



# Public Utilities Street Works Act 1950

1950 CHAPTER 39 14 Geo 6

An Act to enact uniform provisions for regulating relations as to apparatus in streets between authorities, bodies and persons having statutory powers to place and deal with apparatus therein, and those having the control or management of streets and others concerned in the exercise of such powers; to render such powers exercisable in land which abuts on a street and is destined for use for road purposes; to make further provision for regulating the closing or restriction of use of roads for the purposes of works and as to the use of alternative routes; and for purposes connected with the matters aforesaid. [26th October 1950]

## PART I

### THE STREET WORKS CODE

#### Modifications etc. (not altering text)

C3 Pt. I (ss. 1-20) excluded (16.3.1992) by [Avon Weir Act 1992 \(c. v\)](#), s. 6(3).

#### *Preliminary*

#### **1 Purposes of the street works code, and works the execution of which is to be regulated thereby.**

- (1) Sections three to fourteen of this Act and the First, Second and Third Schedules thereto (in this Act referred to as “the street works code”) shall have effect in relation to powers to which

this section applies, that is to say, any statutory power to execute undertakers’ works in a [<sup>F1</sup>street][<sup>F1</sup>road] except a power conferred for purposes of a railway undertaking or a tramway undertaking, with a view to—

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- (a) providing a uniform set of provisions for the protection of authorities, bodies and persons concerned in the mode of exercise of such powers as having the control or management of [<sup>F2</sup>streets][<sup>F2</sup>roads], or of sewers, drains or tunnels, transport undertakings or bridges; and
  - (b) enabling powers to which this section applies, so far as they are powers exercisable in a [<sup>F3</sup>street which is a maintainable highway or is prospectively a maintainable highway][<sup>F3</sup>public road or prospective public road], to be exercised, in accordance with the said code, in controlled land as defined in the First Schedule to this Act.
- (2) In this Act the expression “undertakers’ works” means works (including works executed or to be executed on behalf of the Crown) for any purposes other than road purposes, being works of any of the following kinds, that is to say—
- (a) Placing apparatus.  
Inspecting, maintaining, adjusting, repairing, altering or renewing apparatus.  
Changing the position of apparatus or removing it.
  - (b) Breaking up or opening a [<sup>F4</sup>street][<sup>F4</sup>road] or controlled land for the purposes of works mentioned in paragraph (a) of this subsection, and tunnelling or boring under a [<sup>F4</sup>street][<sup>F4</sup>road] or controlled land for those purposes, breaking up or opening a sewer, drain or tunnel for those purposes, and other works requisite for or incidental to those purposes.
- [<sup>F5X2</sup>(3) In this Act the expression “street” means (without prejudice to the provisions of subsection (1) of section thirty-eight of this Act) any length of a highway (other than a waterway), road, lane, footway, alley or passage, any square or court, and any length of land laid out as a way whether it is for the time being formed as a way or not, irrespective of whether the highway, road or other thing in question is a thoroughfare or not.
- (4) In this Act—
- (a) the expression “maintainable highway” means a highway [<sup>F6</sup>which for the purposes of the <sup>M1</sup>Highways Act 1980 is a highway maintainable at the public expense]; and
  - (b) references to a street that is prospectively a maintainable highway are to a street which, whether being a highway or not, is declared likely to become a maintainable highway in a declaration made by the [<sup>F7</sup>appropriate local authority][<sup>F7</sup>local highway authority] under the Second Schedule to this Act and registered in the register of local land charges thereunder.]
- [<sup>F5X2</sup>(3) In this Act the expression “road” means (without prejudice to section 38(1) of this Act) any way (other than a substitute road made under section 74(1) of the <sup>M2</sup>Roads (Scotland) Act 1984 or a waterway) whether or not there is over it a public right of passage and whether or not it is for the time being formed as a way; and the expression includes a square or court, and any part of a road.
- (4) In this Act—
- (a) the expression “public road” has the same meaning as in the Roads (Scotland) Act 1984; and
  - (b) references to a prospective public road are to a road which is declared likely to become a public road in a declaration made by the local roads authority under the Second Schedule to this Act and registered in the register kept by them under paragraph 2 of that Schedule.]

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(5) In this Act the expression “code-regulated works” means undertakers’ works executed or proposed to be executed—

- (a) in exercise of a power to which this section applies, being a power in relation to which the street works code has effect having regard to the provisions of section fifteen of this Act as to the time for the taking effect of that code in relation to different powers, and
- (b) either in a [<sup>F8</sup>street][<sup>F8</sup>road] in exercise of that power, or in controlled land in exercise of that power together with an authorisation given under the First Schedule to this Act,

but excluding works which were works in hand within the meaning of subsection (4) of the said section fifteen immediately before the time from which the street works code took effect in relation to that power.

#### Editorial Information

- X2** S. 1(3)(4) commencing “In this Act the expression “road”” substituted for s. 1(3)(4) commencing (S.) “In this Act the expression “street”” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(2\)\(c\)](#)

#### Textual Amendments

- F1** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(2\)\(a\)\(i\)](#)
- F2** Word “roads” substituted (S.) for word “streets” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(2\)\(a\)\(ii\)](#)
- F3** Words “public road or prospective public road” substituted (S.) for “street which is a maintainable highway or is prospectively a maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(2\)\(a\)\(iii\)](#)
- F4** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(2\)\(b\)](#)
- F5** S. 1(3)(4) commencing “In this Act the expression “road”” substituted (S.) for s. 1(3)(4) commencing “In this Act the expression “street”” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(2\)\(c\)](#)
- F6** Words substituted by virtue of [Highways Act 1980 \(c. 66, SIF 59\)](#), [Sch. 23 para. 22](#)
- F7** Words “local highway authority” substituted (E.W.) for words “appropriate local authority” by [Local Government Act 1972 \(c. 70, SIF 81:1\)](#), [Sch. 21 para. 98\(1\)](#)
- F8** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(2\)\(d\)](#)

#### Modifications etc. (not altering text)

- C4** S. 1 excluded by [Highways Act 1980 \(c. 66, SIF 59\)](#), [s. 181\(6\)](#)

#### Marginal Citations

- M1** [1980 c. 66\(59\)](#).
- M2** [1984 c. 54\(108\)](#).

## 2 Parties to proceedings under the street works code.

- (1) References in the street works code to an authority or managers concerned are, so far as regards works executed or proposed to be executed in a [<sup>F9</sup>street][<sup>F9</sup>road], to the following, that is to say—

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- [<sup>F10X3</sup>(a) the street authority if the street in question is a maintainable highway or is prospectively a maintainable highway, or the street managers if it is not;
- (b) if the works include the breaking up or opening of a public sewer in the street, the sewer authority;]
- [<sup>F10X3</sup>(a) the roads authority if the road is, or is prospectively, a public road, or the road managers if it is not;
- (b) if the works include the breaking up or opening in the road, of a sewer vested in a local authority, that authority;]
- (c) if the [<sup>F11</sup>street][<sup>F11</sup>road] is carried by or goes under a bridge vested in a transport authority, or crosses or is crossed by any other property held or used for the purposes of a transport undertaking, the transport authority; and
- (d) if the [<sup>F12</sup>street][<sup>F12</sup>road, not being a public road,] is carried by or goes under a bridge not vested as aforesaid, the bridge authority or managers.
- (2) References in the street works code to an authority or managers concerned are, so far as regards works executed or proposed to be executed in controlled land, to the following, that is to say—
- [<sup>F13X4</sup>(a) the street authority for the street on which that land abuts; and
- (b) if the works include the breaking up or opening of a public sewer in that land, the sewer authority.]
- [<sup>F13X4</sup>(a) the roads authority for the road on which that land abuts; and
- (b) if the works include the breaking up or opening in that land, of a sewer vested in a local authority, that authority.]
- (3) The said references do not include, either as regards works in a [<sup>F14</sup>street][<sup>F14</sup>road] or as regards works in controlled land, references to authorities, bodies or persons concerned as mentioned in paragraph (a) of subsection (1) of section one of this Act as having the control or management of sewers, drains or tunnels therein not being [<sup>F15</sup>public sewers][<sup>F15</sup>sewers vested in a local authority], but the provisions of section thirteen of this Act shall have effect for their protection.
- [<sup>F16X5</sup>(4) In this Act the expression “street authority” (used in relation to a street that is a maintainable highway or is prospectively a maintainable highway, and in relation to controlled land abutting on such a street) means—
- (a) where the street is a maintainable highway, the highway authority; or
- (b) where the street is prospectively a maintainable highway, the [<sup>F17</sup>appropriate local authority][<sup>F17</sup>local highway authority].]
- [<sup>F16X5</sup>(4) In this Act the expression “roads authority” used in relation to—
- (a) a public road or prospective public road, has the same meaning as in the Roads (Scotland) Act 1984;
- (b) controlled land, means the roads authority for the road on which that land abuts.]
- (5) In this Act the expression [<sup>F18</sup>“street managers” (used in relation to a street that is not a maintainable highway)][<sup>F18</sup>“road managers” (used in relation to a road that is not a public road)] means—
- (a) if there is an authority, body or person liable to the public to maintain or repair the [<sup>F19</sup>street][<sup>F19</sup>road], that authority, body or person; or
- (b) if there is no authority, body or person so liable, any authority, body or person having the management or control of the [<sup>F19</sup>street][<sup>F19</sup>road].

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- (6) Any reference in this Act to an authority or managers concerned includes a reference to an authority, body or person being such an authority or managers by virtue of functions exercised by them or him on behalf of the Crown.

#### Editorial Information

- X3** S. 2(1)(a)(b) commencing “the street authority” substituted (S.) for s. 2(1) commencing “the roads authority” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(a\)\(ii\)](#)
- X4** S. 2(2)(a)(b) commencing “the roads authority” substituted (S.) for s. 2(2)(a)(b) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(b\)](#)
- X5** S. 2(4) commencing “In this Act the expression “roads authority”” substituted (S.) for s. 2(4) commencing “In this Act the expression “roads authority”” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(d\)](#)

#### Textual Amendments

- F9** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(a\)\(i\)](#)
- F10** S. 2(1)(a)(b) commencing “the street authority” substituted (S.) for s. 2(1)(a)(b) commencing “the roads authority” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(a\)\(ii\)](#)
- F11** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(a\)\(iii\)](#)
- F12** Words “road, not being a public road,” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(a\)\(iv\)](#)
- F13** S. 2(2)(a)(b) commencing “the roads authority” substituted (S.) for s. 2(2)(a)(b) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(b\)](#)
- F14** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(c\)\(i\)](#)
- F15** Words “sewers vested in a local authority” substituted (S.) for words “public sewers” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(c\)\(ii\)](#)
- F16** S. 2(4) commencing “In this Act the expression “roads authority”” substituted (S.) for s. 2(4) commencing “In this Act the expression “roads authority”” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(d\)](#)
- F17** Words “local highway authority” substituted (E.W.) for words “appropriate local authority” by [Local Government Act 1972 \(c. 70, SIF 81:1\)](#), [Sch. 21 para. 98\(2\)](#)
- F18** Words “road managers” (used in relation to a road that is not a public road) substituted (S.) for words “street managers” (used in relation to a street that is not a maintainable highway) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(e\)\(a\)](#)
- F19** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(e\)\(b\)](#)

### *The street works code*

## 3 Settlement of a plan and section to be a condition of execution of major works.

- (1) Subject to the provisions of subsections (3) and (4) of this section, undertakers shall not execute any works to which this section applies until a plan and section thereof have been settled as mentioned in the next or the next but one succeeding section by agreement between the undertakers and each of the authorities or managers concerned or by arbitration, and for that purpose undertakers proposing to execute any such works in a [<sup>F20</sup>street][<sup>F20</sup>road] shall submit a plan and section thereof to each of the authorities or managers concerned.

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- (2) This section applies to all code-regulated works except—
- (a) inspecting, maintaining, adjusting or repairing apparatus;
  - (b) placing, altering renewing, changing the position of or removing a service pipe or service line or [<sup>F21</sup>overhead telecommunication apparatus] in or from a place not in a trunk road or a classified road, or in or from a place in such a road in so far as the works are to be executed elsewhere than in the carriageway of the road and so as not substantially to affect the traffic on the carriageway thereof;
  - (c) placing, elsewhere than in a [<sup>F22</sup>maintainable highway][<sup>F22</sup>public road], apparatus which is required only in connection with the doing of any building or other work on land adjacent to the [<sup>F22</sup>street][<sup>F22</sup>road] and is intended to be removed on the completion of the building or other work;
  - (d) any breaking up or opening (other than breaking up or opening a [<sup>F23</sup>public sewer][<sup>F23</sup>sewer vested in a local authority]), tunnelling or boring in so far as it is to be executed for the purposes of works falling within any of the preceding paragraphs, and any other works so far as requisite for or incidental to works so falling.
- (3) In the case of works to which this section applies being emergency works—
- (a) the undertakers may execute them without submitting a plan and section thereof under subsection (1) of this section or before a plan and section thereof have been settled; but
  - (b) as soon as is reasonably practicable after so executing any such works they shall furnish a plan and section thereof to each of the authorities or managers concerned.
- (4) Subsection (1) of this section, and paragraph (b) of the last preceding subsection, shall not have effect as to [<sup>F24</sup>street][<sup>F24</sup>road] managers concerned in respect of a [<sup>F24</sup>street][<sup>F24</sup>road] which they have no liability to the public to maintain or repair if the undertakers have given them a notice stating the general nature of the works proposed, or of the emergency works executed, as the case may be, and that it is a notice given for the purposes of this subsection, and the [<sup>F24</sup>street][<sup>F24</sup>road] managers have not, within fifteen days from the date on which the notice was given to them, given notice to the undertakers requiring submission or furnishing of a plan and section to them.
- (5) If undertakers execute any works to which this section applies in contravention of subsection (1) thereof, or fail to furnish a plan and section in accordance with an obligation to which they are subject by virtue of paragraph (b) of subsection (3) thereof, they shall in respect of that contravention or failure be liable on summary conviction to a fine not exceeding [<sup>F25</sup>level 3 on the standard scale].
- (6) If any authority or managers concerned object to any works in the case of which subsection (1) of this section or paragraph (b) of subsection (3) thereof has effect as concerns them and which were executed before a plan and section thereof had been settled, whether the works were executed in contravention of the said subsection (1) or were emergency works, they may, after giving to the undertakers notice of the objection and an opportunity to enter into an agreement with the authority or managers for meeting it, refer the matter to arbitration, and the [<sup>F26</sup>arbitrator][<sup>F26</sup>arbiter] may direct the alteration of the works to conform to a plan and section settled by him, or the removal of any apparatus placed in the execution thereof, and the undertakers shall be under obligation to comply with any such direction:

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Provided that, in settling the terms of any such direction, the [F26 arbitrator][F26 arbiter] shall satisfy himself that compliance therewith will not involve any undue interruption or restriction of the supply or service for the purposes of which the works were executed.

If undertakers fail to execute works in accordance with an obligation to which they are subject by virtue of a direction under this subsection, they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding ten pounds in respect of each day of such failure.

- (7) An authority or managers to whom a plan and section of works are required by this section to be submitted or furnished may accept, as or in lieu of a plan and section thereof, any description thereof, whether in diagram form or not, which appears to them to be sufficient, and references in this Act to a plan and section shall include references to any such description so submitted or furnished to the form of which the authority or managers have not objected within the time limited by the next succeeding section for objection in form to a plan and section submitted.

#### Textual Amendments

- F20** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(4\)\(a\)](#)
- F21** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, [Sch. 4 para. 29\(2\)](#), [Sch. 5 para. 45](#)
- F22** Words “public road” and “road” substituted (S.) respectively for words “maintainable highway” and “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(4\)\(b\)\(i\)](#)
- F23** Words “sewer vested in a local authority” substituted (S.) for words “public sewer” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(4\)\(b\)\(ii\)](#)
- F24** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(4\)\(c\)](#)
- F25** Words substituted (E.W.) (S.) by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#) and (S.) by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 289F, 289G](#)
- F26** Word “arbiter” substituted (S.) for word “arbitrators” by virtue of [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(4\)\(d\)](#) (which is in terms expressed to relate to s. 3(5) )

#### Modifications etc. (not altering text)

- C5** [S. 3\(5\)](#) is expressed to be amended (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(4\)\(d\)](#) (but see footnote in s. 3(6) relating to [Roads \(Scotland\) Act 1984](#)).

## 4 Procedure as to plans and sections, etc.: general provisions.

- (1) An authority or managers concerned to whom a plan and section of code-regulated works proposed to be executed in a [F27 street][F27 road] are submitted under subsection (1) of the last preceding section shall give notice to the undertakers either—
- approving the plan and section without modification,
  - objecting to them in form as being on too small a scale or giving insufficient particulars,
  - approving them subject to modifications specified in the notice, or
  - disapproving them.

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- (2) Such an authority or managers shall give the notice required of them by the preceding subsection without avoidable delay, and at the latest before the expiration of the following period from the date on which the plan and section were submitted to them, that is to say—
- (a) in the case of a plan and section not being such as are mentioned in the succeeding paragraph, twenty-nine days; or
  - (b) in the case of a plan and section of works relating only to a service pipe or service line or [<sup>F28</sup>overhead telecommunication apparatus]; eight days,
- and, as between the undertakers and such an authority or managers who have not duly given the notice at the expiration of that period, the plan and section as submitted shall be deemed to have been settled by agreement.
- (3) Where such an authority or managers give a notice approving the plan and section subject to modifications, or disapproving the plan and section, the authority or managers shall state their grounds for requiring the modifications, or for their disapproval, as the case may be.
- (4) If such an authority or managers duly give a notice objecting to the plan and section in form, or approving them subject to modifications to which the undertakers do not agree, or disapproving them, then, unless the notice is withdrawn in the case of each such authority or managers who have duly given such a notice (in which case the plan and section as submitted shall be deemed to have been settled by agreement between them and the undertakers)—
- (a) the undertakers may refer the matter to arbitration; and
  - (b) the [<sup>F29</sup>arbitrator][<sup>F29</sup>arbiter] shall settle a plan and section of works of the kind proposed, as works to be executed in the [<sup>F29</sup>street][<sup>F29</sup>road]:
- Provided that—
- (i) paragraph (b) of this subsection shall not apply if the case falls within the next succeeding section and the only modifications or disapproval are on the part of the [<sup>F30</sup>street][<sup>F30</sup>roads] authority and on the ground that some or all of the works ought to be executed in controlled land, and
  - (ii) paragraph (b) of this subsection shall have effect subject to the provisions of subsection (7) of this section in such a case as is therein mentioned.
- (5) On a reference under this or the next succeeding section the [<sup>F31</sup>arbitrator][<sup>F31</sup>arbiter] shall have power to require the undertakers to submit to him a plan and section in such form, to require any such authority or managers to submit to him such observations on a plan and section submitted to him, and to require either the undertakers or any such authority or managers to furnish him with such information and to take such other steps as appear to him to be requisite, and shall have power to treat compliance with any such requirement made to the undertakers as a condition of his proceeding with the settlement of a plan and section and compliance with any such requirement made to any such authority or managers as a condition of his settling a plan and section otherwise than as proposed by the undertakers.
- (6) A sewer authority concerned, or a bridge authority or managers concerned, shall not be entitled to give notice approving a plan and section submitted to them under subsection (1) of the last preceding section subject to modifications, or disapproving the plan and section, on grounds other than such as relate to injurious effect of the proposed works on their sewer, or on the structure or stability of their bridge, as the case may be:



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Provided that this subsection shall not apply to a sewer authority, or to a bridge authority or managers, who are also concerned as the [<sup>F32</sup>street authority][<sup>F32</sup>roads authority] or [<sup>F32</sup>street managers][<sup>F32</sup>road managers] or as a transport authority.

- (7) Where there is a reference to an [<sup>F33</sup>arbitrator][<sup>F33</sup>arbiter] under subsection (4) of this section in relation to the placing, altering or changing the position of apparatus in a [<sup>F33</sup>street][<sup>F33</sup>road] which is carried by or goes under a bridge, if he is satisfied that the execution thereof would be likely to affect injuriously the structure or stability of the bridge, and that it is not practicable to meet objection on that ground to the plan and the section submitted, he shall so declare, and shall not settle any plan and section of those works on that reference, but without prejudice to the right of the undertakers to submit another plan and section thereof for the purposes of subsection (1) of the last preceding section.
- (8) For the purposes of the application of this and the next succeeding section, in relation to a plan and section of undertakers' works to be executed in exercise of any power to execute such works conferred by section twelve of the <sup>M3</sup>Requisitioned Land and War Works Act 1948 (which relates to government oil pipe-lines and works accessory thereto), or by the joint effect of that section and of section twenty-eight of the <sup>M4</sup>Requisitioned Land and War Works Act 1945—
- (a) any objection to a plan and section in form shall be disregarded if a Minister within the meaning of the said Act of 1945 certifies that in his opinion it would be against the national interest to submit a plan and section on a larger scale or giving further particulars; and
  - (b) any modification of a plan and section shall be disregarded in so far as the modification would involve a lateral diversion of a line to which the said section twelve applies (other than a diversion to which the Minister on whose behalf the works are to be executed consents) or any such change of the site of accessory works to which that section applies as would necessitate such a diversion, any disapproval of a plan and section shall be disregarded in so far as the ground therefor is or involves that there ought to be such a diversion or change, and an [<sup>F34</sup>arbitrator][<sup>F34</sup>arbiter] settling a plan and section shall not thereby provide for any such diversion or change.

#### Textual Amendments

- F27** Word “street” substituted (S.) for word “road” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(5\)\(a\)](#)
- F28** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 29(2), [Sch. 5 para. 45](#)
- F29** Words “arbiter” and “road” substituted (S.) respectively for words “arbitrator” and “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(5\)\(b\)\(i\)](#)
- F30** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(5\)\(b\)\(ii\)](#)
- F31** Word “arbiter” substituted (S.) for word “arbitrator” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(5\)\(c\)](#)
- F32** Words “roads authority” and “road managers” substituted (S.) respectively for words “street authority” and “street managers” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(5\)\(d\)](#)
- F33** Words “arbiter” and “road” substituted (S.) respectively for words “arbitrator” and “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(5\)\(e\)](#)
- F34** Word “arbiter” substituted (S.) for word “arbitrator” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(5\)\(f\)](#)

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#### Modifications etc. (not altering text)

C6 S. 4 modified by Pipe-lines Act 1962 (c. 58, SIF 102), s. 16

C7 S. 4(8) extended by Land Powers (Defence) Act 1958 (c. 30, SIF 28:3), s. 16(5)(a)

#### Marginal Citations

M3 1948 c. 17(28:3).

M4 1945 c. 43(28:3).

## 5 Procedure as to plans and sections, etc.: provisions as to works in controlled land.

- (1) Where a plan and section submitted under subsection (1) of section three of this Act are of works proposed to be executed in a [<sup>F35</sup>street which is a maintainable highway or is prospectively a maintainable highway, the street][<sup>F35</sup>road which is a public road or prospective public road, the roads] authority (but not any other authority or managers concerned) may disapprove the plan and section on the ground that the works ought to be executed in controlled land abutting on the [<sup>F36</sup>street][<sup>F36</sup>road], or they may approve the plan and section subject to modifications excluding some of the works on the ground that they ought to be executed in such land:

Provided that the [<sup>F36</sup>street][<sup>F36</sup>roads] authority shall not so disapprove or require modifications unless they are satisfied that they will be in a position, by exercising powers in that behalf vested in them by virtue of the First Schedule to this Act or otherwise, to confer on the undertakers the right to execute the works in question in the controlled land and all the like rights in relation to apparatus the placing whereof is to be comprised in the works as the undertakers would have if it were placed in the [<sup>F36</sup>street][<sup>F36</sup>road], and to render those rights exercisable from not later than the expiration of the period of twenty-two days mentioned in subsection (4) of this section.

- (2) On a reference to an [<sup>F37</sup>arbitrator][<sup>F37</sup>arbiter] under subsection (4) of the last preceding section relating to such works as aforesaid as to which the [<sup>F37</sup>street][<sup>F37</sup>roads] authority have disapproved the plan and section, or have approved them subject to modifications, on the ground that those works ought to be executed in controlled land (whether or not the reference relates to those works only or the disapproval or requiring of modifications was on that ground only), the [<sup>F37</sup>arbitrator][<sup>F37</sup>arbiter] shall determine whether or not all those works or any of them ought to be executed in the controlled land.

- (3) Where either—

- (a) an [<sup>F38</sup>arbitrator][<sup>F38</sup>arbiter] determines under the last preceding subsection that any works ought to be executed in controlled land, or
- (b) undertakers agree to the execution of any works in controlled land after notification to them of disapproval or modifications of a plan and section of the works as proposed to be executed in the [<sup>F39</sup>street][<sup>F39</sup>road] on the ground that they ought to be executed in controlled land,

those works shall, subject to the provisions of the next succeeding subsection, be excluded from the power of the undertakers to execute works in the [<sup>F39</sup>street][<sup>F39</sup>road], and a plan and section of those works as to be executed in the controlled land shall be settled in the proceedings before the [<sup>F38</sup>arbitrator][<sup>F38</sup>arbiter] who so determines, or, in a case in which the undertakers agree to the execution of the works in the controlled land, shall be settled as may be agreed between the undertakers and the [<sup>F39</sup>street][<sup>F39</sup>roads] authority and any sewer authority concerned, or, in default of

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agreement, by an <sup>F38</sup>arbitrator]<sup>F38</sup>arbitrer] acting on a reference of the matter to arbitration by the undertakers.

- (4) In the circumstances mentioned in the last preceding subsection, if at the expiration of twenty-two days from the date on which the plan and section of the works as to be executed in the controlled land are settled any of the rights mentioned in subsection (1) of this section has, as respects any of the works to which the determination or agreement extends, not been rendered exercisable by the undertakers,—
- (a) the exclusion from the power of the undertakers to execute works in the <sup>F40</sup>street]<sup>F40</sup>road] provided for by the last preceding subsection shall thereupon cease as to all those works, and they may be executed in the <sup>F40</sup>street]<sup>F40</sup>road] in accordance with the plan and section thereof settled under subsection (4) of the last preceding section, or, if the plan and section thereof originally submitted fell within paragraph (i) of the proviso to that subsection, in accordance with that plan and section (with any modifications thereof agreed by the undertakers);
  - (b) the <sup>F41</sup>street]<sup>F41</sup>roads] authority shall pay to the undertakers the amount of any cost reasonably incurred by the undertakers of executing any of those works in the controlled land, at any time after the authority had purported to authorise the execution thereof in that land and before the failure to render the right or rights in question exercisable was ascertained, in so far as it is rendered abortive by the failure, and of any cost reasonably incurred by them of or in connection with removal of apparatus rendered necessary thereby; and
  - (c) any such removal or works in connection therewith may, notwithstanding anything in section three of this Act, be executed without submission or settlement of a plan and section thereof.
- (5) Where undertakers desire to execute in controlled land otherwise than in the circumstances mentioned in subsection (3) of this section works as to which the settlement of a plan and section is requisite by virtue of section three of this Act, the mode of settlement thereof shall be as mentioned in that subsection as to a case in which undertakers agree to the execution of works in controlled land.

#### Textual Amendments

- F35** Words “road which is a public road or prospective public road, the roads” substituted (S.) for words “street which is a maintainable highway or is prospectively a maintainable highway, the street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(6\)\(a\)\(i\)](#)
- F36** Words “road” and “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(6\)\(ii\)](#)
- F37** Words “arbiter” and “roads” substituted (S.) respectively for words “arbitrator” and “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(6\)\(b\)](#)
- F38** Word “arbiter” substituted (S.) for word “arbitrator” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(6\)\(c\)\(i\)](#)
- F39** Words “road” and “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(6\)\(c\)\(ii\)](#)
- F40** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(6\)\(d\)\(i\)](#)
- F41** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(6\)\(d\)\(ii\)](#)

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#### **Modifications etc. (not altering text)**

**C8** S. 5 restricted by Pipe-lines Act 1962 (c. 58, SIF 102), s. 16(1)

## **6 Works not to be begun until after notice to authorities and managers concerned.**

(1) Subject to the provisions of subsections (4) and (5) of this section (as to certain surface works and as to emergency works), undertakers proposing to begin in a [<sup>F42</sup>street][<sup>F42</sup>road] the execution of any code-regulated works shall give to each of the authorities or managers concerned, and, if the [<sup>F42</sup>street][<sup>F42</sup>road] is [<sup>F43</sup>prospectively a maintainable highway][<sup>F43</sup>a prospective public road], to the [<sup>F42</sup>street][<sup>F42</sup>road] managers thereof also, a notice stating the undertakers intention to execute the works and the date on which and the place at which they intend to begin the execution thereof, and the undertakers shall not begin the execution of the works, except with the consent of each of the authorities, bodies and persons to whom the notice is required to be given, until there have elapsed from the date on which the notice was given to them, or to the last of them to be given it if more than one—

- (a) in the case of any works not being such as are mentioned in the succeeding paragraph, seven days, or
- (b) in the case of works relating only to a service pipe or service line or [<sup>F44</sup>overhead telecommunication apparatus], three days.

A notice for the purposes of this subsection shall identify the works in question—

- (i) in the case of a notice to an authority or managers concerned to whom a plan and section of the works have been submitted, by reference thereto; or
- (ii) in any other case, by a statement of the general nature of the works.

(2) A notice for the purposes of the preceding subsection shall not be given in the case of works as to which the settlement of a plan and section is requisite by virtue of section three of this Act until after the plan and section have been settled under section four of this Act.

(3) If, after a notice for the purposes of subsection (1) of this section has been given to any authority, body or person, the execution of the works has not been substantially begun at the expiration of two months from the date on which it was given to them or him, or at the expiration of any extension of that period which they or he may allow, that notice to them or him shall be treated as invalid for those purposes and compliance with subsection (1) of this section shall be requisite as if that notice had not been given to them or him.

(4) Subsection (1) of this section shall not apply to works which fall within paragraph (a), (b) or (c) of subsection (2) of section three of this Act and which do not involve either breaking up or opening the [<sup>F45</sup>street][<sup>F45</sup>road] or any public sewer therein or tunnelling or boring under the [<sup>F45</sup>street][<sup>F45</sup>road]:

Provided that, as respects any such works which are to be executed at a crossing of a railway on the level, subsection (1) of this section shall apply so far as regards notice to the authority concerned who have the management of the railway undertaking.

(5) In the case of works to which subsection (1) of this section applies being emergency works—

- (a) the undertakers may begin the execution thereof before the time when by virtue of the preceding provisions of this section they could lawfully begin them; but

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- (b) as soon as is reasonably practicable after so beginning any such works they shall give to each of the authorities, bodies or persons to whom a notice under subsection (1) of this section is required to be given a notice stating the reason for their having done so.

A notice for the purposes of this subsection shall identify the works in question—

- (i) if notice for the purposes of subsection (1) of this section had been given before they were begun, by reference to that notice; or
- (ii) if not, as mentioned in that subsection.
- (6) If undertakers begin the execution of any works in contravention of subsection (1) of this section, or fail to give a notice in accordance with an obligation to which they are subject by virtue of paragraph (b) of subsection (5) thereof, they shall in respect of that contravention or failure be liable on summary conviction to a fine not exceeding [<sup>F46</sup>level 3 on the standard scale].

#### Textual Amendments

- F42** Word “road” substituted (S.) for word “street” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(7)(a)(i)**
- F43** Words “a prospective public road” substituted (S.) for words “prospectively a maintainable highway” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(7)(a)(ii)**
- F44** Words substituted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 29(2), **Sch. 5 para. 45**
- F45** Word “road” substituted (S.) for word “street” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(7)(b)**
- F46** Words substituted (E.W.) (S.) by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38, 46** and (S.) by Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F, 289G**

## 7 Requirements as to mode of executing major works, and as to reinstatement.

- (1) Undertakers executing works to which section three of this Act applies—
- (a) shall (except in the case of works of which no plan and section have been settled before the execution thereof) execute the works in accordance with the plan and section settled under section four or section five of this Act, as the case may be, or, if each of the authorities or managers concerned who were parties to the settlement thereof agree to any modification thereof, with the plan and section as so modified;
- (b) shall execute to the reasonable satisfaction of each of the authorities or managers concerned items of the works which are of an incidental nature (as distinguished from the placing of apparatus or other principal operation in question); and
- (c) shall afford to any transport authority concerned reasonable facilities for supervising the execution of the works.
- (2) Undertakers executing any code-regulated works which involve breaking up or opening the [<sup>F47</sup>street][<sup>F47</sup>road] or controlled land, or tunnelling or boring under it, shall carry on and complete the works with all such dispatch as is reasonably practicable, and shall be under obligation to reinstate and make good the [<sup>F47</sup>street][<sup>F47</sup>road] or controlled land after the completion of the works, and—
- (a) to begin the reinstatement and making good as soon after completion of any part of the works as is reasonably practicable without hindering the execution

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of other parts of those works or of other works to be undertaken immediately or shortly thereafter;

- (b) to afford reasonable facilities to each of the authorities or managers concerned for supervising the execution of the reinstatement and making good, to execute it in accordance with any reasonable requirements of any such authority or managers made at such a time as to render compliance therewith reasonably practicable, and to execute it to the reasonable satisfaction of each such authority or managers; and
- (c) in the case of works which involve breaking up or opening the [<sup>F47</sup>street][<sup>F47</sup>road] or controlled land (as distinguished from tunnelling or boring under it only), to reinstate it and make it good up to what was the surface level before the execution of the works, subject to the provisions of the Third Schedule to this Act in a case in which the [<sup>F48</sup>street][<sup>F48</sup>roads] authority or [<sup>F47</sup>street][<sup>F47</sup>road] managers elect thereunder to do the reinstatement and making good at upper levels:

Provided that this subsection shall not apply to reinstatement and making good of any sewer, drain or tunnel broken up or opened (as to which provision is made by sections twelve and thirteen of this Act).

If undertakers fail to carry out reinstatement and making good in accordance with an obligation to which they are subject by virtue of this subsection, they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding ten pounds in respect of each day of such failure.

- (3) Undertakers executing any code-regulated works shall pay—
  - (a) to each of the authorities or managers concerned an amount equal to any cost reasonably incurred by them of supervision by them for which the undertakers are required by this section to afford facilities; and
  - (b) to any transport authority concerned an amount equal to any cost reasonably incurred by them of signalling or other measures for controlling traffic on their undertaking, or for securing the safety of persons employed in connection with the works, in so far as it is attributable to the execution of the works or the carrying out of reinstatement and making good thereafter.
- (4) If any authority or managers concerned claim that undertakers have executed works, or reinstatement and making good, otherwise than in accordance with the provisions of this section as to execution thereof in accordance with a plan and section or as to execution thereof in accordance with reasonable requirements of such an authority or managers or to their reasonable satisfaction, the authority or managers may give notice to the undertakers stating that they so claim and requiring the undertakers to remedy the defect, and, if the undertakers agree, or it is determined by arbitration, that any works are needed for that purpose and that the claim was notified as early as was reasonably practicable, the undertakers shall be under obligation to execute them.

If undertakers fail to execute works in accordance with an obligation to which they are subject by virtue of an award on an arbitration under this subsection, they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding ten pounds in respect of each day of such failure.

- (5) If undertakers fail to give an authority or managers concerned facilities for supervision which they are required under this section to give, the authority or managers may execute such works as may be needed for enabling them to inspect the works or reinstatement and making good executed by the undertakers, and the undertakers shall

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pay to the authority or managers an amount equal to the cost reasonably incurred by them of executing works so needed.

- (6) Where a [<sup>F49</sup>street][<sup>F49</sup>road] or controlled land has been broken up or opened, or tunnelling or boring has been done thereunder, by way of code-regulated works, and the reinstatement and making good of the [<sup>F49</sup>street][<sup>F49</sup>road] or land in which the works were executed, or of part of it, has been completed, and within six months from the completion thereof the area reinstated and made good either subsides or deteriorates otherwise than by subsidence or in addition thereto, then—
- (a) in the case of any such subsidence, the amount of any cost of executing works needed for remedying the subsidence reasonably incurred by the [<sup>F50</sup>street][<sup>F50</sup>roads] authority (if the [<sup>F49</sup>street][<sup>F49</sup>road] is, or is prospectively, a [<sup>F51</sup>maintainable highway][<sup>F51</sup>public road]) or by the [<sup>F49</sup>street][<sup>F49</sup>road] managers (if the [<sup>F49</sup>street][<sup>F49</sup>road] is not as aforesaid) shall be paid to the authority or managers by the undertakers, unless the reinstatement and making good at upper levels or some of it was done pursuant to an election under the Third Schedule to this Act and the subsidence is shown to have been attributable to defective workmanship or use of defective materials in the doing of the reinstatement and making good so far as it was done otherwise than by the undertakers, and
- (b) in the case of any such deterioration, the amount of any cost of executing works needed for remedying the deterioration reasonably incurred as aforesaid shall be paid as aforesaid if the deterioration is shown to have been attributable to defective workmanship or use of defective materials in the doing of the reinstatement and making good so far as it was done by the undertakers:

Provided that an authority or managers shall not be entitled to a payment under this subsection in respect of the cost of any works unless before executing the works they had given to the undertakers notice of the works which they claimed to be needed and had allowed reasonable time for examination by the undertakers of the area in question.

#### Textual Amendments

- F47** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(8\)\(a\)](#)
- F48** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(8\)\(a\)](#)
- F49** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(8\)\(b\)\(i\)](#)
- F50** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(8\)\(b\)\(i\)](#)
- F51** Words “public road” substituted (S.) for words “maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(8\)\(b\)\(ii\)](#)

## 8 Requirements as to safety, obstruction, etc., to be observed in execution of works.

- (1) Undertakers who are executing or have executed any code-regulated works shall secure at their expense that the following requirements are observed during and in

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connection with the execution of the works and of reinstatement and making good thereafter under the provisions of this Act in that behalf, that is to say—

- (a) that, so long as the [<sup>F52</sup>street][<sup>F52</sup>road] or controlled land is open or broken up (except in a place to which the public have no right of access and are not permitted to have access), it is adequately fenced and guarded, and lighted in such manner as to give proper warning to the public during the hours of darkness for the purposes of [<sup>F53</sup>the Road Transport Lighting Act, 1927];
  - (b) that traffic signs (within the meaning of section forty-eight of the <sup>M5</sup>Road Traffic Act 1930) are placed and, where so directed, operated . . . <sup>F54</sup>, in accordance with any directions in that behalf which may be given by the authority having power under that section to cause such signs to be placed, so however that any such directions shall be subject to any . . . <sup>F54</sup> directions given by the Minister under . . . <sup>F54</sup> the said section forty-eight, and may be cancelled or modified by the Minister if he is satisfied that they are not reasonably required for the guidance or direction of persons using the street;
  - (c) that no greater width or length of any [<sup>F52</sup>street][<sup>F52</sup>road] or controlled land than is reasonably necessary is open or broken up at any one time;
  - (d) that there is no greater obstruction of traffic on any [<sup>F52</sup>street][<sup>F52</sup>road] or interference with the normal use of controlled land than is reasonably necessary; and
  - (e) that any spoil or other material not required for the execution of the works or of the reinstatement and making good is carried away as soon as is reasonably practicable.
- (2) Without prejudice to the generality of the requirement as to lighting imposed by paragraph (a) of the preceding subsection, it shall include a requirement to comply with any regulations made by the Minister in that behalf.
- The power to make regulations for the purposes of this subsection shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) If undertakers fail to satisfy an obligation to which they are subject by virtue of subsection (1) of this section they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding ten pounds in respect of each day of such failure.
  - (4) If undertakers fail to satisfy an obligation to which they are subject by virtue of subsection (1) of this section as regards any requirement mentioned in paragraph (a), (b) or (e) thereof, the [<sup>F55</sup>street][<sup>F55</sup>roads] authority or managers may do anything needed for securing observance of that requirement and the undertakers shall pay to the authority or managers an amount equal to any cost reasonably incurred by them of so doing.
  - (5) Subsection (1) of this section shall have effect subject to the provisions of paragraph (b) of subsection (5) of section ten of this Act, and of paragraph 6 of the Third Schedule thereto, as to cases in which works or reinstatement and making good are executed by a transport authority or a [<sup>F56</sup>street][<sup>F56</sup>roads] authority or [<sup>F57</sup>street][<sup>F57</sup>road] managers.



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#### Textual Amendments

- F52** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(9\)\(a\)](#)
- F53** The words “section 68 of the Road Traffic Act 1972” were substituted by virtue of the [Road Traffic Act 1972 \(c. 20, SIF 107:1\)](#), [Sch. 10 para. 3](#) and [Road Traffic Act 1974 \(c. 50, SIF 107:1\)](#), [s. 9\(4\)\(b\)](#); those enactments have been repealed by [Road Traffic \(Consequential Provisions\) Act 1988 \(c. 54, SIF 107:1\)](#), [s. 3](#), [Sch. 1 Pt. I](#); the original words were “the Road Transport Lighting Act, 1927” and the [Interpretation Act 1978 \(c. 30\)](#), [s. 17\(2\)\(a\)](#) applies to their construction accordingly.
- F54** Words repealed by [Road Traffic Act 1956 \(c. 67\)](#), [Sch. 9](#)
- F55** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(9\)\(b\)](#)
- F56** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(9\)\(c\)](#)
- F57** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(9\)\(c\)](#)

#### Marginal Citations

- M5** [1930 c. 43\(108\)](#).

## 9 Protection for street managers of a street which is prospectively a maintainable highway.

Where code-regulated works are executed in a [<sup>F58</sup>street][<sup>F58</sup>road] which is [<sup>F59</sup>prospectively a maintainable highway][<sup>F59</sup>a prospective public road], the [<sup>F60</sup>street][<sup>F60</sup>roads] authority shall be under obligation to the [<sup>F58</sup>street][<sup>F58</sup>road] managers—

- (a) generally, in relation to the execution of the works and reinstatement and making good thereafter, to secure the performance by the undertakers of duties imposed on them by virtue of the two last preceding sections and the Third Schedule to this Act, and to exercise the powers vested in the authority by virtue thereof, in such manner as may be reasonably requisite for the protection of the [<sup>F58</sup>street][<sup>F58</sup>road] managers; and
- (b) in particular, to comply with any reasonable request as to securing the performance of those duties, or as to the exercise of those powers, which may be made by the [<sup>F58</sup>street][<sup>F58</sup>road] managers to the authority.

#### Textual Amendments

- F58** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(10\)\(a\)](#)
- F59** Words “a prospective public road” substituted (S.) for words “prospectively a maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(10\)\(b\)](#)
- F60** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(10\)\(a\)](#)

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## **10 Protection for transport authorities (right to execute works and to be paid cost thereof).**

- (1) Where works to which section three of this Act applies, other than emergency works, are to be executed in a [<sup>F61</sup>street][<sup>F61</sup>road] which is carried by or goes under a bridge vested in a transport authority, or in a [<sup>F61</sup>street][<sup>F61</sup>road] which crosses or is crossed by any other property which is held or used for the purposes of a transport undertaking, and the works involve breaking up or opening the [<sup>F61</sup>street][<sup>F61</sup>road] or tunnelling or boring under it, the transport authority may by notice given to the undertakers within the time mentioned in this subsection elect themselves to execute all or any of the following in so far as they are to be executed in that [<sup>F61</sup>street][<sup>F61</sup>road], that is to say—
- (a) the breaking up, opening, tunnelling or boring;
  - (b) any other items of the works which are of an incidental nature (as distinguished from the placing of apparatus or other principal operation in question); and
  - (c) reinstatement and making good (but excluding any such reinstatement and making good as the [<sup>F62</sup>street][<sup>F62</sup>roads] authority or [<sup>F61</sup>street][<sup>F61</sup>road] managers are entitled to elect to do, without the consent of the undertakers, under the Third Schedule to this Act, unless the transport authority are themselves the [<sup>F62</sup>street][<sup>F62</sup>roads] authority or the [<sup>F61</sup>street][<sup>F61</sup>road] managers entitled so to elect, or the [<sup>F62</sup>street][<sup>F62</sup>roads] authority of the [<sup>F61</sup>street][<sup>F61</sup>road] managers entitled so to elect consent to the election of the transport authority under this subsection);

and, where notice of such an election is duly given, the undertakers shall not execute any of the works or reinstatement and making good specified therein, but the transport authority shall execute such works or reinstatement and making good, and the undertakers shall pay to the authority an amount equal to the cost reasonably incurred by the authority of the execution thereof:

Provided that the matters to which this subsection is to apply by virtue of such a notice may be varied by agreement between the transport authority and the undertakers.

A notice of such an election must be given not later than—

- (i) in a case in which the plan and section of the works are settled without recourse to arbitration, the expiration of twenty-nine days (or, if the works relate only to a service pipe or service line or [<sup>F63</sup>overhead telecommunication apparatus], eight days) from the date on which the plan and section were submitted to the transport authority, or
  - (ii) in a case in which the plan and section are settled by arbitration, the expiration of fifteen days from the date of the award.
- (2) If it appears to a transport authority to whom a plan and section of works to which section three of this Act applies in such a [<sup>F64</sup>street][<sup>F64</sup>road] as is mentioned in subsection (1) of this section are submitted under subsection (1) of the said section three, or are furnished under subsection (3) thereof, that the undertakers' works render any other works necessary either—
- (a) for preserving the stability of a bridge vested in the authority for the purposes of such a weight as it is then capable of carrying, or
  - (b) otherwise for securing that the state or circumstances of property held or used for the purposes of their undertaking shall not become other than is requisite having regard to the purposes for which it is intended or used,

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whether consisting only of works to be executed on the occasion of the execution of the undertakers' works or comprising both works to be executed then and subsequent works of maintenance, and—

- (i) the authority give to the undertakers, within twenty-nine days from the date on which the plan and section were submitted or furnished to the authority, a notice specifying works which they claim to be so rendered necessary, or, if the plan and section fall to be settled by arbitration, claim in the proceedings for the settlement thereof that any works are so rendered necessary, and
- (ii) the undertakers agree, or it is determined by arbitration, that any works are so rendered necessary,

the undertakers shall pay to the authority an amount equal to the cost reasonably incurred by the authority of executing those works or any of them.

Where it has been agreed or determined that works are rendered necessary as aforesaid by works of the undertakers not yet executed, the undertakers shall not execute any of their works so as to interfere with the execution of the works so agreed or determined, and the transport authority shall execute the works so agreed or determined (so far as they are to be executed on the occasion of the execution of the undertakers' works) as soon as is reasonably practicable after the agreement or determination has been made.

- (3) If undertakers execute any works or reinstatement and making good in contravention of either of the two preceding subsections, the transport authority may, in so far as the nature of what has been done permits and is such as to render such action necessary, undo what has been done and do again any of it that consists of such things as are mentioned in paragraphs (a) to (c) of subsection (1) of this section, and the undertakers shall pay to the authority an amount equal to the cost reasonably incurred by them of so doing.
- (4) If a transport authority fail to execute works or reinstatement and making good in accordance with an obligation to which they are subject by virtue of subsection (1) or (2) of this section, they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding ten pounds in respect of each day of such failure.
- (5) Where a transport authority execute works or reinstatement and making good pursuant to an election under subsection (1) of this section, or under subsection (3) of this section, they shall be subject to all obligations and liabilities imposed by sections seven and eight of this Act, sections twelve and thirteen thereof, and section twenty-six thereof to which the undertakers would have been subject if the works or reinstatement and making good had been executed by them, and any cost reasonably incurred by the authority of doing things necessary for the discharge of any of those obligations and liabilities shall be treated for the purposes of subsection (1) or (3) of this section as part of the cost of the works or reinstatement and making good in question except in the case of a liability arising by reason of a default on the part of the authority:

Provided that—

- (a) subsection (2) of section seven (as to the obligation of undertakers to reinstate and make good) shall not apply to the authority unless they have elected to reinstate and make good, and in that case paragraph (c) of that subsection shall not apply unless the election extends to reinstatement and making good at upper levels;
- (b) paragraph (a) of subsection (1) of section eight (as to fencing, guarding and lighting) and paragraph (b) of that subsection (as to traffic signs) shall apply to the authority only where they do the initial breaking up or opening of a

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- [<sup>F65</sup>street][<sup>F65</sup>road], and in that case shall cease to apply to them as soon as the undertakers begin any of the works which they are to do, and paragraphs (c) to (e) of that subsection (as to obstruction and like matters) shall apply to the authority, to the exclusion of the undertakers' obligation thereunder, during and in connection with what the authority do but to no further extent; and
- (c) the authority shall not be subject to the liability imposed by subsection (6) of section twenty-six to pay compensation in respect of damage caused by the execution of works lawfully, and the undertakers shall be subject to that liability notwithstanding that the works are executed by the authority.

#### Textual Amendments

- F61** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(11\)\(a\)](#)
- F62** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(11\)\(a\)](#)
- F63** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, [Sch. 4 para. 29\(2\)](#), [Sch. 5 para. 45](#)
- F64** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(11\)\(b\)](#)
- F65** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(11\)\(c\)](#)

## 11 Protection for transport authorities (special precautions in execution of certain works).

- (1) Undertakers executing any code-regulated works in a [<sup>F66</sup>street][<sup>F66</sup>road] which crosses or is crossed by, or is in the vicinity of, a railway, dock, harbour, pier, canal or inland navigation, shall comply with any reasonable requirements made to them by the authority having the management thereof for providing against the displaying of lights so as to involve risk of their being mistaken for any signal light or other light used for controlling, directing or securing the safety of traffic thereon or being a hindrance to the ready interpretation of any such signal or other light.
- (2) Undertakers executing any code-regulated works at a crossing of a railway on the level shall comply with any reasonable requirements as to the arrangements for executing the works, in respect of hours of work or in any other respect, which are made to them by the authority having the management of the railway undertaking for securing the safety of persons employed in connection with the works or for securing that interference with traffic on the railway caused by the execution thereof is reduced so far as is practicable; and, in the case of any such works of which seven or three days' notice to the authority is required under section six of this Act but submission to them of a plan and section is not required, the undertakers shall defer beginning them for such further period as the authority may reasonably request as needed for formulating their requirements or making their traffic arrangements.
- (3) If undertakers fail to satisfy an obligation to which they are subject by virtue of either of the preceding subsections, they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F67</sup>level 3 on the standard scale].

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### Textual Amendments

- F66** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(12\)](#)
- F67** Words substituted (E.W.) (S.) by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#) and (S.) by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 289F, 289G](#)

## 12 Protection for sewer authorities.

- (1) If it appears to a sewer authority concerned to whom a plan and section of works in a [<sup>F68</sup>street][<sup>F68</sup>road] are submitted under subsection (1) of section three of this Act, or are furnished under subsection (3) thereof, or who are parties to the settlement of a plan and section of works in controlled land, that the undertakers’ works render any other works necessary for making proper provision for drainage for which [<sup>F69</sup>a public sewer of the authority][<sup>F69</sup>the sewer vested in the authority] is then used, and—

- (a) in the case of works in a [<sup>F68</sup>street][<sup>F68</sup>road] the authority give to the undertakers, within twenty-nine days from the date on which the plan and section were submitted or furnished to them, a notice specifying works which they claim to be so rendered necessary, or, in the case of works in a [<sup>F68</sup>street][<sup>F68</sup>road] the plan and section whereof fall to be settled by arbitration or of works in controlled land, claim in the proceedings for the settlement of the plan and section that any works are so rendered necessary, and
- (b) the undertakers agree, or it is determined by arbitration, that any works are so rendered necessary,

the undertakers shall execute those works at such time and in such manner in relation to their works as may be needed for securing the purposes of the works so rendered necessary, and in respect of any failure so to do they shall be liable on summary conviction to a fine not exceeding [<sup>F70</sup>level 3 on the standard scale]:

Provided that this subsection shall be subject to the provisions of subsection (4) of this section (as to election by the sewer authority to execute works themselves).

- (2) Undertakers executing any code-regulated works which include breaking up or opening a [<sup>F71</sup>public sewer][<sup>F71</sup>sewer vested in a local authority], or any works rendered necessary as mentioned in the preceding subsection, shall afford to the [<sup>F72</sup>sewer] authority reasonable facilities for supervising the execution of the breaking up or opening, or of the works so rendered necessary, as the case may be.
- (3) Undertakers executing any code-regulated works which include breaking up or opening a [<sup>F73</sup>public sewer][<sup>F73</sup>sewer vested in a local authority] shall be under obligation to reinstate it and make it good:

Provided that this subsection shall be subject to the provisions of subsection (4) of this section (as to election by the sewer authority to execute works themselves).

If undertakers fail to carry out reinstatement and making good in accordance with an obligation to which they are subject by virtue of this subsection, the sewer authority may themselves carry it out.

- (4) Where code-regulated works include the breaking up or opening of a [<sup>F74</sup>public sewer, the sewer][<sup>F74</sup>sewer vested in a local authority, the] authority may, by notice given to the undertakers as mentioned in this subsection, elect themselves to execute all or any of the following, that is to say—

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(a) the breaking up or opening of the sewer,  
(b) reinstatement and making good thereof, and  
(c) works rendered necessary as mentioned in subsection (1) of this section,  
and, where notice of such an election is duly given, the undertakers shall not execute any of the works or reinstatement and making good specified therein, but the sewer authority shall execute them or it:

Provided that the matters to which this subsection is to apply by virtue of such a notice may be varied by agreement between the sewer authority and the undertakers.

A notice of such an election shall be deemed to have been duly given as to works of a kind mentioned in paragraph (a), (b) or (c) of this subsection if the sewer authority had given notice to the undertakers of their desire that the provisions of this subsection should have effect in the case of all works of that kind to be executed in relation to any [<sup>F75</sup>public sewer of theirs][<sup>F75</sup>sewer vested in the authority], but in any other case a notice of such an election must be given—

- (i) as regards breaking up or opening, or reinstatement and making good, in a case in which the plan and section of the undertakers' works are settled without recourse to arbitration, not later than twenty-nine days from the date on which the plan and section were submitted to the authority;
  - (ii) as regards breaking up or opening, or reinstatement and taking good, in a case in which the plan and section are settled by arbitration, not later than the expiration of fifteen days from the date of the award;
  - (iii) as regards works rendered necessary as mentioned in subsection (1) of this section, at the time of the sewer authority's claiming them to be so rendered necessary by the notice or in the proceedings mentioned in that subsection.
- (5) The undertakers shall pay to the sewer authority an amount equal to the cost reasonably incurred by the authority of supervision by them for which the undertakers are required by subsection (2) of this section to afford facilities, or of carrying out reinstatement and making good under subsection (3) thereof, or of executing any works or carrying out any reinstatement and making good pursuant to an election under subsection (4) thereof.

#### Textual Amendments

- F68** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(13\)\(a\)\(i\)](#)
- F69** Words “the sewer vested in the authority” substituted (S.) for words “a public sewer of the authority” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(13\)\(d\)\(ii\)](#)
- F70** Words substituted (E.W.) (S.) by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#) and (S.) by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 289F, 289G](#)
- F71** Words “sewer vested in a local authority” substituted (S.) for words “public sewer” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(13\)\(b\)\(i\)](#)
- F72** Word “sewer” repealed (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(13\)\(b\)\(ii\)](#), [s. 156](#), [Schs. 10, 11](#)
- F73** Words “sewer vested in a local authority” substituted (S.) for words “public sewer” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(13\)\(c\)](#)
- F74** Words “sewer vested in a local authority, the” substituted (S.) for words “public sewer, the sewer” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(13\)\(d\)\(i\)](#)
- F75** Words “sewer vested in the authority” substituted (S.) for words “public sewer of theirs” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(13\)\(d\)\(ii\)](#)

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### 13 Protection for managers of sewers, drains or tunnels not being public sewers.

- (1) Undertakers executing any code-regulated works which include breaking up or opening a sewer, drain or tunnel not being a [F76public sewer][F76sewer vested in a local authority] shall be under obligation to reinstate it and make it good.

If undertakers fail to carry out reinstatement and making good in accordance with an obligation to which they are subject by virtue of this subsection, the authority, body or person having the control or management of the sewer, drain or tunnel may themselves carry it out, and the undertakers shall pay to them or him an amount equal to the cost reasonably incurred by them or him of carrying it out.

- (2) The provisions of section twenty-six of this Act as to obligations of undertakers executing works in a [F77street][F77road] or in controlled land in relation to apparatus of other undertakers (therein referred to as owning undertakers) shall have effect in relation to sewers, drains and tunnels not being [F77public sewers][F77sewers vested in local authorities] and to authorities, bodies and persons having the management or control thereof, as those provisions have effect in relation to apparatus of owning undertakers and to those undertakers.

#### Textual Amendments

- F76** Words “sewer vested in a local authority” substituted (S.) for words “public sewer” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(14\)\(a\)](#)
- F77** Words “roads” and “sewers vested in local authorities” substituted (S.) respectively for words “street” and “public sewers” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(14\)\(b\)](#)

### 14 Provision as to default in removing apparatus placed temporarily.

Where there is placed in a [F78street other than a maintainable highway][F78road other than a public road] apparatus required only in connection with the doing of building or other work on land adjacent to the [F79street][F79road] and the placing thereof is a code-regulated work, if the apparatus is not removed on completion of the building or other work in question, the [F80street][F80roads] authority or [F79street][F79road] managers may give the undertakers notice requiring them to remove it, and if it is not removed within eight days from the giving of such a notice, the authority or managers may remove it and the undertakers shall pay to the authority or managers an amount equal to the cost reasonably incurred by them of its removal and disposal and of reinstating and making good the [F79street][F79road] after its removal.

#### Textual Amendments

- F78** Words “road other than a public road” substituted (S.) for words “street other than a maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(15\)\(a\)](#)
- F79** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(15\)\(b\)](#)
- F80** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(15\)\(b\)](#)

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*Transition to the street works code and exclusion of other regulative provisions*

**15 Time for taking effect of the street works code, and exclusion of other statutory provisions.**

- (1) The provisions of this section shall have effect—
- (a) for fixing the time from which the street works code is to have effect in relation to any power to which section one of this Act applies; and
  - (b) for rendering enactments other than the street works code not applicable in relation to any such power so far as concerns the relations between the undertakers and authorities, bodies and persons concerned as mentioned in paragraph (a) of subsection (1) of section one of this Act in respect of matters as to which provision is made by the street works code or matters of a like nature.

In this section references to the relations aforesaid, being confined to matters as to which provision is made by the street works code or matters of a like nature, shall not be construed as including any reference to rights or obligations as to the obtaining of consents for the execution of works or for any other purpose.

- (2) The street works code shall have effect in relation to a power to which section one of this Act applies from the following time, that is to say—
- (a) in the case of a power created before the passing of this Act or within six months therefrom, other than one whose exercise is regulated (so far as concerns the relations aforesaid) immediately before the expiration of the said six months wholly or in part by special legislation, from the expiration of the said six months, subject to the provisions of subsection (4) of this section as to works then in hand;
  - (b) in the case of a power so created whose exercise is regulated as aforesaid, from such time, not being earlier than the expiration of six months from the passing of this Act, as the Minister may by order appoint, subject to the provisions of subsection (4) of this section as to works then in hand;
  - (c) in the case of a power created after the expiration of the said six months, from the time of its creation.

The power to make orders for the purposes of paragraph (b) of this subsection shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament, and different times may be appointed thereunder in relation to different powers or classes of powers.

- (3) Subject to the provisions of subsection (4) of this section as to works in hand, no enactment passed or made before the passing of this Act, and, unless the contrary intention appears therein, no enactment passed thereafter, whether being a public general enactment or a special enactment, shall extend to the regulation of the exercise of a power to which section one of this Act applies (so far as concerns the relations aforesaid) after the time from which the street works code is to have effect in relation to the power, and accordingly—
- (a) the provisions specified in the Fifth Schedule to this Act as being consequential on the street works code (being provisions for the express modification of public general enactments therein specified in accordance with the preceding general provisions of this subsection) shall have effect from the expiration of six months from the passing of this Act, so however that the said provisions of that Schedule shall not apply for the purposes of the operation of any of those enactments as incorporated or applied in or by a



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- special enactment in relation to such power as is mentioned in paragraph (b) of subsection (2) of this section; and
- (b) paragraph 1 of the Sixth Schedule to this Act shall have effect as to making provision for the express modification, in accordance with the preceding general provisions of this subsection, of special enactments and of public general enactments for the purposes of their operation as incorporated or applied as aforesaid.
- (4) The preceding provisions of this section shall not affect the regulation of the exercise of any such power as is mentioned in paragraph (a) or (b) of subsection (2) of this section as to works which were in hand immediately before the expiration of six months from the passing of this Act, or before the appointed time, as the case may be, but as to such works the exercise of the power shall be regulated as concerns the relations aforesaid by the enactments by which it would have been regulated as concerns those relations apart from this Part of this Act and by those enactments as then in force, and works shall be treated for the purposes of this section as having been in hand then if a plan and section of the works had then been submitted, or any other action requisite thereunder had then been taken in relation to the works, under provisions of those enactments which regulated the exercise of the power as concerns the relations aforesaid, but not otherwise.
- (5) Paragraph 2 of the Sixth Schedule to this Act shall have effect as to certain protective provisions affected by the operation of subsections (2) and (3) of this section.
- (6) Any Act passed before the passing of this Act which authorises the making of provision by order, scheme, regulations or otherwise for regulating the exercise of a power to which section one of this Act applies shall on the passing of this Act cease to have effect in so far as it authorises such provision to be made as concerns the relations aforesaid for any period after the time from which the street works code is to have effect in relation to the power, and Acts passed after the passing of this Act shall be construed as not authorising any such provision to be so made unless the contrary intention appears therein.

**Modifications etc. (not altering text)**

**C9** 26.10.1951 appointed under s. 15(2)(b) by [S.I. 1951/1555](#) (1951 II, p. 318), art. 1

## **16 Agreements inconsistent with the street works code to be invalid.**

An agreement, whether made before or after the passing of this Act, which makes provision for regulating in any respect the exercise of a power to which section one of this Act applies as regards the relations between the undertakers and any authority, body or person concerned as mentioned in paragraph (a) of subsection (1) of section one of this Act shall be of no effect in relation to code-regulated works in so far as its effect apart from this section would be inconsistent with any of the provisions of the street works code:

Provided that this section shall not affect the operation of—

- (a) any agreement in so far as it relates to reinstatement or making good, or
- (b) any agreement for the waiver or variation of a right conferred on any authority, body or person by any of the said provisions, if the agreement is made after the right has accrued and is not inconsistent with the future operation of any of the said provisions.

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*Provisions relating to code-regulated works: consents, liability of undertakers for damage, etc., and minor amendments*

**17 Exclusion or restriction of requirements of consent as to certain code-regulated works.**

- (1) Undertakers may, without obtaining any consent to which this subsection applies, execute in a [<sup>F81</sup>maintainable highway][<sup>F81</sup>public road] any code-regulated works which they would be entitled to execute therein with that consent, other than—
- (a) works above the surface level of the [<sup>F82</sup>highway][<sup>F82</sup>road]; and
  - (b) in the case of undertakers in relation to whom limits of supply are prescribed, works outside their limits of supply.

This subsection applies to any consent of any of the following authorities, bodies and persons which apart from this subsection they or he would have been entitled in the following capacity to require the undertakers to obtain, that is to say any consent—

- (i) of the [<sup>F83</sup>highway][<sup>F83</sup>roads] authority as such or
- (ii) of any transport authority, or any bridge authority or managers, who are an authority or managers concerned within the meaning of the street works code, in the capacity which renders them an authority or managers so concerned,

except a consent under [<sup>F84</sup>section 20 or section 22 of the <sup>M6</sup>Highways Act 1980][<sup>F85</sup>section 133 or 135 of the <sup>M7</sup>Roads (Scotland) Act 1984], and except that, as regards a consent as to which an order under paragraph 3 of the Sixth Schedule to this Act has effect, this subsection shall have effect subject to the provisions of the order.

- (2) All enactments passed or made before the passing of this Act which require the obtaining of consents which the preceding subsection renders not requisite, whether being public general enactments or special enactments, shall cease to have effect in so far as they so require, and no enactment passed after the passing of this Act shall be construed as requiring the obtaining of any such consent unless the contrary intention appears therein, and accordingly—
- (a) the provisions specified in the Fifth Schedule to this Act as being consequential on this section (being provisions for the express modification of public general enactments therein specified in accordance with the preceding general provisions of this subsection) shall have effect as regards code-regulated works, so however that the said provisions of that Schedule shall not apply for the purposes of the operation of any of those enactments as incorporated or applied in or by a special enactment with any modification; and
  - (b) paragraph 1 of the Sixth Schedule to this Act shall have effect as to making provision for the express modification, in accordance with the preceding general provisions of this subsection, of special enactments and of public general enactments for the purposes of their operation as incorporated or applied as aforesaid.
- (3) Subject to any order under paragraph 4 of the Sixth Schedule to this Act, a provision made by way of condition imposed on the giving of a consent for the execution of code-regulated works shall be of no effect in so far as it would have been so by virtue of the last preceding section or of section twenty-five of this Act if it had been made by an agreement.

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- (4) The fact that a [<sup>F86</sup>street][<sup>F86</sup>roads] authority have given, as to works proposed to be executed in a [<sup>F87</sup>street][<sup>F87</sup>road], a consent requisite on the basis of their being executed in the [<sup>F87</sup>street][<sup>F87</sup>road] shall not prejudice the right conferred on the authority by subsection (1) of section five of this Act (as to disapproving or modifying a plan and section on the ground that works ought to be executed in controlled land).
- (5) A consent obtained for the purposes of [<sup>F88</sup>section 37 of the Electricity Act 1989], to the placing of an electric line of which a plan and section have been the subject of a declaration by an [<sup>F89</sup>arbitrator][<sup>F89</sup>arbiter] under subsection (7) of section four of this Act shall be deemed to extend to the placing of any such line of which another plan and section are submitted in exercise of the right in that behalf reserved to the undertakers by that subsection.

#### Textual Amendments

- F81** Words “public road” substituted (S.) for words “maintainable highway” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(16)(a)(i)**
- F82** Word “road” substituted (S.) for word “highway” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(16)(a)(ii)**
- F83** Word “roads” substituted (S.) for word “highway” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(16)(a)(iii)**
- F84** Words substituted (E.W.) by virtue of Interpretation Act 1978 (c. 30, SIF 115:1), s. 17(2)(a)
- F85** Words “section 133 or 135 of the Roads (Scotland) Act 1984” substituted (S.) for words “section four or section six of the Special Roads Act 1949” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(16)(a)(iv)**
- F86** Word “roads” substituted (S.) for word “street” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(16)(b)**
- F87** Word “road” substituted (S.) for word “street” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(16)(b)**
- F88** Words substituted by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 7, Sch. 17 paras. 33, **35(1)**
- F89** Word “arbiter” substituted (S.) for word “arbitrator” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(16)(c)**

#### Marginal Citations

- M6** 1980 c. 66(59).
- M7** 1984 c. 54(108).

## 18 Liabilities of undertakers to street and bridge authorities or managers.

- (1) If by the execution lawfully of code-regulated works in a [<sup>F90</sup>street][<sup>F90</sup>road] damage is caused to property of the [<sup>F91</sup>street][<sup>F91</sup>roads] authority or [<sup>F90</sup>street][<sup>F90</sup>road] managers in the [<sup>F90</sup>street][<sup>F90</sup>road], or, in the case of such works in a [<sup>F90</sup>street][<sup>F90</sup>road] which is carried by or goes under a bridge, to the bridge, the undertakers shall pay compensation to the [<sup>F91</sup>street][<sup>F91</sup>roads] authority or managers, or to the bridge authority or managers, equal to the expense reasonably incurred by them of making good the damage to that property or to the bridge, as the case may be:

Provided that undertakers shall not be liable by virtue of this subsection in respect of any damage if it would not have been sustained but for misconduct or negligence on the part of the authority or managers or their contractors or any person in the employ of the authority or managers or their contractors.

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- (2) If any nuisance is caused—
- (a) by the execution of code-regulated works, or
  - (b) by explosion, ignition or discharge of, or any other event occurring to, gas, electricity, water or any other thing required for the purposes of a supply or service afforded by any undertakers which at the time of or immediately before the event in question was in apparatus of those undertakers the placing or maintenance of which was or is a code-regulated work, or which had been in such apparatus before the time of that event and had escaped therefrom in circumstances which contributed to its occurrence.
- nothing in the enactment which confers the relevant power to which section one of this Act applies or in any enactment which regulates the exercise of that power, and, if the works or the apparatus, as the case may be, are in controlled land, nothing in the relevant authorisation given under the First Schedule to this Act, shall exonerate the undertakers from any action or other proceeding at the suit either—
- (i) of the [<sup>F92</sup>street][<sup>F92</sup>roads] authority or [<sup>F93</sup>street][<sup>F93</sup>road] managers, or
  - (ii) if the works or the apparatus, as the case may be, are in a [<sup>F93</sup>street][<sup>F93</sup>road] which is carried by or goes under a bridge, of the bridge authority or managers.
- (3) The preceding provisions of this section shall not confer any rights on a transport authority (as to whom the provisions of the next succeeding section shall have effect to the exclusion of the preceding provisions of this section).
- (4) Subject to the provisions of section thirty-two of this Act the preceding provisions of this section shall not exonerate undertakers from any liability to which they are subject apart from the preceding provisions of this section, whether to a [<sup>F94</sup>street authority or street][<sup>F94</sup>roads authority or road] managers, to a bridge authority or managers or to any other person.

#### Textual Amendments

- F90** Word “road” substituted (S.) for word “street” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(17)(a)**
- F91** Word “roads” substituted (S.) for word “street” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(17)(a)**
- F92** Word “roads” substituted (S.) for word “street” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(17)(b)**
- F93** Word “road” substituted (S.) for word “street” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(17)(b)**
- F94** Words “roads authority or road” substituted (S.) for words “street authority or street” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(7)(c)**

## 19 Liabilities of undertakers to transport authorities.

- (1) If either—
- (a) by the execution of code-regulated works in a [<sup>F95</sup>street][<sup>F95</sup>road] which is carried by or goes under a bridge vested in a transport authority or which crosses or is crossed by other property held or used for the purposes of a transport undertaking, or
  - (b) by any such event as is mentioned in paragraph (b) of subsection (2) of the last preceding section occurring as therein mentioned in a case in which the apparatus in question is in such a [<sup>F95</sup>street][<sup>F95</sup>road] as aforesaid,

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damage is caused to the bridge or other property, or flooding or other obstruction thereof is caused, the undertakers shall indemnify the transport authority against expense reasonably incurred by them of making good the damage or removing the obstruction, and against any loss sustained by them in respect of interference with traffic resulting directly from the damage or obstruction:

Provided that undertakers shall not be liable by virtue of this subsection in respect of any damage or obstruction if it would not have been sustained or have occurred but for misconduct or negligence on the part of the authority or their contractors or any person in the employ of the authority or their contractors.

- (2) Undertakers having power to maintain apparatus the maintenance of which is a code-regulated work, and which is in such a [<sup>F96</sup>street][<sup>F96</sup>road] as aforesaid, shall secure that the apparatus is maintained to the reasonable satisfaction of the transport authority and shall afford reasonable facilities to the authority for ascertaining that it is so maintained.

If the undertakers fail to give to the authority facilities which they are required by this subsection to give, the authority may execute such works as may be needed for enabling them to inspect the apparatus, including any necessary breaking up or opening of the [<sup>F96</sup>street][<sup>F96</sup>road], and, if the undertakers fail to secure that the apparatus is maintained in accordance with this subsection, the authority may execute any emergency works rendered necessary by the failure, including as aforesaid, and the undertakers shall pay to the authority an amount equal to the cost reasonably incurred by the authority of executing any such works; and—

- (a) subsection (5) of section ten of this Act (as to obligations and liabilities of a transport authority executing works) shall have effect in relation to any such works executed by the authority as it has effect in relation to works executed under subsection (3) of that section, but so as to include (notwithstanding anything in proviso (a) to the said subsection (5) the obligations and liabilities as to reinstating and making good imposed by subsection (2) of section seven of this Act;
- (b) as soon as is reasonably practicable after beginning any such works the authority shall give to each of the authorities or managers concerned within the meaning of the [<sup>F96</sup>street][<sup>F96</sup>road] works code, and, if the works are in a [<sup>F96</sup>street][<sup>F96</sup>road] which is [<sup>F97</sup>prospectively a maintainable highway][<sup>F97</sup>a prospective public road], to the [<sup>F96</sup>street][<sup>F96</sup>road] managers also, a notice stating the general nature of the works which they have executed and propose to execute.

- (3) Subject to the provisions of section thirty-two of this Act, the preceding provisions of this section shall not exonerate undertakers from any liability to which they are subject apart from the preceding provisions of this section, whether to a transport authority or to any other authority, body or person.

- [<sup>F98X6</sup>(4) Where undertakers are required by a transport authority to give an indemnity by virtue of subsection (1) of this section against damage [<sup>F99</sup>suffered by the authority as a result of a tort], in respect of which another person would if sued by the authority be liable as a tortfeasor, but in respect of which the undertakers are not so liable, the undertakers shall have the like right to recover contribution from that other person under [<sup>F100</sup>section 1 of the <sup>M8</sup>Civil Liability (Contribution) Act 1978] as if the undertakers had been so liable.]

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- [<sup>F98X6</sup>(4) Where undertakers are required by a transport authority to give an indemnity by virtue of subsection (1) of this section against loss or damage, within the meaning of the <sup>M9</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1940, in respect of which another person would if sued by the authority be liable in respect of a wrongful act or negligent act or omission, but in respect of which the undertakers are not so liable, the undertakers shall have the like right to recover contribution from that other person under section 3 of that Act as if the undertakers had been so liable.]

#### Editorial Information

- X6** S. 19(4) commencing “Where undertakers are required by a transport authority to give an indemnity by virtue of subsection (1) of this section against loss” substituted (S.) for s. 19(4) commencing “Where undertakers are required by a transport authority to give an indemnity by virtue of subsection (1) of this section against damage” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(18)(c)**

#### Textual Amendments

- F95** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(18)(a)**
- F96** By [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(18)(b)(i)** that in s. 19, as applying to Scotland, in subsection (2) for the word “street” wherever it occurs there is substituted the word “road”
- F97** Words “a prospective public road” substituted (S.) for words “prospectively a maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(18)(b)(ii)**
- F98** S. 19(4) commencing “Where undertakers are required by a transport authority to give an indemnity by virtue of subsection (1) of this section against loss” substituted (S.) for s. 19(4) commencing “Where undertakers are required by a transport authority to give an indemnity by virtue of subsection (1) of this section against damage” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(18)(c)**
- F99** Words substituted for words “within the meaning of the Law Reform (Married Women and Tortfeasors) Act 1935” by [Civil Liability \(Contribution\) Act 1978 \(c. 47, SIF 122:3\)](#), **Sch. 1 para. 2(a)**
- F100** Words substituted for words “section six of that Act” by [Civil Liability \(Contributions\) Act 1978 \(c. 47, SIF 122:3\)](#), **Sch. 1 para. 2(b)**

#### Marginal Citations

- M8** 1978 c. 47(122:3).
- M9** 1940 c. 42(122:3).

## 20 Amendments consequential on enactment of the street works code.

- (1) ..... <sup>F101</sup>
- (3) ..... <sup>F102</sup> in like manner any special legislation imposing any like requirement which is in any case incapable of being complied with shall not have effect in that case as concerns undertakers’ works in a [<sup>F103</sup>street][<sup>F103</sup>road].
- (4) The provisions specified in the Fifth Schedule to this Act as being consequential on this section (being provisions for certain minor amendments of public general enactments consequential on the enactment of the street works code) shall have effect.

#### Textual Amendments

- F101** S. 20(1)(2) repealed by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, **Sch. 7 Pt. I**
- F102** Words repealed by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(3)(4), **Sch. 17 para. 35(1)**, **Sch. 18**

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**F103** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(19\)](#)

**Modifications etc. (not altering text)**

**C10** The text of s. 20(4) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

## PART II

### CODE TO HAVE EFFECT WHERE APPARATUS IS AFFECTED BY ROAD, BRIDGE OR TRANSPORT WORKS

**Modifications etc. (not altering text)**

**C11** Pt. II extended (E.W.) by [Highways Act 1980 \(c. 66, SIF 59\)](#), [s. 184\(9\)\(14\)](#); extended with modifications (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [s. 39\(4\)](#)

**C12** Pt. II applied by [Channel Tunnel Act 1987 \(c. 53, SIF 102\)](#), ss. 6, 45, [Sch. 2 Pt. I para. 1](#), [Sch. 7 Pt. VI para. 2](#)

**C13** Pt. II (ss. 21–25) applied (E.W.) by [Dartford-Thurrock Crossing Act 1988 \(c. 20, SIF 59\)](#), [ss. 19, 39](#)

**C14** Pt. II (ss. 21–25) extended (16.3.1992) by [Midland Metro Act 1992 \(c. vii\)](#), [s. 8\(3\)](#).

*Cases in which the code in this Part of this Act is to have effect*

## 21 Cases in which the code in this Part is to have effect.

(1) The two next succeeding sections and the Fourth Schedule to this Act (in this Act referred to as “the code in this Part of this Act”) shall have effect, subject to the provisions of section twenty-four of this Act as to time of operation, in cases in which undertakers’ apparatus to which this section applies in a street, or in controlled land abutting on a street, is affected by—

- (a) any of the following works executed for road purposes by, or on behalf of, the [<sup>F104</sup>highway authority], that is to say—
  - reconstruction or widening of the street,
  - substantial alteration of the level thereof,
  - provision, alteration of the position or width, or substantial alteration of the level, of a carriageway, footpath, or cycle track in the street,
  - provision of a cattle-grid in the street or works ancillary thereto, or
  - tunnelling or boring under the street; or
- (b) replacing, reconstruction or substantial alteration of a bridge which carries or goes over the street, if the street is one for the maintenance or repair of which the [<sup>F105</sup>highway authority] is liable or is one which is under the control or management of a transport authority; or
- (c) substantial works (other than replacing, reconstruction or substantial alteration of a bridge) required for the purposes of a transport undertaking and executed in property held or used for the purposes of the undertaking which

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the street crosses or is crossed by, if the street is one such as is mentioned in the last preceding paragraph;

with a view to providing a uniform code for regulating the relations between the promoting authority and the undertakers in such cases.

- (2) This section applies to apparatus in a street which was placed (whether before or after the passing of this Act) in exercise of a power to which section one of this Act applies or over which such a power is exercisable, and to apparatus in controlled land which was placed in exercise of such a power together with an authorisation under the First Schedule to this Act.

- (3) In this Part of this Act and in the Fourth Schedule thereto—

such works as are mentioned in paragraph (a), (b) or (c) of subsection (1) of this section are referred to respectively as “a road alteration”, “a bridge alteration” and “transport works”, and the expression “authority’s works” means such works as are mentioned in any of those paragraphs; and the expression “promoting authority” means for the purposes of the operation of this Part of this Act and the Fourth Schedule thereto in relation to a road alteration, to a bridge alteration or to transport works, the following respectively, that is to say the [<sup>F106</sup>highway authority] executing the road alteration, the bridge authority or managers (including any authority, body or person who are or is such an authority or managers by virtue of functions exercised on behalf of the Crown), or the transport authority (including as aforesaid):

Provided that this Part of this Act and Part I of the Fourth Schedule thereto shall have effect subject to the provisions of Part II of that Schedule where two or more operations each being authority’s works are executed in connection with each other on the same occasion by different authorities.

- (4) “<sup>F107</sup>In so far as any works carried out in a street by a district council by virtue of their powers under section 187(2) of the <sup>M10</sup>Local Government Act 1972 constitute a road alteration, the references in subsections (1)(a) and (3) of this section to the highway authority, and in the Table in Schedule 6 to this Act to the local highway authority, shall be construed, in relation to those works, as references to the district council.”

#### Textual Amendments

**F104** Words substituted (E.W.) by [Local Government Act 1972 \(c. 70, SIF 81:1\)](#), [Sch. 21 para. 98\(3\)](#)

**F105** Words substituted (E.W.) by [Local Government Act 1972 \(c. 70, SIF 81:1\)](#), [Sch. 21 para. 98\(3\)](#)

**F106** Words substituted (E.W.) by [Local Government Act 1972 \(c. 70, SIF 81:1\)](#), [Sch. 21 para. 98\(3\)](#)

**F107** [S. 21\(4\)](#) added (E.W.) by [Local Government Act 1972 \(c. 70, SIF 81:1\)](#), [Sch. 21 para. 98\(3\)](#)

#### Modifications etc. (not altering text)

**C15** [S. 21](#) as it appears here is in the form in which it extends to England and Wales. Next following [s. 21](#) is in the form in which it extends to Scotland.

#### Marginal Citations

**M10** [1972 c. 70\(81:1\)](#).

## 21 Cases in which the code in this Part is to have effect.

- (1) The two next succeeding sections and the Fourth Schedule to this Act (in this Act referred to as “the code in this Part of this Act”) shall have effect, subject to the



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provisions of section twenty-four of this Act as to time of operation, in cases in which undertakers' apparatus to which this section applies in a [F108road], or in controlled land abutting on a [F108road], is affected by—

- (a) any of the following works executed for road purposes by, or on behalf of, the [F109roads authority]—

reconstruction or widening of the [F108road],

substantial alteration of the level thereof,

provision, alteration of the position or width, or substantial alteration of the level, of a carriageway, [F110footway,] footpath, or cycle track in the [F108road],

provision of a cattle-grid in the [F108road] or works ancillary thereto, or

tunnelling or boring under the [F108road]; or

- [F111(aa) any works constructed, whether or not for road purposes, under section 27 of the M11Roads (Scotland) Act 1984; or]

- (b) replacing, reconstruction or substantial alteration of a bridge which carries or goes over the [F108road], if the [F108road] is [F112a public road] or is one which is under the control or management of a transport authority; or

- (c) substantial works (other than replacing, reconstruction or substantial alteration of a bridge) required for the purposes of a transport undertaking and executed in property held or used for the purposes of the undertaking which the [F108road] crosses or is crossed by, if the [F108road] is one such as is mentioned in the last preceding paragraph;

with a view to providing a uniform code for regulating the relations between the promoting authority and the undertakers in such cases.

- (2) This section applies to apparatus in a [F113road] which was placed (whether before or after the passing of this Act) in exercise of a power to which section one of this Act applies or over which such a power is exercisable, and to apparatus in controlled land which was placed in exercise of such a power together with an authorisation under the First Schedule to this Act.

- (3) In this Part of this Act and in the Fourth Schedule thereto—

such works as are mentioned in paragraph (a), (b) or (c) of subsection (1) of this section are referred to respectively as “a road alteration”, “a bridge alteration” and “transport works”, and the expression “authority's works” means such works as are mentioned in any of those paragraphs; and

the expression “promoting authority” means for the purposes of the operation of this Part of this Act and the Fourth Schedule thereto in relation to a road alteration, to a bridge alteration or to transport works, the following respectively [F114: the roads authority] executing the road alteration, the bridge authority or managers (including any authority, body or person who are or is such an authority or managers by virtue of functions exercised on behalf of the Crown), or the transport authority (including as aforesaid):

Provided that this Part of this Act and Part I of the Fourth Schedule thereto shall have effect subject to the provisions of Part II of that Schedule where two or more operations each being authority's works are executed in connection with each other on the same occasion by different authorities.

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### Textual Amendments

- F108** Word substituted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(20)(a)(i)**  
**F109** Words substituted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(20)(a)(ii)**  
**F110** Word inserted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(20)(a)(ii)**  
**F111** [S. 21\(1\)\(aa\)](#) inserted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(20)(a)(iii)**  
**F112** Words substituted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(20)(a)(iv)**  
**F113** Word substituted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(20)(b)**  
**F114** Words substituted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(20)(c)**

### Modifications etc. (not altering text)

- C16** [S. 21](#) as it appears here is in the form in which it extends to Scotland. The preceding version of [s. 21](#) is in the form in which it extends to England and Wales.

### Marginal Citations

- M11** [1984 c. 54\(108\)](#).

*The code in this Part of this Act*

## 22 Undertakers' right to payment for works made necessary by, and obligation to facilitate, road, etc. works.

- (1) Where in any such case as is mentioned in subsection (1) of the last preceding section the authority's works render necessary for the purposes of the supply or service for which the undertakers' apparatus is used the execution by the undertakers of any undertakers' works or the taking by them of any other measures, whether consisting of a change in the position of apparatus, of works or measures for the protection of apparatus from damage or for preventing any undue interruption or restriction of the supply or service or of other works or measures, the promoting authority shall pay to the undertakers an amount equal to the cost reasonably incurred by the undertakers of the execution of those works or of the taking of those measures, subject however to the provisions of the next succeeding section.
- (2) In any such case as is mentioned in subsection (1) of the last preceding section the promoting authority may require the undertakers to execute any undertakers' works which are necessary for the purposes of the carrying out of the authority's works with reasonable facility and which the undertakers have power to execute, and—
- (a) the undertakers shall be under obligation to execute any such undertakers' works which the promoting authority require them to execute, and, if the undertakers fail to execute them in accordance with their obligation, they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding ten pounds in respect of each day of such failure; and
  - (b) the promoting authority shall pay to the undertakers an amount equal to the cost reasonably incurred by the undertakers of the execution of those works, subject however to the provisions of the next succeeding section:

Provided that the promoting authority shall not be entitled—

- (i) to require the undertakers to remove any of their apparatus permanently from the <sup>F115</sup>street<sup>F115</sup> or controlled land in which it is; or
- (ii) to require the undertakers to remove any of their apparatus therefrom temporarily, except that, in a case in which such a removal can be arranged

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consistently with the maintenance of the supply or service for which the apparatus is used without undue interruption or restriction, the promoting authority may require a temporary removal of apparatus to any adjacent land in which the undertakers have power to place it, or, in the case of apparatus in a [<sup>F115</sup>street][<sup>F115</sup>road] carried by a bridge, to the side or other part of the bridge if the bridge authority or managers consent (or are themselves the promoting authority); or

- (iii) to require, otherwise than with the consent of a Minister within the meaning of that section, any lateral diversion of a line to which section twelve of the <sup>M12</sup>Requisitioned Land and War Works Act 1948 (which relates to government oil pipe-lines and works accessory thereto) applies, or any such change of the site of accessory works to which that section applies as would necessitate such a diversion.
- (3) Where works necessary as aforesaid are code-regulated works, the promoting authority may waive observance by the undertakers of any of the requirements of section three or six of this Act so far as they concern that authority.
- (4) The provisions of Part I of the Fourth Schedule to this Act shall have effect as to the settlement at the instance of the undertakers or of the promoting authority, as the case may be, of a specification of works or measures to be treated in operating the code in this Part of this Act as necessary for the purposes mentioned in subsection (1) of this section, or of works to be so treated as necessary for the purposes mentioned in subsection (2) thereof, and, save in so far as may be otherwise agreed between the promoting authority and the undertakers, such works and measures only as are included in a specification settled under that Schedule shall be so treated.
- (5) Any question arising under proviso (ii) to subsection (2) of this section, on a requirement by a promoting authority for a temporary removal of apparatus, whether the circumstances in which such a requirement may be made exist shall be determined by arbitration.

#### Textual Amendments

**F115** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(21\)](#)

#### Modifications etc. (not altering text)

**C17** [S. 22](#) amended by [Pipe-lines Act 1962 \(c. 58, SIF 102\)](#), s. 17

**C18** [S. 22\(2\)](#) proviso (iii) extended by [Land Powers \(Defence\) Act 1958 \(c. 30, SIF 28:3\)](#), s. [16\(5\)\(b\)](#)

#### Marginal Citations

**M12** [1948 c. 17\(28:3\)](#).

## 23 Limitations on undertakers’ right to payment for works, and county contribution towards such a payment.

- (1) Undertakers shall not be entitled to payment by virtue of the last preceding section in respect of works or measures of theirs if the authority’s works in question consist only of works executed after a subsidence for reinstating and making good the area of subsidence to its level immediately before the subsidence occurred, unless the undertakers prove that the subsidence was attributable to matters for which the promoting authority were to blame.

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- (2) Subsection (1) of the last preceding section or paragraph (b) of subsection (2) thereof, as the case may be, shall have effect subject to the provisions of this subsection in a case in which the following conditions as to notice of the authority's works were satisfied before the apparatus in question was placed (whether by way of an original placing or by way of renewal of other apparatus), that is to say—
- (a) where the placing of the apparatus was a code-regulated work, if notice of the authority's works being intended was given by the promoting authority or predecessors of theirs to the undertakers or predecessors of theirs within eight days from the date on which the intention to place the apparatus was signified to the authority or their predecessors by the submission of a plan and section if the placing thereof was a work to which section three of this Act applied or by notice under section six of this Act if it was not, and within twenty-nine days from that date a plan and section of the authority's works were furnished to the undertakers or their predecessors; or
  - (b) where the placing of the apparatus was not a code-regulated work, if notice of the authority's works being intended and particulars as to their works were given by the promoting authority or predecessors of theirs to the undertakers or predecessors of theirs in accordance with provisions corresponding to this subsection of any corresponding enactment within the meaning of the next succeeding section.

In any case the undertakers shall not be entitled to payment by virtue of the last preceding section if the authority's works were—

- (i) substantially begun within two years from the date on which the notice was given, and
- (ii) executed in accordance with the plan and section thereof furnished as mentioned in paragraph (a) of this subsection, or with the particulars thereof given as mentioned in paragraph (b) of this subsection, or without any departure therefrom materially affecting the undertakers:

Provided that the Minister may, if he considers it requisite to do so having regard to any general economic circumstances affecting such works as are mentioned in subsection (1) of section twenty-one of this Act, by order (which shall be a statutory instrument, and shall be revocable or variable by him) substitute any longer period not exceeding four years for the period of two years mentioned in paragraph (i) of this subsection, and that paragraph shall, in relation to the authority's works if they were substantially begun at a time when such an order was in force, have effect with the substitution prescribed by the order as in force at that time.

- (3) If in the course of undertakers' works necessary as mentioned in the last preceding section apparatus of better type, of greater dimensions or of greater capacity is placed in substitution for existing apparatus of worse type, of smaller dimensions or of smaller capacity, or apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type, dimensions or capacity, or the placing of apparatus at that depth, as the case may be, had not been specified as so necessary in a specification of the works settled under Part I of the Fourth Schedule to this Act or agreed so to be by the promoting authority, then—
- (a) if it involves cost in the execution of the undertakers' works exceeding that which would have been involved if the apparatus placed had been of the existing type, dimensions or capacity, or at the existing depth, as the case may be, the amount which apart from this subsection would be payable to the

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undertakers in respect of their works by virtue of the last preceding section shall be reduced by the amount of that excess; and

- (b) if it involves cost in the execution of the authority's works exceeding that which would have been involved in that case, the undertakers shall pay to the promoting authority an amount equal to that excess.

For the purposes of this subsection—

- (i) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus;
  - (ii) where the provision of a joint in a cable is specified or agreed as necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been so specified or agreed.
- (4) An amount which apart from this subsection would be payable to undertakers in respect of works of theirs by virtue of the last preceding section (and having regard, where relevant, to the last preceding subsection) shall, if the works include the placing of apparatus by way of renewal of apparatus placed more than seven-and-a-half years earlier so as to confer on the undertakers any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.
- (5) Any question arising under either of the two last preceding subsections shall, in default of agreement between the promoting authority and the undertakers, be determined by arbitration.
- (6) ..... F116

**Textual Amendments**

**F116** S. 23(6) repealed (E.W.) by [Highways Act 1959 \(c. 25\)](#), [Sch. 25](#) and repealed (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(3), [Sch. 11](#)

**Modifications etc. (not altering text)**

**C19** S. 23(3)(4) applied with modifications by [Channel Tunnel Act 1987 \(c. 53, SIF 102\)](#), s. 45, [Sch. 7 Pt. VI paras. 2, 12\(2\)](#)

*Transition to the code in this Part of this Act and exclusion of other regulative provisions*

**24 Time for taking effect of the code in this Part, and exclusion of other statutory provisions.**

- (1) The code in this Part of this Act shall have effect, in such a case as is mentioned in subsection (1) of section twenty-one of this Act, if the authority's works were substantially begun after, but not if they were so begun before, the following time, that is to say—
- (a) the expiration of six months from the passing of this Act unless some corresponding enactment within the meaning of this section, being special legislation making provision in respect of that case, was then in force; or
  - (b) such time, not being earlier than the expiration of six months from the passing of this Act, as the Minister may by order appoint (if the preceding paragraph

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does not apply by reason of there being some such corresponding enactment as therein mentioned in force at the expiration of the said six months).

The references in this section to a corresponding enactment are to any enactment in so far as it makes provision extending to any such case as is mentioned in subsection (1) of section twenty-one of this Act for regulating in any respect the relations between the promoting authority and the undertakers, whether by enabling the promoting authority to execute undertakers' works in relation to apparatus affected by the authority's works, by enabling them to require the undertakers to execute any such works, by rendering them liable for the expense of such works, or otherwise howsoever.

- (2) No corresponding enactment passed or made before the passing of this Act, and, unless the contrary intention appears therein, no corresponding enactment passed thereafter, whether being a public general enactment or a special enactment, shall have effect in a case in which the code in this Part of this Act is to have effect, and accordingly—
- (a) the provisions specified in the Fifth Schedule to this Act as being consequential on the said code (being provisions for the express modification of public general enactments therein specified in accordance with the preceding general provisions of this subsection) shall have effect as from the expiration of six months from the passing of this Act, so however that the said provisions of that Schedule shall not apply for the purposes of the operation of any of those enactments in relation to any authority's works begun before the expiration of the said six months or for the purposes of the operation of any of those enactments as incorporated or applied in or by a special enactment in a case falling within paragraph (b) of the preceding subsection; and
  - (b) paragraph 1 of the Sixth Schedule to this Act shall have effect as to making provision for the express modification, in accordance with the preceding general provisions of this subsection, of special enactments and of public general enactments for the purposes of their operation as incorporated or applied as aforesaid.
- (3) Paragraph 2 of the Sixth Schedule to this Act shall have effect as to certain protective provisions affected by the operation of subsections (1) and (2) of this section.
- (4) The power conferred on the Minister by paragraph (b) of subsection (1) of this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament, and different times may be appointed thereunder in relation to different cases, or cases in respect of which provision is made by different corresponding enactments or other different classes of cases.

**Modifications etc. (not altering text)**

**C20** 26.10.1951 appointed under s. 24(1)(b) by [S.I. 1951/1555](#) (1951 II, p. 318), art. 2

**25 Agreements inconsistent with the code in this Part to be invalid.**

An agreement, whether made before or after the passing of this Act, which makes provision extending to such a case as is mentioned in subsection (1) of section twenty-one of this Act for regulating in any respect the relations between the promoting authority and the undertakers shall be of no effect in a case in which the code in this Part of this Act has effect, in so far as the effect of the agreement apart from this section would be inconsistent with any provision of that code:

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Provided that this section shall not affect the operation of any agreement for the waiver or variation of a right conferred on any authority, body or person by the said code if the agreement is made after the right has accrued and is not inconsistent with the future operation of that code.

### PART III

#### MISCELLANEOUS

*Requirements as to undertakers' works which are likely to affect other undertakers' apparatus*

#### **26 Requirements as to undertakers' works which are likely to affect other undertakers' apparatus.**

- (1) The following provisions of this section shall have effect as to obligations of undertakers executing works to which this section applies (in this section referred to as “operating undertakers”) in relation to apparatus to which this section applies of undertakers other than the operating undertakers (in this section referred to as “owning undertakers”).

The works to which this section applies are any undertakers' works (other than works for purposes of a railway undertaking) executed in a <sup>F117</sup>street<sup>F117</sup>road] or in controlled land in exercise of a statutory power or of such a power together with an authorisation given under the First Schedule of this Act, other than works which have been substantially begun before the expiration of six months from the passing of this Act; and the apparatus to which this section applies is any apparatus of undertakers (other than apparatus held or used for the purposes of a railway undertaking) in a <sup>F117</sup>street<sup>F117</sup>road] or in controlled land, being apparatus maintainable under a statutory power or under such a power together with an authorisation given under the First Schedule to this Act.

- (2) Operating undertakers shall not begin any works to which this section applies which are likely to affect apparatus to which this section applies of owning undertakers (other than works relating only to a service pipe or service line or <sup>F118</sup>overhead telecommunication apparatus], in this section referred to as “excepted works”) until they have given to the owning undertakers notice of their intention to execute undertakers' works, indicating the nature of the works and the place where they intend to execute them, and three days have expired from the date on which the notice was given:

Provided that operating undertakers may begin any such works as aforesaid being emergency works without giving such notice as aforesaid, but as soon as is reasonably practicable after doing so they shall give notice to the owning undertakers stating the reason for their having done so.

- (3) Operating undertakers shall, during the execution of works to which this section applies which are likely to affect apparatus to which this section applies of owning undertakers (other than excepted works), give to the owning undertakers reasonable facilities for supervising the execution of the works.
- (4) Operating undertakers shall comply with the following requirements as to works to which this section applies, that is to say—

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- (a) in the case of works other than excepted works, they shall comply with any requirement as to the nature of the works, or as to things to be done or avoided in the execution thereof, which is made by owning undertakers and compliance with which is reasonably necessary for the protection of apparatus to which this section applies of the owning undertakers or for securing access thereto and is reasonably practicable having regard to the time when the requirement is made;
  - (b) without prejudice to the generality of the preceding paragraph, they shall where the works include tunnelling or boring under apparatus to which this section applies of owning undertakers, secure that there is proper temporary support for the apparatus during the execution of the works and that a proper permanent foundation is provided therefor;
  - (c) without prejudice to the generality of paragraph (a) of this subsection, they shall, where the works include the laying of an electric line crossing or near apparatus to which this section applies of owning undertakers, secure that it is effectively insulated and is so laid as not to be capable of touching such apparatus, and shall secure that such apparatus is not used as a conductor for electric current transmitted by the line laid.
- (5) In the case of emergency works operating undertakers shall be treated as having complied with the requirements of the two last preceding subsections if they have taken all such steps towards satisfying those requirements as it was reasonably practicable for them to take consistently with meeting the circumstances for which those works were required.
- (6) Operating undertakers shall pay to owning undertakers compensation equal to the expense reasonably incurred by the owning undertakers of making good damage to apparatus of theirs to which this section applies which is caused by the execution lawfully of works to which this section applies of the operating undertakers, or by failure of the operating undertakers to comply with any requirement of subsection (4) of this section:
- Provided that operating undertakers shall not be liable by virtue of this subsection in respect of any damage if it would not have been sustained but for misconduct or negligence on the part of the owning undertakers or their contractors or any person in the employ of the owning undertakers or their contractors.
- (7) Obligations and liabilities imposed on operating undertakers by the preceding provisions of this section shall be in addition to, and not in substitution for, obligations and liabilities to which they are subject apart from those provisions, but subject as regards the last preceding subsection to the provisions of section thirty-two of this Act.
- (8) Without prejudice to any liability under subsection (6) of this section, undertakers who fail to comply with any requirement of subsection (2), (3) or (4) of this section shall be liable in respect of each such failure on summary conviction to a fine not exceeding [<sup>F119</sup>level 3 on the standard scale], unless they prove that the failure was attributable to their not knowing of the existence, or not knowing of the position, of the apparatus of the owning undertakers in question, and that their ignorance thereof was not due to any negligence on their part or to any failure to make some inquiry which they ought reasonably to have made.



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#### Textual Amendments

- F117** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(22)**
- F118** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 29(2), **Sch. 5 para. 45**
- F119** Words substituted (E.W.) (S.) by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46** and (S.) by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289F, 289G**

#### Modifications etc. (not altering text)

- C21** [S. 26](#) extended by [Local Government, Planning and Land Act 1980 \(c. 65, SIF 123:2\)](#), **s. 167(7)** and [Highways Act 1980 \(c. 66, SIF 59\)](#), **s. 290(8)**

### *Provisions relating to closing of roads for works*

#### **27 Power to prohibit or restrict traffic on ground of execution of works, and liability of undertakers for cost of use of alternative route.**

[<sup>F120</sup>(1) In subsection (1) of section forty-seven of the Road Traffic Act, 1930 (which empowers the authority responsible for the maintenance thereof to restrict or prohibit the use of a road or part of a road by vehicles where they are satisfied that traffic on the road should be restricted or prohibited by reason of works of repair or reconstruction being required or being in progress on the road), for the words “works of repair or reconstruction being required or being in progress”, there shall be substituted the words “any works being executed or proposed to be executed”.]

[<sup>F121</sup>(2) Where by reason of undertakers’ works (other than works for purposes of a railway undertaking or a tramway undertaking) the use of a road is restricted or prohibited under the said section forty-seven or under any other enactment, and the traffic restricted or prohibited uses as an alternative route a road of a lower classification, the authority, body or person executing the works shall pay to the [<sup>F122</sup>roads authority (if the latter road is a public road) or to the road] managers (if it is not) an amount equal to any cost reasonably incurred by the authority or managers of—

- (a) strengthening the latter road, in so far as the strengthening is done with a view to, and is necessary for, the use thereof by the traffic in question; or
- (b) making good any damage to the latter road occurring in consequence of the use thereof by the traffic in question.

(3) For the purposes of the last preceding subsection the order of classification of roads, from higher to lower, shall be taken to be the following, that is to say, trunk roads, classified roads . . . <sup>F123</sup>, and roads being neither trunk roads nor classified roads.]

(4) This section shall come into operation at the expiration of six months from the passing of this Act.

#### Textual Amendments

- F120** [S. 27\(1\)](#) repealed (E.W.) by [Road Traffic Act 1960 \(c. 16, SIF 107:1\)](#), s. 267, **Sch. 18**
- F121** [S. 27\(2\)\(3\)](#) repealed (E.W.) by [Highways Act 1959 \(c. 25, SIF 59\)](#), **Sch. 25**
- F122** Words substituted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(23)**
- F123** Words repealed by [Local Government \(Scotland\) Act 1966 \(c. 51\)](#), **Sch. 6**

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**Modifications etc. (not altering text)**

**C22** Reference to s. 47 of the [Road Traffic Regulation Act 1930 \(c. 43\)](#) to be construed as mentioned in [Road Traffic Regulation Act 1984 \(c. 27, SIF 107:1\)](#), s. 144(1), [Sch. 10 para. 2](#)

**[<sup>F124</sup>28 Restriction on breaking up by undertakers of maintainable highways recently closed or re-surfaced.**

(1) Subject to the provisions of this section, a statutory power of undertakers to break up or open a [<sup>F125</sup>public road] which comprises a carriageway, being a power conferred for any purpose other than road purposes or purposes of a railway undertaking or a tramway undertaking, shall not be exercisable in the [<sup>F126</sup>road] during the twelve months following either—

- (a) the end of any period during which the use by vehicles of the carriageway has been prohibited, or the width thereof available for vehicular traffic has been reduced to less than two-thirds of its width, for the purposes of the execution of works for road purposes or of such works and other works, or
- (b) the completion of a re-surfacing extending to one-third or more of the width of the carriageway,

if the following conditions are satisfied, that is to say—

- (i) that the [<sup>F127</sup>roads] authority had given to the undertakers, after the passing of this Act and more than three months before the date on which the works for road purposes, or the re-surfacing works, as the case may be, were substantially begun, a notice stating that works for road purposes, or re-surfacing works, relevant for the purposes of this section were in prospect and specifying a date intended for beginning them; and
- (ii) that the works for road purposes, or the re-surfacing works, as the case may be, were substantially begun on, or within one month from, the date so specified or, if any undertakers' works were in progress in the [<sup>F126</sup>road] on that date, within one month from the completion of those undertakers' works or, in either case, within some extended period agreed between the [<sup>F127</sup>roads] authority and the undertakers for the purposes of the operation of this subsection in relation to the works for road purposes, or the re-surfacing works, as the case may be.

(2) The preceding subsection shall not apply to breaking up or opening for the purposes of emergency works.

(3) Subsection (1) of this section shall not apply to breaking up or opening a part of the [<sup>F128</sup>road] other than the carriageway for the purposes of—

- (a) works relating only to a service pipe or service line or [<sup>F129</sup>overhead telecommunication apparatus] or an overhead electric line, but, in the case of a placing of a service pipe or a service line, only if it is for affording a supply or service to premises to which it is not already afforded; or
- (b) works required for satisfaction by the undertakers of an obligation of theirs created by an enactment, or created by an agreement made before the giving of the notice referred to in subsection (1) of this section, which it is not reasonably practicable for them to satisfy without the breaking up or opening in question.

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- (4) Subsection (1) of this section shall not apply to breaking up or opening done with the consent of the [<sup>F130</sup>roads] authority, and a consent for the purposes of this subsection shall not be unreasonably withheld.

Any question arising under this subsection whether the withholding of a consent is unreasonable shall be determined by the Minister and the Minister of the Crown in charge of the Department concerned with the purposes for which the power to break up or open is conferred acting jointly (any question which is the Department so concerned being determined by the Treasury), and a determination of the said Ministers shall not be impugned on the ground that either of them is himself the [<sup>F130</sup>roads] authority or the authority by whom the power is exercisable.

- (5) Subsection (1) of this section shall not apply to breaking up or opening a highway being a street to which section four of the London Traffic Act, 1924, applies.
- (6) If undertakers break up or open a [<sup>F131</sup>road] in any case in which it is unlawful by virtue of subsection (1) of this section for them so to do—
- (a) they shall pay to the [<sup>F132</sup>roads] authority an amount equal to any cost reasonably incurred by the authority of reinstating and making good the [<sup>F131</sup>road]; and
  - (b) without prejudice to their liability under the preceding paragraph, they shall be liable on summary conviction to a fine not exceeding [<sup>F133</sup>level 3 on the standard scale].
- (7) In so far as any failure of undertakers to satisfy an obligation to which they are subject by virtue of any enactment is attributable to the prohibition by this section of breaking up or opening for which the undertakers have duly sought the consent of the [<sup>F134</sup>roads] authority and for which consent has been withheld and has been determined to have been reasonably withheld, the failure shall not be treated as a contravention of that enactment.]

#### Textual Amendments

- F124** S. 28 repealed (E.W.) by [Highway Act 1959 \(c. 25, SIF 59\)](#), **Sch. 25**
- F125** Words substituted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(24)(a)(i)**
- F126** Word substituted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(24)(a)(ii)**
- F127** Word substituted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(24)(a)(ii)**
- F128** Word substituted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(24)(b)**
- F129** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 29(2), **Sch. 5 para. 45**
- F130** Word substituted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(24)(c)**
- F131** Word substituted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(24)(d)**
- F132** Word substituted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(24)(d)**
- F133** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289F, 289G**
- F134** Word substituted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(24)(e)**

#### Modifications etc. (not altering text)

- C23** The text of s. 28(5) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and (except as specified) does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Public Utilities Street Works Act 1950 (repealed 1.1.1993). (See end of Document for details)*

### *Storage of equipment at side of road*

## **29 Storage of equipment at side of road.**

- (1) The [<sup>F135</sup>street][<sup>F135</sup>roads] authority shall not be liable in respect of any damage to apparatus to which this section applies which is caused by storage by the authority after the expiration of six months from the passing of this Act, in connection with the execution of works for road purposes, of any plant, equipment, or materials on any part of the [<sup>F136</sup>street][<sup>F136</sup>road] other than a carriageway, cycle track [<sup>F137</sup>, footway] or footpath or on the controlled land.
- (2) This section applies to apparatus in a [<sup>F138</sup>street that is a maintainable highway, or is prospectively a maintainable highway][<sup>F138</sup>public road or prospective public road], being apparatus placed (whether before or after the passing of this Act) in exercise of a power to which section one of this Act applies or over which such a power is exercisable, and to apparatus in controlled land placed in exercise of such a power together with an authorisation under the First Schedule to this Act.
- (3) This section shall have effect subject to any agreement between a street authority and undertakers to whom apparatus belongs.

#### **Textual Amendments**

- F135** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(25\)\(a\)\(i\)](#)
- F136** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(25\)\(a\)\(i\)](#)
- F137** Word inserted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(25\)\(a\)\(ii\)](#)
- F138** Words “public road or prospective public road” substituted (S.) for words “street that is a maintainable highway, or is prospectively a maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(25\)\(b\)](#)

## **PART IV**

### **GENERAL**

#### *Provisions as to enforcement, and other general provisions*

## **30 Provisions as to enforcement.**

- (1) Any provision of this Act creating a liability to a fine for breach of any obligation shall be without prejudice to any liability in civil proceedings for that breach.
- [<sup>F139</sup>(2) [<sup>F140</sup>Subject to subsection (2A) of this section, proceedings for an offence under] any provision of this Act creating a liability to a fine for breach of any obligation shall not, without the written consent of the Attorney General, be taken by any person other than an authority, body or person having an interest in the performance of the obligation.]
- [<sup>F141</sup>(2A) A constable may take proceedings for an offence under section 8 of this Act without the consent of the Attorney General.]

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- (3) The provisions of this Act creating a liability to a fine for breach of any obligation shall not apply to any obligation in so far as it falls to be performed by any authority, body or person on behalf of the Crown.
- (4) Any obligation imposed by this Act to execute works (including an obligation to carry out reinstatement and making good) shall be treated as an obligation to begin the works as soon as is reasonably practicable after the time when the obligation arises and thereafter to carry on and complete them with all such dispatch as is reasonably practicable; and, if a failure to execute works in accordance with such an obligation is continued after conviction of the authority, body or person who are or is subject thereto of an offence in respect of the failure, they or he shall be guilty of a further offence.

#### Textual Amendments

**F139** S. 30(2) repealed (S.) by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(3), **Sch. 11**

**F140** Words substituted (E.W.) by Local Government (Miscellaneous Provisions) Act 1982 (c. 30, SIF 81:1), s. 21(1)(a)

**F141** S. 30(2A) inserted (E.W.) by Local Government (Miscellaneous Provisions) Act 1982 (c. 30, SIF 81:1), s. 21(1)(b)

### 31 Arbitration.

- (1) Any matter which under this Act is to be determined by arbitration shall be referred to the arbitration of a single [<sup>F142</sup>arbitrator][<sup>F142</sup>arbiter] appointed by agreement between the parties concerned, or, in default of agreement, by the [<sup>F143</sup>President of the Institution of Civil Engineers][<sup>F143</sup>sheriff].
- [<sup>F144</sup>(1A) In any arbitration in accordance with the provisions of subsection (1) of this section the arbiter may, and if so directed by the Court of Session shall, state a case for the decision of the Court on any question of law arising in the arbitration; and the decision of the Court thereon shall be final unless the Court or the House of Lords give leave to appeal to the House of Lords against the decision.
- (1B) Leave under subsection (1A) above may be given on such terms as to expenses or otherwise as the Court or House of Lords may determine.]
- (2) Where, on a claim under any provision of this Act which confers in any circumstances a right to payment of an amount equal to cost reasonably incurred in respect of any matter, any question arises whether the cost in respect of which the claim is made was in fact incurred or was incurred in those circumstances or in respect of that matter, or as to the amount of any cost so incurred, or whether any cost so incurred was reasonably incurred, that question shall be determined by arbitration:

Provided that this subsection shall not apply to a claim under the provisions as to compensation or indemnity of section eighteen, nineteen or twenty-six of this Act.

#### Textual Amendments

**F142** Word “arbiter” substituted (S.) for word “arbitrator” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(26)(a)(i)**

**F143** Word “sheriff” substituted (S.) for words “President of the Institution of Civil Engineers” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(26)(a)(ii)**

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**F144** S. 31(1A)(1B) inserted (S.) by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(26)(b)**

### 32 Provisions against duplication of compensation, etc.

- (1) Where a right to a payment inuring for the benefit of any authority, body or person is conferred in respect of any matter by any provision of this Act for payment of compensation or for indemnity, and apart from this subsection there would fall to be made under any enactment or agreement passed or made before the passing of this Act a payment inuring for the benefit of the same authority, body or person in respect of the same matter, the right to the former payment in so far as it inures for the benefit of that authority, body or person shall be treated as being in or towards satisfaction of the right to the latter in so far as it inures for their or his benefit.
- (2) Where a right to a payment in respect of any matter inuring for the benefit of the same authority, body or person is conferred by each of two or more provisions of this Act for payment of compensation or for indemnity, they or he shall be entitled to claim under such one only of those provisions as they or he may elect to enforce.

#### Modifications etc. (not altering text)

- C24** S. 32 explained (E.W.) by Highways Act 1980 (c. 66, SIF 59), **Sch. 23 para. 21**
- C25** S. 32 amended (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 153(1), 160(1)(2) (4), 163, 189(4)–(10), 190, 193(1), Sch. 19 para. 2(6), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- C26** S. 32(1) modified (S.) by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(2), **Sch. 10 para. 6**

### 33 Financial provisions.

- (1) ..... <sup>F145</sup>
- (2) ..... <sup>F146</sup> any sums received under this Act by any Minister of the Crown, ..... <sup>F147</sup>, shall be paid into the Exchequer.
- (3) The power of the [<sup>F148</sup>Minister to make advances under section eight of the <sup>M13</sup>Development and Road Improvement Funds Act 1909][<sup>F148</sup>Secretary of State to make advances under section 3(1) of the <sup>M14</sup>Roads (Scotland) Act 1984], shall include power to make advances to a [<sup>F149</sup>highway authority][<sup>F149</sup>roads authority] in respect of—
  - (a) any amount paid by that authority as [<sup>F150</sup>the street][<sup>F150</sup>roads] authority under sub-paragraph (1) of paragraph 6 of the First Schedule to this Act, so far as that amount is not required by that authority to be paid to them by the undertakers under sub-paragraph (2) of that paragraph;
  - (b) any amount paid by that authority as [<sup>F150</sup>the street][<sup>F150</sup>roads] authority under sub-paragraph (2) of paragraph 7, or under paragraph 8, of the said First Schedule.

#### Textual Amendments

- F145** S. 33(1) repealed by Miscellaneous Financial Provisions Act 1955 (4 & 5 Eliz. 2 c. 6, SIF 99:3), **Sch. 2 Pt. II**
- F146** Words repealed by Statute Law (Repeals) Act 1978 (c. 45), **Sch. 1 Pt. XI**

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- F147** Words repealed by [Miscellaneous Financial Provisions Act 1955 \(4 & 5 Eliz. 2 c. 6, SIF 99:3\)](#), [Sch. 2 Pt. II](#)
- F148** Words “Secretary of State to make advances under s. 3(1) of the Roads (Scotland) Act 1984” substituted (S.) for words “Minister to make advances under section 8 of the Development and Road Improvement Funds Act 1909” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(27\)\(a\)](#)
- F149** Words “roads authority” substituted (S.) for words “highway authority” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(27\)\(b\)](#)
- F150** Word “roads” substituted (S.) for words “the street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(27\)\(c\)](#)

#### Marginal Citations

- M13** 1909 c. 47.  
**M14** 1984 c. 54(108).

### 34 Notices, etc., and reckoning of periods.

- (1) In this Act the expression “notice” means a notice in writing.
- (2) Any notice required or authorised by this Act to be given to an authority or body being a corporation shall be duly given if it is given to the secretary or clerk of the authority or body.
- (3) Any notice required or authorised by this Act to be given to any person may be given either—
  - (a) by delivering it to that person; or
  - (b) by leaving it at his proper address; or
  - (c) by post;so however that, where a notice is sent by post otherwise than in a registered letter, it shall be deemed not to have been given if it is proved that it was not received by the person to whom it was addressed.
- (4) For the purposes of this section, and of [<sup>F151</sup>section 7 of the <sup>M15</sup>Interpretation Act 1978] in its application to this section, the proper address of any person to whom such a notice as aforesaid is to be given shall, in the case of the secretary or clerk of a corporation, be that of the registered or principal office of the corporation, and, in any other case, be the last known address of the person to whom the notice is to be given.

Provided that, where the person to whom the notice is to be given has furnished an address for service in accordance with arrangements agreed in that behalf, his proper address for the purposes aforesaid shall be the address furnished.
- (5) If the name or the address of any owner, lessee or occupier of land to whom any such notice is to be given cannot after reasonable inquiry be ascertained by the authority, body or person seeking to give the notice, the notice may be given by addressing it to the person to whom it is to be given by the description of “owner”, “lessee” or “occupier” of the land (describing it) to which the notice relates, and by delivering it to some responsible person resident or appearing to be resident on the premises, or, if there is no such person to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.
- (6) The preceding provisions of this section shall apply to the submitting, furnishing or sending of a plan and section or other document as they apply to the giving of a notice.
- (7) For the purposes of this Act—

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- (a) in reckoning any period which is therein expressed to be a period from or before a given date, that date shall be excluded; and
- (b) in reckoning any period therein mentioned of eight days or less which apart from this provision would include a day being a Sunday, Christmas Day, Good Friday or a bank holiday, that day shall be excluded.

In this subsection the expression “bank holiday” means a day which is, or is to be observed as, <sup>F152</sup>a bank holiday under the <sup>M16</sup>Banking and Financial Dealings Act 1971], in the locality in which the <sup>F153</sup>street]<sup>F153</sup>road] in question is situated.

#### Textual Amendments

**F151** Words substituted by virtue of [Interpretation Act 1978 \(c. 30, SIF 115:1\)](#), **s. 25(2)**

**F152** Words substituted by virtue of [Banking and Financial Dealings Act 1971 \(c. 80, SIF 10\)](#), **s. 4(1)**

**F153** Word “road” in the definition of “bank holiday” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(28)**

#### Marginal Citations

**M15** [1978 c. 30\(115:1\)](#).

**M16** [1971 c. 80\(10\)](#).

### *Application to London and to Scotland*

#### **35 Application to London.**

- (1) This Act in its application to London, and to the Metropolitan and the City of London police districts, shall have effect subject to the provisions of the Seventh Schedule to this Act.
- (2) In this Act “London” means <sup>F154</sup>Greater London], and “the City of London police district” means the City of London as defined for the purposes of the Acts relating to the City police.

#### Textual Amendments

**F154** Words substituted by [London Government Act 1963 \(c. 33, SIF 81:1\)](#), **s. 19(3)**

#### **36 Application to Scotland.**

- (1) ..... <sup>F155</sup>
- (12) Any inquiry in relation to an order under the Sixth Schedule to this Act shall, if the Secretary of State so directs, be held by Commissioners under the <sup>M17</sup>Private Legislation Procedure (Scotland) Act 1936; and any direction so given shall be deemed to have been given under section two as read with section ten of the <sup>M18</sup>Statutory Orders (Special Procedure) Act 1945, and the provisions of that Act with regard to the publication of notices in the Edinburgh Gazette shall, notwithstanding anything contained in the said Act, not apply to any order under the said Schedule which is subject to special parliamentary procedure.
- (13) Where no direction is given under the last preceding subsection, <sup>F156</sup>subsections (2) to (8) of section 210 of the <sup>M19</sup>Local Government (Scotland) Act 1973] (which relate



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to procedure for holding local inquiries) shall apply in relation to a local inquiry held under the Sixth Schedule to this Act as they apply in relation to inquiries held under that section.

- (14) A [<sup>F157</sup>local authority][<sup>F157</sup>regional or islands council] shall not be liable for any loss, injury or damage arising from the execution of any undertakers' works in any [<sup>F158</sup>street][<sup>F158</sup>road].

#### Textual Amendments

- F155** S. 36(1)–(11) repealed (S.) by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(3), **Sch. 11**  
**F156** Words substituted by virtue of Local Government (Scotland) Act 1973 (c. 65, SIF 81:2), **s. 237(2)**  
**F157** Words “regional or islands council” substituted (S.) for words “local authority” by Local Government (Scotland) Act 1973 (c. 65, SIF 81:2), **Sch. 14 para. 51(c)**  
**F158** Word “road” substituted (S.) for word “street” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(29)**

#### Marginal Citations

- M17** 1936 c. 52(89).  
**M18** 1945 c. 18(89).  
**M19** 1973 c. 65(81:2).

### Interpretation

#### 37 References to property held or used for transport undertakings, and to powers for railway or tramway purposes.

- (1) References in this Act to a [<sup>F159</sup>street][<sup>F159</sup>road] which crosses or is crossed by property held or used for the purposes of a transport undertaking extend to cases in which the [<sup>F159</sup>street][<sup>F159</sup>road] and the property in question are at different levels as well as to cases in which they are on the same level, but the transport authority shall not be treated as an authority concerned as regards undertakers' works in such a [<sup>F159</sup>street][<sup>F159</sup>road], or be entitled to elect themselves to execute any of them, where the property in question consists only of—
- subsoil of the [<sup>F159</sup>street][<sup>F159</sup>road], or land under it, which is held by the transport authority but is not used, and has not been adapted for use, for the purposes of the undertaking, or
  - property underground at such a depth that there is no reasonable possibility of the works' affecting it;

and the Fourth Schedule to this Act (which requires notice and settling of specifications in connection with transport works which affect apparatus of undertakers) shall not apply where the property in which such works are to be executed is underground at such a depth that there is no reasonable possibility of their affecting the apparatus in question.

- (2) The provisions of this Act relating to a [<sup>F159</sup>street][<sup>F159</sup>road] which crosses or is crossed by property held or used for the purposes of a transport undertaking shall apply to a [<sup>F159</sup>street][<sup>F159</sup>road] which is or forms part of a towing-path or other way running along a canal or inland navigation, being a path or way which, or the subsoil of which, is held or used for the purposes of the canal or inland navigation undertaking.

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- (3) References in this Act to a power conferred for purposes of a railway undertaking or a tramway undertaking include references to a power conferred primarily for those purposes but for other purposes also, and references therein to works, or to apparatus held or used, for purposes of a railway undertaking or a tramway undertaking, or for purposes of a railway undertaking, shall be construed in like manner.

#### Textual Amendments

**F159** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(30\)](#)

### 38 References to powers to execute works in streets, to bridges, and to service pipes and lines.

- (1) For the purposes of this Act—
- (a) a power to execute works in a place falling within the definition of a “[<sup>F160</sup>street][<sup>F160</sup>road]” in subsection (3) of section one of this Act shall be treated as included in references in this Act to a power to execute works in a [<sup>F160</sup>street][<sup>F160</sup>road], notwithstanding that that place is referred to in the enactment which creates the power by some word not comprised in that definition, and, in relation to such a power, references in this Act to a [<sup>F160</sup>street][<sup>F160</sup>road] shall be construed as references to that place;
  - (b) a power to execute works which extends both to a [<sup>F160</sup>street][<sup>F160</sup>road] and also to other land shall be treated as included in references in this Act to a power to execute works in a [<sup>F160</sup>street][<sup>F160</sup>road] in so far as it extends to a [<sup>F160</sup>street][<sup>F160</sup>road]; and
  - (c) a power to execute works which extends to the [<sup>F161</sup>roadway and footpaths][<sup>F161</sup>carriageway and footway] of a [<sup>F160</sup>street][<sup>F160</sup>road], or to some other part thereof, but not to the whole thereof, shall be treated as included in references in this Act to a power to execute works in a [<sup>F160</sup>street][<sup>F160</sup>road], and, in relation to such a power, references in this Act to the [<sup>F160</sup>street][<sup>F160</sup>road] in which it is exercisable shall be construed as references to the part to which the power extends, so however that land abutting on another part of it shall be treated for the purposes of provisions relating to controlled land as abutting on the [<sup>F160</sup>street][<sup>F160</sup>road] in which the power is exercisable.
- (2) In this Act references to a bridge include references to its approaches, and circumstances therein mentioned relating to a bridge shall be treated as existing if they exist either as to the bridge or as to its approaches or as to any part of either.
- (3) In this Act references to a service pipe or service line are to any such pipe or line as the following and to such only, that is to say—
- (a) a pipe or line through or by means of which a supply of gas, electricity or water is afforded or intended to be afforded to a consumer, either directly from premises from which the supply originates or from a main (that is to say, a pipe or line through or by means of which a supply thereof is afforded, or intended to be afforded, for the purposes of a general supply thereof);
  - (b) a pipe or line through or by means of which sewerage services are afforded or intended to be afforded, and which is [<sup>F162</sup>a private sewer or a drain within the

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meaning assigned to those expressions respectively by the <sup>M20</sup>Public Health Act 1936; or] <sup>F162</sup>not a sewer vested in a local authority]

<sup>F163</sup>(c) any telecommunication apparatus placed or intended to be placed underground for the purpose of providing a service by means of a telecommunication system to or from any premises, as distinct from telecommunication apparatus placed or intended to be placed for the general purposes of any such system]

Provided that so much of any such pipe or line as is placed, or intended to be placed, for a continuous length of one hundred yards or more in a <sup>F160</sup>street] <sup>F160</sup>road] which is a <sup>F164</sup>maintainable highway, or is prospectively a maintainable highway] <sup>F164</sup>public road, or prospective public road], shall be treated as not being a service pipe or service line.

#### Textual Amendments

**F160** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(31\)\(a\)](#)

**F161** Words “carriageway and footway” substituted (S.) for words “roadway and footpaths” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(31\)\(b\)](#)

**F162** Words “not a sewer vested in a local authority” substituted (S.) for words from “a private” to the end of para. (b) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(31\)\(c\)\(i\)](#)

**F163** S. 38(3)(c) substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), [Sch. 4 para. 29\(3\)](#), [Sch. 5 para. 45](#)

**F164** Words “public road, or prospective public road” substituted (S.) for words “maintainable highway, or is prospectively a maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(31\)\(c\)\(ii\)](#)

#### Marginal Citations

**M20** [1936 c. 49\(100:1\)](#).

## 39 Definitions.

(1) In this Act, except where the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

“apparatus” includes any structure constructed for the lodging therein of apparatus;

... <sup>F165</sup>

“authority or managers concerned” has the meaning assigned to it by section two of this Act;

“bridge authority or managers” <sup>F166</sup>means the authority, body or person in whom a bridge is vested;

[“carriageway” has the same meaning as in the <sup>M21</sup>Roads (Scotland) Act 1984;]

[“classified road” <sup>F167</sup>means a road classified by the Minister under the <sup>M22</sup>Ministry of Transport Act 1919;]

[“classified road” <sup>F167</sup>means a road classified under section 11(1) of the <sup>M23</sup>Roads (Scotland) Act 1984;]

“code-regulated works” has the meaning assigned to it by section one of this Act;

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“controlled land” has the meaning assigned to it by the First Schedule to this Act;

[“county council” means the council of an administrative county;]

[“cycle track”<sup>F168</sup> has the same meaning as in the<sup>M24</sup>Roads (Scotland) Act 1984;]

“emergency works” means works whose execution at the time when they are executed is requisite in order to put an end to, or to prevent the arising of, circumstances then existing or imminent which are calculated to cause danger to persons or property, interruption of a supply or service afforded by undertakers or by a transport authority, or substantial loss to undertakers or to such an authority, or in order to enable undertakers to satisfy an obligation created by an enactment to afford a supply or service within a time fixed by or under the enactment; and, in relation to works comprising items whereof some fall within the preceding definition and others do not, includes only such of them as fall within it and such others of them as cannot reasonably be severed therefrom;

“enactment” includes a provision of an order, scheme, regulations or other instrument, made under or confirmed by an Act;

[“footpath” and “footway”<sup>F169</sup> have the same meanings as in the<sup>M25</sup>Roads (Scotland) Act 1984;]

“general legislation” means a public general enactment, including such an enactment as incorporated in, or applied by, a special enactment, if incorporated or applied without modification; [<sup>F170</sup>[<sup>F171</sup>“highway authority” and “local highway authority” have the same meanings as in [<sup>F172</sup>the<sup>M26</sup>Highways Act 1980];]

“in”, in a context referring to works, apparatus or other property in a [<sup>F173</sup>street][<sup>F173</sup>road], controlled land or other place, includes a reference to works, apparatus or other property under, over, across, along or upon it, and, in a context referring to a sewer, drain or tunnel in a [<sup>F173</sup>street][<sup>F173</sup>road], includes a reference to one thereunder;

[<sup>F174</sup>“local roads authority” has the same meaning as in the<sup>M27</sup>Roads (Scotland) Act 1984;]

[“maintainable highway”<sup>F175</sup> has the meaning assigned to it by subsection (4) of section one of this Act, and references to a street that is prospectively a maintainable highway shall be construed as mentioned in that subsection;]

“the Minister” means [<sup>F176</sup>the Secretary of State];

[“private road”<sup>F177</sup> has the same meaning as in the<sup>M28</sup>Roads (Scotland) Act 1984;]

“public general enactment” means an enactment in an Act treated as a public general Act under the system of division of Acts adopted in the regnal year 38 George 3, other than an Act for confirming a provisional order;

[“public sewer”<sup>F178</sup> has the meaning assigned to it by the<sup>M29</sup>Public Health Act 1936, and “sewer authority” means the authority in whom a public sewer is vested;]

[“public road”<sup>F178</sup> has the meaning assigned to it by paragraph (a) of subsection (4) of section 1 of this Act; and references to a “prospective public road” shall be construed as mentioned in paragraph (b) of that subsection;]

“railway” includes a light railway other than one which is of the nature of a tramway, that is to say, laid mainly or exclusively along a

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[<sup>F179</sup>highway][<sup>F179</sup>road] and used mainly or exclusively for the carriage of passengers;

“reinstatement and making good” includes interim restoration as defined in the Third Schedule to this Act;

[“road”<sup>F180</sup> has (without prejudice to section 38(1) of this Act) the meaning assigned to it by section 1(3) of this Act;

“roads authority” has the meaning assigned to it by section 2(4) of this Act;

“road managers” has the meaning assigned to it by section 2(5) of this Act;]

“road purposes” means the maintenance of a road, any purpose falling within the definition of improvement [<sup>F181</sup>in section 329(1) of the<sup>M30</sup>Highways Act 1980][<sup>F182</sup>in section 151(1) of the<sup>M31</sup>Roads (Scotland) Act 1984] and the construction of a crossing for vehicles across a footway [<sup>F183</sup>or grass verge] or the strengthening or adaptation of a footway for use as a crossing for vehicles;

“service pipe” and “service line” have the meanings assigned to them respectively by the last preceding section;

[“sewer authority”<sup>F184</sup> means [<sup>F185</sup>the local authority]] in whom the sewer is vested;

“special enactment” means any enactment other than a public general enactment;

“special legislation” means a special enactment, and a public general enactment as incorporated in, or applied by, a special enactment, if incorporated or applied with any modification;

“statutory power” means a power conferred by any enactment, other than an enactment in this Act, whether being a public general enactment or a special enactment, and whether passed, made or coming into operation before or after the passing of this Act, so however that works executed by a statutory corporation shall not be treated as executed in exercise of a statutory power by reason only of the corporation’s having statutory authorisation in that behalf for the purposes of the law relating to the capacity of such corporations, and references in this Act to a statutory power to execute works shall be construed accordingly;

[“street”<sup>F186</sup> has (without prejudice to the provisions of subsection (1) of the last preceding section) the meaning assigned to it by section one of this Act;]

[“street authority” and “street managers”<sup>F186</sup> have the meanings assigned to them respectively by section two of this Act;]

<sup>F187</sup>

“tramway” includes a light railway being one which is of the nature of a tramway, that is to say, laid mainly or exclusively along a [<sup>F188</sup>highway][<sup>F188</sup>road] and used mainly or exclusively for the carriage of passengers, and includes a trolley vehicle system;

“transport undertaking” means a railway, dock, harbour, pier, canal or inland navigation undertaking, being an undertaking the activities of which, or some of the activities of which, are carried on under authorisation conferred by an enactment, and “transport authority” means the authority, body or person having the control or management of a transport undertaking, in the capacity in which they have the control or management thereof;

[“trunk road”<sup>F189</sup> has the same meaning as in the<sup>M32</sup>Roads (Scotland) Act 1984;]

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“undertakers” means the authority, body or person by whom a statutory power to execute undertakers’ works is exercisable, in the capacity in which that power is vested in them;

“undertakers’ works” has the meaning assigned to it by section one of this Act.

- (2) Any reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including an enactment in this Act.

### Textual Amendments

- F165** Definition “appropriate local authority” repealed (E.W.) by [Local Government Act 1972 \(c. 70, SIF 81:1\)](#), [Sch. 30](#) and (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156, Schs. 10, [11](#)
- F166** Definition of “carriageway” inserted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(32\)\(a\)](#)
- F167** Definition commencing “ “classified road” means a road classified under section 11(1)” substituted (S.) for definition commencing “ “classified road” means a road classified by the Minister” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(32\)\(b\)](#)
- F168** Definition of “cycle track” substituted (S.) for definition of “county council” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(32\)\(c\)](#)
- F169** Definitions “footpath” and “footway” inserted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(32\)\(d\)](#)
- F170** Definition “highway authority” repealed (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 11](#)
- F171** Definition substituted (E.W.) by [Local Government Act 1972 \(c. 70, SIF 81:1\)](#), [Sch. 21 para. 98\(4\)](#)
- F172** Words substituted (E.W.) by [Highways Act 1980 \(c. 66, SIF 59\)](#), [Sch. 24 para. 5\(a\)](#)
- F173** Word “road” substituted (S.) for word “street” (in both places where occurring) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(32\)\(e\)](#)
- F174** Definition of “local roads authority” inserted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(32\)\(f\)](#)
- F175** Definition “maintainable highway” repealed (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 11](#)
- F176** Words substituted by virtue of [S.I. 1953/1204, art. 3](#), 1955/1955 (1955 I, p. 1205), arts. 2, 6(1), Sch. 1 Pt. I, 1965/319, arts. 3(1), 10(1), Sch. 2 Pt. I, 1970/1681, arts. 2(1), 6(3)
- F177** Definition “private road” inserted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(32\)\(g\)](#)
- F178** Definition “public road” substituted (S.) for definitions of “public sewer” and “sewer authority” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(32\)\(h\)](#)
- F179** Word “road” substituted (S.) for word “highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(32\)\(i\)](#)
- F180** Definitions “road”, “roads authority” and “road authority” inserted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(32\)\(j\)](#)
- F181** Words substituted (E.W.) by [Highways Act 1959 \(c. 25\)](#), [Sch. 22](#) and [Highways Act 1980 \(c. 66, SIF 59\)](#), s. 340(1)(b)(2)(e), [Sch. 24 para. 5\(b\)](#)
- F182** Words substituted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(32\)\(k\)](#)
- F183** Words inserted (E.W.) by [Highways Act 1959 \(c. 25\)](#), [Sch. 22](#) saved by [Highways Act 1980 \(c. 66, SIF 59\)](#), s. 340(1)(b)
- F184** Definition “sewer authority” inserted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(32\)\(l\)](#)
- F185** In the definition of “sewer authority” for “the authority” there is expressed to be substituted “the person” by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 14, Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), [58](#)

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*Changes to legislation: There are currently no known outstanding effects for the Public Utilities Street Works Act 1950 (repealed 1.1.1993). (See end of Document for details)*

- F186** Definitions “street”, “street authority” and “street managers” repealed (S.) by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 11**
- F187** Definition “telegraphic line” repealed by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, **Sch. 7 Pt. I**
- F188** Word “road” substituted (S.) for word “highway” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(32)(m)**
- F189** Definition “trunk road” inserted (S.) by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(32)(n)**

**Modifications etc. (not altering text)**

- C27** Definition of “classified road” amended by Highways Act 1980 (c. 66, SIF 59), **s. 12**
- C28** Definition of “emergency works” extended by Water (Scotland) Act 1980 (c. 45, SIF 130), **s. 78(2)**
- C29** Definition of emergency works extended (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 132(8), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

**Marginal Citations**

- M21** 1984 c. 54(108).
- M22** 1919 c. 50(126).
- M23** 1984 c. 54(108).
- M24** 1984 c. 54(108).
- M25** 1984 c. 54(108).
- M26** 1980 c. 66(59).
- M27** 1984 c. 54(108).
- M28** 1980 c. 66(59).
- M29** 1936 c. 49(100:1).
- M30** 1980 c. 66(59).
- M31** 1984 c. 54(108).
- M32** 1984 c. 54(108).

*Short title and extent*

**40 Short title and extent.**

- (1) This Act may be cited as the Public Utilities Street Works Act 1950.
- (2) This Act shall not apply to Northern Ireland.

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*Status: Point in time view as at 01/02/1991.**Changes to legislation: There are currently no known outstanding effects for the Public Utilities Street Works Act 1950 (repealed 1.1.1993). (See end of Document for details)*

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## SCHEDULES

### FIRST SCHEDULE

Sections 1, 5, 18, 20, 29, 36, 39.

#### DEFINITION OF “CONTROLLED LAND”, AND PROVISIONS AS TO AUTHORISATION OF WORKS THEREIN

##### *Definition of “Controlled Land”*

- 1 (1) In this Act the expression “controlled land” means land abutting on a [<sup>F190</sup>street which is a maintainable highway or is prospectively a maintainable highway][<sup>F190</sup>road which is a public road or prospective public road] (in whatsoever use the land is for the time being, not excepting use as or as part of a garden or pleasure ground or the curtilage of a building), being land which either—
- (a) belongs to the [<sup>F191</sup>street][<sup>F191</sup>roads] authority and is for the time being held by them, or capable of being immediately appropriated by them, for road purposes; or
  - (b) is the subject of a subsisting authorisation of compulsory acquisition by them given with a view to their holding it for road purposes; or
  - [<sup>F192X7</sup>(c) lies between the boundary of the street and an improvement line prescribed under [<sup>F193</sup>section 73 of the <sup>M33</sup>Highways Act 1980], or under that section as applied by any other enactment, or under any corresponding provision in a special enactment.]
  - [<sup>F192X7</sup>(c) is by virtue of an agreement capable of being immediately used by the roads authority for road purposes.]
- (2) Where a piece of land which would be controlled land within the definition in the preceding sub-paragraph contains any building, structure or erection other than fences, fence-walls, gates, posts, hoardings or other similar structures or erections, the controlled land shall be treated as consisting of that piece of land exclusive of the building, structure or erection, and of strata under or above it:
- Provided that the placing of a building, structure or erection in controlled land after apparatus has been placed in it by virtue of an authorisation under this Schedule shall not affect the right of the undertakers to keep the apparatus there and to execute any undertakers’ works in relation thereto (including the placing of apparatus by way of renewal thereof and undertakers’ works requisite therefor or incidental thereto), and references in this Act to works executed in controlled land shall extend to works executed in exercise of that right.
- (3) Land falling within the definition of controlled land in this paragraph which or an interest in which is held by the Minister shall not be treated as excluded therefrom by reason of its being held by him on behalf of the Crown.



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### Editorial Information

- X7** Para. 1(1)(c) commencing “is by virtue” substituted (S.) for para. 1(1)(c) commencing “lies between” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(33)(a)(iii)**

### Textual Amendments

- F190** Words “road which is a public road or prospective public road” substituted (S.) for words “street which is a maintainable highway or is prospectively a maintainable highway” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(33)(a)(i)**
- F191** Word “roads” substituted (S.) for word “street” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(33)(a)(ii)**
- F192** Para. 1(1)(c) commencing “is by virtue” substituted (S.) for para. 1(1)(c) commencing “lies between” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(33)(a)(iii)**
- F193** Words substituted by virtue of Interpretation Act 1978 (c. 30, SIF 115:1), **s. 17(2)(a)**

### Marginal Citations

- M33** 1980 c. 66(59).

### *Provisions as to authorisation of execution of works in controlled land*

- 2 The [<sup>F194</sup>street][<sup>F194</sup>roads] authority for any such [<sup>F195</sup>street][<sup>F195</sup>road] as is mentioned in paragraph 1 of this Schedule wherein there is exercisable a power to execute undertakers’ works of any kind (being a power to which section one of this Act applies and in relation to which the street works code has effect) may, subject to the provisions of this Schedule, authorise the undertakers to execute works of that kind in controlled land abutting on the [<sup>F195</sup>street][<sup>F195</sup>road] instead of in the [<sup>F195</sup>street][<sup>F195</sup>road], and such an authorisation may be given as to such works either generally or as respects a particular class of such works or as respects particular works.

### Textual Amendments

- F194** Word “roads” substituted (S.) for word “street” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(33)(b)**
- F195** Word “road” substituted (S.) for word “street” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(33)(b)**

- 3 An authorisation given under this Schedule shall be irrevocable, and, where such an authorisation has been duly given as respects any works, the undertakers shall, subject to the provisions of this Schedule, have the like power to execute the works in the controlled land, and the like rights in relation to apparatus placed in exercise of that power, as if the controlled land had been comprised in the [<sup>F196</sup>street][<sup>F196</sup>road] (and, where any consent of the [<sup>F197</sup>street][<sup>F197</sup>roads] authority as such or of the [<sup>F196</sup>street][<sup>F196</sup>road] managers as such would have been requisite for the execution of the works in the [<sup>F196</sup>street][<sup>F196</sup>road], as if that consent had been given unconditionally), and shall have power to enter upon the controlled land for the purposes of the execution of the works therein.

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- F196** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(33\)\(c\)](#)
- F197** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(33\)\(c\)](#)

- 4 Before giving an authorisation under this Schedule the [<sup>F198</sup>street][<sup>F198</sup>roads] authority shall publish in a newspaper circulating in the locality a notice of their intention to give the authorisation, and shall, not later than the day on which the notice is published, serve a like notice on every person being an owner, lessee or occupier of the controlled land or of any part thereof and having the interest of a tenant for a year or from year to year or any greater interest, and no person shall be entitled to question the power of the authority to give the authorisation, or the validity of the authorisation when given, in any proceedings commenced later than the expiration of one month from the date on which the notice was published.

**Textual Amendments**

- F198** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(33\)\(d\)](#)

- 5 (1) Undertakers proposing to begin the execution of code-regulated works in controlled land shall give to the [<sup>F199</sup>street][<sup>F199</sup>roads] authority, and, in the case of land in the occupation of a person other than the [<sup>F199</sup>street][<sup>F199</sup>roads] authority, to him, a notice stating the general nature of the works and their intention to execute them, and shall not begin the execution thereof, except with the consent of the [<sup>F199</sup>street][<sup>F199</sup>roads] authority and of any other person in occupation of the land, until there have elapsed from the date on which the notice was given—

- (a) in the case of any works not being such as are mentioned in head (b) of this sub-paragraph, seven days, or
- (b) in the case of works relating only to a service pipe or service line or [<sup>F200</sup>overhead telecommunication apparatus], three days:

Provided that the undertakers may begin the execution of any of the works in question which are emergency works before the time when by virtue of the preceding provisions of this sub-paragraph they could lawfully begin them.

- (2) If undertakers begin the execution of any works in contravention of the preceding sub-paragraph, they shall in respect of that contravention be liable on summary conviction to a fine not exceeding [<sup>F201</sup>level 3 on the standard scale].

**Textual Amendments**

- F199** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(33\)\(e\)](#)
- F200** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 29(2), [Sch. 5 para. 45](#)

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*Changes to legislation: There are currently no known outstanding effects for the Public Utilities Street Works Act 1950 (repealed 1.1.1993). (See end of Document for details)*

**F201** Words substituted (E.W.) (S.) by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46** and (S.) by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289F, 289G**

6 (1) In respect of—

- (a) any diminution of the value of an interest in controlled land, or in land adjacent thereto and held therewith, by the giving of an authorisation under this Schedule, or
- (b) any damage sustained by the owner of such an interest or of things in the controlled land which is caused by the execution lawfully of works therein, or by entry thereon, by virtue of such an authorisation.

the [<sup>F202</sup>street][<sup>F202</sup>roads] authority giving the authorisation shall pay compensation to the owner of the interest so diminished in value, or to the owner who sustained the damage, as the case may be, any compensation for such diminution being in the form of a lump sum assessed with due regard to the right to compensation for such damage, and where any dispute arises whether compensation is payable under this paragraph, or as to the amount of any such compensation, the dispute shall be determined by the Lands Tribunal [<sup>F203</sup>for Scotland].

(2) Undertakers to whom an authorisation is given under this Schedule shall pay to the [<sup>F204</sup>street][<sup>F204</sup>roads] authority the amount of any compensation which the authority are liable to pay under this paragraph as the [<sup>F204</sup>street][<sup>F204</sup>roads] authority giving the authorisation, except—

- (a) where it has been determined under section five of this Act otherwise than with the agreement of the undertakers that the works in question ought to be executed in the controlled land, or the undertakers have agreed to the execution of the works therein after notification to them of modifications or disapproval of a plan and section of the works as proposed to be executed in the [<sup>F205</sup>street][<sup>F205</sup>road] on the ground that the works ought to be executed in the controlled land, in so far as the liability of the authority to make the payment is attributable to the giving of an authorisation required for the execution of those works or to the execution thereof or to entry for the purposes thereof; or
- (b) in any other case, in so far as it appears t the [<sup>F204</sup>street][<sup>F204</sup>roads] authority that it is reasonable that the ultimate incidence of the liability for any such compensation should be on them.

#### Textual Amendments

**F202** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(33)(f)(i)**

**F203** Words added (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(33)(f)(ii)**

**F204** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(33)(g)**

**F205** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(33)(g)**

7 (1) Undertakers to whom an authorisation is given under this Schedule shall pay to the [<sup>F206</sup>street][<sup>F206</sup>roads] authority an amount equal to any amount by which the cost

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reasonably incurred by the undertakers of executing any works which are executed in controlled land pursuant to the authorisation is less by reason of their being executed therein than it would have been if they had been executed in the [F207street][F207road].

For the purposes of this sub-paragraph, any payment made or required to be made by the undertakers to the [F206street][F206roads] authority under sub-paragraph (2) of the last preceding paragraph shall be treated as part of the cost reasonably incurred by the undertakers of executing the works in the controlled land.

- (2) Where it has been determined under section five of this Act otherwise than with the agreement of the undertakers that works ought to be executed in controlled land, or the undertakers have agreed to the execution of works therein after notification to them of modifications or disapproval of a plan and section of the works as proposed to be executed in the [F207street][F207road] on the ground that the works ought to be executed in controlled land, the [F206street][F206roads] authority shall pay to the undertakers an amount equal to any amount by which the cost reasonably incurred by the undertakers of the execution of those works is greater by reason of their being executed in that land than it would have been if they had been executed in the [F207street][F207road].
- (3) Any question arising under this paragraph shall, in default of agreement between the [F206street][F206roads] authority and the undertakers, be determined by arbitration.

#### Textual Amendments

**F206** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(33\)\(h\)](#)

**F207** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(33\)\(h\)](#)

*Provision for case of controlled land ceasing to be such after authorisation of execution of works therein*

- 8 (1) If at any time after an authorisation has been given under this Schedule as to any controlled land the land or any part of it ceases to be within the definition of controlled land contained in paragraph 1 of this Schedule without having become part of the [F208street][F208road], and any person being an owner, lessee or occupier of the land or of that part of it, as the case may be, not being only a tenant for a year or from year to year or for any less interest, gives notice to the undertakers that he objects to the continuance of the power and rights thereover vested in them by virtue of the authorisation, the said power and rights shall determine as to the land or to that part of it, as the case may be, at the expiration of six months from the date on which the notice was given:

Provided that (as respects any land ceasing to be controlled land under sub-paragraph (2) of paragraph 1 of this Schedule by reason of the placing of a building, structure or erection in controlled land after apparatus has been placed in it) this sub-paragraph shall have effect subject to the like saving for the right of undertakers as is contained in the proviso to the said sub-paragraph (2).

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- (2) The [<sup>F209</sup>street][<sup>F209</sup>roads] authority shall pay to the undertakers the amount of any cost reasonably incurred by the undertakers of or in connection with any removal of apparatus rendered necessary by such a determination, and of executing any other undertakers' works or taking any other measures the execution or taking whereof is rendered necessary thereby for the purposes of the supply or service for which apparatus whose removal is rendered necessary was used.
- (3) Where after apparatus has been placed in controlled land by virtue of an authorisation under this Schedule the land becomes part of the [<sup>F208</sup>street][<sup>F208</sup>road], if any consent would have been requisite for the placing thereof had it been placed in the [<sup>F208</sup>street][<sup>F208</sup>road] immediately after that land became part thereof, the relevant power of the undertakers to which section one of this Act applies shall be exercisable in relation to the apparatus as if that consent had been given unconditionally.

#### Textual Amendments

**F208** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(33\)\(i\)](#)

**F209** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(33\)\(i\)](#)

## [<sup>F210X8</sup>SECOND SCHEDULE

Sections 1, 36.]

### DECLARATIONS DESIGNATING STREETS AS PROSPECTIVELY MAINTAINABLE HIGHWAYS

#### Editorial Information

**X8** [Sch. 2](#) headed “Declarations Designating Roads as Prospective Public Roads” substituted (S.) for [Schedule 2](#) headed “Declarations Designating Streets as Prospectively Maintainable Highways” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(34\)](#)

#### Textual Amendments

**F210** [Sch. 2](#) headed “Declarations Designating Roads as Prospective Public Roads” substituted (S.) for [Schedule 2](#) headed “Declarations Designating Roads as Prospectively Maintainable Highways” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(34\)](#)

- 1 Where the [<sup>F211</sup>local highway authority] are satisfied as to any street in their area, whether a highway or not, which is not a maintainable highway that it is likely to become a maintainable highway, they may declare that it is likely to become such:

Provided that such a declaration shall not be made as to a street which is under the management or control of a transport authority.

#### Textual Amendments

**F211** Words substituted by [Local Government Act 1972 \(c. 70, SIF 81:1\)](#), [Sch. 21 para. 98\(5\)](#)

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Public Utilities Street Works Act 1950 (repealed 1.1.1993). (See end of Document for details)*

[<sup>F212</sup>2 A declaration made under this Schedule shall be a local land charge.]

**Textual Amendments**

**F212** Para. 2 substituted for paras. 2–4 by [Local Land Charges Act 1975 \(c. 76, SIF 98:2\)](#), [Sch. 1](#)

[<sup>F213X9</sup>SECOND SCHEDULE

DECLARATIONS DESIGNATING ROADS AS PROSPECTIVE PUBLIC ROADS]

**Editorial Information**

**X9** [Sch. 2](#) headed “Declarations Designating Roads as Prospective Public Roads” substituted (S.) for Schedule 2 headed “Declarations Designating Streets as Prospectively Maintainable Highways” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(34\)](#)

**Textual Amendments**

**F213** [Sch. 2](#) headed “Declarations Designating Roads as Prospective Public Roads” substituted (S.) for Schedule 2 headed “Declarations Designating Roads as Prospectively Maintainable Highways” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(34\)](#)

- 1 Subject to paragraph 2 below, where a local roads authority are satisfied that a road in their area which is not a public road is likely to become a public road they may issue a declaration to that effect.
- 2 A declaration under paragraph 1 above shall not be made as regards a road which is under the management or control of a transport authority.
- 3 Each local roads authority shall keep a register in which shall be entered, in such manner as may be prescribed by the Secretary of State, particulars of every declaration made by them under paragraph 1 above; and they shall keep the register open to public inspection and allow any person to make a copy of any entry therein.

THIRD SCHEDULE

Sections 7, 8, 9, 10.

REINSTATEMENT AND MAKING GOOD BY STREET AUTHORITY OR  
STREET MANAGERS AFTER EXECUTION OF UNDERTAKERS’ WORKS

- 1 (1) In any case in which undertakers are under obligation by virtue of subsection (2) of section seven of this Act to reinstate and make good a [<sup>F214</sup>street][<sup>F214</sup>road] or controlled land after the completion of any code-regulated works involving breaking up or opening thereof, other than works relating to a service pipe or service

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line or an <sup>F215</sup>overhead telecommunication apparatus] being works such as are mentioned in paragraph (b) or (d) of subsection (2) of section three of this Act, the <sup>F216</sup>street][<sup>F216</sup>roads] authority or <sup>F214</sup>street][<sup>F214</sup>road] managers may, by notice given to the undertakers as mentioned in the next succeeding sub-paragraph, elect to do the permanent reinstatement and making good of the <sup>F214</sup>street][<sup>F214</sup>road] or controlled land or of any part thereof at upper levels:

Provided that the provisions of this Schedule shall not apply to a <sup>F217</sup>street being a highway which is not a maintainable highway and][<sup>F217</sup>private road] which no person is liable to the public to maintain or repair.

- (2) A notice of such an election shall be deemed to have been duly given if the code-regulated works are in a <sup>F218</sup>street][<sup>F218</sup>road] or controlled land as to which the authority or managers had given to the undertakers notice of their desire that the provisions of this Schedule should have effect in the case of all code-regulated works executed by the undertakers therein or in the case of all such works of a class specified in the notice within which the works in question fall.

In any other case, a notice of such an election shall be given without any avoidable delay on the part of the authority or managers after they know of the intention of the undertakers to execute the code-regulated works, and—

- (a) where those works are executed after settlement of a plan and section thereof under section four of this Act if the works are in a <sup>F218</sup>street][<sup>F218</sup>road] or under section five thereof if they are in controlled land, notice given after the expiration of eight days from the date on which the plan and section were settled shall not be effective; and
- (b) where they are not, notice given after the undertakers have begun reinstatement or making good of any part of the <sup>F218</sup>street][<sup>F218</sup>road] or controlled land shall not be effective as to that part thereof.
- (3) If a notice of such an election is given in relation to reinstatement of a <sup>F219</sup>street which is prospectively a maintainable highway][<sup>F219</sup>prospective public road] both by the <sup>F220</sup>street][<sup>F220</sup>roads] authority and by the <sup>F221</sup>street][<sup>F221</sup>road] managers, the election of the authority shall have effect to the exclusion of that of the managers, and, if in relation to reinstatement of a <sup>F221</sup>street][<sup>F221</sup>road] as to which two or more bodies or persons are <sup>F221</sup>street][<sup>F221</sup>road] managers notice of such an election is given by two or more of them, the election of such of them as the <sup>F222</sup>appropriate local][<sup>F222</sup>local roads] authority may determine shall have effect to the exclusion of that of any of the others.

#### Textual Amendments

- F214** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(a\)\(i\)](#)
- F215** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, [Sch. 4 para. 29\(2\)](#), [Sch. 5 para. 45](#)
- F216** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(a\)\(i\)](#)
- F217** Words “private road” substituted (S.) for words “street being a highway which is not a maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(a\)\(ii\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Public Utilities Street Works Act 1950 (repealed 1.1.1993). (See end of Document for details)*

- F218** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(b\)](#)
- F219** Words “prospective public road” substituted (S.) for words “street which is prospectively a maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(c\)\(i\)](#)
- F220** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(c\)\(ii\)](#)
- F221** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(c\)\(ii\)](#)
- F222** Words “local roads” substituted (S.) for words “appropriate local” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(c\)\(iii\)](#)

- 2 (1) In case of such an election as aforesaid, the following provisions of this Schedule shall have effect as to so much of the [<sup>F223</sup>street][<sup>F223</sup>road] or controlled land as the election extends to.
- (2) In the said provisions, in relation to a [<sup>F223</sup>street][<sup>F223</sup>road] or controlled land that has been opened or broken up—
- “interim restoration” means all such works as are requisite for securing that it does not remain open or broken up for any longer time than is reasonably necessary, and that its state during the period before it is permanently reinstated and made good at surface level is not such as to be likely to cause danger;
- “permanent reinstatement and making good” means any works of reinstatement and making good executed on any occasion otherwise than with a view to their being superseded by further works to be executed shortly thereafter; and
- “surface level” means what was the surface level before the opening or breaking up.

**Textual Amendments**

- F223** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 50, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(d\)](#)

- 3 The undertakers shall be under obligation (in accordance with the provisions of subsection (2) of section seven of this Act as to the time for the discharge of that obligation and otherwise) to execute the following reinstatement and making good, and no other, that is to say—
- (a) interim restoration at any place during the period between the time when their obligation under the said subsection (2) to begin reinstatement and making good there arises and the time when they are given notice under paragraph 5 of this Schedule that the electing authority or managers are about to begin their permanent reinstatement and making good there; and
- (b) such of the permanent reinstatement and making good as is not within the obligation of the electing authority or managers under the next succeeding paragraph.



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- 4 (1) The electing authority or managers shall be under obligation (in accordance with the provisions of paragraph 5 of this Schedule as to the time for discharge of that obligation) to execute the permanent reinstatement and making good at surface level, and at lower levels so far as may be requisite for securing that the [<sup>F224</sup>street][<sup>F224</sup>road] or controlled land is permanently reinstated and made good at the surface level:

Provided that they shall not be under any obligation, and shall not have any power, to execute any of the permanent reinstatement and making good within twelve inches above apparatus of the undertakers, or, if and in so far as the electing authority or managers and the undertakers agree to the substitution of another measure for the said twelve inches for the purposes of this proviso, within that measure above such apparatus.

- (2) During the period between the time when the electing authority or managers give notice under paragraph 5 of this Schedule that they are about to begin their permanent reinstatement and making good at any place and the time of the completion thereof there, they shall be under obligation to execute interim restoration there.
- (3) The undertakers shall pay to the electing authority or managers an amount equal to the cost reasonably incurred by them in the discharge of their obligations under the preceding sub-paragraphs.
- (4) The electing authority or managers shall be entitled, if and so far as may be requisite for the discharge of their obligation under sub-paragraph (1) of this paragraph as to permanent reinstatement and making good, to undo and do again reinstatement and making good previously executed by the undertakers, and the cost thereof reasonably incurred by the electing authority or managers shall be included in the amount payable to them under the last preceding sub-paragraph.

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#### Textual Amendments

**F224** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 50, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(e\)](#)

- 5 (1) The electing authority or managers shall begin their permanent reinstatement and making good at any place as soon as is prudent and practicable after the time when the undertakers are to be treated under the next succeeding sub-paragraph as having completed their works there and such of the permanent reinstatement and making good there as they are under obligation to execute.

- (2) When—

- (a) the undertakers have completed at any place their works and such of the permanent reinstatement and making good there as they are under obligation to execute; and
- (b) if any notice under subsection (4) of section seven of this Act requiring the undertakers to remedy any defect in what they have done there has been given, the proceedings consequent on the notice and any works which they are under obligation to execute by virtue thereof have been completed,

the undertakers shall give notice of the completion thereof to each of the authorities concerned who are entitled to give a notice under the said subsection (4), and on the giving by the undertakers of their notice they shall be treated for the purposes

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of this paragraph as having completed their works there and such of the permanent reinstatement and making good there as they are under obligation to execute, if either—

(i) no notice under the said subsection (4) (or, if there has already been any such, no further such notice) is given by any such authority within the following time from the giving of the undertakers' notice, that is to say eight days in the case of such an authority being a [<sup>F225</sup>Minister of the Crown, a county council][<sup>F225</sup>roads authority] or a transport authority, or four days in the case of any other such authority; or

(ii) any notice under the said subsection (4) so given (or every such notice if more than one) is withdrawn or is determined by arbitration not to be justified.

(3) When the electing authority or managers are about to begin their permanent reinstatement and making good at any place they shall give notice to the undertakers that they are about to begin it.

#### Textual Amendments

**F225** Words “roads authority” substituted (S.) for words “Minister of the Crown, a county council” by [Roads \(Scotland\) Act 1984 \(c. 50, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(f\)](#)

- 6 (1) The duty to secure observance of the requirements of paragraphs (a) to (e) of subsection (1) of section eight of this Act (as to safety, obstruction and other matters) shall, as regards the observance thereof during and in connection with the execution of reinstatement and making good at any place, be on the undertakers until the electing authority or managers have given notice under the last preceding paragraph that they are about to begin their permanent reinstatement and making good there, but shall then devolve on the electing authority or managers.
- (2) The undertakers shall pay to the electing authority or managers an amount equal to the cost reasonably incurred by them of performing duties devolving on them under this paragraph.
- 7 Nothing in this Schedule shall affect the provisions of section twelve of this Act or of subsection (1) of section thirteen thereof as to the reinstatement and making good of sewers, drains and tunnels.

## FOURTH SCHEDULE

Sections 21, 22, 23, 37.

### SUPPLEMENTARY PROVISIONS OF THE CODE IN PART II OF THIS ACT

#### Modifications etc. (not altering text)

**C30** [Sch. 4](#) extended (16.3.1992) by [Midland Metro Act 1992 \(c. vii\)](#), [s. 8\(3\)](#)

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Public Utilities Street Works Act 1950 (repealed 1.1.1993). (See end of Document for details)*

## PART I

### SETTLEMENT OF SPECIFICATION OF WORKS AND MEASURES TO BE TREATED AS RENDERED NECESSARY UNDER THE CODE IN PART II

- 1 (1) The provisions of Part I of this Schedule shall have effect as to settling a specification of undertakers' works or measures which are to be treated at the instance of undertakers or of a promoting authority as necessary as mentioned in section twenty-two of this Act.
- (2) In this Schedule the expression "relevant apparatus" means apparatus such as is mentioned in section twenty-one of this Act which is in the [<sup>F226</sup>street][<sup>F226</sup>road] in question or in controlled land abutting on it.

#### Textual Amendments

**F226** Word "road" substituted (S.) for word "street" by [Roads \(Scotland\) Act 1984 \(c. 50, SIF 108\)](#), [Sch. 9 para. 39\(36\)\(a\)](#)

#### *Settlement of specification at the instance of the undertakers*

- 2 (1) Where the execution of any authority's works is intended, the promoting authority shall give notice of the intention to execute them, stating that the notice is given for the purposes of this Schedule, together with, in the case of a road alteration, a statement of the nature and mode of execution of the authority's works, or, in the case of a bridge alteration or of transport works, a plan and section of the authority's works—
    - (a) to all undertakers whom the authority know to have relevant apparatus, and
    - (b) to any undertakers having relevant apparatus who have not been given a notice by virtue of head (a) of this sub-paragraph and who give notice to the authority that they have such apparatus not later than the expiration of fifteen days from the date on which the authority's works are begun.
  - (2) In the case of a road alteration, if it appears to any such undertakers that a plan and section of the authority's works or any of them ought to be furnished to them, they shall, as early as practicable and not later than the expiration of fifteen days from the date of the giving to them of the authority's notice under the preceding sub-paragraph, give notice to the authority requiring them to furnish a plan and section thereof.
- 3 If any undertakers entitled to notice from the authority under the last preceding paragraph desire to claim that any undertakers' works or any measures are necessary for the purposes mentioned in subsection (1) of section twenty-two of this Act as respects relevant apparatus of theirs, they shall, as early as practicable and not later than the expiration of twenty-nine days from the date of the giving to them of the authority's notice under the last preceding paragraph (or, in the case of a road alteration as to which they have duly required a plan and section to be furnished to them, from the date on which they are furnished therewith), give notice to the authority, specifying the undertakers' works and the measures which the undertakers claim to be so necessary.

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*Changes to legislation: There are currently no known outstanding effects for the Public Utilities Street Works Act 1950 (repealed 1.1.1993). (See end of Document for details)*

- 4 When any undertakers entitled as aforesaid have duly given a notice under the last preceding paragraph, the authority shall give notice to the undertakers without avoidable delay either accepting the undertakers' notice as a specification of works and measures to be treated at the instance of the undertakers as necessary for the purposes aforesaid as respects relevant apparatus of theirs, or objecting to it, and—
- (a) if the authority do not so give notice within twenty-nine days from the date on which the undertakers' notice was given, the authority shall be deemed to have accepted it as aforesaid;
  - (b) if the authority do so give notice objecting to the undertaker's notice, such a specification may be settled by agreement between the authority and the undertakers, or, in default of agreement, the undertakers or the authority may refer the matter to arbitration and the [<sup>F227</sup>arbitrator][<sup>F227</sup>arbiter] shall (unless he determines that none of the works or measures claimed ought to be so treated) settle a specification of the works and measures to be so treated.

#### Textual Amendments

**F227** Word “arbiter” substituted (S.) for word “arbitrator” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(36\)\(b\)](#)

- 5 Except as regards emergency works, the authority's works shall not be begun (or, if they have been begun before the giving by the undertakers of a notice under head (b) of sub-paragraph (1) of paragraph 2 of this Schedule, they shall not be continued thereafter) until—
- (a) in the case of all undertakers entitled to notice from the authority under paragraph 2 of this Schedule who have duly given a notice under paragraph 3 thereof, such a specification as aforesaid has been settled as aforesaid, or it has been agreed or determined that none of the works or measures claimed ought to be treated as aforesaid, and
  - (b) any undertakers so entitled who have not given a notice under paragraph 3 of this Schedule are under the preceding provisions of this Schedule out of time for giving it.
- 6 If any authority's works, other than emergency works, are begun without the authority's having previously given a notice under paragraph 2 of this Schedule to undertakers whom the authority know, or ought reasonably to have known, to have relevant apparatus, the authority shall pay to those undertakers an amount equal to any loss sustained by them by reason of the failure of the authority so to give such a notice to those undertakers.

#### *Settlement of specification at the instance of the promoting authority*

- 7 (1) If a promoting authority desire to claim that any undertakers' works are necessary for the purposes mentioned in subsection (2) of section twenty-two of this Act as respects relevant apparatus of any undertakers, the authority may give notice to the undertakers specifying the works which the authority claim to be so necessary.

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- (2) When the promoting authority have given a notice under the preceding sub-paragraph, the provisions relating to undertakers' works of paragraph 4 of this Schedule shall have effect with requisite adaptations as to the settlement of a specification of works to be treated at the instance of the authority as necessary for the purposes aforesaid as respects apparatus of the undertakers.
- (3) The promoting authority shall use their best endeavours to secure that any notice to be given by them to any undertakers under sub-paragraph (1) of this paragraph shall be given early enough to enable the requisite specification to be settled in the same proceedings as any specification to be settled under the said paragraph 4 at the instance of those undertakers in relation to the same authority's works.

## PART II

### MODIFICATIONS OF THE CODE IN PART II OF THIS ACT TO APPLY WHERE TWO OR MORE OPERATIONS BEING AUTHORITY'S WORKS ARE EXECUTED ON THE SAME OCCASION

- 8 (1) Where two or more operations each being authority's works are executed in connection with each other on the same occasion by different authorities, those operations shall be treated for the purposes of sections twenty-two to twenty-five of this Act and Part I of this Schedule as together constituting the authority's works.
  - (2) In relation to authority's works constituted by such operations as aforesaid, the obligations and rights of a promoting authority under the said sections and Part I of this Schedule to or against the undertakers shall be in one only of the authorities executing the operations in question (hereinafter referred to as the negotiating authority), and the negotiating authority shall be such one of them as may be selected by agreement between them, or, in default of agreement—
    - (a) if a road alteration is included and is not one executed only because it is made necessary by another of the operations, the authority executing the road alteration, or
    - (b) otherwise, the authority executing the other operation, or, if the operations include or consist of two or more other operations, such one of the authorities executing them as the Minister may select,and a notice under paragraph 2 of this Schedule shall not be given until the negotiating authority has been selected, and a notice given thereunder shall state what authority is to be the negotiating authority.
- 
- 9 (1) In relation to authority's works constituted by such operations as aforesaid references to the promoting authority in sections twenty-two to twenty-five of this Act and in Part I of this Schedule shall (except in the case of those mentioned in the succeeding sub-paragraph) be construed as references to the negotiating authority.
  - (2) In relation to such authority's works references in the following provisions to the promoting authority shall be construed as references to either or any of the authorities executing the operations in question, that is to say—
    - subsection (3) of section twenty-two (as to a promoting authority's power to waive observance of the requirements therein mentioned);

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subsection (1) of section twenty-three (as to the effect on the undertakers' right to payment for works for remedying subsidence in circumstances in which such an authority were to blame); and  
 sections twenty-four and twenty-five (as to the effect of enactments and agreements for regulating the relations between such an authority and the undertakers).

- 10 The authorities executing such operations as aforesaid may, notwithstanding anything in the two preceding paragraphs, make provision by agreement as to the discharge and exercise of the obligations and rights which are in the negotiating authority thereunder, as to how expenses and receipts arising from the discharge and exercise thereof are to be ultimately allocated between them, or otherwise in relation thereto, and in default of agreement as to any of those matters, it shall be determined by arbitration on a reference by either or any of those authorities:

Provided that nothing in any such agreement or determination shall, except with the consent of the undertakers, affect the right conferred on them by virtue of those paragraphs to deal with the negotiating authority only.

- 11 Subsection (2) of section twenty-three of this Act (as to excluding the right of undertakers to payment under section twenty-two of this Act where conditions as to notice of authority's works are satisfied) shall not have effect as to authority's works constituted by such operations as aforesaid, but the undertakers shall not be entitled to any payment by virtue of section twenty-two of this Act by reference to such authority's works so far as consisting of any operation included therein if their right thereto would have been excluded by that subsection had that operation been the only one executed.

## FIFTH SCHEDULE

### CONSEQUENTIAL MODIFICATIONS OF PUBLIC GENERAL ENACTMENTS

**Modifications etc. (not altering text)**

**C31** Sch. 5 amended (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(37\)](#)

The modifications specified in this Schedule have effect subject to the limitations specified in the following provisions of this Act:—

- (i) As to modifications consequential on the street works code—Paragraph (a) of subsection (3) of section fifteen and subsection (4) of that section.
- (ii) As to modifications consequential on section seventeen of this Act—Paragraph (a) of subsection (2) of that section.
- (iii) As to modifications consequential on the code in Part II of this Act—Paragraph (a) of subsection (2) of section twenty-four.

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<b>Modifications</b>	<b>Provision of this Act on which modification is consequential</b>
<p>... F228</p> <p><i>The Waterworks Clauses Act, 1847 (10 &amp; 11 Vict. c. 17).</i></p> <p>In section twenty-eight, the words “under such superintendence as is hereinafter specified” shall be omitted.</p> <p>Sections thirty to thirty-four shall cease to have effect.</p> <p><i>The Towns Improvement Clauses Act, 1847 (10 &amp; 11 Vict. c. 34).</i></p> <p>Section sixty-one shall cease to have effect so far as it relates to the alteration, for the purpose of authority’s words as defined in Part II of this Act, of the position of any pipes or other works.</p>	<p>... F228</p> <p>The street works code.</p> <p>The street works code.</p> <p>The code in Part II.</p>
<p>... F229</p> <p><i>The Public Health Act, 1875 (38 &amp; 39 Vict. c. 55).</i></p> <p>Section one hundred and fifty-three shall cease to have effect so far as it relates to the alteration, for the purpose of authority’s works as defined in Part II of this Act, of the situation of pipes or other works.</p>	<p>... F229</p> <p>The code in Part II.</p>
<p>... F230</p>	<p>... F230</p>
<p>... F228</p>	<p>... F228</p>
<p>... F231</p> <p><i>The Burgh Police (Scotland) Act, 1892 (55 &amp; 56 Vict. c. 55).</i></p> <p>Section one hundred and forty-nine shall cease to have effect so far as it relates to the alteration, for the purpose of authority’s works as defined in Part II of this Act, of the situation of pipes or other works.</p>	<p>... F231</p> <p>The code in Part II.</p>
<p>... F231</p>	<p>... F231</p>
<p>... F228</p>	<p>... F228</p>
<p>... F232</p>	<p>... F232</p>

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*Changes to legislation: There are currently no known outstanding effects for the Public Utilities Street Works Act 1950 (repealed 1.1.1993). (See end of Document for details)*

*The Electricity (Supply) Act, 1926 (16 & 17Geo.5,c.51).*

In section thirty-five, in subsection (1), paragraph (b) shall cease to have effect. The code in Part II.

*The Petroleum Production Act, 1934 (24 & 25 Geo.5. c. 36).*

In section three, in subsection (1), the words “and thirty to thirty-four” shall be omitted. The street works code.

*The Public Health Act, 1936 (26Geo.5 & 1Edw.8c.49).*

In section two hundred and seventy-nine, the proviso to subsection (2), and subsection (3), shall cease to have effect. The street works code.

[<sup>F233</sup>*The Water Act, 1945 (8 & 9Geo.6.c. 42).*]

[<sup>F233</sup>In section twelve, in subsection (5), after the words “Parts V and VI of the Third Schedule to this Act” there shall be inserted the words “and the street works code in the Public Utilities Street Works Act, 1950”.] [<sup>F233</sup>Section twenty.]

[<sup>F233</sup>In section twenty-two, in subsection (3), there shall be added at the end thereof the words:— “Provided that the consent of the highway authority shall not be required by virtue of this subsection for the carrying by any undertakers of any drain, sewer or watercourse under any street maintainable at the public expense which is within the limits of supply of those undertakers”.] [<sup>F233</sup>Section s eventeen.]

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F232

...  
F232

[<sup>F233</sup>In the Third Schedule, sections twenty-three and twenty-four shall cease to have effect.] [<sup>F233</sup>The street works code.]

[<sup>F233</sup>In the Third Schedule, in section twenty-five, in subsection (1), after the words “street or bridge” there shall be inserted the words “(not being a street or bridge maintainable at the public expense)”.] [<sup>F233</sup>Section seventeen.]

[<sup>F233</sup>In the Third Schedule, subsection (2) of section twenty-five (except so far as it is applied by subsection (3) of that section), section twenty-six, subsection (2) of section twenty-seven, and subsection (2) of section twenty-eight, shall cease to have effect.] [<sup>F233</sup>The street works code.]

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F234

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F234



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*Changes to legislation: There are currently no known outstanding effects for the Public Utilities Street Works Act 1950 (repealed 1.1.1993). (See end of Document for details)*

### Textual Amendments

- F228** Entries relating to the Gasworks Clauses Act 1847 as incorporated with the Electric Lighting Act 1882 by section 12 of that Act, the Electric Lighting Act 1882 and the Schedule to the Electric Lighting (Clauses) Act 1899 repealed by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(3)(4), [Sch. 17 para. 35\(1\)](#), **Sch. 18**
- F229** Entries repealed by [Statute Law \(Repeals\) Act 1978 \(c. 45\)](#), **Sch. 1 Pt. XI**, [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, **Sch. 7 Pt. I** and [Post Office Act 1969 \(c. 48, SIF 96\)](#), **Sch. 8 Pt. I**
- F230** Entry repealed by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, **Sch. 7 Pt. I**
- F231** Entries repealed by [Statute Law \(Repeals\) Act 1978 \(c. 45\)](#), **Sch. 1 Pt. XI**
- F232** Entries repealed by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, **Sch. 7 Pt. I**
- F233** Entries relating to the Water Act 1945 repealed (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 41\(1\), 57\(6\), 58](#), **Sch. 27 Pt. I**
- F234** Entries repealed by [Town and Country Planning Act 1962 \(c. 38, SIF 123:1\)](#), s. 223, **Sch. 15**, [Town and Country Planning \(Scotland\) Act 1972 \(c. 52, SIF 123:2\)](#), s. 277, **Sch. 23**, [Gas Act 1972 \(c. 60, SIF 44:2\)](#), s. 49, **Sch. 8**, [Water \(Scotland\) Act 1980 \(c. 45, SIF 130\)](#), **Sch. 11** and [Telecommunications Act 1984 \(c. 12,](#)

## SIXTH SCHEDULE

### POWERS FOR CONSEQUENTIAL MODIFICATION OF SPECIAL ENACTMENTS, AND FOR SAVINGS AS TO CERTAIN PROTECTIONS AND CONSENT REQUIREMENTS

#### PART I

#### POWERS

##### *Power to provide for consequential modification of special enactments*

- 1 (1) If it appears to the Minister that uncertainty or obscurity has resulted, or is likely to result, from the operation on a special enactment of the general provisions—
- (a) of subsection (3) of section fifteen of this Act for restricting the operation of special enactments which regulate the exercise of powers in relation to which the street works code is to have effect,
  - (b) of subsection (2) of section seventeen thereof for restricting the operation of special enactments as regards the obtaining of consents which that section renders not requisite, or
  - (c) of subsection (2) of section twenty-four thereof for excluding the operation of special enactments in cases in which the code in Part II of this Act is to have effect,
- the Minister may, subject to the provisions of Part II of this Schedule, by order make provision for the express modification, in accordance with the general provisions of that subsection, of the enactment in question.
- (2) The preceding sub-paragraph shall apply to public general enactments for the purposes of their operation as incorporated or applied as mentioned in subsection (3)

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of section fifteen of this Act, in subsection (2) of section seventeen or in subsection (2) of section twenty-four thereof, as it applies to special enactments.

*Power for saving certain existing protections*

- 2 (1) If it appears to the Minister that, by the operation of subsections (2) and (3) of section fifteen of this Act, or of subsections (1) and (2) of section twenty-four thereof (or by the operation of those subsections respectively together with an order under paragraph 1 of this Schedule), an authority, body or person has been or will be deprived of some protection which was afforded to them or him by a special enactment, and that a corresponding protection is in all the circumstances reasonably required in connection with the operation in relation to them or him of the street works code, or of the code in Part II of this Act, as the case may be, the Minister may, subject to the provisions of Part II of this Schedule, by order make provision for affording such corresponding protection to them or him.
- (2) The preceding sub-paragraph shall apply to public general enactments for the purposes of their operation as incorporated or applied as mentioned in subsection (3) of section fifteen of this Act, or in subsection (2) of section twenty-four thereof, as it applies to special enactments.

*Powers for savings as to certain consent requirements*

- 3 The Minister may, subject to the provisions of Part II of this Schedule, by order provide for saving, notwithstanding anything in subsection (1) of section seventeen of this Act, any requirement of consent imposed by a special enactment or by a public general enactment as incorporated or applied in or by a special enactment with any modification, either as regards all works to which the requirement extends or as regards any class of such works.
- 4 The Minister may, subject to the provisions of Part II of this Schedule, by order provide for rendering valid, notwithstanding anything in subsection (3) of section seventeen of this Act, a provision made by way of condition imposed on the giving of a consent in any respect in which it would otherwise be of no effect by virtue of that subsection.

## PART II

### PROCEDURE FOR MAKING ORDERS UNDER THIS SCHEDULE

- 5 Where the Minister proposes to make an order under this Schedule, he shall prepare a draft of the order and shall publish in the [<sup>F235</sup>London][<sup>F235</sup>Edinburgh] Gazette, and in at least one newspaper circulating in the locality in relation to which the enactment in question has effect, a notice—
- (a) stating the general effect of the proposed order;

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- (b) specifying a place in the said locality where a copy of the draft of the order may be inspected by any person free of charge at all reasonable hours or may be purchased by any person at a charge not exceeding [<sup>F236</sup>5p]; and
- (c) stating that any person may, by notice given to the Minister within three months from the date of the publication of the notice, object to the proposed order.

**Textual Amendments**

**F235** Word “Edinburgh” substituted (S.) for word “London” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(38\)\(a\)](#)

**F236** Words substituted by virtue of [Decimal Currency Act 1969 \(c. 19, SIF 10\)](#), [s. 10\(1\)](#)

6 Not later than the day on which the said notice is published, or, if it is published on two or more days, the day on which it is first published, the Minister shall furnish each of the parties specified in the Table set out at the end of this Schedule with a copy of the draft of the order.

7 If any objection to the proposed order is received by the Minister from any authority, body or person required to be furnished with a copy of the draft of the order within three months from the date of their or his being furnished therewith, or is received by the Minister from any other person appearing to him to be affected within three months from the day on which the notice of the proposed order is published, or, if it is published on two or more days, from the later or latest of them, and the objection is not withdrawn, he shall cause a local inquiry to be held:

Provided that, in the case of an objection made otherwise than by an authority, body or person required to be furnished with a copy of the draft of the order, the Minister may dispense with such an inquiry if he is satisfied that it is unnecessary.

[<sup>F237</sup>8 [<sup>F238</sup>Subsections (2) to (5) of section 250 of the <sup>M34</sup>Local Government Act 1972] (which relate to the giving of evidence at, and defraying of costs of, inquiries) shall apply in relation to a local inquiry held under the last preceding paragraph as they apply in relation to inquiries held under that section:

Provided that subsection (4) of that section (which requires the costs of the department holding the inquiry to be defrayed by the parties thereto) shall not apply in so far as the Minister is of opinion, having regard to the object and result of the inquiry, that the Minister’s costs should be defrayed by him.]

**Textual Amendments**

**F237** [Sch. 6 para. 8](#) repealed (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [s. 156\(3\)](#), [Schs. 10, 11](#)

**F238** Words substituted by virtue of [Local Government Act 1972 \(c. 70, SIF 81:1\)](#), [s. 272\(2\)](#)

**Marginal Citations**

**M34** [1972 c. 70\(81:1\)](#).

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*Changes to legislation: There are currently no known outstanding effects for the Public Utilities Street Works Act 1950 (repealed 1.1.1993). (See end of Document for details)*

- 9 After considering any objections to the order which are not withdrawn, and, where a local inquiry is held, the report of the person who held the inquiry, the Minister may make the order either without modification or subject to such modifications as he thinks fit.
- 10 If any objection is duly made by any authority, body or person required to be furnished with a copy of the draft of the order and is not withdrawn, the order shall be subject to special parliamentary procedure.

## TABLE

### PARTIES TO BE FURNISHED WITH COPIES OF DRAFTS OF ORDERS UNDER THIS SCHEDULE

- (i) In the case of an order under paragraph 1 for the modification of an enactment which regulates the exercise of a power in relation to which the street works code is to have effect—

On the undertakers by whom the power is exercisable, and on each authority, body or person who would in any circumstances be an authority or managers concerned in relation to code-regulated works executed in a <sup>F239</sup>street][<sup>F239</sup>road] in exercise of the power.

#### **Textual Amendments**

**F239** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 50, SIF 108\)](#), [Sch. 9 para. 39\(38\)\(b\)\(i\)](#)

- (ii) In the case of an order under paragraph 1 for the modification of an enactment as regards the obtaining of a consent—

On the authority, body or person whose consent would be required but for section seventeen of this Act and on the undertakers who would be required to obtain the consent.

- (iii) In the case of an order under paragraph 1 for the modification of an enactment proposed to be modified on the ground of the result, or likely result, of the operation of the general provisions of subsection (2) of section twenty-four of this Act on the enactment—

On each of the parties (whether a <sup>F240</sup>[<sup>F241</sup>local highway authority] mentioned in subsection(1) of section twenty-one of this Act, [<sup>F240</sup>local roads authority] or a bridge authority or managers or a transport authority having power to execute authority’s works within the meaning of that section, or undertakers having apparatus liable to be affected by such works) relations between whom in connection with such works and apparatus are regulated by the enactment.

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#### Textual Amendments

- F240** Words “local roads authority” substituted (S.) for words “[local highway authority] mentioned in subsection 1 of section twenty-one of this Act,” by virtue of [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(38\)\(b\)\(ii\)](#)
- F241** Words substituted (E.W.) by [Local Government Act 1972 \(c. 70, SIF 81:1\)](#), [Sch. 21 para. 98\(6\)](#)

- (iv) In the case of an order under paragraph 2 relating to a protection afforded by an enactment—

On each of the parties on whom service would have been required under head (i) or (iii) of this Table if the order had been one under paragraph 1 for the modification of the enactment, and on any other authority, body or person to whom the protection in question was afforded by the enactment.

- (v) In the case of an order under paragraph 3 or 4—

On each of the parties on whom service would have been required under head (ii) of this Table if the order had been one under paragraph 1 for the modification of an enactment as regards the obtaining of the consent.

## SEVENTH SCHEDULE

### APPLICATION TO LONDON

#### Modifications etc. (not altering text)

- C32** This Schedule may have been affected by private and local Acts which have not been noted

- 1 Section one of this Act shall not apply—
- (a) to any statutory power to execute undertakers’ works in so far as it is exercisable in a subway to which the<sup>M35</sup>London County Council (Subways) Act 1893, applies or in public service works constructed under Part V of the<sup>M36</sup>City of London (Various Powers) Act 1900;
- (b) to a power to execute undertakers’ works [<sup>F242</sup>in default of their execution by the undertakers conferred] by section three of the London County Council (Subways) Act 1893, or conferred on the Common Council of the City of London by section thirty-three of the City of London (Various Powers) Act 1900.

#### Textual Amendments

- F242** Words substituted by [London Government Act 1963 \(c. 33, SIF 81:1\)](#), [s. 19\(4\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Public Utilities Street Works Act 1950 (repealed 1.1.1993). (See end of Document for details)*

### Marginal Citations

**M35** 1893 c. ccii.

**M36** 1900 c. ccxxviii.

F243

2—4.

### Textual Amendments

**F243** Sch. 7 paras. 2—4 repealed by London Government Act 1963 (c. 33, SIF 81:1), s. 93, **Sch. 18 Pt. II**

F244

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### Textual Amendments

**F244** Sch. 7 paras. 5, 7(1) repealed by Local Government Act 1972 (c. 70, SIF 81:1), **Sch. 30**

- 6 For the purposes of the operation of the Third Schedule to this Act in relation to a street or controlled land in [<sup>F245</sup>any part of London other than an outer London borough], the power thereby conferred on a street authority or street managers to elect to do reinstatement and making good after the completion of code-regulated works shall extend to a case in which the works fall within the exception contained in paragraph 1 of that Schedule as to certain works relating to service pipes or service lines or [<sup>F246</sup>overhead telecommunication apparatus], and that exception shall not apply.

### Textual Amendments

**F245** Words substituted by London Government Act 1963 (c. 33, SIF 81:1), s. 19(6)

**F246** Words substituted by Telecommunications Act 1984 (c. 12, SIF 96), Sch. 4 para. 29(4)(a), **Sch. 5 para. 45**

- 7 (1) ..... <sup>F247</sup>

- (2) Part II of this Act and the Fourth Schedule thereto shall not apply to apparatus of undertakers in a subway to which the <sup>M37</sup>London County Council (Subways) Act 1893, applies or in public service works constructed under Part V of the <sup>M38</sup>City of London (Various Powers) Act 1900.

### Textual Amendments

**F247** Sch. 7 paras. 5, 7(1) repealed by Local Government Act 1972 (c. 70, SIF 81:1), **Sch. 30**

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*Changes to legislation: There are currently no known outstanding effects for the Public Utilities Street Works Act 1950 (repealed 1.1.1993). (See end of Document for details)*

**Marginal Citations**

- M37** 1893 c. ccii.
- M38** 1900 c. ccxxviii.

- 8 (1) Undertakers shall not, in the execution of any code-regulated works other than emergency works or works relating only to a service pipe or service line or an [<sup>F248</sup>overhead telecommunication apparatus], break up or open a highway in the Metropolitan or the City of London police district that is part of a special road, a trunk road or a classified road so as to reduce the width of the carriageway available for vehicular traffic to less than two-thirds of the width thereof, unless they have, more than fourteen days before the date on which any breaking up or opening of the highway for the purposes of those works was begun, given notice to the Police stating the place of the intended breaking up or opening and the date intended for beginning it.

In this paragraph the expression “ the Police” means the Commissioner of City of London police in the case of a highway in the City of London police district, or the Commissioner of Police of the Metropolis in the case of a highway in the Metropolitan police district.

- (2) If undertakers break up or open a highway in contravention of the preceding subparagraph they shall be liable on summary conviction to a fine not exceeding [<sup>F249</sup>level 3 on the standard scale].
- (3) Where pursuant to an election under subsection (1) of section ten of this Act a transport authority do the initial breaking up or opening of such a highway as aforesaid, the preceding provisions of this paragraph shall have effect with the substitution of references to the transport authority for references to the undertakers.

**Textual Amendments**

- F248** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), Sch. 4 para. 29(4)(b), **Sch. 5 para. 45**
- F249** Words substituted (E.W.) (S.) by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46** and (S.) by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289F, 289G**

*F250*

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**Textual Amendments**

- F250** [Sch. 7 para. 9](#) repealed by [London Government Act 1963 \(c. 33, SIF 81:1\)](#), s. 93, **Sch. 18 Pt. II**

**Status:**

Point in time view as at 01/02/1991.

**Changes to legislation:**

There are currently no known outstanding effects for the Public Utilities Street Works Act 1950 (repealed 1.1.1993).