

Highways (Miscellaneous Provisions) Act, 1961

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ARRANGEMENT OF SECTIONS

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CHAPTER 63

An Act to make certain amendments to the law relating to highways, streets and bridges in England and Wales.
[3rd August, 1961]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) The rule of law exempting the inhabitants at large and any other persons as their successors from liability for non-repair of highways is hereby abrogated.

Civil liability for non-repair of certain highways and bridges.

(2) In an action against a highway authority in respect of damage resulting from their failure to maintain a highway maintainable at the public expense, it shall be a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the authority had taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous for traffic.

(3) For the purposes of a defence under the last foregoing subsection, the court shall in particular have regard to the following matters, that is to say—

- (a) the character of the highway, and the traffic which was reasonably to be expected to use it ;
- (b) the standard of maintenance appropriate for a highway of that character and used by such traffic ;
- (c) the state of repair in which a reasonable person would have expected to find the highway ;

- (d) whether the highway authority knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway ;
- (e) where the highway authority could not reasonably have been expected to repair that part of the highway before the cause of action arose, what warning notices of its condition had been displayed ;

but for the purposes of such a defence it shall not be relevant to prove that the highway authority had arranged for a competent person to carry out or supervise the maintenance of the part of the highway to which the action relates unless it is also proved that the authority had given him proper instructions with regard to the maintenance of the highway and that he had carried out the instructions.

(4) In the application of this section to highways in London repairable by the inhabitants at large, references to the highway authority are references to the council responsible for the maintenance of the highway ; and for the avoidance of doubt it is hereby declared that, by virtue of subsection (1) of section sixteen of this Act, any reference to a highway in this section includes a reference to a bridge.

(5) This section shall bind the Crown.

(6) The following provisions (which relate to the rule of law abrogated by this section) are hereby repealed, that is to say—

- (a) in section forty of the Crown Proceedings Act, 1947, paragraph (e) of subsection (2) ;
- (b) in subsection (1) of section eighty-nine of the principal Act, the words from “ and they ” onwards ;
- (c) section two hundred and ninety-eight of the principal Act ;

and the provisions of any enactment other than a public general enactment shall cease to have effect so far as they exempt a highway authority from liability for non-repair of a highway maintainable by the authority.

(7) This section shall not apply to damage resulting from breaking or opening or tunnelling or boring under a street by way of code-regulated works, being damage resulting from an event which occurred—

- (a) before the completion of the reinstatement or making good of the relevant part of the street in pursuance of the obligation imposed on the undertakers by subsection (2) of section seven of the Public Utilities Street Works Act, 1950 ; or

- (b) where the relevant part of the street is the subject of an election under the Third Schedule to that Act (which, with minor exceptions, limits the obligation of undertakers to the execution of interim restoration), during the period mentioned in sub-paragraph (a) of paragraph 3 of that Schedule ;

and expressions used in this subsection and in the said Act of 1950 have the same meanings as in that Act.

(8) This section shall come into force on the expiration of the period of three years beginning with the passing of this Act, and shall not apply to damage resulting from an event which occurred before the expiration of that period.

2.—(1) The power conferred on the Minister by section seven of the principal Act to direct that a highway shall become a trunk road shall include power to direct that a highway which he considers suitable for the purpose of relieving a main carriageway of the trunk road from local traffic shall become part of the trunk road, whether or not the highway is separated from the remainder of the road by intervening land.

Relief of main carriageways of trunk roads from local traffic.

In this subsection references to a highway include references to a proposed highway.

(2) Without prejudice to the provisions of the foregoing subsection, the powers to improve a trunk road conferred on the Minister by the principal Act and the Trunk Roads Acts, 1936 and 1946, shall include power to construct, as part of the trunk road, a highway for the purpose aforesaid ; but nothing in this subsection shall authorise the construction of a highway which is separated from the remainder of the trunk road by intervening land.

3.—(1) A scheme made by a local highway authority under this section and confirmed by the Minister may make provision for the construction, as part of a highway or proposed highway which is or is to be a highway maintainable at the public expense by the authority (not being a special road), of a bridge over or a tunnel under any navigable waters (whether the sea, a river or other waters) specified in the scheme.

Further powers of local highway authorities to construct bridges over and tunnels under navigable waters.

(2) The following provisions of the principal Act, that is to say, subsection (8) of section eleven, subsections (3) to (5) and (7) of section twenty, subsection (1) of section two hundred and eighty-five, subsections (1), (3) and (6) of section two hundred and eighty-six, Part II of the First Schedule and the Second Schedule (which among other things provide for safeguarding navigation over waters affected by a

scheme under section eleven of that Act authorising the construction of such bridges and tunnels as part of a special road, require the inclusion in the scheme of relevant plans and specifications, specify the procedure for publicising and giving effect to the scheme, and make it subject to special parliamentary procedure in certain cases), shall apply to a scheme under this section as they apply to a scheme under the said section eleven, as if the references in the said subsection (8) to the special road and the special road authority were references to the bridge or tunnel in question and the highway authority for it and the references in the said Part II to the special road and its route were references to the proposed site of the bridge or tunnel.

Contributions to expenditure of parish councils in maintaining footpaths etc.

4.—(1) The highway authority for any footpath or bridleway which a parish council have power to maintain under section forty-six of the principal Act may undertake to defray the whole or part of any expenditure incurred by the council in maintaining the footpath or bridleway.

(2) For the purposes of any enactment restricting the expenditure of a parish council, their expenditure shall be deemed not to include any expenditure falling to be defrayed by a highway authority by virtue of the foregoing subsection.

Extension of powers of highway and local authorities to plant and protect trees in highways etc.

5.—(1) The following powers conferred on a highway authority by subsections (1) and (2) of section eighty-two of the principal Act, that is to say—

- (a) the power to maintain and protect trees, shrubs and grass verges planted by the authority in a highway maintainable by them or in other land mentioned in the said subsection (2); and
- (b) the power to alter or remove any such verge and any thing provided by the authority for the maintenance or protection of trees, shrubs or verges so planted by them,

shall be exercisable in relation to, and to things provided for the maintenance or protection of, trees, shrubs or verges whether or not they were provided or planted by the highway authority; and subsections (3) and (4) of that section (which provide for the exercise by the other authorities there mentioned of the powers conferred on a highway authority by the said subsection (1)) shall have effect accordingly.

(2) The following amendments consequential on the provisions of the foregoing subsection shall be made in the said subsection (1), that is to say—

- (a) for the words “by them under this subsection” in both places where they occur there shall be substituted the words “, whether or not by them, in such a highway”; and

(b) for the words from “ provided ” onwards there shall be substituted the words “ provided, whether or not by them, for the maintenance or protection of any tree, shrub or verge in such a highway ”.

(3) Any reference in the said section eighty-two as amended by the last foregoing subsection to trees or shrubs shall include a reference to plants of any description; and accordingly the following subsection shall be inserted at the end of that section:—

“ (8) References in this section to trees or shrubs shall be construed as including references to plants of any description.”

6.—(1) If it appears to the highway authority for any highway that a ditch on land adjoining or lying near to the highway constitutes a danger to users of the highway, the authority may—

Power to fill
in roadside
ditches etc.

(a) if they consider the ditch unnecessary for drainage purposes and any occupier of the land known to the authority agrees in writing that it is unnecessary for those purposes, fill it in; or

(b) place in the ditch, or in land adjoining or lying near to it, such pipes as they consider necessary in substitution for the ditch, and thereafter fill it in.

(2) Subsection (2) of section one hundred and three of the principal Act (which provides for compensating persons damaged by the exercise of the powers to lay pipes and construct ditches conferred by subsection (1) of that section) shall have effect as if the reference to the said subsection (1) included a reference to the foregoing subsection; and subsection (3) of that section (which penalizes persons who interfere with works constructed under the said subsection (1)) shall apply to any person who opens up or keeps open any ditch filled in under the foregoing subsection (except as may be reasonably necessary for the purpose of doing work on any pipes placed in the ditch) as it applies to persons who interfere as aforesaid.

(3) Section two hundred and fifty-six of the principal Act (which provides that where an authority having power to execute works on land under specified provisions of that Act are refused entry to the land, the authority may apply to a magistrates' court for an order authorising the entry) and section three hundred and eight of that Act (under which the consent of drainage boards is required for the exercise of powers to interfere with certain water-courses conferred by specified provisions of that Act) shall have effect as if subsection (1) of this section were a provision to which those sections apply; and nothing in section two hundred and sixty-three of the Public Health Act, 1936 (which prohibits

the culverting of watercourses in certain districts without the approval of the local authority) shall apply to anything done by virtue of subsection (1) of this section.

(4) A highway authority shall not exercise their powers under subsection (1) of this section in such a manner as to be likely to cause damage to or affect the drainage of any land or works used for the purposes of a railway or canal undertaking, except—

- (a) after giving not less than fourteen days' notice to the undertakers of the manner in which it is proposed to exercise those powers ; and
- (b) in accordance with any reasonable requirements of the undertakers of which notice is given to the authority within fourteen days from the date of service of the authority's notice ;

and any question whether any such requirement is reasonable shall, in default of agreement, be determined by the Minister.

(5) In this section, "ditch" includes a watercourse and any part of a ditch or watercourse, and "pipes" includes culverts, tunnels and other works.

Penalty for unlawfully painting marks on highways.

7. It shall be an offence under subsection (1) of section one hundred and seventeen of the principal Act (which provides that persons who damage highways shall be liable to a fine of forty shillings) for any person, without lawful authority or excuse, to paint or otherwise inscribe or affix upon the surface of a highway, or upon any tree, structure or works on or in a highway, any picture, letter, sign or other mark ; and accordingly the said subsection (1) shall have effect with the insertion after paragraph (c) of the following paragraph :—

"(cc) paints or otherwise inscribes or affixes upon the surface of a highway, or upon any tree, structure or works on or in a highway, any picture, letter, sign or other mark, or".

Removal of dangerous things deposited on highways.

8.—(1) If the highway authority for any highway have reasonable grounds for considering—

- (a) that any thing unlawfully deposited on the highway constitutes a danger (including a danger caused by obstructing the view) to users of the highway ; and
- (b) that the thing in question ought to be removed without the delay involved in giving notice or obtaining a removal order from a magistrates' court under section one hundred and twenty-eight of the principal Act,

the authority may remove the thing forthwith and recover from the person by whom it was deposited on the highway, or from any person claiming to be entitled to it, any expenses reasonably incurred by the authority in removing it.

(2) The highway authority by whom a thing is removed in pursuance of the foregoing subsection may, instead of recovering their expenses as provided by that subsection, make a complaint to a magistrates' court for an order under subsection (2) of the said section one hundred and twenty-eight, as applied by this subsection, authorising the authority to dispose of the thing in question; and subsections (2) to (4) of that section shall apply for the purposes of this subsection as if for the words "to remove the thing in question and to dispose of it" in subsection (2) there were substituted the words "to dispose of the thing in question".

9.—(1) The highway authority or other person having a duty under section one hundred and twenty-nine of the principal Act to remove an obstruction from a highway may—

Supplementary provisions as to removal of obstructions from highways.

- (a) take any reasonable steps (including the placing of lights, signs and fences on the highway) for the purpose of warning users of the highway of the obstruction;
- (b) sell any thing removed in carrying out the duty aforesaid, unless the thing is claimed by its owner before the expiration of seven days from the date of its removal;
- (c) recover from the owner of the thing which caused or contributed to the obstruction, or where the thing has been sold under the last foregoing paragraph, from its previous owner, the expenses reasonably incurred as respects the obstruction in carrying out the duty aforesaid and in exercising any powers conferred by this subsection, so however that no such expenses shall be recoverable from a person who proves that he took reasonable care to secure that the thing in question did not cause or contribute to the obstruction.

(2) Where the highway authority or any other person sell any thing in exercise of their powers under the foregoing subsection, then—

- (a) if any expenses are recoverable under that subsection by the authority or person from the previous owner of the thing, they may set off the expenses against the proceeds of sale (without prejudice to the recovery of any balance of the expenses from the previous owner) and shall pay over any balance of the proceeds to the previous owner; and
- (b) if no expenses are so recoverable, they shall pay over the whole of the proceeds of sale to the previous owner.

10.—(1) Where it appears to the appropriate authority for any highway, or for any other road or footpath to which the public has access,—

- (a) that any hedge, tree, or shrub is dead, diseased, damaged or insecurely rooted; and

Cutting or felling of dangerous trees etc. near roads or footpaths.

(b) that by reason of its condition it, or part of it, is likely to cause danger by falling on the highway, road or footpath;

the authority may, by notice either to the owner of the hedge, tree or shrub or to the occupier of the land on which it is situated, require him within fourteen days from the date of service of the notice so to cut or fell it as to remove the likelihood of danger.

(2) Subsections (2) to (4) of section one hundred and thirty-four of the principal Act (which relate to the interpretation of that section and to appeals from, and the enforcement of, notices under subsection (1) of that section requiring the cutting of vegetation which overhangs roads and footpaths) shall have effect as if references to that section and subsection (1) of that section included references to the foregoing subsection; and section two hundred and fifty-six of the principal Act (which confers powers of entry) shall have effect for the purposes of this section as if this section were a provision to which that section applies and as if the purposes mentioned in subsection (1) of that section included the purpose of ascertaining whether any hedge, tree or shrub is dead, diseased, damaged or insecurely rooted.

Overruling of objections to streets becoming maintainable highways.

11.—(1) Where by virtue of an objection made in pursuance of section two hundred and two of the principal Act (which provides that where street works have been executed in a private street or part of it, the street works authority may by notice make the street or part a highway maintainable at the public expense unless the owner or a majority of the owners of the street or part object) a private street within the meaning of that section or a part of such a street is prevented from becoming such a highway, the street works authority may, within two months from the expiration of the period mentioned in subsection (1) of that section, apply to a magistrates' court for an order overruling the objection.

(2) If an order overruling the objection is made in pursuance of the foregoing subsection and no appeal against the order is brought within the time limited for such an appeal, the street or part in question shall become a highway maintainable at the public expense on the expiration of that time; and where such an order is made or refused and an appeal, or an appeal arising out of that appeal, is brought against or arises out of the order or refusal, the street or part shall become such a highway on the final determination of the matter in favour of the authority or on the abandonment of the appeal by the objectors.

(3) Notwithstanding anything in any other enactment or provision, for the purposes of this section the time for bringing or seeking leave for any appeal (including an application for

certiorari) shall be two months from the date of the decision or of the conclusion of the proceedings appealed against, unless apart from this subsection the time is less than that period; and any power, however worded, to enlarge any such time shall not be exercisable for the purposes of this section.

12. In subsection (2) of section two hundred and ten of the principal Act (which empowers the street works authority to bear the whole or a portion of the expenses of any street works which would otherwise be apportioned on or to the owner of any premises of which only the rear or a flank fronts the street) the word "only" shall be omitted.

Street works expenses for premises flanking or backing on the street.

13. In sections two hundred and fourteen and two hundred and fifteen of the principal Act (which among other things relate to the acquisition of land for the construction and improvement of highways), so much of subsection (3) of either section as prohibits the compulsory acquisition of land lying more than two hundred and twenty yards from the middle of the relevant highway shall not apply to land required for purposes connected with the drainage of that highway.

Extension of powers to acquire land for drainage of highways.

14.—(1) Subject to the provisions of this section, the highway authority for any highway maintainable at the public expense may, for the purpose of straightening or otherwise adjusting the boundaries of the highway, enter into an agreement with the owner of any land which adjoins or lies near to the highway providing for the exchange of any such land for land on which the highway is situated, with or without the payment by either party of money for equality of exchange.

Power to exchange land to adjust boundaries of highways.

(2) A highway authority proposing to enter into an agreement under this section shall—

- (a) publish once at least in each of two successive weeks, in one or more newspapers circulating in the area concerned, a notice giving particulars of the proposed agreement; and
- (b) not later than the date on which the notice is first published in pursuance of the foregoing paragraph, serve a copy of the notice—
 - (i) on any statutory undertakers appearing to the authority to be affected by the proposal; and
 - (ii) on any other person appearing to the authority to have an interest in the land proposed to be conveyed by the authority; and
 - (iii) where the highway in question is a claimed county road, on the county council concerned; and

- (c) not later than the date aforesaid, cause a copy of the notice to be displayed in a prominent position on the part of the highway to which the proposal relates ;

and shall not enter into the proposed agreement before the expiration of the period of two months from the date aforesaid and, where an appeal under the next following subsection is brought against the proposed agreement, until the determination or abandonment of the appeal and of any appeal arising out of that appeal.

(3) Any person who objects to a proposed agreement under this section may, before the expiration of the period aforesaid, appeal to a magistrates' court against the proposed agreement ; and the court shall, after considering any representations made by or on behalf of any party to the appeal and the desirability in the public interest of the proposed agreement, either dismiss the appeal or order the highway authority not to enter into the proposed agreement (without prejudice to the power of the authority to make the same proposal on a subsequent occasion).

(4) Where any land on which a highway is situated falls to be conveyed by the highway authority in pursuance of an agreement under this section, then—

- (a) if the land belongs to the highway authority, nothing in this section shall be construed as dispensing with any consent of a government department which, under any enactment, is required for the conveyance, but where such consent is given or is not required the conveyance of the land by the authority shall, by virtue of this paragraph, operate to extinguish the public right of way over the land ;
- (b) if the land does not belong to the highway authority, the authority shall have power to convey the land in accordance with the agreement and the conveyance shall, by virtue of this paragraph, operate to vest the land in the transferee for an estate in fee simple freed and discharged (subject to the provisions of subsections (6) and (7) of this section) from all other estates, interests, rights and charges, including the public right of way, which subsisted in, over or on the land immediately before the conveyance.

(5) Where by virtue of paragraph (b) of the last foregoing subsection any person suffers damage by being deprived of such an estate, interest, right or charge as is there mentioned, other than the public right of way, the highway authority shall pay him compensation equal to the amount of the damage.

(6) Where immediately before the conveyance of any land by a highway authority in pursuance of this section there is under, in, upon, over, along or across the land—

(a) any telegraphic line (within the meaning of the Telegraph Act, 1878) belonging to or used by the Postmaster-General; or

(b) any apparatus belonging to or used by statutory undertakers for the purposes of their undertaking,

the provisions of subsection (2) of section three hundred of the principal Act or, as the case may be, Part II of the Twelfth Schedule to that Act (which respectively safeguard the rights of the Postmaster-General and statutory undertakers as respects lines and apparatus in stopped up highways, and regulate their alteration or removal) shall apply to the land as those provisions apply to a highway stopped up in pursuance of such an order as is mentioned in those provisions, but as if—

(i) any reference to, or to an order authorising, the stopping up of a highway were a reference to the conveyance of the land in pursuance of this section; and

(ii) any reference in that Part to the authority on whose application the order was made were a reference to the authority who conveyed the land.

(7) Nothing in this section shall be construed as affecting any mines or minerals under a highway.

15. There shall be defrayed out of moneys provided by Parliament any increase attributable to this Act in the sums payable out of such moneys—

(a) by way of advances or other expenditure by the Minister under section two hundred and thirty-five of the principal Act;

(b) by way of rate-deficiency grant or exchequer equalisation grant under the enactments relating to local government in England and Wales or in Scotland.

16.—(1) This Act shall be construed as one with the principal Act, and accordingly, without prejudice to the effect of that construction, references in the principal Act to that Act shall include references to this Act except where the context otherwise requires.

Construction with principal Act, and application of s. 261 and s. 288.

(2) In this Act “ the principal Act ” means the Highways Act, 1959.

(3) Section two hundred and sixty-one of the principal Act (which protects members and officers of local authorities from personal liability) shall have effect as if the provisions of this Act were provisions to which that section applies.

(4) In the application for the purposes of this Act of section two hundred and eighty-eight of the principal Act (which provides for the alteration by order of provisions of local Acts which are redundant or inconsistent with that Act)—

- (a) any reference to the commencement of that Act shall be construed as a reference to the commencement of this Act ;
- (b) any reference to provisions which appear or may be treated as redundant having regard to any provision of the principal Act, and to the purpose of removing redundant provisions, and the reference in subsection (3) to that provision of the principal Act shall be construed as including respectively a reference to provisions which it appears proper to alter having regard to the effect of section one of this Act, to the purpose of taking the effect of that section into account and to that section ; and
- (c) in relation to the power to make an order under the said section two hundred and eighty-eight which is exercisable by virtue of the last foregoing paragraph, any reference to the Minister of Housing and Local Government shall be construed as a reference to the Minister ;

and an order made by the Minister by virtue of this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Citation,
commence-
ment and
extent.

17.—(1) This Act may be cited as the Highways (Miscellaneous Provisions) Act, 1961, and may be cited together with the principal Act as the Highways Acts, 1959 and 1961.

(2) This Act, except section one, shall come into force on the expiration of one month beginning with the date of its passing.

(3) This Act shall not extend to Scotland or Northern Ireland or, except sections one and two, to London.



Table of Statutes referred to in this Act

Short Title	Session and Chapter
Telegraph Act, 1878	41 & 42 Vict. c. 76.
Public Health Act, 1936	26 Geo. 5 & 1 Edw. 8. c. 49.
Trunk Roads Act, 1936	1 Edw. 8 & 1 Geo. 6. c. 5.
Trunk Roads Act, 1946	9 & 10 Geo. 6. c. 30.
Crown Proceedings Act, 1947	10 & 11 Geo. 6. c. 44.
Public Utilities Street Works Act, 1950	14 Geo. 6. c. 39.
Highways Act, 1959	7 & 8 Eliz. 2. c. 25.

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