respect to the width of new streets which applied to the street when it was laid out; and any sum in excess of that charge shall be borne by the authority.

#### **227 Widening of highway comprised in private street**

Where, in the course of the execution of street works under the private street works code in a private street which consists of or comprises a highway, the street works authority widen the highway under Part V of this Act, the widening does not relieve any person of liability for expenses of the street works, and the amount of that liability is not greater or less than it would have been if the highway had not been widened.

#### **228 Adoption of private street after execution of street works**

- (1) When any street works have been executed in a private street, the street works authority may, by notice displayed in a prominent position in the street, declare the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense, and on the expiration of one month from the day on which the notice was first so displayed the street shall, subject to subsections (2) to (4) below, become such a highway.
- (2) A street shall not become a highway maintainable at the public expense by virtue of subsection (1) above if, within the period there mentioned, the owner of the street



or, if more than one, the majority in number of the owners of the street, by notice to the authority object; but within 2 months from the expiration of that period the street works authority may apply to a magistrates' court for an order overruling the objection.

- (3) If an order overruling an objection under subsection (2) above is made pursuant to an application under that subsection and no appeal against the order is brought within the time limited for such an appeal, the street or part in question shall become a highway maintainable at the public expense on the expiration of that time.
- (4) Where such an order is made or refused and an appeal, or an appeal arising out of that appeal, is brought against or arises out of the order or refusal, then—
  - (a) if the final determination of the matter is in favour of the authority, or
  - (b) the appeal is abandoned by the objectors,the street shall become a highway maintainable at the public expense on that final determination or, as the case may be, on the abandonment of the appeal.
- (5) Notwithstanding anything in any other enactment or provision, for the purposes of this section the time for bringing or seeking leave for any appeal (including an application for certiorari) is 2 months from the date of the decision or of the conclusion of the proceedings appealed against, unless apart from this subsection the time is less than that period; and no power, however worded, to enlarge any such time is exercisable for the purposes of this section.
- (6) Where street works have been executed in a part only of a street (other than a part extending for the whole of the length of the street), subsections (1) to (4) above have effect as if for references in those subsections to the street there were substituted references to the length of the street which constitutes or comprises that part.
- (7) If all street works (whether or not including lighting) have been executed in a private street to the satisfaction of the street works authority, then, on the application of the majority in rateable value of the owners of premises in the street, the street works authority shall, within the period of 3 months from the date of the application, by notice displayed in a prominent position in the street, declare the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense and thereupon the street shall become such a highway.

In this subsection a reference to a street does not include a reference to a part of a street.

## **229 Power of majority of frontagers to require adoption where advance payment made**

- (1) Where a majority in number of the owners of land having a frontage on a built-up private street, or as many of those owners as have between them more than half the aggregate length of all the frontages on both sides of the street, by notice request the street works authority to exercise their powers under the private street works code so as—
  - (a) to secure the carrying out of such street works in that street as the street works authority require under that code before declaring the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense, and
  - (b) to declare the street to be such a highway,the street works authority shall proceed to exercise their powers accordingly.

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- (2) Subsection (1) above does not apply unless, in at least one case, a payment has been made or security has been given under section 219 above by the owner of land having a frontage on the street and the payment has not been refunded, or the security released or realised, under subsection (5) of that section, or under section 223 above.
- (3) For the purposes of this section a street is to be deemed to be built-up if the aggregate length of the frontages of the buildings on both sides of the street constitutes at least one half of the aggregate length of all the frontages on both sides of the street.
- (4) This section does not apply in relation to a part of a street unless it is a part not less than 100 yards in length which the owners of land having a frontage on that part of the street elect to treat as constituting a street for the purposes of this section.

### **230 Urgent repairs to private streets**

- (1) Where repairs are needed to obviate danger to traffic in a private street the street works authority may by notice require the owners of the premises fronting the street to execute, within such time as may be specified in the notice, such repairs as may be so specified.
- (2) Where such repairs as are mentioned in subsection (1) above are needed in a part only of the street (other than a part extending for the whole of the length of the street), a requirement under that subsection shall be made only of the owners of the premises fronting the length of the street which constitutes or comprises that part.
- (3) A person aggrieved by a requirement of a street works authority under this section may appeal to a magistrates' court.
- (4) Subject to any order made on appeal and to subsection (5) below, if, within the time specified in a notice served under subsection (1) above, the repairs required thereby have not been executed, the authority may execute the repairs, and may recover the expenses reasonably incurred by them in so doing from the owners in default, the expenses being apportioned between those owners according to the extent to which their respective premises front the street.
- (5) If, within the time so specified, the majority in number or rateable value of owners of premises in the street by notice require the street works authority to proceed in relation to the street under the private street works code, the street works authority shall so proceed, and on the completion of the necessary works shall forthwith declare the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense; and thereupon the street shall become such a highway.
- (6) Where a requirement under subsection (1) above has been made in respect of a part only of a street (other than a part extending for the whole of the length of the street), subsection (5) above has effect as if for references therein to the street there were substituted references to the length of the street which constitutes or comprises that part.
- (7) Without prejudice to the foregoing provisions of this section or to any other enactment for the time being in force relating to private street works, the street works authority and also, in the cases mentioned below, the district council may, in any street that is not a highway maintainable at the public expense, execute such repairs as are in their opinion urgently required to prevent or remove danger to persons or vehicles in the street.

The cases in which the district council may act under this subsection are those in which the street concerned is a footpath, bridleway or any such road as is mentioned in section 42(2)(c) above (urban roads).

- (8) The power of a district council under subsection (7) above is subject to Part I of Schedule 7 to this Act.

### **231 Compensation for damage caused by execution of street works**

A street works authority shall pay compensation to any person who sustains damage by reason of the execution of street works by the authority under the private street works code.

### **232 Power to treat as a private street land designated for purposes of this section by development plan**

- (1) The provisions of this section apply in relation to land defined by a development plan—
- (a) as the site of a proposed road, or
  - (b) as land required for the widening of an existing road which is of less than byelaw width,
- and designated by the plan as land to which this section applies.

- (2) Where any land is so defined and designated as aforesaid, the prospective street works authority, subject to subsection (3) below, may at any time by order declare the land (together with any land forming part of any such existing road as aforesaid) to be a private street, and thereupon the land is to be deemed; to have been dedicated to the use of the public as a highway and to be a private street for the purposes of this Part of this Act.

The reference in this subsection to the prospective street works authority is a reference to the council who will be the street works authority as respects the private street constituted by the council's declaration.

- (3) No order shall be made by the authority under subsection (2) above in relation to land which has not been acquired by them at the date of the order (other than land forming part of any such existing road as aforesaid) except with the consent of all persons interested in the land.
- (4) In relation to land which is deemed to be a private street by virtue of a declaration under subsection (2) above the provisions of the private street works code apply subject to such exceptions, adaptations and modifications as may be prescribed by regulations made by the Minister of Transport.
- (5) Regulations made for the purposes of subsection (4) above shall make provision for securing—
- (a) that the amount of the expenses incurred in the execution of street works charged under the private street works code on the owners of adjoining land does not exceed the amount which would, at the date of the commencement of the works, have been the cost of the execution of street works in the course of the construction, widening or improvement if it had been carried out—
    - (i) so as to comply with the provisions of any byelaws, regulations or other enactments in force in the area, and

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- (ii) as respects matters for which no such provision is made, so as to comply with such requirements as would have been imposed by the street works authority at the date of the commencement of the works as a condition of declaring the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense ;
  - (b) that as soon as the street has been made up or widened by or to the satisfaction of the street works authority it becomes a highway maintainable at the public expense;
  - (c) that no expenses incurred in the execution of street works are recoverable against agricultural land or buildings until the land or buildings cease to be agricultural land or buildings ; and
  - (d) that no expenses incurred in the execution of street works for the purpose of making a new street are recoverable in respect of any land (whether the site of a building or not) unless and until access is provided for and used by persons or vehicles from that land to the new street.
- (6) Regulations made for the purposes of subsection (4) above may provide—
- (a) for the inclusion in the expenses recoverable as aforesaid in respect of street works carried out by the street works authority of any expenses incurred by a local authority after the date on which the land is defined and designated as mentioned in subsection (1) above, and before it is declared to be a private street under subsection (2) above, in the construction of sewers in or under the land ; and
  - (b) for authorising the street works authority to enter on any land adjoining the street for the purpose of executing street works on land comprised in the street.
- (7) A highway constructed by a local highway authority on land deemed to be a private street by virtue of a declaration under subsection (2) above is not by virtue only of section 36(2)(a) above for the purposes of this Act a highway maintainable at the public expense.
- (8) The provisions of this section, and any restrictions or powers imposed or conferred by it in relation to land, apply and may be exercised in relation to any land notwithstanding that provision is made for authorising or regulating any development of the land by any enactment in force on 6th August 1947 or by any local Act passed at any time during the Session of Parliament held during the regnal years 10 and 11 Geo. 6 (that date and that Session being, respectively, the date of passing of the Town and Country Planning Act 1947 and the Session during which that Act was passed, and that Act, now superseded by the Town and Country Planning Act 1971, being the Act that first made provision for development plans).
- (9) In this section—
- " byelaw width ", in relation to a road, means the width required by any byelaws, regulations or other enactments relating to the construction of streets in the area in which the road is situated ;
  - " construction " and " improvement", in relation to a street, include the planting, laying out, maintenance and protection of trees, shrubs and grass verges in and beside the street;
  - " development plan " has the meaning provided by section 20 of the Town and Country Planning Act 1971 and " local authority " has the same meaning as in that Act.

### **233 Appeal to Minister under private street works code**

- (1) Subject to section 217 above, a person aggrieved by a decision of a street works authority in a case where the authority are empowered by section 212 above to recover any expenses incurred by them may appeal to the Minister, who may make such decision as to him seems equitable; and the decision shall be final and binding on all parties.
- (2) The time within which an appeal may be brought under subsection (1) above is 21 days from the date on which a demand for the payment of the expenses, or any part of them, was first served on the person wishing to appeal.
- (3) A person appealing under subsection (1) above shall in his appeal state the grounds thereof, and shall serve a copy of his appeal on the street works authority; and any proceedings commenced for the recovery of any such expenses as aforesaid by the street works authority shall, on the service on them of the copy of the appeal, be stayed.
- (4) The Minister may, if he thinks fit, by his decision direct the authority to pay to the person so proceeded against such sum as he may consider to be a just compensation for the loss or damage sustained by that person by reason of the proceedings.

### **234 Provisions as to private street in area of more than one street works authority**

- (1) In a case where a part only of a private street is within the area of a street works authority, the authority may, with the consent of the street works authority in whose area any other part of the street is situated, and subject to subsection (3) below, resolve to treat that other part for the purposes of this Part of this Act as if it were within their own area.
- (2) Where the authority so resolve, then, without prejudice to the operation of any enactment not contained in this Part of this Act, this Part of this Act applies in relation to that other part of the street as if it, together with the premises fronting it, were within the area of the authority passing the resolution.
- (3) A street works authority shall not resolve under subsection (1) above to treat a part of a street as if it were within their own area if that part comprises a length of the street wholly outside that area.
- (4) In a case where a private street is within the area of a street works authority but premises fronting the street are wholly or partly outside that area, then, without prejudice to the operation of any enactment not contained in this Part of this Act, this Part of this Act applies in relation to that street as if those premises were wholly within the area of the authority.

In this subsection a reference to a street includes a reference to a length of the street but does not include a reference to any other part of it.

- (5) A resolution passed by a street works authority under subsection (1) above shall be published by advertisement in one or more local newspapers circulating within the area in which the street is situated and otherwise in such manner as the authority think sufficient for giving notice to all persons interested.

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### **235 Evasion of private street works expenses by owners**

- (1) Where a street works authority are empowered by section 212 above to recover any sum from the owner of any premises, and the authority are unable by the exercise of their powers (other than powers conferred by this section) to recover that sum, then if—
  - (a) the said premises were previously transferred by a person (" the transferor ") who at the time of the transfer was the owner of other premises adjoining those premises, and
  - (b) a magistrates' court is satisfied that the transfer was intended for the purpose of evading the payment of expenses of street works,the court may make an order under this section.
- (2) An order under this section shall provide that, to such extent as the court making the order may determine, the street works authority may recover the said sum, and, where that sum is payable under an order made under section 212(4) above or section 305(2) below, any further sums which may fall due under that order, from the transferor.
- (3) In this section " transfer " includes any disposal of land whether by way of sale, lease, exchange, gift or otherwise.

### **236 Contribution by street works authority to expenses of street works**

- (1) A street works authority may at any time resolve to bear the whole or a portion of the expenses of any street works in their area under the private street works code and where an authority so resolve the liabilities of the owners of premises in respect of those expenses are to be treated as discharged or as proportionately reduced, accordingly.
- (2) Without prejudice to their powers under subsection (1) above, a street works authority may at any time resolve to bear the whole or a portion of the expenses of any street works in their area under the private street works code which would otherwise be apportioned on, or to the owner of, any premises of which the rear or a flank fronts the street; and where an authority so resolve the liability of the owner of those premises in respect of those expenses is to be treated as discharged or reduced accordingly.

### **237 Power of street works authority to grant charging order**

- (1) Where a person has paid, or advanced money for, expenses which by section 212 above a street works authority are empowered to recover, that person may apply to the authority for a charging order, and the authority, on being satisfied as to the amount of the expenditure on private street works, and, in the case of an advance, as to the sum advanced, may make an order accordingly charging on the premises in respect of which the expenses are recoverable, and on all estates and interests therein, an annuity to repay the sum expended or advanced.
- (2) The annuity charged shall be such sum as the street works authority may determine in respect of every £100 of the amount of the expenditure and so in proportion in respect of any fraction of that amount, and shall commence from the date of the order and be payable by equal half-yearly payments for a term of 30 years to the person named in the order, his executors, administrators or assigns.
- (3) A person aggrieved by an order of a street works authority under subsection (1) above, or by the refusal of the authority to make an order under that subsection, may appeal to a magistrates' court.

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- (4) Schedule 13 to this Act applies in relation to any sum paid by an occupier of premises in respect of an annuity charged on those premises under this section.