Highways Act 1980

1980 CHAPTER 66

PART I E+W

HIGHWAY AUTHORITIES AND AGREEMENTS BETWEEN AUTHORITIES

Highway authorities

1 Highway authorities: general provision. E+W

(1) The Minister is the highway authority for—

(a) any highway which is a trunk road;

[F1(aa) any special road provided by him;**]**

(b) any highway as respects which an order made by him under any enactment expressly provides that he is to be the highway authority for it but does not direct that the highway is to be a trunk road;

(c) any highway (not falling within paragraph (a) above) transferred to him by an order under section 14 or 18 below;

(d) any other highway being a highway constructed by him, except where by virtue of section 2, 4(3) or 5(2) below or by virtue of some other enactment a local highway authority are the highway authority for it or where by means of an order made under section 14 or 18 below the highway is transferred to a local highway authority.

(2) Outside Greater London the council of a county **[**F2or metropolitan district**]** are the highway authority for all highways in the county **[**F2or, as the case may be, the district**]**, whether or not maintainable at the public expense, which are not highways for which under subsection (1) above the Minister is the highway authority.

(3) **[**F3The council**]** of a London borough or the Common Council are the highway authority for all highways in the borough or, as the case may be, in the City, whether or not maintainable at the public expense, which are not. . . F4 highways for which under subsection (1) above the Minister is the highway authority.

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[F5(3A) In Wales the council of a county or county borough are the highway authority for all highways in the county or, as the case may be, the county borough, whether or not maintainable at the public expense, which are not highways for which the Minister is the highway authority under subsection (1) above.**]**

(4) Subsection (2) above is subject, as respects any highway outside Greater London for which the Minister is not the highway authority under subsection (1) above, to any provision of this Act, or of any order made under this or any other Act, by virtue of which a council other than the council of the county **[**F6or, as the case may be, the metropolitan district**]** in which the highway is situated are the highway authority therefor.

[F7(5) Subsection (3A) above is subject to any provision of this Act, or of any order made under this or any other Act, by virtue of which a council other than the Welsh council for the area in which the highway is situated are the highway authority.**]**

Textual Amendments

F1 S. 1(1)(aa) inserted (01.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 21(2)**; S.I. 1991/2288, art. 3, **Sch.**

F2 Words in s. 1(2) inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 1**(*a*)

F3 Words in s. 1(3) substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 Pt. I**, para. 1(*b*)

F4 Words in s. 1(3) repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F5 S. 1(3A) inserted (3.4.1995 for limited purposes, as mentioned in S.I. 1995/852 and 1.4.1996 otherwise, as mentioned in S.I. 1996/396) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 1(2)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/852, art. 4(1)(5), **Sch.2** (with saving in art. 4(6)); S.I. 1996/396, art. 3, **Sch.1**.

F6 Words in s. 1(4) inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 1**(*c*)

F7 S. 1(5) added (3.4.1995 for limited purposes, as mentioned in S.I. 1995/852 and 1.4.1996 otherwise, as mentioned in S.I. 1996/396) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 1(3)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/852, art. 4(1)(5), **Sch. 2** (with saving in art. 4(6)); S.I. 1996/396, art. 3, **Sch.1**.

2 Highway authority for road which ceases to be a trunk road. E+W

[F8(1)**]**Where an order made under section 10 below directs that a trunk road shall cease to be a trunk road, then, as from the date specified in that behalf in the order, the following authority, that is to say—

(a) where the road is situated outside Greater London, the council of the county **[**F9or metropolitan district**]**, and

(b) where the road is situated in a London borough, **[**F10the council of the borough,**]**

shall become the highway authority for the road.

[F8(2) In the case of a special road provided by the Minister, subsection (1) above has effect subject to any provision of the order directing that the Minister shall continue to be the highway authority for the road.**]**

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Textual Amendments

F8 S. 2 renumbered 2(1) and s. 2(2) inserted (01.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 21(3)**; S.I. 1991/2288, **art. 3**,Sch.

F9 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 2**

F10 Words substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 2**

3 Highway authority for approaches to and parts of certain bridges. E+W

(1) Where a bridge carries a highway for which the Minister is not the highway authority and part of the bridge is situated in one county and part in another the highway authority for the highway carried by the bridge and the approaches thereto is such one of the councils of those counties as may be agreed between them before such a day as the Minister may by order made by statutory instrument appoint or, in default of such agreement, as may be determined by the Minister.

(2) Where the Minister has made a determination under subsection (1) above the determination—

(a) may be varied at the request of the council of either of the counties concerned; and

(b) shall be varied to give effect to any request made jointly to the Minister by those councils;

and any such variation shall take effect on the 1st April falling not less than 3 months, and not more than 15 months, after the date on which the determination is varied.

(3) Where a bridge carries a highway for which the Minister is not the highway authority and subsection (1) above does not apply, but some part of one or more of the approaches to the bridge lies in a county different from the bridge itself, the highway authority for the whole of that approach or those approaches is the council of the county in which the bridge is situated.

(4) For the purposes of this section, the approaches to a bridge consist of so much of the highway or highways on either side of the bridge as is situated within 100 yards of either end of the bridge.

Agreements between authorities

4 Agreement for exercise by Minister of certain functions of local highway authority as respects highway affected by construction, etc. of trunk road. E+W

(1) The Minister and a local highway authority may enter into an agreement for providing, in relation to a highway specified in the agreement, being a highway that crosses or enters the route of a trunk road or is or will be otherwise affected by the construction or improvement of a trunk road, that any functions specified in the agreement, being functions of improvement exercisable as respects that highway by the local highway authority, shall be exercisable by the Minister on such terms and subject to such conditions (if any) as may be so specified.

(2) Where under an agreement made under this section any function of a local highway authority is exercisable by the Minister, then, for the purpose of exercising that function the Minister shall have the same powers under this Act (including highway

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land acquisition powers) as the local highway authority have for that purpose, and in exercising that function and those powers he shall have the like rights and be subject to the like liabilities as that authority.

(3) Where for purposes connected with any function exercisable by him under an agreement made under this section the Minister proposes to construct a new highway, every council (other than the council of a **[**F11non-metropolitan**]** district) in whose area the proposed highway is situated shall be a party to the agreement and the agreement shall provide for a local highway authority specified in the agreement to become the highway authority for the highway on its completion.

(4) An agreement under this section made between the Minister and any other highway authority may provide for the payment of contributions—

(a) by the Minister to that other authority in respect of any additional liabilities imposed on that other authority in consequence of the provisions of the agreement;

(b) to the Minister by that other authority in respect of liabilities so imposed on the Minister, being liabilities which would otherwise have fallen to be discharged by that other authority;

and may also provide for the determination by arbitration of disputes as to the payment of such contributions.

(5) Any local highway authority who are a party to an agreement made under this section may contribute towards any expenses incurred by the Minister in executing any works to which the agreement relates.

Textual Amendments

F11 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 3**

5 Agreement for local highway authority to maintain and improve certain highways constructed or to be constructed by Minister. E+W

(1) The local highway authority may by agreement with the Minister undertake the maintenance and improvement of a highway in their area, being a highway (other than a trunk road) which the Minister proposes to construct or has, whether before or after the commencement of this Act, constructed.

(2) Where an agreement is made under this section the council who are a party to the agreement shall, on such date as may be provided by the agreement, become the highway authority for the highway to which the agreement relates.

6 Delegation etc. of functions with respect to trunk roads. E+W

(1) The Minister may by agreement with a county council, **[**F12a metropolitan district council**]**, or a London borough council delegate to that council all or any of his functions (including functions under a local or private Act) with respect to the maintenance and improvement of, and other dealing with, any trunk road or any land which does not form part of a trunk road but which has been acquired by him in connection with a trunk road under section 239(2) or (4) or section 246 below;. . . F13

[F14(1A) The Minister shall not delegate functions to a council under subsection (1) above—

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(a) with respect to a trunk road or land outside their area but within a non-metropolitan county or London borough, except with the consent of the council of that county or borough;

(b) with respect to a trunk road or land outside their area but within a metropolitan district except after consultation with the council of that district.**]**

[F15(1B) The Minister shall not delegate functions to a council under subsection (1) above with respect to a trunk road or land outside their area but in Wales except after consultation with the Welsh council in whose area it is situated; and subsection (1A) does not apply in relation to a trunk road or land in Wales.**]**

(2) A council shall, in the exercise of any functions delegated to them under subsection (1) above, act as agents for the Minister and in accordance with such conditions as he may attach to the delegation, and among such conditions there shall be included the following—

(a) that the works to be executed and the expenditure to be incurred by the council in the discharge of the delegated functions shall be subject to the approval of the Minister;

(b) that the council shall comply with any requirement of the Minister as to the manner in which any such works are to be carried out, and with any directions of the Minister as to the terms of contracts to be entered into for the purposes of the discharge of the delegated functions; and

(c) that any such works shall be completed to the satisfaction of the Minister.

(3) If at any time the Minister is satisfied that a trunk road or land with respect to which functions are delegated under subsection (1) above is not in proper repair and condition, he may give notice to the council requiring them to place it in proper repair and condition within such time as may be specified in the notice, and if the notice is not complied with the Minister may do anything that seems to him necessary to place the road or land in proper repair and condition.

(4) A delegation to a council under subsection (1) above may be determined by notice given by the Minister to the council during the first 9 months of any calendar year, or the functions so delegated may be relinquished by a notice given by the council to the Minister during any such period; and the notice shall take effect as from 1st April in the calendar year following that in which it is given.

(5) The Minister may enter into an agreement with a county council, **[**F16a metropolitan district council**]** or a London borough council—

(a) for the construction of a trunk road, or

(b) for the carrying out by them of any work of improvement of, or other dealing with, any trunk road or any such land as is mentioned in subsection (1) above;

and subsection (2) above applies to the discharge of the functions of a council under any such agreement and to the conditions to be included in any such agreement as it applies to the discharge of functions delegated under subsection (1) above to any such council and to the conditions to be attached to any such delegation.

(6) Where—

(a) any functions have been delegated by the Minister to a county council under subsection (1) above, or

(b) the Minister has entered into an agreement with a county council under subsection (5) above,

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the county council **[**F17(the "responsible council")**]** may, with the consent of the Minister, enter into arrangements with a district council **[**F18or Welsh council (the "contracting council")**]** for the carrying out by the **[**F19contracting**]**council, in accordance with the arrangements, of such of the delegated functions or, as the case may be, of the functions to which the agreement relates as may be specified in the arrangements;. . . F20

[F21(6A) No arrangements shall be entered into under subsection (6) above for the carrying out by a **[**F22contracting council**]** of any functions—

(a) with respect to a trunk road or land outside their area but within a non-metropolitan district, except with the consent of the council of the non-metropolitan district;

(b) with respect to a trunk road or land outside their area but within a metropolitan district, except after consultation with the council of the metropolitan district.**]**

[F23(c) with respect to a trunk road or land in Wales but outside the area—

(i) of the responsible council; and

(ii) of the contracting council,

except after consultation with the Welsh council in whose area the trunk road or land is situated.**]**

(7) Plant or materials belonging to a council by whom functions fall to be exercised by virtue of a delegation, or agreement or arrangements under this section may be used by them for the purposes of those functions subject to the terms of the delegation, or agreement or arrangements.

(8) Nothing in this section limits the power of the Minister to enter into and carry into effect agreements with any person for any purpose connected with the construction, improvement or maintenance of, or other dealing with, a trunk road or otherwise connected with his functions relating to trunk roads under this or any other Act; but no such agreement shall provide for the delegation of powers or duties of the Minister except in accordance **[**F24with

(a) the provisions of this section; or

(b) the provisions of any order made under section 69 of the Deregulation and Contracting Out Act 1994.**]**

Textual Amendments

F12 Words substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 4**(*a*)(i)

F13 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), ss. 8, 102, **Sch. 4 para. 4**(*a*)(ii), Sch. 17

F14 S. 6(1A) inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 4**(*b*)

F15 S. 6(1B) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 2(2)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F16 Words substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 4**(*c*)

F17 Words in s. 6(6) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I** para. (3)(a) (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F18 Words in s. 6(6) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 2(3)(b)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F19 Words in s. 6(6) substituted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 2(3)(c)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F20 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), ss. 8, 102, **Sch. 4 para. 4**(*d*), Sch. 17

F21 S. 6(6A) inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 4**(*e*)

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F22 Words in s. 6(6A) substituted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 2(4)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.
F23 S. 6(6A)(c) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 2(4)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.
F24 Words in s. 6(8) substituted (25.7.1995) by S.I. 1995/1986, **art. 3**.

Modifications etc. (not altering text)
C1 S. 6 restricted (13.2.1992) by Severn Bridges Act 1992 (c. 3), **s. 15(6)**

7 . . . . . F25 E+W

Textual Amendments
F25 S. 7 repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

8 Agreements between local highway authorities for doing of certain works. E+W

(1) Subject to the provisions of this section, local highway authorities may enter into agreements with each other for or in relation to the construction, reconstruction, alteration, improvement or maintenance of a highway for which any party to the agreement are the highway authority.

(2) An agreement under this section may provide, in relation to a highway specified in the agreement, being a highway for which one of the parties to the agreement are the highway authority, that any functions specified in the agreement, being functions exercisable as respects that highway by the highway authority therefor, shall be exercisable by some other party to the agreement on such terms and subject to such conditions (if any) as may be so specified.

(3) Where under an agreement made under this section any function of the highway authority for a highway is exercisable by another highway authority, then, for the purpose of exercising that function that other highway authority shall have the same powers under this Act (including highway land acquisition powers) as the highway authority for the highway have for that purpose, and in exercising that function and those powers they shall have the like rights and be subject to the like liabilities as that authority.

(4) The council of a county **[**F26(other than one in Wales)**]** may not enter into an agreement under this section with the council of another county **[**F27or county borough**]** unless **[**F28their areas**]** adjoin each other **[**F29; and the council of a metropolitan district may not enter into an agreement under this section with the council of another metropolitan district or of a county **[**F30or county borough**]** unless the districts are in the same county or in counties which adjoin each other or, as the case may be, the county in which the district is situated and the other county **[**F31or, as the case may be, county borough**]** adjoin each other.**]**.

(5) Expenses incurred in pursuance of an agreement made under this section shall be borne for the parties to the agreement in such proportions as may be determined by the agreement.

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Textual Amendments

F26 Words in s. 8(4) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 3(a)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F27 Words in s. 8(4) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 3(b)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F28 Words in s. 8(4) substituted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 3(c)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F29 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 5**

F30 Words in s. 8(4) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 3(d)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F31 Words in s. 8(4) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 3(e)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

Modifications etc. (not altering text)

C2 S. 8 restricted by Local Government Act 1985 (c. 51, SIF 81:1), s. 91, **Sch. 15 para. 1**

9 Seconding of staff etc. E+W

(1) A council may enter into an agreement with the Minister for placing at his disposal for the purposes of his functions relating to highways, on such terms as may be provided by the agreement, the services of persons employed by the council and any premises, equipment and other facilities under the control of the council.

(2) For superannuation purposes service rendered by a person whose services are placed at the disposal of the Minister in pursuance of this section is service rendered to the council by whom that person is employed.

PART II E+W

TRUNK ROADS, CLASSIFIED ROADS, METROPOLITAN ROADS, SPECIAL ROADS

Trunk roads

10 General provision as to trunk roads. E+W

(1) Subject to the provisions of this section, all such highways and proposed highways as immediately before the commencement of this Act were trunk roads within the meaning of the [M1]Highways Act 1959 continue to be, and to be known as, trunk roads.

(2) The Minister shall keep under review the national system of routes for through traffic in England and Wales, and if he is satisfied after taking into consideration the requirements of local and national planning, including the requirements of agriculture, that it is expedient for the purpose of extending, improving or reorganising that system either—

(a) that any highway

[[F32]or any proposed highway—

(i) to be constructed by the Minister, or

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(ii) in relation to which the Minister has entered or proposes to enter into an agreement under section 38(3A),**]**

should become a trunk road, or

(b) that any trunk road should cease to be a trunk road,

he may by order direct that that highway or proposed highway shall become, or, as the case may be, that that road shall cease to be, a trunk road as from such date as may be specified in that behalf in the order.

(3) The power of the Minister under this section to direct that a highway or proposed highway shall become a trunk road shall include power to direct that a highway or proposed 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 or proposed highway is separated from the remainder of the road by intervening land.

(4) **F33**. . .

(a) . . . . . .

(b) . . . . . .

the power under this section to direct that a **[F34**proposed highway**]** shall become a trunk road may be exercised in relation to any cycle track or footpath proposed to be constructed **F33**. . . on land separated by intervening land from the trunk road in connection with which it is to be used.

(5) Parts I and III of Schedule 1 to this Act have effect as to the making of an order under this section; and Schedule 2 to this Act has effect as to the validity and date of operation of any such order.

(6) If objection to an order proposed to be made under this section is duly made in accordance with Part I of Schedule 1 to this Act by a council who are responsible for the maintenance of a highway to which the order relates, or who will become so responsible by virtue of the order, and is not withdrawn, the order shall be subject to special parliamentary procedure.

(7) If an order under this section directing that a **[F35**proposed highway**]** shall become a trunk road is revoked or varied by a subsequent order made at any time before the date on which the highway is opened for the purposes of through traffic, the revoking or varying order shall not be deemed for the purposes of section 2 above to be an order directing that a trunk road shall cease to be a trunk road.

(8) In addition to the case where a trunk road ceases to be a trunk road by virtue of an order made under this section, a trunk road shall cease to be a trunk road if the road is transferred from the Minister to some other highway authority to become part of a special road provided by that authority.

(9) No highway which is within the City shall be, or become, a trunk road, and without prejudice to the generality of the foregoing provision, none of the following bridges, that is to say, Blackfriars Bridge, London Bridge, Southwark Bridge and Tower Bridge, and no highway carried by any of those bridges, shall be, or become, a trunk road.

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Textual Amendments

F32 Words in s. 10(2)(a) substituted (01.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 22(2)(a)**; S.I. 1991/2288, **art. 3**,Sch.

F33 Words in s. 10(4) omitted (01.11.1991) by virtue of New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 22(2)(b)**, (with ss. 25(2), 167(2)); S.I. 1991/2288, **art. 3**,Sch.

F34 Words in s. 10(4) substituted (01.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 22(2)(b)**; S.I. 1991/2288, art. 3, **Sch.**

F35 Words in s. 10(7) substituted (01.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 22(2)(c)**; S.I. 1991/2288, **art. 3**,Sch.

Modifications etc. (not altering text)

C3 S. 10(6) modified (22.7.2008) by Transport for London Act 2008 (c. i), ss. 1, **31(2)(a)** (with ss. 31(3), 48)

Marginal Citations

M1 1959 c. 25.

11 Local and private Act functions with respect to trunk roads. E+W

(1) As from the date when a highway becomes a trunk road, any functions of construction, maintenance or improvement exercisable as respects that highway by a council under a local or private Act are to be deemed to have become exercisable by the Minister alone and while the highway remains a trunk road they shall continue to be so exercisable.

(2) Where the Minister is satisfied that there has been conferred on a council by a local or private Act a function substantially similar to one conferred by a provision of this Act specified in Schedule 3 to this Act, he may, after consultation with the council, by order direct that, in relation to a trunk road, the function conferred by the local or private Act is to be exercisable in accordance with the following conditions:

(a) where the provision of the local or private Act is similar to a provision of this Act specified in Part I of the said Schedule 3, that it is to be exercisable by the Minister only;

(b) where the provision of the local or private Act is similar to a provision of this Act specified in Part II of the said Schedule, that, in so far as it is exercisable by a council, it is to be exercisable by that council. . . [F36], as well as by the Minister;

(c) where the provision of the local or private Act is similar to a provision of this Act specified in Part III of the said Schedule, that, in so far as it is exercisable by a council, it is to be exercisable by that council with the consent of the Minister. . . [F36], as well as by the Minister.

(3) Where the Minister makes an order under this section in relation to a function conferred by a provision of a local or private Act, and the provision of this Act by which a function substantially similar to the first-mentioned function is conferred is, in relation to a trunk road, subject to any modification, the provision of the local or private Act shall, in relation to a trunk road, be subject to a similar modification, and the Minister may by the same order specify the modification to which the provision of the local or private Act is accordingly to be subject.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Highways Act 1980 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F36 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

Modifications etc. (not altering text)

C4 S. 11 modified (22.7.2008) by Transport for London Act 2008 (c. i), ss. 1, **32(1)** (with ss. 32(2), 48)

Classified roads

12 General provision as to principal and classified roads. E+W

(1) Subject to subsection (3) below, all such highways or proposed highways as immediately before the commencement of this Act—

(a) were principal roads for the purposes of any enactment or instrument which refers to roads or highways classified by the Minister as principal roads, either by virtue of having been so classified under section 27(2) of the [M2]Local Government Act 1966 (which is replaced by subsection (3) below), or by virtue of being treated as such in accordance with section 40(1) of the [M3]Local Government Act 1974,

(b) were (whether or not they also fall within paragraph (a) above) classified roads for the purposes of any enactment or instrument which refers to roads classified by the Minister (but does not specifically refer to their classification as principal roads), either by virtue of having been so classified under section 27(2) of the said Act of 1966, or by virtue of being treated as such in accordance with section 40(1) of the said Act of 1974, or

(c) were classified roads for the purposes of any enactment or instrument by virtue of being treated as such in accordance with section 27(4) of the said Act of 1966,

continue to be, and to be known as, principal roads or, as the case may be, classified roads (or both principal roads and classified roads of a category other than principal roads, in the case of highways falling within both paragraph (a) and paragraph (b) above) for the purposes specified in subsection (2) below.

(2) So far as a highway that continues to be a principal or classified road in accordance with subsection (1) above was, immediately before the commencement of this Act, a classified road for the purposes of any enactment repealed and replaced by this Act, it is a classified road for the purposes of the corresponding provision of this Act; and so far as any such highway was immediately before the commencement of this Act a principal or classified road for the purposes of any other enactment, or any instrument, it so continues for the purposes of that enactment or instrument.

(3) The Minister may for the purposes of—

(a) any provision of this Act which refers to classified roads, or

(b) any other enactment or any instrument (whether passed or made before or after the passing of this Act) which refers to highways classified by the Minister,

classify highways or proposed highways, being highways or proposed highways for which local highway authorities are the highway authorities, in such manner as he may from time to time determine after consultation with the highway authorities concerned.

(4) References in any provision hereafter contained in this Act to classified roads are references to—

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Highways Act 1980 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) any highway or proposed highway that for the time being is a classified road for the purposes of that provision by virtue of subsections (1) and (2) above;

(b) any highway or proposed highway that for the time being is classified under subsection (3) above for the purposes of that provision, or for the purposes of enactments that include that provision; and

(c) any highway or proposed highway that for the time being is classified under subsection (3) above as a principal road for the purposes of any enactment or instrument which refers to roads or highways classified by the Minister as principal roads.

Marginal Citations

M2 1966 c. 42.

M3 1974 c. 7.

13 Power to change designation of principal roads. E+W

(1) The Minister may by order assign some other description to the highways which for the time being are principal roads for the purposes of any enactment or instrument (whether by virtue of section 12(1) and (2) above, or by virtue of having been so classified under section 12(3) above, or otherwise).

(2) If an order is made under subsection (1) above, then, except in so far as the order otherwise provides, any reference to a principal road in any enactment or instrument passed or made before the order is made (including an enactment in this Act) is to be construed as a reference to a highway of the description specified in the order.

(3) Nothing in subsection (1) above affects the power of the Minister under section 12(3) above to classify highways or proposed highways in such manner as he may determine after consultation with the highway authority concerned.

Powers as respects roads that cross or join trunk roads or classified roads

14 Powers as respects roads that cross or join trunk or classified roads. E+W

(1) Provision may be made by an order under this section in relation to a trunk road or a classified road, not being, in either case, a special road, for any of the following purposes:—

(a) for authorising the highway authority for the road—

(i) to stop up, divert, improve, raise, lower or otherwise alter a highway that crosses or enters the route of the road or is or will be otherwise affected by the construction or improvement of the road;

(ii) to construct a new highway for purposes concerned with any such alteration as aforesaid or for any other purpose connected with the road or its construction, and to close after such period as may be specified in the order any new highway so constructed for temporary purposes;

(b) for transferring to such other highway authority as may be specified in the order, as from such date as may be so specified, a highway constructed by the highway authority in pursuance of the order or any previous order made under this section;

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(c) for any other purpose incidental to the purposes aforesaid;

and references in this section, with respect to an order made thereunder, to "the road" and "the highway authority" are references to, respectively, the trunk road or, as the case may be, classified road to which the order relates and the highway authority for that road.

(2) The provision that may be made pursuant to subsection (1)(c) above in an order under this section that provides for the stopping up or diversion of a highway, includes provision for the preservation of any rights—

(a) of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across the highway to be stopped up or diverted;. . . F37

(b) F37

(3) An order under this section—

(a) in relation to a trunk road shall be made by the Minister, and

(b) in relation to a classified road shall be made by the highway authority and confirmed by the Minister.

(4) Parts I and III of Schedule 1 to this Act have effect as to the making of an order under this section; and Schedule 2 to this Act has effect as to the validity and date of operation of any such order.

(5) Subject to subsection (4) above, an order under this section relating to a trunk road may come into operation on the same day as the order under section 10 above relating to that road.

(6) No order under this section authorising the stopping up of a highway shall be made or confirmed by the Minister unless he is satisfied that another reasonably convenient route is available or will be provided before the highway is stopped up.

(7) An order under this section may provide for the payment of contributions—

(a) by the highway authority to any other highway authority in respect of any additional liabilities imposed on that other authority in consequence of the order or of any previous order made under this section;

(b) to the highway authority by any other highway authority in respect of any liabilities so imposed on the first-mentioned authority that would otherwise have fallen to be discharged by that other authority;

and may also provide for the determination by arbitration of disputes as to the payment of such contributions.

Textual Amendments

F37 S. 14(2)(b) and the word immediately preceding it repealed 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**

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Highways Act 1980 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 12/01/2000

[F38GLA roads]

Textual Amendments

F38 S. 14A and crossheading inserted (12.1.2000) by 1999 c. 29, **s.260** (with Sch. 12 para. 9(1)); S.I. 1999/3434, **art.2**

[F39F40 14A Designation of first GLA roads by Secretary of State. E+W

(1) The Secretary of State may by order designate highways or proposed highways as highways which are to be GLA roads.

(2) Any highway or proposed highway so designated—

(a) shall become a GLA road, and

(b) if it is a trunk road or other highway for which the Secretary of State is the highway authority, shall accordingly cease to be such a road or highway,

on such date as may be specified in that behalf in the order.

(3) Orders under this section may be made or amended at any time before the beginning of the term of office of the first Mayor of London.**]**

Textual Amendments

F39 S. 14A and crossheading inserted (12.1.2000) by 1999 c. 29, **s.260** (with Sch. 12 para. 9(1)); S.I. 1999/3434, **art.2**

F40 S. 14A and crossheading inserted (12.1.2000) by 1999 c. 29, **s.260** (with Sch. 12 para. 9(1)); S.I. 1999/3434, **art.2**

Modifications etc. (not altering text)

C5 S. 14A extended (5.5.2000) by S.I. 2000/1064, **art. 2(1)**

VALID FROM 03/07/2000

[F41 14B Orders of the Authority changing what are GLA roads. E+W

(1) The Mayor of London shall keep under review the system of highways and proposed highways in Greater London and the allocation of responsibility for that system between the different local highway authorities.

(2) If the Mayor of London considers it expedient that—

(a) any highway or proposed highway in Greater London, other than a trunk road, should become a GLA road, or

(b) that any GLA road should cease to be such a road and should become a road for which the highway authority is a London borough council or the Common Council,

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the Greater London Authority may by order direct that that highway or proposed highway shall become, or (as the case may be) that that road shall cease to be, a GLA road as from such date as may be specified in that behalf in the order.

(3) Where an order under subsection (2) above directs that a highway or proposed highway shall become a GLA road, it shall become such a road as from the date specified in that behalf in the order.

(4) Where an order under subsection (2) above directs that a GLA road shall cease to be such a road, then, as from the date specified in that behalf in the order, the road shall cease to be a GLA road and the following authority, that is to say—

(a) where the road is situated in a London borough, the council for the London borough, and

(b) where the road is situated in the City, the Common Council,

shall become the highway authority for the road.

(5) An order under this section shall be of no effect unless—

(a) it is made with the consent of the relevant highway authority; or

(b) if that consent is refused, it is confirmed (with or without modification) by the Secretary of State.

(6) For the purposes of subsection (5) above, the relevant highway authority is—

(a) in the case of an order directing that a highway or proposed highway shall become a GLA road, the authority which is the highway authority for the highway or proposed highway; and

(b) in the case of an order directing that a GLA road shall cease to be such a road, the authority which will become the highway authority for the road in consequence of the order.**]**

Textual Amendments

F41 S. 14B inserted (3.7.2000) by 1999 c. 29, **s.261** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch. Pt. 3**

Modifications etc. (not altering text)

C6 S. 14B: power to apply conferred by 1984 c. 27, **s. 124A(6)** (as inserted (12.1.2000) by 1999 c. 29, s.272 (with **Sch. 12 para. 9(1)**); S.I. 1999/3434, **art.2**)

VALID FROM 03/07/2000

[F42 14C Certification and records of GLA roads. E+W

(1) A certificate by or on behalf of Transport for London that any highway or proposed highway is, or is not, for the time being a GLA road shall be evidence of the facts stated in the certificate.

(2) A certificate under subsection (1) above may describe the highway or proposed highway in question by reference to a map.

(3) Transport for London shall prepare and maintain a record of the highways which are for the time being GLA roads.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Highways Act 1980 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) The record required to be prepared and maintained under subsection (3) above may consist of—

(a) a list;

(b) a map; or

(c) a list and a map.

(5) Transport for London shall deposit a copy of that record with the Greater London Authority, each of the London borough councils and the Common Council.

(6) Transport for London, and the Greater London Authority, each of the London borough councils and the Common Council, shall make the record, or (as the case may be) the copies of the record deposited with them, available for inspection by the public at all reasonable hours.**]**

Textual Amendments

F42 S. 14C inserted (3.7.2000) by 1999 c. 29, **s.262** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch. Pt. 3**

Modifications etc. (not altering text)

C7 S. 14C: power to apply conferred by 1984 c. 27, **s. 124A(6)** (as inserted (12.1.2000) by 1999 c. 29, s.272 (with **Sch. 12 para. 9(1)**); S.I. 1999/3434, **art.2**)

VALID FROM 03/07/2000

[F43 14D Construction of provisions relating to GLA roads. E+W

(1) Any reference in any provision of this Act or any other enactment to a GLA road shall be construed as a reference to a highway or proposed highway in Greater London which is for the time being a GLA road by virtue of—

(a) section 2(3) above;

(b) an order made by the Secretary of State under section 14A above; or

(c) an order made under section 14B above by the Greater London Authority.

(2) The functions conferred or imposed on the Greater London Authority in relation to GLA roads shall be functions of the Authority which are exercisable by the Mayor of London acting on behalf of the Authority.

(3) Subsection (2) above does not apply in relation to any function expressly conferred or imposed on the London Assembly.**]**

Textual Amendments

F43 S. 14D inserted (3.7.2000) by 1999 c. 29, **s. 263(1)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch. Pt. 3**

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Highways Act 1980 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Metropolitan roads

15 . . . . . F44 E+W

Textual Amendments

F44 S. 15 repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

Special roads

16 General provision as to special roads. E+W

(1) Subject to the provisions of this Act, all such highways or proposed highways as immediately before the commencement of this Act were special roads, as being highways or proposed highways provided, or to be provided, in pursuance of a scheme made, or having effect as if made, under section 11 of the M4Highways Act 1959 (which section is replaced by subsections (3) to (10) below), continue to be, and to be known as, special roads.

(2) Roads that continue to be special roads by virtue of subsection (1) above continue, subject to the provisions of this Act, to be special roads for the use of traffic of the classes for the use of which they were special roads immediately before the commencement of this Act.

(3) A highway authority may be authorised by means of a scheme under this section to provide, along a route prescribed by the scheme, a special road for the use of traffic of any class prescribed thereby.

(4) Subject to subsection (10) below, a highway authority authorised by means of a scheme under this section, or any such scheme as is referred to in subsection (1) above, to provide a special road is in this Act referred to in relation to that road as the special road authority.

(5) A special road authorised by a scheme under this section may be provided—

(a) by means of the construction by the special road authority of a new highway along the route prescribed by the scheme or any part thereof;

(b) by means of the appropriation under subsequent provisions in that behalf of this Part of this Act of a highway comprised in that route for which the special road authority are the highway authority;

(c) by means of the transfer to the special road authority under subsequent provisions in that behalf of this Part of this Act of a highway comprised in that route for which they are not the highway authority.

(6) A scheme under this section authorising the provision of a special road shall—

(a) in the case of a road to be provided by the Minister, be made by the Minister; and

(b) in the case of a road to be provided by a local highway authority, be made by that authority and confirmed by the Minister.

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(7) Parts II and III of Schedule 1 to this Act have effect as to the making of a scheme under this section; and Schedule 2 to this Act has effect as to the validity and date of operation of any such scheme.

(8) Before making or confirming a scheme under this section, the Minister shall give due consideration to the requirements of local and national planning, including the requirements of agriculture.

(9) If objection to a scheme under this section is duly made in accordance with Part II of the said Schedule 1 by the highway authority for a highway comprised in the route of the special road authorised by the scheme, and is not withdrawn, the scheme shall be subject to special parliamentary procedure.

(10) A scheme under this section may be submitted to the Minister jointly by any two or more local highway authorities, and any such scheme may determine which of those authorities shall be the special road authority for the special road or any part thereof, and may provide—

(a) for the performance by that authority, in relation to the road or that part thereof, of any of the highway functions of any other authority who are party to the application, and

(b) for the making of contributions by that other authority to the special road authority in respect of expenditure incurred in the performance of those functions;

and in relation to a special road provided or to be provided in pursuance of such a scheme, or any part of such a road, references in this Act to a special road authority are references to the highway authority who are by virtue of that scheme the special road authority for that road or part.

Marginal Citations

M4 1959 c. 25.

17 Classification of traffic for purposes of special roads. E+W

(1) Different classes of traffic may be prescribed by a scheme under section 16 above in relation to different parts of the special road to which the scheme relates.

(2) The classes of traffic prescribed by any such scheme shall be prescribed by reference to the classes set out in Schedule 4 to this Act.

(3) The Minister of Transport may by order amend the said Schedule 4 by varying the composition of any class of traffic specified therein or adding a further class of traffic to those so specified, [F45]. . .

[[F46](4) An amending order may contain provision applying the amendments made by the order to existing schemes (whether made by the Minister or a local highway authority); and in the absence of such provision an amending order does not affect the classes of traffic prescribed in an existing scheme.

In this subsection an "existing scheme" means a scheme under section 16 made before the order comes into operation.**]**

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Textual Amendments

F45 Words in s. 17(3) omitted (01.11.1991) by virtue of New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 20(1)**, (with ss. 25(2), 167(2)); S.I. 1991/2288, **art. 3**,Sch.

F46 S. 17(4) inserted (01.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 20(1)**; S.I. 1991/2288, **art. 3**,Sch.

18 Supplementary orders relating to special roads. E+W

(1) Provision in relation to a special road may be made by an order under this section for any of the following purposes:—

(a) for appropriating as, or as part of, the special road, as from such date as may be specified in the order, a highway which is comprised in the route prescribed by the scheme authorising the special road and which is a highway for which the special road authority are the highway authority;

(b) for transferring to the special road authority, as from such date as may be specified in the order, a highway which is comprised in the route prescribed by the scheme authorising the special road and which is a highway for which they are not the highway authority;

(c) for authorising the special road authority—

(i) to stop up, divert, improve, raise, lower or otherwise alter a highway that crosses or enters the route of the special road or is or will be otherwise affected by the construction or improvement of the special road;

(ii) to construct a new highway for purposes connected with any such alteration as aforesaid or for any other purpose connected with the special road or its construction, and to close after such period as may be specified in the order any new highway so constructed for temporary purposes;

(d) for transferring to such highway authority as may be specified in the order, as from such date as may be so specified, a highway constructed by the special road authority in pursuance of the order or any previous order made under this section;

(e) for authorising or requiring the special road authority to exercise, either concurrently with or to the exclusion of any local authority, any functions which, apart from the order, would be exercisable by that local authority in relation to the special road other than functions of that authority as local planning authority;

(f) for any other purpose incidental to the purposes aforesaid or otherwise incidental to the construction or maintenance of, or other dealing with, the special road.

(2) The provision that may be made pursuant to subsection (1)(f) above in an order under this section that provides for the stopping up or diversion of a highway, includes provision for the preservation of any rights—

(a) of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across the highway to be stopped up or diverted;. . . F47

(b) F47

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(3) An order under this section making provision in connection with a special road shall—

(a) in the case of a special road provided or to be provided by the Minister be made by the Minister; and

(b) in the case of a special road provided or to be provided by a local highway authority, be made by that authority and confirmed by the Minister.

(4) Parts I and III of Schedule 1 to this Act have effect as to the making of an order under this section; and Schedule 2 to this Act has effect as to the validity and date of operation of any such order.

(5) Subject to subsection (4) above, an order under this section may come into operation on the same day as the scheme authorising the special road to which it relates.

(6) No order providing for the appropriation by or transfer to a special road authority of a highway comprised in the route prescribed by the scheme authorising the special road shall be made or confirmed by the Minister under this section unless either—

(a) he is satisfied that another reasonably convenient route is available for traffic other than traffic of the class authorised by the scheme, or will be provided before the date on which the appropriation or transfer takes effect, or

(b) he is satisfied that no such other route is reasonably required for any such other traffic;

and no order authorising the stopping up of a highway shall be made or confirmed by the Minister under this section unless he is satisfied that another reasonably convenient route is available or will be provided before the highway is stopped up.

(7) An order under this section may provide for the payment of contributions—

(a) by a special road authority to any other highway authority in respect of any additional liabilities imposed on that other authority in consequence of the provisions of the order or of any previous order made under this section,

(b) to a special road authority by any other authority in respect of any liabilities so imposed on the special road authority that would otherwise have fallen to be discharged by the other authority,

and may also provide for the determination by arbitration of disputes as to the payment of such contributions.

(8) In this section "local authority" means. . . [F48] the Common Council and the council of a county, district, London borough, parish or community, and includes the parish meeting of a [F49]. . . parish not having a separate parish council.

Textual Amendments

F47 S. 18(2)(b) and the word immediately preceding it repealed 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**

F48 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**.

F49 Word in s. 18(8) repealed (8.11.1995) by 1995 c. 44, s. 1, **Sch. 1 Pt. V** Group2.

19 Certain special roads and other highways to become trunk roads. E+W

(1) A special road to be provided by the Minister in pursuance of a scheme under section 16 above shall, except so far as it is provided by means of the appropriation

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or transfer of a highway, become a trunk road on such date as may be specified in the scheme.

(2) A highway (not being a trunk road) which, by means of an order under section 18 above, is appropriated as, or as part of, a special road to be provided by the Minister, and a highway which, by means of such an order, is transferred to the Minister, shall become a trunk road on the date on which it is so appropriated or is so transferred, as the case may be.

[F50(3) Subsections (1) and (2) above have effect subject to any provision of the scheme under section 16 directing that the special road in question or any part of it shall not be a trunk road.

Any such provision does not affect the power of the Minister to make an order under section 10(2)(a) with respect to the special road or part.**]**

Textual Amendments

F50 S. 19(3) added (01.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 21(1)**; S.I. 1991/2288, art. 3, **Sch.**

F51 20 . . . . . E+W

Textual Amendments

F51 S. 20 repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(2), **Sch.9** (with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch.2**

Ancillary matters with respect to orders under section 14 or 18 and schemes under section 16

21 Extinguishment of rights of statutory undertakers as to apparatus etc. in connection with orders under section 14 or 18 and schemes under section 16. E+W

(1) F52. . . **[**F53sections 271 to 274 of the Town and Country Planning Act 1990**]**, (power to extinguish rights of statutory undertakers and power of statutory undertakers to remove or re-site apparatus) apply in relation to any land specified in subsection (2) below as they apply in relation to land acquired by a Minister, a local authority or statutory undertakers under **[**F54Part IX of that Act**]**, or under any other enactment, or appropriated by a local authority for planning purposes; and all such other provisions of that Act as apply for the purposes of those provisions (including **[**F55sections 279(2) to (4), 280 and 282, which provide for the payment of compensation, and sections 275 to 278 which contain provisions consequential on the extinguishment of any rights under section 271 or 272**]**) shall have effect accordingly.

(2) The land referred to in subsection (1) above is—

(a) land acquired or appropriated by a special road authority for the purposes of carrying out any works in pursuance of a scheme under section 16 above or an order under section 18 above;

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(b) land forming the site of any part of a highway which is appropriated by or transferred to a special road authority by means of an order under section 18 above;

(c) land over which there subsists or has subsisted a highway the stopping up or diversion of which is or was authorised by an order under section 14 or 18 above.

(3) The provisions of **[**F56the said Act of 1990**]** referred to in subsection (1) above have effect, as applied for the purposes of this section—

(a) in relation to any such land as is referred to in subsection (2)(a) or (b) above, subject to the modifications set out in Part I of Schedule 5 to this Act, and

(b) in relation to any such land as is referred to in subsection (2)(c) above, subject to the modifications set out in Part II of that Schedule.

(4) Where any apparatus of public utility undertakers is removed in pursuance of a notice or order given or made under **[**F57section 271, 272, or 273 of the said Act 1990**]**, as applied for the purposes of this section in relation to any such land as is specified in paragraph (a) or (b) of subsection (2) above, any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the special road authority compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

[F58(4A) Subsection (4) above shall not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that subsection, any person who is—

(a) the owner or occupier of premises the drains of which communicated with that sewer; or

(b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the special road authority compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of making his drain or sewer communicate with any other public sewer or with a private sewage disposal plant.**]**

(5) In this section "owner", in relation to any premises, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple in the premises, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the premises under a lease the unexpired term of which exceeds three years.

Textual Amendments

F52 Words in s. 21(1) repealed (1.1.1993)by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(2), **Sch. 9**; S.I. 1992/2984, art. 2(2), **Sch.2**.

F53 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(1)(a)(i)**

F54 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(1)(a)(ii)**

F55 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(1)(a)(iii)**

F56 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(1)(b)**

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F57 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(1)(c)**

F58 S. 21(4A) inserted 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. 62(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

22 . . . . . F59 E+W

Textual Amendments

F59 S. 22 repealed 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**

23 Compensation in respect of certain works executed in pursuance of orders under section 14 or 18. E+W

Where, in pursuance of an order under section 14 or 18 above, the Minister, a special road authority or a local highway authority, as the case may be, execute in, or with respect to, a highway works which the highway authority for that highway have power to execute under Part V of this Act, the Minister, the special road authority or the local highway authority, as the case may be, shall be subject to the like liability to pay compensation to a person who sustains damage by reason of the execution of those works as would be the highway authority for that highway had those works been executed by that authority under the said Part V.

PART III E+W

CREATION OF HIGHWAYS

24 Construction of new highways and provision of road-ferries. E+W

(1) The Minister may, with the approval of the Treasury, construct new highways; but where he proposes to construct a new highway other than—

(a) a trunk road,

(b) a special road,

(c) a highway the construction of which is authorised by an order relating to a trunk road under section 14 above or an order under section 18 above, or

(d) a highway to be constructed for purposes connected with any function exercisable by him under an agreement made under section 4 above,

he shall give notice of his proposals to, and consider any representations by, every council through whose area the highway will pass.

(2) A local highway authority may construct new highways; but—

(a) where a new highway to be constructed by such an authority will communicate with a highway for which the Minister is the highway authority;. . . F60

(b) F60

the communication shall not be made unless the manner in which it is to be made has been approved by the Minister. . . F60

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(3) F61

(4) The Minister or a local highway authority may provide and maintain new road-ferries.

Textual Amendments

F60 S. 24(2)(b) and the word immediately preceding it and words in concluding words of s. 24(2) repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F61 S. 24(3) repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

Modifications etc. (not altering text)

C8 S. 24(1) modified (18.12.1996) by 1996 c. 61, s. 44, **Sch. 12 Pt. III para. 9(b)**.

25 Creation of footpath or bridleway by agreement. E+W

(1) A local authority may enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a footpath or bridleway over land in their area.

An agreement under this section is referred to in this Act as a "public path creation agreement".

(2) For the purposes of this section "local authority"—

(a) in relation to land outside Greater London means a county council, a district council or a joint planning board within the meaning of **[**F62the Town and Country Planning Act 1990**]**, being a board for an area which comprises any part of a National Park; and

(b) in relation to land in Greater London means F63. . . a London borough council or the Common Council.

(3) Before entering into an agreement under this section a local authority shall consult any other local authority or authorities in whose area the land concerned is situated.

(4) An agreement under this section shall be on such terms as to payment or otherwise as may be specified in the agreement and may, if it is so agreed, provide for the dedication of the footpath or bridleway subject to limitations or conditions affecting the public right of way over it.

(5) Where a public path creation agreement has been made it shall be the duty of the local authority who are a party to it to take all necessary steps for securing that the footpath or bridleway is dedicated in accordance with it.

[F64(6) As soon as may be after the dedication of a footpath or bridleway in accordance with a public path creation agreement, the local authority who are party to the agreement shall give notice of the dedication by publication in at least one local newspaper circulating in the area in which the land to which the agreement relates is situated.**]**

Textual Amendments

F62 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(2)**

F63 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F64 S. 25(6) inserted by Wildlife and Countryside Act 1981 (c. 69, SIF 4:5), **s. 64**

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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Modifications etc. (not altering text)

C9 S. 25 extended by Norfolk and Suffolk Broads Act 1988 (c. 4, SIF 81:1), ss. 2(5)(6), 23(2), **Sch. 3 para. 47(1)**

C10 Ss. 25-29 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 11(a)** (with ss. 7(6), 115, 117, Sch. 8 para. 7).

26 Compulsory powers for creation of footpaths and bridleways. E+W

(1) Where it appears to a local authority that there is need for a footpath or bridleway over land in their area and they are satisfied that, having regard to—

(a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area, and

(b) the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 28 below,

it is expedient that the path or way should be created, the authority may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order, create a footpath or bridleway over the land.

An order under this section is referred to in this Act as a "public path creation order"; and for the purposes of this section "local authority" has the same meaning as in section 25 above.

(2) Where it appears to the Secretary of State in a particular case that there is need for a footpath or bridleway as mentioned in subsection (1) above, and he is satisfied as mentioned in that subsection, he may, after consultation with each body which is a local authority for the purposes of this section in relation to the land concerned, make a public path creation order creating the footpath or bridleway.

(3) A local authority shall, before exercising any power under this section, consult any other local authority or authorities in whose area the land concerned is situated.

(4) A right of way created by a public path creation order may be either unconditional or subject to such limitations or conditions as may be specified in the order.

(5) A public path creation order shall be in such form as may be prescribed by regulations made by the Secretary of State, and shall contain a map, on such scale as may be so prescribed, defining the land over which a footpath or bridleway is thereby created.

(6) Schedule 6 to this Act shall have effect as to the making, confirmation, validity and date of operation of public path creation orders.

Modifications etc. (not altering text)

C11 Ss. 26–29 extended by Norfolk and Suffolk Broads Act 1988 (c. 4, SIF 81:1), ss. 2(5)(6), 23(2), 27(2), **Sch. 3 para. 47(1)**

C12 Ss. 25-29 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 11(a)** (with ss. 7(6), 115, 117, Sch. 8 para. 7).

C13 S. 26: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**

C14 S. 26(2) amended (30.1.2001) by 2000 c. 37, **ss. 58(1)**, 103(2)

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27 Making up of new footpaths and bridleways. E+W

(1) On the dedication of a footpath or bridleway in pursuance of a public path creation agreement, or on the coming into operation of a public path creation order, being—

(a) an agreement or order made by a local authority who are not the highway authority for the path in question, or

(b) an order made by the Secretary of State under section 26(2) above in relation to which he directs that this subsection shall apply,

the highway authority shall survey the path or way and shall certify what work (if any) appears to them to be necessary to bring it into a fit condition for use by the public as a footpath or bridleway, as the case may be, and shall serve a copy of the certificate on the local authority mentioned in paragraph (a) above or, where paragraph (b) applies, on such local authority as the Secretary of State may direct.

(2) It shall be the duty of the highway authority to carry out any works specified in a certificate under subsection (1) above, and where the authority have carried out the work they may recover from the authority on whom a copy of the certificate was served any expenses reasonably incurred by them in carrying out that work, including any expenses so incurred in the discharge of any liability for compensation in respect of the carrying out thereof.

(3) Notwithstanding anything in the preceding provisions of this section, where an agreement or order is made as mentioned in subsection (1)(a) above, the local authority making the agreement or order may—

(a) with the consent of the highway authority carry out (in place of the highway authority) the duties imposed by that subsection on the highway authority; and

(b) carry out any works which, apart from this subsection, it would be the duty of the highway authority to carry out under subsection (2) above.

(4) Where the Secretary of State makes a public path creation order under section 26(2) above, he may direct that subsection (5) below shall apply.

(5) Where the Secretary of State gives such a direction—

(a) the local authority who, on the coming into force of the order, became the highway authority for the path or way in question shall survey the path or way and shall certify what work (if any) appears to them to be necessary to bring it into a fit condition for use by the public as a footpath or bridleway, as the case may be, and shall furnish the Secretary of State with a copy of the certificate;

(b) if the Secretary of State is not satisfied with a certificate made under the foregoing paragraph, he shall either cause a local inquiry to be held or shall give to the local authority an opportunity of being heard by a person appointed by him for the purpose and, after considering the report of the person appointed to hold the inquiry or the person so appointed as aforesaid, shall make such order either confirming or varying the certificate as he may think fit; and

(c) subject to the provisions of the last foregoing paragraphs, it shall be the duty of the highway authority to carry out the work specified in a certificate made by them under paragraph (a) above.

(6) In this section "local authority" means any council or any such joint planning board as is mentioned in section 25(2)(a) above.

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Modifications etc. (not altering text)

C15 Ss. 26–29 extended by Norfolk and Suffolk Broads Act 1988 (c. 4, SIF 81:1), ss. 2(5)(6), 23(2), 27(2), **Sch. 3 para. 47(1)**

C16 Ss. 25-29 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 11(a)** (with ss. 7(6), 115, 117, Sch. 8 para. 7).

28 Compensation for loss caused by public path creation order. E+W

(1) Subject to the following provisions of this section, if, on a claim made in accordance with this section, it is shown that the value of an interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of a public path creation order, the authority by whom the order was made shall pay to that person compensation equal to the amount of the depreciation or damage.

(2) A claim for compensation under this section shall be made within such time and in such manner as may be prescribed by regulations made by the Secretary of State, and shall be made to the authority by whom the order was made.

(3) For the purposes of the application of this section to an order made by the Secretary of State under section 26(2) above, references in this section to the authority by whom the order was made are to be construed as references to such one of the authorities referred to in that subsection as may be nominated by the Secretary of State for the purposes of this subsection.

(4) Nothing in this section confers on any person, in respect of a footpath or bridleway created by a public path creation order, a right to compensation for depreciation of the value of an interest in the land, or for disturbance in his enjoyment of land, not being in either case land over which the path or way was created or land held therewith, unless the creation of the path or way would have been actionable at his suit if it had been affected otherwise than in the exercise of statutory powers.

(5) In this section "interest", in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an interest in land or by virtue of a licence or agreement, and in particular includes sporting rights.

Modifications etc. (not altering text)

C17 Ss. 26-29 extended by Norfolk and Suffolk Broads Act 1988 (c. 4, SIF 81:1), ss. 2(5)(6), 23(2), 27(2), **Sch. 3 para. 47(1)**

C18 Ss. 25-29 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 11(a)** (with ss. 7(6), 115, 117, Sch. 8 para. 7).

C19 S. 28 applied (with modifications) (28.4.2003) by The Network Rail (West Coast Main Line) Order 2003 (S.I. 2003/1075), **art. 8(6)-(10)** (with art. 40)

C20 Ss. 25-28 applied (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. I**; S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

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29 Protection for agriculture and forestry. E+W

In the exercise of their functions under this Part of this Act relating to the making of public path creation agreements and public path creation orders it shall be the duty of councils and joint planning boards to have due regard to the needs of agriculture and forestry.

Modifications etc. (not altering text)

C21 Ss. 26–29 extended by Norfolk and Suffolk Broads Act 1988 (c. 4, SIF 81:1), ss. 2(5)(6), 23(2), 27(2), **Sch. 3 para. 47(1)**

C22 Ss. 25-29 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 11(a)** (with ss. 7(6), 115, 117, Sch. 8 para. 7).

30 Dedication of highway by agreement with parish or community council. E+W

(1) The council of a parish or community may enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a highway over land in the parish or community or an adjoining parish or community in any case where such a dedication would in the opinion of the council be beneficial to the inhabitants of the parish or community or any part thereof.

(2) Where the council of a parish or community have entered into an agreement under subsection (1) above for the dedication of a highway they may carry out any works (including works of maintenance or improvement) incidental to or consequential on the making of the agreement or contribute towards the expense of carrying out such works, and may agree or combine with the council of any other parish or community to carry out such works or to make such a contribution.

31 Dedication of way as highway presumed after public use for 20 years. E+W

(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.

(3) Where the owner of the land over which any such way as aforesaid passes—

(a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway, and

(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,

the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

(4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is

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mentioned in subsection (3) above, so, however, that no injury is done thereby to the business or occupation of the tenant.

(5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as a highway is, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as a highway.

(6) An owner of land may at any time deposit with the appropriate council—

(a) a map of the land on a scale of not less than 6 inches to 1 mile, and

(b) a statement indicating what ways (if any) over the land he admits to have been dedicated as highways;

and, in any case in which such a deposit has been made, statutory declarations made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time—

(i) within six years from the date of the deposit, or

(ii) within six years from the date on which any previous declaration was last lodged under this section.

to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgment of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

(7) For the purposes of the foregoing provisions of this section "owner", in relation to any land, means a person who is for the time being entitled to dispose of the fee simple in the land; and for the purposes of subsections (5) and (6) above "the appropriate council" means the council of the county **[**F65, metropolitan district**]** or London borough in which the way (in the case of subsection (5)) or the land (in the case of subsection (6)) is situated or, where the way or land is situated in the City, the Common Council.

(8) Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public or statutory purposes to dedicate a way over that land as a highway if the existence of a highway would be incompatible with those purposes.

(9) Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years, or being presumed or proved in any circumstances in which it might have been presumed or proved immediately before the commencement of this Act.

(10) Nothing in this section or section 32 below affects **[**F66section 56(1) of the Wildlife and Countryside Act 1981 (which provides that a definitive map and statement**]** are conclusive evidence as to the existence of the highways shown on the map and as to certain particulars contained in the statement),. . . F67

(11) For the purposes of this section "land" includes land covered with water.

Textual Amendments

F65 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 7**

F66 Words substituted by Wildlife and Countryside Act 1981 (c. 69, SIF 4:5), **s. 72(11)**

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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F67 Words repealed by Wildlife and Countryside Act 1981 (c. 69, SIF 4:5), s. 73, **Sch. 17 Pt. II**

VALID FROM 21/11/2005

[F68 31A Register of maps, statements and declarations. E+W

(1) The appropriate council shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect to maps and statements deposited and declarations lodged with that council under section 31(6) above.

(2) Regulations may make provision for the register to be kept in two or more parts, each part containing such information as may be prescribed with respect to such maps, statements and declarations.

(3) Regulations may make provision as to circumstances in which an entry relating to a map, statement or declaration, or anything relating to it, is to be removed from the register or from any part of it.

(4) Every register kept under this section shall be available for inspection free of charge at all reasonable hours.

(5) In this section—

"appropriate council" has the same meaning as in section 31(6) above;

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Secretary of State.**]**

Textual Amendments

F68 S. 31A inserted (21.11.2005 for W. and 1.10.2007 for E.) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 4; S.I. 2005/1314, **art. 4(b)(i)**; S.I. 2007/2335, **art. 2**

32 Evidence of dedication of way as highway. E+W

A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

33 Protection of rights of reversioners. E+W

The person entitled to the remainder or reversion immediately expectant upon the determination of a tenancy for life, or pour autre vie, in land shall have the like remedies by action for trespass or an injunction to prevent the acquisition by the public of a right of way over that land as if he were in possession thereof.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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34 Conversion of private street into highway. E+W

Without prejudice to the foregoing provisions of this Part of this Act, a street which is not a highway and land to which section 232 below applies may become a highway by virtue of a declaration made by a county council, **[**F69a metropolitan district council,**]** a London borough council or the Common Council in accordance with the provisions in that behalf contained in Part XI of this Act.

Textual Amendments

F69 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 8**

35 Creation of walkways by agreement. E+W

(1) An agreement under this section may be entered into—

(a) by a local highway authority, after consultation with the council of any **[**F70non-metropolitan**]** district in which the land concerned is situated;

(b) by a **[**F70non-metropolitan**]** district council, either alone or jointly with the local highway authority, after consultation with the local highway authority.

(2) An agreement under this section is an agreement with any person having an interest in any land on which a building is, or is proposed to be, situated, being a person who by virtue of that interest has the necessary power in that behalf,—

(a) for the provision of ways over, through or under parts of the building, or the building when constructed, as the case may be, or parts of any structure attached, or to be attached, to the building; and

(b) for the dedication by that person of those ways as footpaths subject to such limitations and conditions, if any, affecting the public right of way thereover as may be specified in the agreement and to any rights reserved by the agreement to that person and any person deriving title to the land under him.

A footpath created in pursuance of an agreement under this section is referred to below as a "walkway".

(3) An agreement under this section may make provision for—

(a) the maintenance, cleansing and drainage of any walkway to which the agreement relates;

(b) the lighting of such walkway and of that part of the building or structure which will be over or above it;

(c) the provision and maintenance of support for such walkway;

(d) entitling the authority entering into the agreement or, where the agreement is entered into jointly by a **[**F70non-metropolitan**]** district council and a local highway authority, either of those authorities to enter on any building or structure in which such walkway will be situated and to execute any works necessary to secure the performance of any obligation which any person is for the time being liable to perform by virtue of the agreement or of subsection (4) below;

(e) the making of payments by the authority entering into the agreement or, where the agreement is entered into jointly by a **[**F70non-metropolitan**]** district council and a local highway authority, either of those authorities to any person having an interest in the land or building affected by the agreement;

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(f) the termination, in such manner and subject to such conditions as may be specified in the agreement, of the right of the public to use such walkway;

(g) any incidental and consequential matters.

(4) Any covenant (whether positive or restrictive) contained in an agreement under this section and entered into by a person having an interest in any land affected by the agreement shall be binding upon persons deriving title to the land under the covenantor to the same extent as it is binding upon the covenantor notwithstanding that it would not have been binding upon those persons apart from the provisions of this subsection, and shall be enforceable against those persons by the local highway authority.

(5) A covenant contained in an agreement under this section and entered into by a person having an interest in any land affected by the agreement is a local land charge.

(6) Where an agreement has been entered into under this section the appropriate authority may make byelaws regulating—

(a) the conduct of persons using any walkway to which the agreement relates;

(b) the times at which any such walkway may be closed to the public;

(c) the placing or retention of anything (including any structure or projection) in, on or over any such walkway.

(7) For the purposes of subsection (6) above, "the appropriate authority" means—

(a) where the agreement was entered into by a local highway authority, that authority;

(b) where the agreement was entered into by a **[**F71non-metropolitan**]** district council alone, that council;

(c) where the agreement was entered into by a **[**F71non-metropolitan**]** district council jointly with the local highway authority, the local highway authority;

but in cases falling within paragraph (c) above the local highway authority shall before making any byelaw consult the district council, and in exercisng his power of confirmation the Minister shall have regard to any dispute between the local highway authority and the district council.

(8) Not less than 2 months before an authority propose to make byelaws under subsection (6) above they shall display in a conspicuous position on or adjacent to the walkway in question notice of their intention to make such byelaws.

(9) A notice under subsection (8) above shall specify the place where a copy of the proposed byelaws may be inspected and the period, which shall not be less than 6 weeks from the date on which the notice was first displayed as aforesaid, within which representations may be made to the authority, and the authority shall consider any representations made to them within that period.

(10) The Minister of the Crown having power by virtue of section 236 of the M5Local Government Act 1972 to confirm byelaws made under subsection (6) above may confirm them with or without modifications; and if he proposes to confirm them with modifications he may, before confirming them, direct the authority by whom they were made to give notice of the proposed modifications to such persons and in such manner as may be specified in the direction.

(11) Subject to subsection (12) below, the Minister, after consulting such representative organisations as he thinks fit, may make regulations—

(a) for preventing any enactment or instrument relating to highways or to things done on or in connection with highways from applying to walkways which

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have been, or are to be, created in pursuance of agreements under this section or to things done on or in connection with such walkways;

(b) for amending, modifying or adapting any such enactment or instrument in its application to such walkways;

(c) without prejudice to the generality of paragraphs (a) and (b) above, for excluding, restricting or regulating the rights of statutory undertakers, F72. . . [F73F72. . . and the operators of telecommunications code systems to place] and maintain apparatus in, under, over, along or across such walkways;

(d) without prejudice as aforesaid, for defining the cirumstances and manner in which such walkways may be closed periodically or temporarily or stopped up and for prescribing the procedure to be followed before such a walkway is stopped up.

(12) Regulations under this section shall not exclude the rights of statutory undertakers, F74. . . [F75F74. . . or the operators of telecommunications code systems to place] and maintain apparatus in, under, along or across any part of a walkway, being a part which is not supported by any structure.

(13) Without prejudice to subsection (11) above, regulations under this section may make different provisions for different classes of walkways and may include such incidental, supplemental and consequential provisions (and, in particular, provisions relating to walkways provided in pursuance of agreements made before the coming into operation of the regulations) as appear to the Minister to be expedient for the purposes of the regulations.

(14) Nothing in this section is to be taken as affecting any other provision of this Act, or any other enactment, by virtue of which highways may be created.

Textual Amendments

F70 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 9**

F71 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 9**

F72 Word repealed 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**

F73 Words substituted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, **Sch. 4 para. 76(2)**(*a*), Sch. 5 para. 45

F74 Word repealed 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**

F75 Words substituted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, **Sch. 4 para. 76(2)**(*a*), Sch. 5 para. 45

Marginal Citations

M5 1972 c. 70.

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PART IV E+W

MAINTENANCE OF HIGHWAYS

Highways maintainable at public expense

36 Highways maintainable at public expense. E+W

(1) All such highways as immediately before the commencment of this Act were highways maintainable at the public expense for the purposes of the [M6]Highways Act 1959 continue to be so maintainable (subject to this section and to any order of a magistrates' court under section 47 below) for the purposes of this Act.

(2) Without prejudice to any other enactment (whether contained in this Act or not) whereby a highway may become for the purposes of this Act a highway maintainable at the public expense, and subject to this section and section 232(7) below, and to any order of a magistrates' court under section 47 below, the following highways (not falling within subsection (1) above) shall for the purposes of this Act be highways maintainable at the public expense—

(a) a highway constructed by a highway authority, otherwise than on behalf of some other person who is not a highway authority;

(b) a highway constructed by a council within their own area under **[**[F76]Part II of the Housing Act 1985**]**, other than one in respect of which the local highway authority are satisfied that it has not been properly constructed, and a highway constructed by a council outside their own area under **[**[F76]the said Part II**]**, being, in the latter case, a highway the liability to maintain which is, by virtue of **[**[F76]the said Part II**]**, vested in the council who are the local highway authority for the area in which the highway is situated;

(c) a highway that is a trunk road or a special road; [F77]. . .

(d) a highway, being a footpath or bridleway, created in consequence of a public path creation order or a public path diversion order or in consequence of an order made by the Minister of Transport or the Secretary of State under **[**[F78]section 247 of the Town and Country Planning Act 1990 or by a competent authority under section 257 of that Act**]**, or dedicated in pursuance of a public path creation agreement.

[[F79](e) a highway, being a footpath or bridleway, created in consequence of a rail crossing diversion order, or of an order made under section 14 or 16 of the Harbours Act 1964, or of an order made under section 1 or 3 of the Transport and Works Act 1992.**]**

(3) Paragraph (c) of subsection (2) above is not to be construed as referring to a part of a trunk road or special road consisting of a bridge or other part which a person is liable to maintain under a charter or special enactment, or by reason of tenure, enclosure or prescription.

[[F80](3A) Paragraph (e) of subsection (2) above shall not apply to a footpath or bridleway, or to any part of a footpath or bridleway, which by virtue of an order of a kind referred to in that subsection is maintainable otherwise than at the public expense.**]**

(4) Subject to subsection (5) below, where there occurs any event on the occurrence of which, under any rule of law relating to the duty of maintaining a highway by reason of tenure, enclosure or prescription, a highway would, but for the enactment which abrogated the former rule of law under which a duty of maintaining highways fell

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on the inhabitants at large (section 38(1) of the [M7]Highways Act 1959) or any other enactment, become, or cease to be, maintainable by the inhabitants at large of any area, the highway shall become, or cease to be, a highway which for the purposes of this Act is a highway maintainable at the public expense.

(5) A highway shall not by virtue of subsection (4) above become a highway which for the purposes of this Act is a highway maintainable at the public expense unless either—

(a) it was a highway before 31st August 1835; or

(b) it became a highway after that date and has at some time been maintainable by the inhabitants at large of any area or a highway maintainable at the public expense;

and a highway shall not by virtue of that subsection cease to be a highway maintainable at the public expense if it is a highway which under any rule of law would become a highway maintainable by reason of enclosure but is prevented from becoming such a highway by section 51 below.

(6) The council of every county **[**[F81], metropolitan district**]** and London borough and the Common Council shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense.

(7) Every list made under subsection (6) above shall be kept deposited at the offices of the council by whom it was made and may be inspected by any person free of charge at all reasonable hours and in the case of a list made by the council of a county **[**[F82]in England**]**, the county council shall supply to the council of each district in the county an up to date list of the streets within the area of the district that are highways maintainable at the public expense, and the list so supplied shall be kept deposited at the office of the district council and may be inspected by any person free of charge at all reasonable hours.

Textual Amendments

F76 Words substituted by Housing (Consequential Provisions) Act 1985 (c. 71, SIF 61), s. 4, **Sch. 2 para. 47**

F77 Word in s. 36(2) at the end of para. (c) repealed (31.1.1993) by Transport and Works Act 1992 (c. 42), ss. 64(2), 68(1), **Sch. 4 Pt. I**; S.I. 1992/3144, art. 3, **Sch.**

F78 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(3)**

F79 S. 36(2)(e) added (31.1.1993) by Transport and Works Act 1992 (c. 42), **s. 64(3)**; S. I. 1992/3144, art. 3, **Sch.**

F80 S. 36(3A) inserted (31.1.1993) by Transport and Works Act 1992 (c. 42), **s. 64(4)**; S.I. 1992/3144, art. 3, **Sch.**

F81 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 7**

F82 Words in s. 36(7) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.4** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

Marginal Citations

M6 1959 c. 25.

M7 1959 c. 25.

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Methods whereby highways may become maintainable at public expense

37 Provisions whereby highway created by dedication may become maintainable at public expense. E+W

(1) A person who proposes to dedicate a way as a highway and who desires that the proposed highway shall become maintainable at the public expense by virtue of this section shall give notice of the proposal, not less than 3 months before the date of the proposed dedication, to the council who would, if the way were a highway, be the highway authority therefor, describing the location and width of the proposed highway and the nature of the proposed dedication.

(2) If the council consider that the proposed highway will not be of sufficient utility to the public to justify its being maintained at the public expense, they may make a complaint to a magistrates' court for an order to that effect.

(3) If the council certify that the way has been dedicated in accordance with the terms of the notice and has been made up in a satisfactory manner, and if—

(a) the person by whom the way was dedicated or his successor keeps it in repair for a period of 12 months from the date of the council's certificate, and

(b) the way has been used as a highway during that period,

then, unless an order has been made in relation to the highway under subsection (2) above, the highway shall, at the expiration of the period specified in paragraph (a) above, become for the purposes of this Act a highway maintainable at the public expense.

(4) If the council, on being requested by the person by whom the way was dedicated or his successor to issue a certificate under subsection (3) above, refuse to issue the certificate, that person may appeal to a magistrates' court against the refusal, and the court, if satisfied that the certificate ought to have been issued, may make an order to the effect that subsection (3) above shall apply as if the certificate had been issued on a date specified in the order.

(5) Where a certificate has been issued by a council under subsection (3) above, or an order has been made under subsection (4) above, the certificate or a copy of the order, as the case may be, shall be deposited with the proper officer of the council and may be inspected by any person free of charge at all reasonable hours.

Modifications etc. (not altering text)

C23 S. 30 modified (28.4.2003) by The Network Rail (West Coast Main Line) Order 2003 (S.I. 2003/1075), **art. 8(11)**

38 Power of highway authorities to adopt by agreement. E+W

(1) Subject to subsection (2) below, where any person is liable under a special enactment or by reason of tenure, enclosure or prescription to maintain a highway, the Minister, in the case of a trunk road, or a local highway authority, in any other case, may agree with that person to undertake the maintenance of that highway; and where an agreement is made under this subsection the highway to which the agreement relates shall, on such date as may be specified in the agreement, become for the purposes of this Act a

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highway maintainable at the public expense and the liability of that person to maintain the highway shall be extinguished.

(2) A local highway authority shall not have power to make an agreement under subsection (1) above with respect to a highway with respect to which they or any other highway authority have power to make an agreement under Part V or Part XII of this Act.

[F83(3) A local highway authority may agree with any person to undertake the maintenance of a way—

(a) which that person is willing and has the necessary power to dedicate as a highway, or

(b) which is to be constructed by that person, or by a highway authority on his behalf, and which he proposes to dedicate as a highway;

and where an agreement is made under this subsection the way to which the agreement relates shall, on such date as may be specified in the agreement, become for the purposes of this Act a highway maintainable at the public expense.

(3A) The Minister may agree with any person to undertake the maintenance of a road—

(a) which that person is willing and has the necessary power to dedicate as a highway, or

(b) which is to be constructed by that person, or by a highway authority on his behalf, and which he proposes to dedicate as a highway,

and which the Minister proposes should become a trunk road; and where an agreement is made under this subsection the road shall become for the purposes of this Act a highway maintainable at the public expense on the date on which an order comes into force under section 10 directing that the road become a trunk road or, if later, the date on which the road is opened for the purposes of through traffic.**]**

(4) Without prejudice to the provisions of subsection (3) above and subject to the following provisions of this section, a local highway authority may, by agreement with railway, canal or tramway undertakers, undertake to maintain as part of a highway maintainable at the public expense a bridge or viaduct which carries the railway, canal or tramway of the undertakers over such a highway or which is intended to carry such a railway, canal or tramway over such a highway and is to be constructed by those undertakers or by the highway authority on their behalf.

(5) F84

(6) An agreement under this section may contain such provisions as to the dedication as a highway of any road or way to which the agreement relates, the bearing of the expenses of the construction, maintenance or improvement of any highway, road, bridge or viaduct to which the agreement relates and other relevant matters as the authority making the agreement think fit.

Textual Amendments

F83 S. 38(3)(3A) substituted (01.11.1991) for s. 38(3) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 22(1)**; S.I. 1991/2288, art. 3, **Sch.**

F84 S. 38(5) repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

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Textual Amendments

F85 S. 39 repealed by Statute Law (Repeals) Act 1986 (c. 12), s. 1(1), **Sch. 1 Pt. II**

40 Adoption of private streets. E+W

The foregoing provisions of this Part of this Act are without prejudice to the power or, as the case may be, the duty of the council of a county **[**[F86], metropolitan district**]** or London borough, or the Common Council, to adopt private streets as highways maintainable at the public expense under Part XI of this Act.

Textual Amendments

F86 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 7**

Maintenance of highways maintainable at public expense

41 Duty to maintain highways maintainable at public expense. E+W

(1) The authority who are for the time being the highway authority for a highway maintainable at the public expense are under a duty, subject to subsections (2) and (4) below, to maintain the highway.

(2) An order made by the Minister under section 10 above directing that a highway proposed to be constructed by him shall become a trunk road may, as regards—

(a) a highway to which this subsection applies which becomes a trunk road by virtue of the order, or

(b) a part of a highway to which this subsection applies, being a part which crosses the route of the highway to be so constructed,

contain such a direction as is specified in subsection (4) below.

(3) Subsection (2) above applies to—

(a) any highway maintainable at the public expense by a local highway authority, and

(b) any highway other than a highway falling within paragraph (a) above or a highway maintainable under a special enactment or by reason of tenure, enclosure or prescription.

(4) The direction referred to in subsection (2) above is—

(a) in a case where the highway or part of a highway falls within subsection (3)(a) above, a direction that, notwithstanding subsection (1) above, it shall be maintained by the highway authority for that highway until such date, not being later than the date on which the new route is opened for the purposes of through traffic, as may be specified in a notice given by the Minister to that authority; and

(b) in a case where the highway or part of a highway falls within subsection (3)(b) above, a direction that, notwithstanding subsection (1) above, the Minister is to be under no duty to maintain it until such date as aforesaid.

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(5) Where an order under section 10 above contains a direction made in pursuance of subsections (2) to (4) above, then, until the date specified in the notice given by the Minister pursuant to the direction, in accordance with subsection (4) above, the powers of a highway authority under sections 97, 98, 270 and 301 below as respects the highway to which the direction relates are exercisable by the highway authority to whom the notice is required to be given, as well as by the Minister.

42 Power of district councils to maintain certain highways. E+W

(1) Subject to Part I of Schedule 7 to this Act, the council of a **[**F87non-metropolitan**]** district may undertake the maintenance of any eligible highway in the district which is a highway maintainable at the public expense.

(2) For the purposes of subsection (1) above the following are eligible highways:—

(a) footpaths,

(b) bridleways, and

(c) roads (referred to in Schedule 7 to this Act as "urban roads") which are neither trunk roads nor classified roads and which—

(i) are restricted roads for the purposes of **[**F88section 81 of the Road Traffic Regulation Act 1984**]** (30 m.p.h. speed limit), or

(ii) are subject to an order **[**F89made by virtue of section 84(1)(a) of that Act imposing a speed limit**]** not exceeding 40 m.p.h., or

(iii) are otherwise streets in an urban area.

(3) The county council who are the highway authority for a highway which is for the time being maintained by a **[**F90non-metropolitan**]**district council by virtue of this section shall reimburse to the district council any expenses incurred by them in carrying out on the highway works of maintenance necessary to secure that the duty to maintain the highway is performed, and Part II of Schedule 7 to this Act shall have effect for this purpose.

Textual Amendments

F87 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 11**

F88 Words substituted by Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), s. 146, **Sch. 13 para. 40**

F89 Words in s. 42(2)(c)(ii) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch 4 para.11**; S.I. 1992/1286, **art. 2**,Sch.

F90 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 11**

Modifications etc. (not altering text)

C24 S. 42 applied (with modifications) (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. I**; S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

43 Power of parish and community councils to maintain footpaths and bridleways. E+W

(1) The council of a parish or community may undertake the maintenance of any footpath or bridleway within the parish or community which is, in either case, a highway maintainable at the public expense; but nothing in this subsection affects the duty of any highway authority or other person to maintain any such footpath or bridleway.

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(2) The highway authority for any footpath or bridleway which a parish or community council have power to maintain under subsection (1) above, and a **[**[F91]non-metropolitan**]** district council for the time being maintaining any such footpath or bridleway by virtue of section 42 above, may undertake to defray the whole or part of any expenditure incurred by the parish or community council in maintaining the footpath or bridleway.

(3) The power of a parish or community council under subsection (1) above is subject to the restrictions for the time being imposed by any enactment on their expenditure, but for the purposes of any enactment imposing such a restriction their expenditure is to be deemed not to include any expenditure falling to be defrayed by a highway authority or district council by virtue of subsection (2) above.

Textual Amendments

F91 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 12**

Modifications etc. (not altering text)

C25 S. 43 applied (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. I**; S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

44 Person liable to maintain highway may agree to maintain publicly maintainable highway. E+W

Where any person is liable under a special enactment or by reason of tenure, enclosure or prescription to maintain a highway, he may enter into an agreement with the highway authority for that highway for the maintenance by him of any highway maintainable at the public expense by the highway authority; but nothing in this section affects the duty of a highway authority to maintain a highway as respects which any such agreement is made.

45 Power to get materials for repair of publicly maintainable highways. E+W

(1) For the purpose of repairing highways maintainable at the public expense by them, a highway authority may exercise such powers with respect to the getting of materials as are mentioned in this section.

(2) Subject to subsection (3) below, the authority may search for, dig, get and carry away gravel, sand, stone and other materials in and from any waste or common land (including the bed of any river or brook flowing through such land).

(3) The authority—

(a) shall not in the exercise of their powers under subsection (2) above divert or interrupt the course of any river or brook, or dig or get materials out of any river or brook within 50 yards above or below a bridge, dam or weir;

(b) shall not in the exercise of those powers remove such quantity of stones or other materials from any sea beach as to cause damage by inundation or increased danger of encroachment by the sea; and

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(c) shall not exercise those powers in any land forming part of a common to which section 20 of the [M8]Commons Act 1876 applies, except in accordance with that section.

(4) Subject to subsection (5) below, the authority may gather and carry away stones lying upon any land in the **[**[F92]non-metropolitan county, metropolitan district**]** or London borough within which the stones are to be used.

(5) The authority—

(a) shall not exercise the powers conferred by subsection (4) above in a garden, yard, avenue to a house, lawn, park, paddock or inclosed plantation, or in an inclosed wood not exceeding 100 acres in extent;

(b) shall not in the case of any other inclosed land exercise those powers unless either they have obtained the consent of the owner and of the occupier of that land, or a magistrates' court has made an order authorising them to exercise those powers in the case of that land; and

(c) shall not in the exercise of those powers remove such quantity of stones or other materials from any sea beach as to cause damage by inundation or increased danger of encroachment by the sea.

(6) If the authority cannot get sufficient materials by the exercise of their powers under the foregoing provisions of this section, a magistrates' court may make an order authorising them to search for, dig, get and carry away materials in and from any inclosed land in the **[**[F92]non-metropolitan county, metropolitan district**]** or London borough within which the materials are to be used, other than any such land as is mentioned in subsection (5)(a) above.

(7) For the purpose of repairing a bridge maintainable at the public expense and so much of a highway so maintainable as is carried by the bridge or forms the approaches to the bridge up to 100 yards from each end of the bridge, the authority may take and carry away the rubbish or refuse stones from any quarry in the **[**[F93]non-metropolitan county or metropolitan district**]** within which the materials are to be used or, if the materials are to be used in Greater London, from any quarry in Greater London.

(8) Subject to subsection (9) below, for the purpose of repairing or reconstructing a bridge maintainable at the public expense, the authority may be authorised by an order of a magistrates' court to quarry stone from any quarry in the **[**[F93]non-metropolitan county or metropolitan district**]** in which the bridge is or, if the bridge is in Greater London, from any quarry in Greater London.

(9) No order shall be made under subsection (8) above in relation to a quarry which has not been worked at any time during the 3 years immediately preceding the date on which a complaint for such an order is made; and no stone shall be taken from a quarry situated in a garden, yard, avenue to a house, lawn, paddock or inclosed plantation, or in land on which ornamental timber trees are growing, except with the consent of the owner of the quarry.

(10) An authority who exercise any of the powers conferred by this section shall pay compensation to persons interested in any land for any damage done thereto by the carriage of the materials obtained by the authority and also, in cases falling within subsection (6) or subsection (8) above, for the value of those materials.

(11) At least one month before making a complaint to a magistrates' court for an order under subsection (5) or subsection (6) above the authority shall give notice of their

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intention to make such a complaint to the owner, and to the occupier, of the land from which they propose to get materials.

(12) In relation to highways in respect of which a **[**F94non-metropolitan**]** district council's powers of maintenance under section 42 above are exercisable, references in this section and section 46 below to a highway authority include references to the district council; and for the purposes of this section—

"inclosed land" includes any land in the exclusive occupation of one or more persons for agricultural purposes, though not separated by a fence or otherwise from adjoining land of another person, or from a highway; and

"London borough" includes the City of London.

Textual Amendments

F92 Words substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 13**(*a*)

F93 Words substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 13**(*b*)

F94 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 13**(*c*)

Marginal Citations

M8 1876 c. 56.

46 Supplemental provisions with respect to the getting of materials under section 45. E+W

(1) Where an excavation is made by a highway authority in the exercise of powers conferred by section 45 above, the authority shall—

(a) while work is in progress, and thereafter so long as the excavation remains open, keep the excavation sufficiently fenced to prevent accidents to persons or animals,

(b) if no materials are found therein, fill up the excavation within 3 days from the date on which the excavation was made,

(c) if materials are found, then within 14 days from the date on which sufficient materials have been obtained, fill up the excavation or slope it down and fence it off, if the owner or occupier of the land in question so requires, and thereafter keep it so fenced, and

(d) when filling up an excavation, make good and level the ground and cover it with the turf or clod dug therefrom.

(2) An authority who fail to comply with any of the provisions of subsection (1) above are guilty of an offence and liable to a fine not exceeding **[**F95level 1 on the standard scale**]**.

(3) If in the exercise of powers conferred by section 45 above materials are dug so as to damage or endanger a highway, occupation road, ford, dam, mine, building, works or apparatus, the authority are guilty of an offence and, without prejudice to any civil proceedings which may be available against them, liable to a fine not exceeding **[**F96level 1 on the standard scale**]**.

(4) A person who, without the consent of the highway authority,—

(a) takes away any materials purchased, gotten or gathered by them for the repair of highways, or

(b) takes away any materials from a quarry or excavation opened by the authority before their workmen have ceased working thereat for 6 weeks,

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is guilty of an offence and liable to a fine not exceeding **[**F97level 1 on the standard scale**]**; but in the case of a quarry or excavation in private grounds, nothing in this subsection prevents the owner or occupier from getting materials therefrom for his own private use and not for sale.

Textual Amendments

F95 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

F96 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

F97 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

47 Power of magistrates' court to declare unnecessary highway to be not maintainable at public expense. E+W

(1) Where a highway authority are of opinion that a highway maintainable at the public expense by them is unnecessary for public use and therefore ought not to be maintained at the public expense, they may, subject to subsections (2) to (4) below, apply to a magistrates' court for an order declaring that the highway shall cease to be so maintained.

(2) No application shall be made under this section for an order relating to a trunk road, special road, metropolitan road, footpath or bridleway.

(3) Where a county council, as highway authority, propose to make an application under this section for an order relating to any highway **[**F98in England**]**, they shall give notice of the proposal to the council of the district in which the highway is situated, and the application shall not be made if, within 2 months from the date of service of the notice by the county council, notice is given to the county council by the district council that the district council have refused to consent to the making of the application.

(4) If a highway authority propose to make an application under this section for an order relating to a highway situated in a parish or a community they shall give notice of the proposal—

(a) to the council of the parish or community, or

(b) in the case of a parish not having a separate parish council, to the chairman of the parish meeting,

and the application shall not be made if, within 2 months from the date of service of the notice by the highway authority, notice is given to the highway authority by the council of the parish or community or the chairman of the parish meeting, as the case may be, that the council or meeting have refused to consent to the making of the application.

(5) Where an application is made to a magistrates' court under this section, 2 or more justices of the peace acting for the petty sessions area for which the court acts shall together view the highway to which the application relates, and no further proceedings shall be taken on the application unless they are of opinion, after viewing the highway, that there was ground for making the application.

(6) The clerk to the justices who view a highway in accordance with the provisions of subsection (5) above shall, as soon as practicable after the view, notify the highway authority by whom an application under this section relating to the highway was made of the decision of the justices and, if the justices decide that there was ground for making the application, of the time, not being less than 6 weeks from the date of the notice, and place, at which the application is to be heard by a magistrates' court.

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(7) A magistrates' court shall not hear an application under this section unless it is satisfied that the highway authority making the application have—

(a) not less than one month before the date on which the application is to be heard by the court, given notice to the owners and the occupiers of all lands adjoining the highway to which the application relates of the making of the application, and the purpose of it, and of the time and place at which the application is to be heard by the court, and

(b) given public notice in the terms and manner required by subsection (8) below.

(8) A highway authority making an application under this section shall publish, once at least in each of the 4 weeks immediately preceding the week in which the application is to be heard, in a local newspaper circulating in the area in which the highway to which the application relates is situated, a notice—

(a) stating that an application has been made to a magistrates' court under this section and the purpose of the application,

(b) describing the highway, and

(c) specifying the time and place at which the application is to be heard,

and shall cause a copy of the notice to be fixed, at least 14 days before the date on which the application is to be heard by the court, to the principal doors of every church and chapel in the parish or community in which the highway is situated, or in some conspicuous position near the highway.

(9) On the hearing of an application for an order under this section, a magistrates' court shall hear any person who objects to the order being made and may either dismiss the application or make an order declaring that the highway to which the application relates shall cease to be maintained at the public expense.

(10) Where an order is made under this section the highway to which the order relates shall cease to be a highway maintainable at the public expense.

(11) The highway authority on whose application an order is made under this section shall give notice of the making of the order to any public utility undertakers having apparatus under, in, upon, over, along or across the highway to which the order relates.

Textual Amendments

F98 Words in s. 47(3) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.5** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

48 Power of magistrates' court to order a highway to be again maintainable at public expense. E+W

(1) Subject to subsection (2) below, if it appears to a magistrates' court that, in consequence of any change of circumstances since the time at which an order was made under section 47 above, the highway to which the order relates has again become of public use and ought to be maintained at the public expense, the court may by order direct that the highway shall again become for the purposes of this Act a highway maintainable at the public expense.

(2) An order under this section shall not be made except on the application of a person interested in the maintenance of the highway to which the application relates, and on proof that not less than 1 month before making the application he gave notice to the

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highway authority for the highway of his intention to make an application under this section.

Maintenance of privately maintainable highways

49 Maintenance of approaches to certain privately maintainable bridges. E+W

Where a person is liable to maintain the approaches to a bridge by reason of the fact that he is liable to maintain the bridge by reason of tenure or prescription, his liability to maintain the approaches extends to 100 yards from each end of the bridge.

50 Maintenance of privately maintainable footpaths and bridleways. E+W

(1) Where apart from section 41 above a person would under a special enactment or by reason of tenure, enclosure or prescription be under an obligation to maintain a footpath or bridleway, the operation of section 41(1) does not release him from the obligation.

(2) The council of a **[**F99non-metropolitan**]** district, parish or community may undertake by virtue of this subsection the maintenance of any footpath or bridleway within the district, parish or community (other than a footpath or bridleway the maintenance of which they have power to undertake under section 42 or, as the case may be, section 43 above) whether or not any other person is under a duty to maintain the footpath or bridleway; but nothing in this subsection affects the duty of any other person to maintain any such footpath or bridleway.

(3) The power of a district council under subsection (2) above is subject to Part I of Schedule 7 to this Act; and the power of a parish or community council under that subsection is subject to the restrictions for the time being imposed by any enactment on their expenditure.

Textual Amendments

F99 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 14**

51 No liability to maintain by reason of enclosure if highway fenced with consent of highway authority. E+W

(1) If a person across whose land there is a highway maintainable at the public expense erects a fence between the highway and the adjoining land, and the fence is erected with the consent of the highway authority for the highway, he does not thereby become liable to maintain the highway by reason of enclosure.

(2) Nothing in subsection (1) above is to be construed as imposing on any person a liability to maintain a highway by reason of enclosure.

52 Power to get materials for repair of privately maintainable highways. E+W

(1) A person liable to maintain a highway by reason of tenure, enclosure or prescription has, for the purpose of repairing it, the like powers with respect to the getting of materials as are conferred on a highway authority by section 45(2) to (6) above for the purpose of repairing highways maintainable at the public expense by them.

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(2) A person on whom powers are conferred by this section is, with respect to the exercise of those powers, subject to the like duties and liabilities under section 45(10) and (11) above and under section 46(1) to (3) above as are a highway authority with respect to the exercise of the powers conferred on them by section 45.

53 Power of magistrates' court to extinguish liability to maintain privately maintainable highway. E+W

(1) Where a person is liable by reason of tenure, enclosure or prescription to maintain a highway, a magistrates' court may, on a complaint made either by that person or by the highway authority for the highway, make an order that the liability of that person to maintain the highway shall be extinguished, and on the extinguishment of that liability the highway, if it is not then a highway maintainable at the public expense, shall become for the purposes of this Act a highway maintainable at the public expense.

(2) Where a complaint is made to a magistrates' court under this section by a person liable as aforesaid to maintain a highway—

(a) the highway authority for the highway have a right to be heard by the court at the hearing of the complaint, and

(b) the court shall not make an order on the complaint unless it is satisfied that not less than 21 days before the date on which the complaint is heard by the court the complainant gave notice to the highway authority for the highway of the making of the complaint and of the time and place at which it was to be heard by the court.

(3) Where by virtue of an order under this section the liability of a person to maintain a highway is extinguished, that person is liable to pay to the highway authority for the highway such sum as may be agreed between him and that authority or, in default of agreement, as may be determined by arbitration to represent the value to him of the extinguishment of his liability.

(4) A sum payable by any person under subsection (3) above shall, at his option, be paid—

(a) as a lump sum, or

(b) by annual payments of such amount, and continuing for such number of years, as may be agreed between him and the highway authority or, in default of agreement, as may be determined by arbitration.

(5) Any matter which by virtue of subsection (3) or (4) above is to be determined by arbitration shall be determined by a single arbitrator appointed, in default of agreement between the parties concerned, by the Minister.

(6) Nothing in this section affects any exemption from rating under any enactment as continued by section 117 of the [M9]General Rate Act 1967.

Marginal Citations

M9 1967 c. 9.

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54 Extinguishment of liability to maintain privately maintainable highway diverted by order of magistrates' court. E+W

(1) Where a highway which a person is liable to maintain under a special enactment or by reason of tenure, enclosure or prescription is diverted in accordance with an order made under section 116 below, then—

(a) the substituted highway becomes for the purposes of this Act a highway maintainable at the public expense, and

(b) the person liable as aforesaid to maintain the highway so diverted is liable to pay to the highway authority for the substituted highway such sum as may be agreed between him and that authority or, in default of agreement, as may be determined by arbitration to represent the value to him of the extinguishment of his liability.

(2) A sum payable by any person under subsection (1) above shall, at his option, be paid—

(a) as a lump sum, or

(b) by annual payments of such amount, and continuing for such number of years, as may be agreed between him and the highway authority or, in default of agreement, as may be determined by arbitration.

(3) Any matter which by virtue of subsection (1) or (2) above is to be determined by arbitration shall be determined by a single arbitrator appointed, in default of agreement between the parties concerned, by the Minister.

55 Extinguishment of liability to maintain or improve bridges comprised in trunk roads and special roads. E+W

(1) Where a highway comprising a bridge becomes a trunk road, and the bridge is transferred to the Minister under this Act, then, if immediately before the transfer the bridge was not a highway maintainable at the public expense, any liability of the owners of the bridge for the maintenance or improvement of it or of the highway carried by it is thereupon extinguished.

(2) Where the liability of the owners of a bridge is extinguished under subsection (1) above, the owners shall pay to the Minister such sum as may be agreed between them and the Minister or, in default of agreement, as may be determined by arbitration to represent the value to the owners of the extinguishment of their liability.

(3) Any sum payable by the owners of a bridge under subsection (2) above shall, in so far as it exceeds any sum payable by the Minister to the owners under this Act, be paid, at the option of the owners—

(a) as a lump sum, or

(b) by annual instalments of such amount, and continuing for such number of years, as may be agreed between the owners and the Minister or, in default of agreement, as may be determined by arbitration, or

(c) by perpetual annual payments of such amount as may be so agreed or determined.

(4) The foregoing provisions of this section apply where a highway comprising a bridge is included in the route prescribed by a scheme under section 16 above authorising the provision of a special road by a local highway authority and the bridge is transferred to the special road authority, as they apply where such a highway becomes a trunk road and the bridge is transferred to the Minister; and accordingly those provisions

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have effect as if the references therein to a trunk road and to the Minister included references to a special road and to the special road authority.

(5) In this section—

"bridge" includes so much of the approaches thereto as supports or protects the surface of the trunk road or special road;

"owners", in relation to a bridge, means the persons who, immediately before the transfer of the bridge to the Minister or the special road authority, were responsible for the maintenance of it, and includes any persons who, in pursuance of any agreement with the persons so responsible, were then discharging that responsibility on their behalf.

Enforcement of liability for maintenance

56 Proceedings for an order to repair highway. E+W

(1) A person ("the complainant") who alleges that a way or bridge—

(a) is a highway maintainable at the public expense or a highway which a person is liable to maintain under a special enactment or by reason of tenure, enclosure or prescription, and

(b) is out of repair,

may serve a notice on the highway authority or other person alleged to be liable to maintain the way or bridge (" the respondent") requiring the respondent to state whether he admits that the way or bridge is a highway and that he is liable to maintain it.

(2) If, within 1 month from the date of service on him of a notice under subsection (1) above, the respondent does not serve on the complainant a notice admitting both that the way or bridge in question is a highway and that the respondent is liable to maintain it, the complainant may apply to the Crown Court for an order requiring the respondent, if the court finds that the way or bridge is a highway which the respondent is liable to maintain and is out of repair, to put it in proper repair within such reasonable period as may be specified in the order.

(3) The complainant for an order under subsection (2) above shall give notice in writing of the application to the appropriate officer of the Crown Court and the notice shall specify—

(a) the situation of the way or bridge to which the application relates,

(b) the name of the respondent,

(c) the part of the way or bridge which is alleged to be out of repair, and

(d) the nature of the alleged disrepair;

and the complainant shall serve a copy of the notice on the respondent.

(4) If, within 1 month from the date of service on him of a notice under subsection (1) above, the respondent serves on the complainant a notice admitting both that the way or bridge in question is a highway and that the respondent is liable to maintain it, the complainant may, within 6 months from the date of service on him of that notice, apply to a magistrates' court for an order requiring the respondent, if the court finds that the highway is out of repair, to put it in proper repair within such reasonable period as may be specified in the order.

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(5) A court in determining under this section whether a highway is out of repair shall not be required to view the highway unless it thinks fit, and any such view may be made by any 2 or more of the members of the court.

(6) If at the expiration of the period specified in an order made under subsection (2) or (4) above a magistrates' court is satisfied that the highway to which the order relates has not been put in proper repair, then, unless the court thinks fit to extend the period, it shall by order authorise the complainant (if he has not the necessary power in that behalf) to carry out such works as may be necessary to put the highway in proper repair.

(7) Any expenses which a complainant reasonably incurs in carrying out works authorised by an order under subsection (6) above are recoverable from the respondent summarily as a civil debt.

(8) Where any expenses recoverable under subsection (7) above are recovered from the respondent, then, if the respondent would have been entitled to recover from some other person the whole or part of the expenses of repairing the highway in question if he had repaired it himself, he is entitled to recover from that other person the whole or the like part, as the case may be, of the expenses recovered from him.

(9) Where an application is made under this section for an order requiring the respondent to put in proper repair a footpath or bridleway which, in either case, is a highway maintainable at the public expense and some other person is liable to maintain the footpath or bridleway under a special enactment or by reason of tenure, enclosure or prescription, that other person has a right to be heard by the court which hears the application, but only on the question whether the footpath or bridleway is in proper repair.

57 Default powers of highway authorities in respect of non-repair of privately maintainable highways. E+W

(1) Where a person is liable under a special enactment or by reason of tenure, enclosure or prescription to maintain a footpath or bridleway which, in either case, is a highway maintainable at the public expense, and the highway authority for the highway repair it in the performance of their duty to maintain it, they may, subject to subsection (3) below, recover the necessary expenses of doing so from that person in any court of competent jurisdiction.

(2) Where a person is liable as aforesaid to maintain a highway other than such a footpath or bridleway as is referred to in subsection (1) above the highway authority for the highway may, if in their opinion the highway is not in proper repair, repair it and, subject to subsection (3) below, recover the necessary expenses of doing so from that person in any court of competent jurisdiction.

(3) The right of recovery conferred by the foregoing provisions of this section is not exercisable—

(a) in a case where a highway authority repair a footpath or bridleway in obedience to an order of a court made under section 56 above, unless not less than 21 days before the date on which the application was heard by the court the authority gave notice to the person liable to maintain the path or way of the making of an application with respect to it and of the time and place at which the application was to be heard by the court (so however that there is no obligation to give notice to him under this paragraph if he was the person on whose application the order of the court was made);

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(b) in any other case, unless the highway authority, before repairing the highway, have given notice to the person liable to maintain it that the highway is not in proper repair, specifying a reasonable time within which he may repair it, and he has failed to repair it within that time.

(4) Where a highway authority exercise a right of recovery from any person under the foregoing provisions of this section, then, if that person would have been entitled to recover from some other person the whole or part of the expenses of repairing the highway if he had repaired it himself, he is entitled to recover from that other person the whole or the like part, as the case may be, of the expenses recovered from him by the highway authority.

58 Special defence in action against a highway authority for damages for non-repair of highway. E+W

(1) 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 is 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.

(2) For the purposes of a defence under subsection (1) above, the court shall in particular have regard to the following matters:—

(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 is not 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.

(3) This section binds the Crown.

F100(4) . . . . . .

Textual Amendments

F100 S. 58(4) repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22), s. 168(2), **Sch.9**; S.I. 1992/2984, art. 2(2), **Sch.2**

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Modifications etc. (not altering text)

C26 S. 58 applied (1.2.2011) by The River Mersey (Mersey Gateway Bridge) Order 2011 (S.I. 2011/41), arts. 1, **11(3)** (with arts. 3(5), 51, Sch. 10 paras. 68, 85)

Recovery by highway authorities etc. of certain expenses incurred in maintaining highways

59 Recovery of expenses due to extraordinary traffic. E+W

(1) Subject to subsection (3) below, where it appears to the highway authority for a highway maintainable at the public expense, by a certificate of their proper officer, that having regard to the average expense of maintaining the highway or other similar highways in the neighbourhood extraordinary expenses have been or will be incurred by the authority in maintaining the highway by reason of the damage caused by excessive weight passing along the highway, or other extraordinary traffic thereon, the highway authority may recover from any person ("the operator") by or in consequence of whose order the traffic has been conducted the excess expenses.

(2) In subsection (1) above "the excess expenses" means such expenses as may be proved to the satisfaction of the court having cognizance of the case to have been or to be likely to be incurred by the highway authority by reason of the damage arising from the extraordinary traffic; and for the purposes of that subsection the expenses incurred by a highway authority in maintaining a highway are (without prejudice to the application of this section to a by-pass provided under this Act for use in connection with a cattle-grid) to be taken to include expenses incurred by them in maintaining a cattle-grid provided for the highway under this Act.

(3) If before traffic which may cause such damage commences the operator admits liability in respect of such traffic, then—

(a) the operator and the highway authority may agree for the payment by the operator to the highway authority of a sum by way of a composition of such liability, or

(b) either party may require that the sum to be so paid shall be determined by arbitration;

and where a sum has been so agreed or determined the operator is liable to pay that sum to the highway authority and is not liable to proceedings for the recovery of the excess expenses under subsection (1) above.

(4) **[**[F101]The county court with jurisdiction to hear and determine a claim for a sum recoverable under this section is**]** the county court in the district in which the highway or any part of it is situated.

(5) Proceedings for the recovery of any sums under this section shall be commenced within 12 months from the time at which the damage has been done or, where the damage is the consequence of any particular building contract or work extending over a long period, not later than 6 months from the date of completion of the contract or work.

(6) In the application of this section to highways for which the Minister is the highway authority the words "by a certificate of their proper officer" in subsection (1) are to be omitted.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F101 Words substituted by Administration of Justice Act 1982 (c. 53, SIF 34), s. 37, **Sch. 3 Part IV para. 8(2)**

F102 60 . . . . . E+W

Textual Amendments

F102 S. 60 repealed (1.1.1993)by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 168(2)**,Sch. 9; S.I. 1992/2984, art. 2(2), **Sch. 2**.

Regulations supplementing maintenance powers of district councils

61 Regulations supplementing maintenance powers of district councils. E+W

The Minister may by regulations empower **[**F103non-metropolitan**]** district councils, in relation to highways in respect of which their powers of maintenance under sections 42 and 50 above are exercisable, to exercise subject to such terms and conditions as may be specified in the regulations such additional powers as appear to him—

(a) to be appropriate to supplement powers of maintenance; and

(b) to correspond to powers exercisable in relation to highways by highway authorities;

and accordingly in those sections, in Schedule 7 to this Act and in any other enactment referring to the powers of **[**F103non-metropolitan**]** district councils under those sections, the expressions "maintenance" and "maintain" where used with respect to the powers of **[**F103non-metropolitan**]** district councils under those sections, are to be construed as including the carrying out of operations in the exercise of powers conferred on **[**F103non-metropolitan**]** district councils by regulations under this section.

Textual Amendments

F103 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 15**

PART V E+W

IMPROVEMENT OF HIGHWAYS

Modifications etc. (not altering text)

C27 Pt. V (ss. 62-105) extended (13.2.1992) by Severn Bridges Act 1992 (c. 3), **s. 32(2)(a)**

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General power of improvement

62 General power of improvement. E+W

(1) The provisions of this Part of this Act have effect for the purpose of empowering or requiring highway authorities and other persons to improve highways.

(2) Without prejudice to the powers of improvement specifically conferred on highway authorities by the following provisions of this Part of this Act, any such authority may, subject to subsection (3) below, carry out, in relation to a highway maintainable at the public expense by them, any work (including the provision of equipment) for the improvement of the highway.

(3) Notwithstanding subsection (2) above, but without prejudice to any enactment not contained in this Part of this Act, work of any of the following descriptions shall be carried out only under the powers specifically conferred by the following provisions of this Part of this Act, and not under this section—

(a) the division of carriageways, provision of roundabouts and variation of the relative widths of carriageways and footways;

(b) the construction of cycle tracks;

(c) the provision of subways, refuges, pillars, walls, barriers, rails, fences or posts for the use or protection of persons using a highway;

(d) the construction and reconstruction of bridges and alteration of level of highways;

(e) the planting of trees, shrubs and other vegetation and laying out of grass verges;

(f) the provision, maintenance, alteration, improvement or other dealing with cattle-grids, by-passes, gates and other works for use in connection with cattle-grids;

[F104(ff) the construction, maintenance and removal of road humps;**]**

[F105(fg) the construction and removal of such traffic calming works as may be specially authorised by the Secretary of State under section 90G below or prescribed by regulations made by him under section 90H below;**]**

(g) the execution of works for the purpose of draining a highway or of otherwise preventing surface water from flowing on to it;

(h) the provision of barriers or other works for the purpose of affording to a highway protection against hazards of nature.

(4) A highway authority may alter or remove any works executed by them under this section.

(5) F106

Textual Amendments

F104 S. 62(3)(*ff*) inserted by Transport Act 1981 (c. 56, SIF 126), s. 32, **Sch. 10 para. 1**

F105 S. 62(3)(fg) inserted (16.5.1992) by Traffic Calming Act 1992 (c. 30), **ss. 1(1)**, 3

F106 S. 62(5) repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

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Modifications etc. (not altering text)

C28 S. 62 modified (1.4.2011) by The Greater Manchester Combined Authority Order 2011 (S.I. 2011/908), arts. 1, **8(2)**

Relief of main carriageway of trunk road from local traffic

63 Relief of main carriageway of trunk road from local traffic. E+W

Without prejudice to section 10(3) above, the Minister may construct as part of a trunk road a highway for the purpose of relieving a main carriageway of the trunk road from local traffic; but this section does not authorise the construction of a highway which is separated from the remainder of the trunk road by intervening land.

Dual carriageways, roundabouts and cycle tracks

64 Dual carriageways and roundabouts. E+W

(1) Where a highway maintainable at the public expense consists of or comprises a made-up carriageway, the highway authority liable to maintain it may construct and maintain works in that carriageway—

(a) along any length of the highway, for separating a part of the carriageway which is to be used by traffic moving in one direction from a part of the carriageway which is to be used (whether at all times or at particular times only) by traffic moving in the other direction;

(b) at crossroads or other junctions, for regulating the movement of traffic.

(2) The powers conferred by subsection (1) above include power, in relation to any such works as are referred to in that subsection—

(a) to light them,

(b) to pave, grass or otherwise cover them or any part of them,

(c) to erect pillars, walls, rails or fences on, around or across them or any part of them, and

(d) to plant on them trees, shrubs and other vegetation either for ornament or in the interests of safety.

(3) A highway authority may alter or remove any works constructed by them under this section.

(4) F107

F108(5) . . . . . .

Textual Amendments

F107 S. 64(4) repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F108 S. 64(5) repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(2), **Sch. 9**; S.I. 1992/2984, art. 2(2), **Sch. 2**.

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Modifications etc. (not altering text)

C29 S. 64 applied (14.3.2002) by The Chester Guided Busway Order 2002 (S.I. 2002/412), **art. 3(1)(b)** (with art. 38)

65 Cycle tracks. E+W

(1) Without prejudice to section 24 above, a highway authority may, in or by the side of a highway maintainable at the public expense by them which consists of or comprises a made-up carriageway, construct a cycle track as part of the highway; and they may light any cycle track constructed by them under this section.

(2) A highway authority may alter or remove a cycle track constructed by them under this section.

Safety provisions

66 Footways and guard-rails etc. for publicly maintainable highways. E+W

(1) It is the duty of a highway authority to provide in or by the side of a highway maintainable at the public expense by them which consists of or comprises a made-up carriageway, a proper and sufficient footway as part of the highway in any case where they consider the provision of a footway as necessary or desirable for the safety or accommodation of pedestrians; and they may light any footway provided by them under this subsection.

(2) A highway authority may provide and maintain in a highway maintainable at the public expense by them which consists of or comprises a carriageway, such raised paving, pillars, walls, rails or fences as they think necessary for the purpose of safeguarding persons using the highway.

(3) A highway authority may provide and maintain in a highway maintainable at the public expense by them which consists of a footpath, such barriers, rails or fences as they think necessary for the purpose of safeguarding persons using the highway.

(4) The powers conferred by the foregoing provisions of this section to provide any works include power to alter or remove them.

(5) The power conferred by subsection (3) above, and the power to alter or remove any works provided under that subsection, shall not be exercised so as to obstruct any private access to any premises or interfere with the carrying out of agricultural operations.

(6) The powers of a highway authority under subsections (2) and (3) above may, with the consent of the Minister, be exercised by the council of a county **[**F109or metropolitan district**]** in relation to any part within the county **[**F109or metropolitan district**]** but outside Greater London of a highway for which the Minister is the highway authority.

(7) The powers of a highway authority under subsections (2) and (3) above may, with the consent of the highway authority, be exercised by the council of a London borough or, as the case may require, by the Common Council in relation to any part within the borough, or the City, of a highway for which the council, or the Common Council, are not the highway authority.

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(8) A highway authority or council shall pay compensation to any person who sustains damage by reason of the execution by them of works under subsection (2) or (3) above.

Textual Amendments

F109 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 17**

67 Guard-rails etc. in private streets. E+W

(1) Subject to the provisions of this section, in any street which is not a highway maintainable at the public expense and which consists of or comprises a carriageway a local authority may provide and maintain such pillars, rails or fences as they think necessary for the purpose of safeguarding persons using the street.

(2) The power under subsection (1) above to provide any works includes power to alter or remove them.

(3) Schedule 8 to this Act (consents before carrying out work in streets) applies to the powers conferred on local authorities by this section.

(4) A local authority shall pay compensation to any person who sustains damage by reason of the execution by them of works under this section.

(5) In this section "local authority" means any of the following, namely, the council of a district or London borough,. . . [F110] the Common Council and the Council of the Isles of Scilly **[**[F111]but in relation to a street in Wales, means a Welsh council**]**.

Textual Amendments

F110 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F111 Words in s. 67(5) added (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.6** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

68 Refuges. E+W

(1) A highway authority may, in relation to a highway maintainable at the public expense by them which consists of or comprises a made-up carriageway, construct and maintain works in that carriageway for providing places of refuge for the protection of pedestrians crossing the carriageway.

(2) Subsections (2) to (5) of section 64 above apply in relation to works mentioned in subsection (1) above as they apply in relation to works mentioned in subsection (1) of that section.

69 Subways. E+W

(1) For the purpose of protecting from danger traffic along a highway which consists of or comprises a made-up carriageway, or of making the crossing of it less dangerous to pedestrians, the highway authority for the highway may construct, light and maintain subways under the highway for the use of pedestrians, and may alter, remove or close temporarily any such subway.

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(2) With respect to highways in Greater London, the powers of a highway authority under subsection (1) above may be exercised with that authority's consent—

(a) in the case of a highway for which the Minister is the highway authority, by the council of a London borough or the Common Council, as respects any parts of the highway in that council's area; and

(b) F112

(3) Subsection (1) above has effect in relation to a road which consists of or comprises a made-up carriageway and to which the public have access, but which is not a highway, as if it were a highway and as if the council of the district or London borough in which the road is situated were the highway authority for it or, in the case of a road situated in the City, as if the Common Council were the highway authority for it **[**F113or, in the case of a road in Wales, as if the Welsh council in whose area it is situated were the highway authortiy for it**]**.

Textual Amendments

F112 S. 69(2)(*b*) repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F113 Words in s. 69(3) added (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 7** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

70 Footbridges over highways. E+W

(1) Without prejudice to any other powers of theirs to construct or reconstruct bridges, the highway authority for any highway may, for the purpose of protecting traffic along the highway from danger, or of making the crossing of it less dangerous to, or easier for, pedestrians, construct, light and maintain a bridge over the highway for the use of pedestrians, and may alter, remove or close temporarily any such bridge.

(2) A bridge constructed under this section may form part of a bridge constructed for the use of vehicles or of a bridge providing a way from premises on one side of a highway to premises on the other or a means of access from a highway to any premises.

(3) The supports of, and approaches to, a bridge constructed under this section may be situated—

(a) in the highway over which the bridge is to be constructed; or

(b) subject to subsection (4) below, in any other highway that crosses or enters the route of the first-mentioned highway.

(4) The supports of, or approaches to, a bridge to be constructed under this section shall not be constructed in such a highway as is mentioned in subsection (3)(b) above unless the highway authority by whom the bridge is to be constructed are the highway authority for that highway or the highway authority for it have given their consent.

(5) Where any bridge proposed to be constructed under this section by a highway authority will provide or improve an access to a highway from any street vested in some other highway authority or any other premises, the highway authority may enter into agreements with that other authority or any person having an interest in those premises—

(a) for the making by the other party to the agreement of contributions towards the expenses to be incurred by the highway authority in constructing, lighting and maintaining the bridge;

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(b) with respect to the use of the bridge and its maintenance.

(6) A highway authority shall pay compensation to any person who sustains damage by reason of the execution by them under this section of works in or over a highway.

71 Margins for horses and livestock. E+W

(1) It is the duty of a highway authority to provide in or by the side of a highway maintainable at the public expense by them which consists of or comprises a made-up carriageway adequate grass or other margins as part of the highway in any case where they consider the provision of margins necessary or desirable for the safety or accommodation of ridden horses and driven livestock; and a highway authority may light a margin provided by them under this section.

(2) A highway authority may alter or remove a margin provided by them under this section.

Widths

72 Widening of highways. E+W

(1) A highway authority may widen any highway for which they are the highway authority and may for that purpose agree with a person having power in that behalf for the dedication of adjoining land as part of a highway.

(2) A council or joint planning board have the like power to enter into a public path creation agreement under section 25 above, or to make a public path creation order under section 26 above, for the purpose of securing the widening of an existing footpath or bridleway as they have for the purpose of securing the creation of a footpath or bridleway, and references in those sections to the dedication or creation of a footpath or bridleway are to be construed accordingly.

(3) The council of a parish or community have the like power to enter into an agreement under section 30 above for the purpose of securing the widening of an existing highway in the parish or community or an adjoining parish or community as they have for the purpose of securing the dedication of a highway, and references in that section to the dedication of a highway are to be construed accordingly.

Modifications etc. (not altering text)

C30 S. 72(2) extended by Norfolk and Suffolk Broads Act 1988 (c. 4, SIF 81:1), ss. 2(5)(6), 23(2), 27(2), **Sch. 3 para. 47(1)**
S. 72(2) extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 11(a)** (with ss. 7(6), 115, 117, Sch. 8 para. 7).

73 Power to prescribe improvement line for widening street. E+W

(1) Where in the opinion of a highway authority—

(a) a street which is a highway maintainable at the public expense by them is narrow or inconvenient, or without any sufficiently regular boundary line, or

(b) it is necessary or desirable that such a street should be widened,

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the authority may prescribe in relation to either one side or both sides of the street, or at or within a distance of 15 yards from any corner of the street, a line to which the street is to be widened (in this section referred to as an "improvement line").

(2) Where an improvement line prescribed under this section in relation to any street is in force, then, subject to subsections (3) and (4) below, no new building shall be erected, and no permanent excavation below the level of the street shall be made, nearer to the centre line of the street than the improvement line, except with the consent of the authority who prescribed the line, and the authority may give a consent for such period and subject to such conditions as they may deem expedient.

(3) The prohibition imposed by subsection (2) above does not affect any right of statutory undertakers to make an excavation for the purpose of laying, altering, maintaining or renewing any main, **[**F114sewer,**]** pipe, electric line, cable, duct or other work or apparatus.

(4) Where an authority prescribe an improvement line under this section, a person aggrieved by the decision to prescribe the line or by the refusal of consent under subsection (2) above or by the period for which the consent is given or any conditions attached to it may appeal to the Crown Court.

(5) A condition imposed in connection with the giving of a consent under subsection (2) above is binding on the successor in title to every owner, and on every lessee and every occupier, of any land to which it relates.

(6) If a person contravenes the provisions of this section, or any condition imposed in connection with the giving of a consent under it, he is, without prejudice to any other proceedings which may be available against him, guilty of an offence and liable to a fine not exceeding **[**F115level 1 on the standard scale**]**; and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding £2 for each day on which the offence is so continued.

(7) Where in the opinion of a highway authority an improvement line prescribed by them under this section, or any part of such a line, is no longer necessary or desirable and should be revoked, they may revoke the line or that part of it.

(8) Schedule 9 to this Act has effect in relation to the prescription of an improvement line under this section and to the revocation of such a line or any part of it.

(9) Any person whose property is injuriously affected by the prescribing of an improvement line under this section is, subject to the following provisions thereof, entitled to recover from the authority who prescribed the line compensation for the injury sustained.

(10) A person is not entitled to compensation on account of any building erected, contract made, or other thing done, after the date on which a plan showing the improvement line was deposited in accordance with the provisions of paragraph 5 of Schedule 9 to this Act, except as regards work done for the purpose of finishing a building the erection of which had begun before that date, or of carrying out a contract made before that date.

(11) Nothing in this section applies to or affects, without the consent of the undertakers concerned—

(a) any property occupied or used by railway undertakers for the purposes of a railway comprised in the railway undertaking; or

(b) any property belonging to any of the following undertakers and used by them for the following purposes respectively, that is to say, by canal undertakers

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for those of a canal comprised in the canal undertaking, by inland navigation undertakers for those of a navigation comprised in the inland navigation undertaking, by dock undertakers for those of a dock comprised in the dock undertaking, or by harbour undertakers for those of a harbour comprised in the harbour undertaking; or

(c) any land used by gas undertakers for the manufacture or storage of gas, by electricity undertakers for the generation of electricity. . . [F116] by water undertakers as a pumping station or reservoir for water **[**[F117]or by sewerage undertakers as a pumping station or sewage disposal works**]**.

A consent required by this subsection shall not be unreasonably withheld, and any question whether the withholding of such a consent is unreasonable shall, except where the street in question is one for which the Minister is the highway authority, be determined by the Secretary of State.

(12) In relation to any prohibition or restriction on the use of land or buildings imposed by the Minister by the prescription of an improvement line under this section or by virtue of any condition imposed by him in connection with the giving of a consent under subsection (2) above, section 1(1)(c) of the [M10]Local Land Charges Act 1975 shall have effect as if the references to the date of the commencement of that Act were omitted.

(13) In this section "building" includes any erection however, and with whatever material, it is constructed and any part of a building, and "new building" includes any addition to an existing building.

Textual Amendments

F114 Word inserted 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. 62(2)(a), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

F115 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

F116 Word repealed 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

F117 Words inserted 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. 62(2)(b), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

Modifications etc. (not altering text)

C31 S. 73(11)(*c*) amended by Gas Act 1986 (c. 44, SIF 44:2), s. 67(1)(3), **Sch. 7 para. 2(2)**(*e*), Sch. 8 para. 33

C32 S. 73(11)(*c*) extended by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 1(4), Sch. 17 paras. 33, **35(1)**
S. 73(11)(c) amended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(2)(f)**; S.I. 1996/218, **art.2**.

Marginal Citations

M10 1975 c. 76.

74 Power to prescribe a building line. E+W

(1) Subject to the provisions of this section, a highway authority may prescribe, in relation to either one side or both sides of a highway maintainable at the public expense for which they are the highway authority, a frontage line for building (in this section referred to as a "building line").

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(2) Where a building line prescribed under this section in relation to any highway is in force, no new building, other than a boundary wall or fence, shall be erected, and no permanent excavation below the level of the highway shall be made, nearer to the centre line of the highway than the building line, except with the consent of the authority who prescribed the line; and the authority may give a consent for such period and subject to such conditions as they deem expedient.

(3) The prohibition imposed by subsection (2) above does not affect any right of light railway, tramway, electricity, gas **[**F118water undertakers or sewerage undertakers**]** to make an excavation for the purpose of laying, altering, maintaining or renewing any main, **[**F119sewer,**]** pipe, electric line, duct or other apparatus.

(4) A condition imposed in connection with the giving of a consent under subsection (2) above is binding on the successor in title to every owner, and on every lessee and every occupier, of any land to which it relates.

(5) If a person contravenes the provisions of this section, or any condition imposed in connection with the giving of a consent under it, he is, without prejudice to any other proceedings which may be available against him, guilty of an offence and liable to a fine not exceeding **[**F120level 1 on the standard scale**]**; and if the offence is continued after conviction, he is guilty of a further offence and liable to a fine not exceeding £2 for each day on which the offence is so continued.

(6) Where in the opinion of a highway authority a building line prescribed by them under this section, or any part of such a line, is no longer necessary or desirable and should be revoked, they may revoke the line or that part of it.

(7) Schedule 9 to this Act has effect in relation to the prescription of a building line under this section and to the revocation of such line or any part of it.

(8) Any person whose property is injuriously affected by the prescribing of a building line under this section is entitled, subject to subsection (9) below, to recover from the authority who prescribed the line compensation for the injury sustained.

(9) A person is not entitled to compensation under subsection (8) above—

(a) unless he made a claim within 6 months from the date on which the building line was prescribed or, if the claimant is a person to whom a notice of the prescribing of the line was required to be given by paragraph 8 of Schedule 9 to this Act, within 6 months from the date on which such a notice was given to him; or

(b) on account of anything done by him after the date on which a notice of the proposal to prescribe the line was served on him, except so far as it was done for the purpose of finishing a building the erection of which had begun before that date, or of carrying out a contract made before that date.

(10) Any two or more authorities on whom powers are conferred by this section may by agreement exercise those powers jointly, and the agreement may provide for the apportionment of any expenses incurred under it.

(11) Nothing in this section applies to or affects, without the consent of the undertakers concerned—

(a) any land belonging to any of the following undertakers, and held by them for the following purposes respectively, that is to say, by railway undertakers for those of a railway comprised in the railway undertaking, by canal undertakers for those of a canal comprised in the canal undertaking, by inland navigation

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undertakers for those of a navigation comprised in the inland navigation undertaking, by dock undertakers for those of a dock comprised in the dock undertaking, or by harbour undertakers for those of a harbour comprised in the harbour undertaking; or

(b) any land used by gas undertakers for the manufacture or storage of gas, by electricity undertakers for the generation of electricity. . . [F121] by water undertakers as a pumping station or reservoir for water **[**[F122]or by sewerage undertakers as a pumping station or sewage disposal works**]**.

A consent required by this subsection shall not be unreasonably withheld, and any question whether the withholding of such a consent is unreasonable shall, except where the highway in question is one for which the Minister is the highway authority, be determined by the Minister.

(12) In relation to any prohibition or restriction on the use of land or buildings imposed by the Minister by the prescription of a building line under this section or by virtue of any condition imposed by him in connection with the giving of a consent under subsection (2) above, section 1(1)(c) of the [M11]Local Land Charges Act 1975 has effect as if the reference to the date of the commencement of that Act were omitted.

(13) In this section—

"building" and "new building" have the same meaning respectively as in section 73 above; and

"light railway undertakers" means persons authorised by any enactment to carry on a light railway undertaking.

Textual Amendments

F118 Words substituted 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. 62(3)(a)(i), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

F119 Word inserted 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. 62(3)(a)(ii), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

F120 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

F121 Word repealed 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**

F122 Words inserted 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. 62(3)(b), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

Modifications etc. (not altering text)

C33 S. 74(11)(*b*) amended by Gas Act 1986 (c. 44, SIF 44:2), s. 67(1)(3), **Sch. 7 para. 2(2)**(*e*), Sch. 8 para. 33
S. 74(11)(b) amended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(2)(f)**; S.I. 1996/218, **art.2**.

C34 S. 74(11)(*b*) extended by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(3)(1), Sch. 16 para. 1(4), Sch. 17 paras. 33, **35(1)**

Marginal Citations

M11 1975 c. 76.

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75 Variation of widths of carriageways and footways. E+W

(1) Where a highway maintainable at the public expense comprises both a footway or footways and a carriageway, the highway authority may vary the relative widths of the carriageway and of any footway.

(2) Where any part of a highway is carried by a bridge over a railway, canal, inland navigation, dock or harbour or forms the approaches to such a bridge, the powers conferred by this section shall not be exercised in relation to that part without the consent of the railway, canal, inland navigation, dock or harbour undertakers concerned.

(3) A consent required by subsection (2) above shall not be unreasonably withheld, and any question whether the withholding of such consent is unreasonable shall be determined by the Minister.

Levels

76 Levelling of highways. E+W

A highway authority may execute works for levelling a highway maintainable at the public expense by them.

77 Alteration of levels. E+W

(1) Without prejudice to section 76 above, a highway authority may raise or lower or otherwise alter, as they think fit, the level of a highway maintainable at the public expense by them.

(2) A highway authority shall pay compensation to any person who sustains damage by reason of the execution by them of works under this section.

Corners

78 Cutting off of corners. E+W

A highway authority may execute works for cutting off the corners of a highway maintainable at the public expense by them.

79 Prevention of obstruction to view at corners. E+W

(1) Where, in the case of a highway maintainable at the public expense, the highway authority for the highway deem it necessary for the prevention of danger arising from obstruction to the view of persons using the highway to impose restrictions with respect to any land at or near any corner or bend in the highway or any junction of the highway with a road to which the public has access, the authority may, subject to the provisions of this section, serve a notice, together with a plan showing the land to which the notice relates,—

(a) on the owner or occupier of the land, directing him to alter any wall (other than a wall forming part of the structure of a permanent edifice), fence, hoarding, paling, tree, shrub or other vegetation on the land so as to cause it to conform with any requirements specified in the notice; or

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(b) on every owner, lessee and occupier of the land, restraining them either absolutely or subject to such conditions as may be specified in the notice from causing or permitting any building, wall, fence, hoarding, paling, tree, shrub or other vegetation to be erected or planted on the land.

(2) A notice under subsection (1) above may at any time be withdrawn by the authority by whom it was given.

(3) A notice restraining the erection of any building on land shall not be served by a highway authority except with the consent of the council of the **[**F123non-metropolitan**]** district in which the land is situated or if the land is situated in a London borough or the City and the highway authority concerned is. . . F124 the Minister, with the consent of the council of that London borough or the Common Council, as the case may require.

[F125(3A) In relation to any land in Wales—

(a) subsection (3) above does not apply; but

(b) if the Minister is the highway authority, he shall not serve a notice restraining the erection of any building on the land except with the consent of the Welsh council in whose area the land is situated.**]**

(4) A copy of a notice under subsection (1)(a) above shall be served on the owner or on the occupier of any land according as the notice was served on the occupier or on the owner of it.

(5) A notice under subsection (1)(b) above does not prevent any owner, lessee or occupier of any land from executing or permitting the reconstruction or repair, in such manner as not to create any new obstruction to the view of persons using the adjacent highways, of any building which was on the land before the service of the notice.

(6) A restriction imposed by a notice under subsection (1) above comes into force on the service of the notice and, while in force, is binding on the successor in title to every owner, and on every lessee and every occupier, of the land to which it relates.

(7) A person on whom a notice has been served under subsection (1) above may, within 14 days from the date of the receipt of the notice by him, give notice to the authority by whom the notice was given objecting to any requirement specified in it, or to any restriction imposed by it, and stating reasons for his objections.

(8) Where notice is given under subsection (7) above the question whether the notice under subsection (1) above is to be withdrawn as respects any requirement or restriction objected to shall be determined, if the parties so agree, by a single arbitrator appointed by them and, in default of agreement, shall be determined by a county court, and in determining a question under this subsection the arbitrator or court shall have power to order that the requirement or restriction objected to shall have effect subject to such modifications, if any, as the arbitrator or court may direct.

(9) A person on whom a notice is served under subsection (1) above may, notwithstanding anything in any conveyance, or in any lease or other agreement, do all such things as may be necessary for complying with the requirements of the notice.

(10) Subject to the provisions of this section, if a person on whom a notice is served under subsection (1) above contravenes the provisions of the notice, he is, without prejudice to any other proceedings which may be available against him, guilty of an offence and liable to a fine not exceeding **[**F126level 1 on the standard scale**]**; and if the offence is continued after conviction, he is guilty of a further offence and liable to a fine not exceeding £2 for each day on which the offence is so continued.

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(11) Any person sustaining loss in direct consequence of any requirement of a notice served under subsection (1) above, and any person who proves that his property is injuriously affected by restrictions imposed by a notice served under that subsection, is entitled, if he makes a claim within 6 months from the date of service of the notice, to recover from the authority by whom the notice was served compensation for the injury sustained.

(12) A person on whom a notice is served under subsection (1) above is entitled to recover from the authority by whom the notice was served any expenses reasonably incurred by him in carrying out any directions contained in the notice.

(13) If any question arises under subsection (12) above whether any expenses were reasonably incurred by any person as there provided, it shall be determined, if the parties so agree, by a single arbitrator appointed by them and, in default of agreement, shall be determined by a county court.

(14) Any two or more authorities on whom powers are conferred by this section may by agreement exercise those powers jointly, and the agreement may provide for the apportionment of any expenses incurred under it.

(15) Nothing in this section—

(a) authorises the service by a local highway authority of a notice under this section with respect to any wall forming part of an ancient monument or other object of archaeological interest, except with the consent of the Secretary of State; or

(b) applies with respect to a wall belonging to any of the following undertakers, that is to say, railway undertakers, canal undertakers, inland navigation undertakers, dock undertakers, or harbour undertakers, where the wall forms part of or is necessary for the maintenance of a railway comprised in the railway undertaking, a canal comprised in the canal undertaking, a navigation comprised in the inland navigation undertaking, a dock comprised in the dock undertaking, or a harbour comprised in the harbour undertaking.

(16) In relation to any prohibition or restriction on the use of land or buildings imposed by the Minister by a notice served by him under this section, section 1(1)(c) of the [M12]Local Land Charges Act 1975 has effect as if the references to the date of the commencement of that Act were omitted.

(17) In this section—

"building" includes any erection however, and with whatever material, it is constructed, and any part of a building;

"wall" includes any partition with whatever material it is constructed, and any bank.

Textual Amendments

F123 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 18**

F124 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F125 S. 79(3A) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.8** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F126 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

Marginal Citations

M12 1975 c. 76.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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Fences and boundaries

80 Power to fence highways. E+W

(1) Subject to the provisions of this section, a highway authority may erect and maintain fences or posts for the purpose of preventing access to—

(a) a highway maintainable at the public expense by them,

(b) land on which in accordance with plans made or approved by the Minister they are for the time being constructing or intending to construct a highway shown in the plans which is to be a highway so maintainable, or

(c) land on which in pursuance of a scheme under section 16 above, or of an order under section 14 or 18 above, they are for the time being constructing or intending to construct a highway.

(2) A highway authority may alter or remove a fence or post erected by them under this section.

(3) The powers conferred by this section shall not be exercised so as to—

(a) interfere with a fence or gate required for the purpose of agriculture; or

(b) obstruct a public right of way; or

(c) obstruct any means of access for the construction, formation or laying out of which planning permission has been granted under Part III of **[**F127the Town and Country Planning 1990**]** (or under any enactment replaced by the said Part III); or

(d) obstruct any means of access which was constructed, formed or laid out before 1st July 1948, unless it was constructed, formed or laid out in contravention of restrictions in force under section 1 or 2 of the M13Restriction of Ribbon Development Act 1935.

(4) As respects—

(a) a highway that is a trunk road, and

(b) land on which the Minister is for the time being constructing or intending to construct a highway that is, or is to be, a trunk road, either in accordance with plans made by him in which the road is shown or in pursuance of a scheme under section 16 above,

the powers under this section may be exercised not only by the Minister but also, where the road or land is outside Greater London, by the council of the county **[**F128or metropolitan district**]** in which it is situated, or where the road or land is in Greater London, by. . . F129 the council of the London borough in which it is situated.

Textual Amendments

F127 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(4)**

F128 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 19**

F129 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

Modifications etc. (not altering text)

C35 S. 80 modified by Wildlife and Countryside Act 1981 (c. 69, SIF 4:5), **s. 72(12)**

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Marginal Citations
M13 1935 c. 47.

81 Provision of highway boundary posts. E+W

A highway authority may erect and maintain, in a highway for which they are the highway authority, posts or stones to mark the boundary of the highway and may alter or remove any post or stone erected by them under this section.

Cattle-grids

82 Provision of cattle-grids and by-passes. E+W

(1) Where, whether on the representations of owners or occupiers of agricultural land or otherwise, and after such consultation with any such owners and occupiers as the highway authority consider requisite, it appears to the highway authority for a highway which consists of or comprises a carriageway expedient so to do for controlling the passage of animals along the highway, the authority may, subject to the provisions of this section and sections 83 to 90 below, provide for the highway, and maintain, a cattle-grid in the highway or partly in the highway and partly in adjoining land.

(2) Where a highway authority provide a cattle-grid under this Act they shall also provide, either by means of a gate or other works on the highway or by means of a by-pass, or partly by one of those means and partly by the other, and maintain, facilities for the passage under proper control of animals and all other traffic that is unable to pass over the cattle-grid and is entitled by law to go along the highway.

(3) Save as provided by subsection (4) below, the powers conferred by the foregoing provisions of this section do not include power to place any part of a cattle-grid in land not forming part of the highway and not belonging to the highway authority, or to provide a by-pass on land not belonging to the highway authority, except in so far as is authorised by any such agreement as is provided for by section 87 below.

(4) Where after complying with the provisions of Schedule 10 to this Act the highway authority determine, as respects any common or waste land not forming part of the highway but adjoining the highway or adjacent thereto, that it is expedient so to do, the authority may place any part of a cattle-grid in, or provide a by-pass on, any of that land notwithstanding that it does not form part of the highway and does not belong to the authority.

(5) Without prejudice to subsection (3) above, a highway authority shall not provide a by-pass along any part of a highway unless, after complying with the provisions of Schedule 10 to this Act, the authority determine that it is expedient so to do.

(6) In this Act—

"cattle-grid" means a device designed to prevent the passage of animals, or animals of any particular description, but to allow the passage of all or some other traffic, and includes any fence or other works necessary for securing the efficient operation of the said device; and

"by-pass", in relation to a cattle-grid provided for a highway, means a way, over land not comprised within the limits of the highway, for the traffic for which the by-pass is provided, with a public right of way thereover—

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(a) for that traffic, or

(b) if any part of the by-pass is provided along an existing highway, for that traffic and for any other traffic entitled to use the highway before the by-pass was provided,

subject in either case to the limitation that there may be placed on the way any such gate or other works as may be necessary for the proper control of all or any of such traffic and the efficient operation of the cattle-grid for use in connection with which the by-pass is provided;

and references in this Act to the provision or maintenance of a by-pass include references to the provision or maintenance of any such gate or other works.

(7) Subject to subsection (8) below, a highway authority may alter or improve—

(a) a cattle-grid or by-pass provided under this Act for a highway for which they are are the highway authority;

(b) any works provided for use in connection with such a cattle-grid or provided for the purposes of such a by-pass.

(8) A highway authority shall not carry out any alteration or improvement under subsection (7) above whereby traffic of a description which before the alteration or improvement could lawfully have gone along the highway (either by passing over the cattle-grid or by going through a gate or along a by-pass provided under subsection (2) above) will be prevented from so going along the highway.

83 Removal of cattle-grids and discontinuance of by-passes. E+W

(1) Where it appears to a highway authority, after such consultation with such owners and such occupiers of agricultural land as the highway authority consider requisite, that a cattle-grid provided under this Act for a highway for which they are the highway authority is no longer required, the authority may remove the cattle-grid and any gate or other works on the highway which have been provided for use in connection with it, making good the site thereof.

(2) Where a by-pass has been provided for use in connection with a cattle-grid and the highway authority remove the cattle-grid they may direct that the by-pass is to be discontinued, and where they give such a direction they may remove all or any of the works provided for the purposes of the by-pass.

(3) If a direction under subsection (2) above so provides, then as from such date as may be specified in the direction the public right of way over the by-pass shall be extinguished.

(4) Where a by-pass or any part of one has been provided along an existing highway, then—

(a) notwithstanding subsection (3) above, a direction under subsection (2) above shall not extinguish any right of way which existed before the by-pass was provided;

(b) if the cattle-grid for use in connection with which the by-pass was provided is removed, as soon as may be thereafter the highway authority shall (whether or not they direct that the by-pass is to be discontinued, but without prejudice to their power to remove works under subsection (2) above if they do so direct) remove so much of the works provided for the purpose of the by-pass as obstructs the exercise of any right of way existing before the by-pass was provided.

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84 Maintenance of cattle-grids and by-passes. E+W

(1) A cattle-grid provided under this Act for a highway, a gate or other works on a highway provided for use in connection with such a cattle-grid, and any works provided for the purposes of a by-pass provided under this Act, are maintainable by the highway authority for the highway.

(2) A by-pass provided under this Act shall, unless and until the highway authority give a direction discontinuing the by-pass, in all cases be a highway which for the purposes of this Act is a highway maintainable at the public expense for which that authority are the highway authority.

85 Exercise of powers by agreement between neighbouring authorities. E+W

(1) Where a highway maintainable at the public expense is intersected, joined or continued by a highway for which the highway authority are an authority other than the highway authority for the first-mentioned highway, the following provisions have effect.

(2) The highway authority for the first mentioned highway ("the first authority") and the other authority ("the second authority") may enter into an agreement as to the exercise by the second authority of that authority's powers under sections 82 and 83 above in relation to the highway for which they are the highway authority; and any such agreement may provide for the first authority to defray the whole or any part of the expenses incurred by the second authority in consequence of the agreement.

(3) The second authority shall not unreasonably refuse to enter into an agreement under this section; and if any question arises as to the terms (including terms as to payments) to be included in such an agreement, or whether the refusal of that authority to enter into such an agreement is unreasonable, the question shall be determined by arbitration.

86 Supersession of gates by cattle-grids. E+W

(1) Where—

(a) any person has the right to install a gate or gates in a highway, and

(b) a highway authority providing or proposing to provide a cattle-grid in the highway under section 82 above determine, after complying with the provisions of Schedule 10 to this Act, that the purpose for which the above-mentioned right is exercisable will be adequately achieved by the provision of the cattle-grid,

the right is not exercisable, so long as the cattle-grid is provided, except with the approval of the highway authority, and the highway authority may require that a gate or gates installed in the exercise of the right before the provision of the cattle-grid shall be removed or may themselves remove any such gate or gates.

(2) The highway authority shall on demand repay any expenses reasonably incurred in removing a gate in compliance with a requirement under this section.

(3) Where in pursuance of subsection (1) above a gate has been removed (whether by, or in compliance with a requirement of, the highway authority) and the highway authority subsequently remove the cattle-grid, then, if within 12 months from the date of the removal of the cattle-grid a person reinstalls a gate in the exercise of a right the exercise of which was suspended while the cattle-grid was provided, the highway authority shall on demand repay the expenses reasonably incurred in reinstalling the gate.

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(4) No objection shall be made or proceedings brought in respect of the purported exercise by a highway authority of their powers under subsection (1) above as respects a gate or gates on the ground that no right to install the gate or gates existed; but the purported exercise by the authority of their powers under that subsection shall not affect the question whether any such right existed, or prejudice the powers of the highway authority or any other person under any enactment (including an enactment in this Act) or rule of law to protect public rights of way or to prevent or remove obstructions.

87 Agreements for use of land for cattle-grids or by-passes. E+W

(1) A highway authority may, for the purpose of providing, altering or improving a cattle-grid or by-pass under the powers conferred by this Part of this Act, enter into an agreement under this section with persons interested in any land for the use of the land for that purpose; and (without prejudice to the provision of other matters in the agreement) there shall be exercisable by the highway authority and the public such rights over the land as may be specified in the agreement.

(2) An agreement under this section may contain provisions for payment to persons who are parties to it in consideration of the use of the land or otherwise in respect of their entering into the agreement.

(3) The provisions of an agreement under this section bind the interest of any person who is a party to the agreement notwithstanding any devolution of that interest, and also bind any interest of any person which is thereafter created (whether immediately or not) out of that interest; but save as aforesaid an agreement under this section shall not operate so as to prejudice the rights of a person not a party to it or confer upon any other person any right against him.

(4) A tenant for life may enter into an agreement under this section relating to the settled land or any part of it either for consideration or gratuitously, and—

(a) this subsection is to be construed as one with the [M14]Settled Land Act 1925;

(b) that Act and section 28 of the [M15]Law of Property Act 1925 (which confers the powers of a tenant for life on trustees for sale), apply as if the power conferred by this subsection had been conferred by that Act; and

(c) for the purposes of section 72 of the [M16]Settled Land Act 1925 (disposition by a tenant for life) and of any other relevant statutory provision, entering into an agreement under this section is to be treated as a disposition.

(5) A university or college to which the [M17]Universities and College Estates Act 1925 applies may enter into an agreement under this section relating to any land belonging to it either for consideration or gratuitously, and that Act applies as if the power conferred by this subsection had been conferred by that Act.

(6) Where land is glebe land or other land belonging to an ecclesiastical benefice, the incumbent of the benefice and, where land is part of the endowment of any other ecclesiastical corporation, the ecclesiastical corporation, may with the consent of the Church Commissioners enter into an agreement under this section relating to the land either for consideration or gratuitously, and the Ecclesiastical Leasing Acts apply as if the power conferred by this subsection had been conferred by those Acts, except that the consent of the patron of an ecclesiastical benefice is not requisite.

(7) An agreement under this section is a local land charge.

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Marginal Citations

M14 1925 c. 18.
M15 1925 c. 20.
M16 1925 c. 18.
M17 1925 c. 24.

88 Contributions towards expenditure of highway authorities. E+W

(1) A highway authority may enter into an agreement with a person at whose instance a cattle-grid has been or is to be provided by them under this Act, or any other person willing to make a contribution towards expenses of the authority under this Act in connection with a cattle-grid, for the making by that person of such a contribution (whether by a single payment or by periodical payments) of such amount as may be specified in the agreement and either towards all such expenditure of the authority or towards such description of such expenditure as may be so specified.

(2) An agreement under this section may contain such incidental and consequential provisions as appear to the parties to it expedient for the purposes of the agreement, and in particular such an agreement providing for a contribution towards the cost of installing a cattle-grid may provide for repayment of the contribution, to such extent as may be specified in the agreement, in the event of the cattle-grid being removed.

(3) In determining whether or not to provide a cattle-grid, a highway authority shall be entitled to have regard to the extent to which persons who in the opinion of the authority will derive special benefit from the provision of the cattle-grid are willing to enter into agreements under this section.

89 Delegation to certain authorities of functions of Minister. E+W

(1) Subsections (1) to (4) of section 6 above apply, as respects trunk roads, to the functions of the Minister under the foregoing provisions of this Part of this Act relating to cattle-grids, and to his functions under Schedule 10 to this Act in so far as they are conferred on him as highway authority.

(2) Plant or materials belonging to a council to whom functions are delegated under this section may be used by them for the purposes of those functions, subject to the terms of the delegation.

90 Protection of bridges and railways. E+W

(1) A highway authority shall not, in the exercise of functions relating to cattle-grids conferred by this Part of this Act, carry out any work in—

(a) so much of a highway as is carried by a bridge maintainable by a person other than the highway authority or so much of a highway as is comprised within the immediate approaches to such a bridge,

(b) so much of a highway passing under such a bridge as is within 10 feet of any part of the bridge or of the foundations of the bridge, or

(c) so much (if any) of a highway passing above a tunnel provided for the purpose of a railway undertaking of railway undertakers as is within 10 feet of any part of the tunnel,

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Changes to legislation: *Highways Act 1980 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

except with the consent of the person liable to maintain the bridge or of the railway undertakers, as the case may be.

(2) Where consent under this section is withheld the highway authority may refer the matter to the Minister and if, after affording to the highway authority and to the said person, or to the railway undertakers, as the case may be, an opportunity of being heard by a person appointed by the Minister for the purpose, and considering his report, the Minister so directs, the work may be carried out notwithstanding that the consent has been withheld but subject to compliance with any conditions which the Minister may impose.

[F130 Road humps]

Textual Amendments

F130 Ss. 90A–90F inserted by Transport Act 1981 (c. 56, SIF 126), s. 32, **Sch. 10 para. 2**

90A Construction of road humps by highway authority. E+W

(1) A highway authority may construct road humps in a highway maintainable at the public expense for which they are the highway authority if—

(a) the highway is subject to a statutory speed limit for motor vehicles of 30 miles per hour or less; or

(b) **[**F131(whether or not the highway is subject to such a limit)**]**the road humps are specially authorised by the Secretary of State,

and may remove any road humps so constructed by them.

(2) F132

Textual Amendments

F131 Words in s. 90A(1)(b) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para.12**; S.I. 1992/1286, art. 2, **Sch.**

F132 S. 90A(2) repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

[F133**90B Additional powers of the Secretary of State.** E+W

(1) The Secretary of State may construct road humps in a highway maintainable at the public expense for which he is not the highway authority if—

(a) the highway is subject to a statutory speed limit for motor vehicles of 30 miles per hour or less; or

(b) **[**F134(whether or not the highway is subject to such a limit)**]**the road humps are specially authorised by him,

and may maintain and remove any road humps so constructed by him.

(2) The consent of the local highway authority for the highway concerned is required for the construction of road humps under this section. . . F135

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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(3) The Secretary of State and the local highway authority may enter into an agreement for the carrying out by the local highway authority of any works which the Secretary of State has power to carry out under this section.

(4) Subject to subsection (5) below, the consent of the Secretary of State is required before the local highway authority or any other person having power to maintain the highway may remove or otherwise interfere with a road hump constructed under this section.

(5) If the Secretary of State so directs with the consent of the local highway authority the local highway authority shall have the same powers in relation to a road hump constructed under this section as they have in relation to a road hump constructed by them under section 90A above.

(6) Where a road hump has been constructed under this section, the local highway authority and any other person having power to maintain the highway may reimburse the Secretary of State the whole or part of his expenses in relation to the road hump.

Textual Amendments

F133 Ss. 90A–90F inserted by Transport Act 1981 (c. 56, SIF 126), s. 32, **Sch. 10 para. 2**

F134 Words in s. 90B(1)(b) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para.12**; S.I. 1992/1286, **art. 2**,Sch.

F135 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

90C Consultation and local inquiries. E+W

(1) Where the Secretary of State or a local highway authority propose to construct a road hump under section 90A or 90B above, he or they shall consult with—

(a) the chief officer of police for the area in which the highway concerned is situated; and

(b) such other persons or bodies as may be prescribed by regulations made by the Secretary of State.

(2) The Secretary of State or local highway authority shall also—

(a) publish in one or more newspapers circulating in the area in which the highway concerned is situated; and

(b) place at appropriate points on that highway,

a notice of the proposal stating the nature, dimensions and location of the proposed road hump and the address to which and the period within which any objections to the proposal may be sent.

(3) The period stated in a notice under subsection (2) above shall be not less than 21 days beginning with the date on which the notice is first published in accordance with paragraph (a) of that subsection.

(4) The Secretary of State or local highway authority shall consider any objections sent to him or them in accordance with a notice under subsection (2) above and may, if he or they think fit, cause a local inquiry to be held.

(5) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (provisions as to inquiries) have effect in relation to an inquiry held under subsection (4) above as they have effect in relation to an inquiry held under that section, but with such modifications as may be prescribed by regulations made by the Secretary of State.

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(6) Before making regulations under this section the Secretary of State shall consult such representative organisations as he thinks fit.

Textual Amendments

F133 Ss. 90A–90F inserted by Transport Act 1981 (c. 56, SIF 126), s. 32, **Sch. 10 para. 2**

VALID FROM 03/07/2000

[F136 90CA Special procedure for certain road humps in London. E+W

(1) A road hump falls within this section if—

(a) it is constructed by a local highway authority in Greater London, and

(b) the requirements of subsections (2) and (3) below have been complied with.

(2) The requirement of this subsection is that before starting to construct the road hump the authority concerned gives the Secretary of State notice stating—

(a) the nature, dimensions and location of the proposed road hump,

(b) the spacing between the proposed road hump and any other humps constructed, or proposed to be constructed, in the vicinity,

(c) the type and description of signs which are proposed to be located in the highway in connection with the proposed hump,

(d) the statutory speed limit for motor vehicles to which the highway where it is proposed to construct the hump is subject, and

(e) the period (of not less than one month) within which, and the address to which, the Secretary of State may send any comments on the proposal to the authority.

(3) The requirement of this subsection is that in deciding—

(a) whether to proceed with the construction of the road hump, and

(b) what the nature, dimensions and location of the road hump as constructed are to be,

the authority concerned has regard to any comments made by the Secretary of State within the period stated in the notice.**]**

Textual Amendments

F133 Ss. 90A–90F inserted by Transport Act 1981 (c. 56, SIF 126), s. 32, **Sch. 10 para. 2**

F136 S. 90CA inserted (3.7.2000) by 1999 c. 29, **s. 268(3)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch. Pt. 3**

90D Regulations concerning construction and maintenance of road humps. E+W

(1) The Secretary of State may by regulations make such provision in relation to the construction and maintenance of road humps as appears to him to be necessary or expedient in the interests of safety and the free movement of traffic, and may in particular—

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(a) provide that road humps shall be constructed only in highways of such descriptions and in such circumstances as may be prescribed by the regulations;

(b) impose requirements as to—

(i) the nature, dimensions, location and spacing of road humps;

(ii) the placing of signs of such type or character as may be so prescribed;

(iii) the carrying out and maintenance of other ancillary or consequential works.

(2) Regulations under this section may make different provision for different cases, as for example for road humps and highways of different descriptions.

(3) Before making any regulations under this section the Secretary of State shall consult with such representative organisations as he thinks fit.

(4) Regulations under this section do not apply where a road hump is specially authorised by the Secretary of State, but conditions attached by him to the authorisation may, in particular, relate to any of the matters with respect to which regulations may be made under this section.

90E Status of road humps. E+W

(1) Where a road hump conforms to regulations under section 90D above and, in the case of a road hump in a highway maintainable at the public expense, the conditions mentioned in subsection (2) below are satisfied, the road hump shall not be treated as constituting an obstruction to the highway but as part of the highway, so that in particular—

(a) the obligation of any person to maintain the highway; and

(b) the obligation of any person having power to break open the highway to make good any damage or otherwise reinstate the highway,

extend to maintaining or, as the case may be, making good any damage to or otherwise reinstating the road hump.

(2) The further conditions applicable in the case of a road hump in a highway maintainable at the public expense are—

(a) that the highway is for the time being subject to a statutory speed limit for motor vehicles of 30 miles per hour or less or the road hump is specially authorised by the Secretary of State; and

(b) that the road hump was constructed under section 90A or 90B above or was constructed at a time when the highway was not maintainable at the public expense.

(3) In relation to a road hump specially authorised by the Secretary of State the reference in subsection (1) above to conformity with regulations shall be construed as a reference to conformity with the conditions attached to the authorisation.

F137(4) . . . . . .

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Highways Act 1980 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F137 S. 90E(4) repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(2), **Sch.**; S.I. 1992/2984, art. 2(2), **Sch.2**

90F Meaning of "road hump" and interpretation of sections 90A to 90E. E+W

(1) In this Act "road hump" means an artificial hump in or on the surface of the highway which is designed to control the speed of vehicles, and references to a road hump include references to any other works (including signs for lighting) required in connection with such a hump.

(2) In sections 90A to 90E above—

"motor vehicle" has the same meaning as in the Road Traffic Regulation Act **[**F138 1984**]**; and

[F139 "statutory speed limit" means a speed limit having effect by virtue of an enactment other than section 84(1)(b) or (c) of the Road Traffic Regulation Act 1984 (temporary and variable speed limits).**]]**

Textual Amendments

F133 Ss. 90A–90F inserted by Transport Act 1981 (c. 56, SIF 126), s. 32, **Sch. 10 para. 2**

F138 Words substituted by Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), s. 146, **Sch. 13 para. 42**

F139 S. 90F(2): definition 'statutory speed limit' substituted (1.7.1992) for definition of 'statutory' by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para.13**; S.I. 1992/1286, **art. 2**,Sch.

[F140 Other traffic calming works]

Textual Amendments

F140 Ss. 90G-90I and cross-heading inserted (16.5.1992) by Traffic Calming Act 1992 (c. 30), ss. 1(2), 3, **Sch. 1**

F141 90G Powers to carry out traffic calming works. E+W

(1) A highway authority may, in a highway maintainable at the public expense for which they are the highway authority, construct traffic calming works which—

(a) are of a description prescribed by regulations under section 90H below, or

(b) are specially authorised by the Secretary of State,

and may remove such works (whenever constructed).

(2) A highway authority shall not exercise the powers conferred by subsection (1) above except in accordance with any requirements imposed by the regulations or authorisation concerned.

(3) Requirements imposed by a special authorisation given by the Secretary of State under this section may relate to any matter with respect to which regulations may be made under section 90H below.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Highways Act 1980 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Nothing in this section shall prejudice any power of a highway authority to construct or remove traffic calming works which are neither of a description prescribed by regulations under section 90H below nor specially authorised by the Secretary of State.

Textual Amendments

F141 Cross heading and ss. 90G-90I inserted (16.5.1992) by Traffic Calming Act 1992 (c. 30), ss. 1(1), 3, **Sch.1**

[F142 90GA Special procedure for certain traffic calming works in London. E+W

(1) Traffic calming works fall within this section if—

(a) the works are constructed by a local highway authority in Greater London, and

(b) the requirements of subsection (2) and (3) below have been complied with.

(2) The requirement of this subsection is that before starting to construct the works the authority concerned gives the Secretary of State notice stating—

(a) the nature, dimensions and location of the proposed works,

(b) the type and description of signs which are proposed to be located in the highway in connection with the proposed hump, and

(c) the period (of not less than one month) within which, and the address to which, the Secretary of State may send any comments on the proposal to the authority.

(3) The requirement of this subsection is that in deciding—

(a) whether to proceed with the construction of the works, and

(b) what the nature, dimensions and location of the works as constructed are to be,

the authority concerned has regard to any comments made by the Secretary of State within the period stated in the notice.**]**

Textual Amendments

F142 S. 90GA inserted (*prosp.*) by 1999 c. 29, ss. 269(4), 425 (with **Sch. 12 para. 9(1)**)

F143 90H Prescribing of works. E+W

(1) The Secretary of State may make regulations—

(a) prescribing any description of traffic calming works for the purposes of section 90G above, and

(b) making such provision (if any) as appears to him necessary or expedient in relation to the construction, maintenance and removal of works of a prescribed description.

(2) Regulations under this section may in particular—

(a) provide that works of a prescribed description shall be constructed only in highways of such descriptions and in such circumstances as may be prescribed by the regulations;

(b) impose requirements as to—

(i) the dimensions and location of works;

(ii) the placing of signs;

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(iii) the carrying out and maintenance of ancillary or consequential works;

(c) impose requirements as to consultation and publicity in respect of proposed works.

(3) Regulations under this section may make different provision for different cases.

Textual Amendments

F143 Ss. 90G-90I and cross-heading inserted (16.5.1992) by Traffic Calming Act 1992 (c. 30), ss. 1(1), 3, **Sch. 1**

F144 90I Status of works authorised by section 90G. E+W

Works (whenever constructed) of a description prescribed by regulations under section 90H above or specially authorised under section 90G above which conform to any requirements imposed by the regulations or authorisation shall not be treated as constituting an obstruction to the highway but as part of the highway, so that in particular—

(a) the obligation of any person to maintain the highway, and

(b) the obligation of any person having power to break open the highway to make good any damage or otherwise reinstate the highway,

extend to maintaining or, as the case may be, making good any damage to or otherwise reinstating the works.

Textual Amendments

F144 Cross heading and ss. 90G-90I inserted (16.5.1992) by Traffic Calming Act 1992 (c. 30), ss. 1(2), 3, **Sch.1**

Construction, reconstruction, improvement etc. of bridges

91 Construction of bridge to carry existing highway maintainable at public expense. E+W

A highway authority may construct a bridge to carry a highway maintainable at the public expense but the Minister shall not construct such a bridge without the approval of the Treasury.

92 Reconstruction of bridge maintainable at public expense. E+W

Without prejudice to any other powers they have under this Part of this Act, a highway authority may reconstruct a bridge which is a highway maintainable at the public expense by them, either on the same site or on a new site within 200 yards of the old one.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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93 Power to make orders as to reconstruction, improvement, etc., of privately maintainable bridges. E+W

(1) If the owners of a bridge to which this section applies or a local highway authority entitled by virtue of section 95 below to exercise with respect to such a bridge the powers conferred by this section consider—

(a) that the bridge is or may be, by reason of its construction, position, or state of repair, dangerous or unsuitable for the requirements of road traffic as then existing or the expected development thereof, or

(b) that the responsibility for the maintenance and improvement of the highway carried by the bridge or of the approaches to it should for any reason be transferred from the owners to a highway authority,

the owners or the authority may apply to the Minister for an order to provide for the reconstruction, improvement or maintenance of the bridge, or of the highway carried by the bridge, or of the approaches to the bridge.

(2) Where an application is made to the Minister under subsection (1) above, he may, subject to the provisions of this section, make an order under this section, but before making such an order he shall consult the owners of the bridge and every local highway authority entitled to exercise with respect to it the powers conferred by this section, and if either the owners or any such local highway authority request him so to do shall hold an inquiry.

(3) Subject to the provisions of this section, the Minister may by an order made under this section—

(a) require the execution, either by the owners or by a highway authority, of such works of reconstruction or improvement as may be specified in the order;

(b) determine and direct by whom the bridge, the highway carried by the bridge and the approaches to the bridge are to be maintained;

(c) provide for the transfer to and vesting in a highway authority of the property in the bridge, or the highway carried by the bridge, or the approaches to the bridge, and of all or any rights and obligations attaching to the bridge, or to such highway or approaches;

(d) in the case of a swing bridge, determine and direct by whom and in what manner it is to be operated;

(e) modify, so far as he considers necessary for giving effect to the order, any statutory provisions applicable to the bridge other than the provisions of a public general Act;

(f) make such incidental, consequential and supplementary provisions, including provisions authorising the owners of the bridge or a highway authority to construct works which are necessary to enable them to comply with a requirement or direction contained in the order, as may appear to him to be necessary or proper for the purposes of the order.

(4) Subject to the provisions of this section, the Minister may, on his own initiative and without any application under subsection (1) above, make an order under this section with respect to a trunk road bridge if, on such grounds as are referred to in subsection (1) above, it seems to him fit and proper so to do; but, before making such an order, he shall consult the owners of the bridge (unless after diligent inquiry their names and addresses cannot be ascertained), and, if the owners request him so to do, shall hold an inquiry.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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(5) In relation to an order made under this section with respect to a trunk road bridge, subsection (3)(c) above has effect with the substitution, for the reference to a highway authority, of a reference to the Minister.

(6) Subject to section 95(9) below, this section applies to any bridge (other than a highway maintainable at the public expense) which carries a highway consisting of or comprising a carriageway over a railway, over a canal, river, creek, watercourse, marsh or other place where water flows or is collected or over a ravine or other depression, other than a bridge to which a right to levy tolls is attached.

(7) Schedule 11 to this Act has effect in relation to the making and carrying out of orders under this section.

Modifications etc. (not altering text)
C36 Ss. 93-95 modified (22.7.2008) by Transport for London Act 2008 (c. i), ss. 1, **33** (with s. 48)

94 Powers of highway authorities and bridge owners to enter into agreements. E+W

(1) A highway authority may agree with the owners of a bridge to which this section applies and with respect to which the highway authority are entitled by virtue of section 95 below to exercise the powes conferred by this section—

(a) for the payment by the highway authority of contributions towards the cost of the reconstruction, improvement or maintenance of the bridge, or of the highway carried by the bridge, or of the approaches to the bridge;

(b) for the transfer to the highway authority, on such terms as may be agreed, of the responsibility for the improvement and maintenance of the highway carried by the bridge, or of the approaches to it;

(c) for the transfer to the highway authority, on such terms as may be agreed, of the property in the bridge, the highway carried by the bridge, and the approaches to the bridge, and of all or any rights and obligations attaching to the bridge, or to such highway or approaches;

and the owners of the bridge may enter into and carry into effect any such agreement, notwithstanding that the bridge was constructed under statutory powers.

(2) Subject to section 95(9) below, this section applies to any bridge (other than a highway maintainable at the public expense) which carries a highway over a railway or highway, over a canal, river, creek, watercourse, marsh or other place where water flows or is collected or over a ravine or other depression.

(3) Where an agreement made under this section provides for the transfer to the highway authority of rights or obligations attaching to a bridge, then as from the date of the transfer the highway authority may exercise the rights transferred and shall, to the exclusion of the owners, be subject to the obligations transferred.

Modifications etc. (not altering text)
C37 Ss. 93-95 modified (22.7.2008) by Transport for London Act 2008 (c. i), ss. 1, **33** (with s. 48)

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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95 Supplemental provisions as to orders and agreements under sections 93 and 94. E+W

(1) Subject to subsection (2) below, the powers conferred by sections 93 and 94 above on a highway authority or a local highway authority are exercisable-

(a) in the case of a bridge outside Greater London, by the council of the county **[**F145or metropolitan district**]** in which the bridge is situated;

(b) F146

(c) in the case of **[**F147a**]** bridge in Greater London, by the council of the borough in which it is situated, or, if it is in the City, by the Common Council.

(2) In the case of a trunk road bridge, the powers conferred on a highway authority by section 94 above are exercisable by the Minister; and neither those powers nor the powers conferred on a local highway authority by section 93 above are exercisable with respect to such a bridge by a local highway authority.

(3) Where a bridge other than a trunk road bridge is situated partly in one area and partly in another, the powers conferred by sections 93 and 94 above on a highway authority or a local highway authority are exercisable by the council who, by virtue of section 3 above, are the highway authority for the whole of the bridge or, if there is no such highway authority, by any council who could have exercised those powers if their area had included the whole of the bridge.

(4) For the purposes of the foregoing provisions of this section, the highway carried by a bridge, and the approaches to the bridge, are to be deemed to be part of the bridge.

(5) Where—

(a) a bridge crossing a railway is owned by railway undertakers and the railway is leased to other such undertakers, or

(b) a bridge crossing a canal is owned by canal undertakers and the canal is leased to other such undertakers,

references in sections 93 and 94 above and in this section to the owners of the bridge, railway or canal include references to those other undertakers.

(6) Nothing in sections 93 and 94 above or in this section or in any order made under section 93 above, authorises the stoppage of traffic on a canal without the consent of the canal owners, and a highway authority carrying out works authorised by any of the said sections, or by any such order, with respect to a bridge crossing a canal shall take such steps as may be necessary to prevent, so far as practicable, interference with traffic on the canal.

(7) The consent of the owners of a canal to the temporary stoppage of traffic on it pursuant to subsection (6) above shall not be unreasonably withheld, and any question whether the withholding of such a consent is unreasonable shall be determined by the Minister.

(8) In sections 93 and 94 above and in this section—

"approaches" in relation to a bridge, means approaches for the maintenance of which the owners of the bridge are responsible and which connect the bridge to the highway maintainable at the public expense;

"trunk road bridge" means a bridge the highway over which is a trunk road or partly a trunk road;

"canal" includes inland navigation;

and for the purposes of the said sections the towing path of a canal is to be deemed to form part of the canal.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Highways Act 1980 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(9) Sections 93 and 94 above and this section do not apply to any bridge which crosses the Manchester Ship Canal and is owned by the Manchester Ship Canal Company.

Textual Amendments

F145 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 20**

F146 S. 95(1)(*b*) repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F147 Word substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 20**

Modifications etc. (not altering text)

C38 Ss. 93-95 modified (22.7.2008) by Transport for London Act 2008 (c. i), ss. 1, **33** (with s. 48)

Miscellaneous improvements

[F148 95A Power to install equipment for detection of traffic offences. E+W

A highway authority may install and maintain on or near a highway structures and equipment for the detection of traffic offences.]

Textual Amendments

F148 S. 95A inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), **s. 40(1)**; S.I. 1992/1286, **art. 2**,Sch.

96 Powers of highway and local authorities to plant trees, lay out grass verges, etc. E+W

(1) Subject to the provisions of this section, a highway authority may, in a highway maintainable at the public expense by them, plant trees and shrubs and lay out grass verges, and may erect and maintain guards or fences and otherwise do anything expedient for the maintenance or protection of trees, shrubs and grass verges planted or laid out, whether or not by them, in such a highway.

(2) A highway authority may alter or remove any grass verge laid out, whether or not by them, in a highway maintainable at the public expense by them and any guard, fence or other thing provided, whether or not by them, for the maintenance or protection of any tree, shrub or verge in such a highway.

(3) Subject to the following provisions of this section, a highway authority may exercise the like powers as are conferred by subsections (1) and (2) above on any land acquired in exercise of powers conferred on them by section 239(2) to (4) below, notwithstanding that the land does not form part of a highway.

(4) A local authority, if they are not the highway authority for a highway maintainable at the public expense in their area, may, with the consent of the highway authority, exercise with respect to that highway any of the powers conferred by subsections (1) and (2) above on the highway authority.

(5) Subject to the restrictions for the time being imposed by any enactment on their expenditure, the council of a parish or community may, with the consent of the highway authority for a highway maintainable at the public expense in the parish or

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community, exercise with respect to that highway any of the powers conferred by subsections (1) and (2) above on the highway authority.

(6) No tree, shrub, grass verge, guard or fence shall be planted, laid out or erected under this section, or, if planted, laid out or erected under this section, allowed to remain, in such a situation as to hinder the reasonable use of the highway by any person entitled to use it, or so as to be a nuisance or injurious to the owner or occupier of premises adjacent to the highway.

(7) If damage is caused to the property of any person by anything done in exercise of the powers conferred by this section, that person is entitled, subject to subsection (8) below, to recover compensation for it from the authority or parish or community council by whom the powers were exercised.

(8) A person is not entitled to compensation under subsection (7) above if his negligence caused the damage; and if his negligence contributed to the damage the compensation under that subsection shall be reduced accordingly.

(9) Any two or more highway authorities on whom powers are conferred by this section may by agreement exercise those powers jointly, and the agreement may provide for the apportionment of any expenses incurred under it.

(10) References in this section to trees or shrubs are to be construed as including references to plants of any description.

97 Lighting of highways. E+W

(1) The Minister and every local highway authority may provide lighting for the purposes of any highway or proposed highway for which they are or will be the highway authority, and may for that purpose—

(a) contract with any persons for the supply of gas, electricity or other means of lighting; and

(b) construct and maintain such lamps, posts and other works as they consider necessary.

(2) A highway authority may alter or remove any works constructed by them under this section or vested in them under Part III of the [M18]Local Government Act 1966 or section 270 below.

(3) A highway authority shall pay compensation to any person who sustains damage by reason of the execution of works under this section.

(4) Section 45 of the [M19]Public Health Act 1961 (attachment of street lamps to buildings) and section 81 of that Act (summary recovery of damages for negligence) apply to a highway authority who are not a council of a kind therein mentioned as they apply to such a council.

Marginal Citations

M18 1966 c. 42.

M19 1961 c. 64.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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98 Delegation of lighting functions of highway authority. E+W

(1) A highway authority may agree with a lighting authority for the delegation to the lighting authority of any of the functions of the highway authority with respect to the lighting of any highway or part of a highway within the area of the lighting authority.

(2) A lighting authority shall, in the discharge of any functions delegated to them under subsection (1) above, act as agents for the highway authority; and it shall be a condition of the delegation—

(a) that the works to be executed or expenditure to be incurred by the lighting authority in the discharge of the delegated functions are to be subject to the approval of the highway authority;

(b) that the lighting authority are to comply with any requirement of the highway authority as to the manner in which any such works are to be carried out, and with any directions of the highway authority as to the terms of contracts to be entered into for the purposes of the discharge of the delegated functions; and

(c) that any such works are to be completed to the satisfaction of the highway authority.

(3) If at any time the highway authority are satisfied that a lighting system in respect of which the functions of that authority are delegated under this section is not in proper repair or condition, they may give notice to the lighting authority requiring them to place it in proper repair or condition, and if the notice is not complied with within a reasonable time may themselves do anything which seems to them necessary to place the system in proper repair or condition.

(4) A highway authority may agree with a lighting authority for the carrying out by the lighting authority of any works in connection with a lighting system provided or to be provided by the highway authority within the area of the lighting authority; and subsections (2) and (3) above apply to the conditions to be included in and to the discharge of functions pursuant to any such agreement, as they apply to the conditions to be attached to a delegation of functions under subsection (1) above and the discharge of functions so delegated.

(5) A delegation to a lighting authority under this section may be determind by notice given to that authority by the highway authority during the first 9 months of any calendar year, and functions delegated to a lighting authority under this section may be relinquished by notice given by that authority to the highway authority during any such period; and any such notice shall take effect as from 1st April in the calendar year following that in which it is given.

99 Metalling of highways. E+W

A highway authority may, in relation to a highway maintainable at the public expense by them, execute works for the conversion of the highway into a metalled highway.

100 Drainage of highways. E+W

(1) The highway authority for a highway may, for the purpose of draining it or of otherwise preventing surface water from flowing on to it, do all or any of the following:—

(a) construct or lay, in the highway or in land adjoining or lying near to the highway, such drains as they consider necessary;

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(b) erect barriers in the highway or in such land as aforesaid to divert surface water into or through any existing drain;

(c) scour, cleanse and keep open all drains situated in the highway or in such land as aforesaid.

(2) Where under subsection (1) above a drain is constructed or laid, or barriers are erected, for the purpose of draining surface water from a highway or, as the case may be, diverting it into an existing drain, the water may be discharged into or through that drain and into any inland waters, whether natural or artificial, or any tidal waters.

(3) A highway authority shall pay compensation to the owner or occupier of any land who suffers damage by reason of the exercise by the authority of any power under subsection (1) or (2) above.

(4) If a person, without the consent of the highway authority, alters, obstructs or interferes with a drain or barrier which has been constructed, laid or erected by the authority in exercise of their powers under subsection (1) above, or which is under their control, then—

(a) the authority may carry out any work of repair or reinstatement necessitated by his action and may recover from him the expenses reasonably incurred by them in so doing, and

(b) without prejudice to their right to exercise that power, he is guilty of an offence and liable to a fine not exceeding three times the amount of those expenses.

(5) Without prejudice to their powers under the foregoing provisions of this section, a highway authority may, for the purpose of the drainage of a highway or proposed highway for which they are or, as the case may be, will be the highway authority, exercise any powers exercisable by a **[**F149sewerage undertaker under**[**F150sections 158, 159, 163, 165 and 168 of the Water Industry Act 1991**]**for the purposes of the drainage of highways within the area of that undertaker**]**.

(6) Where the highway authority are a county council they shall, before exercising any powers **[**F151under**[**F150sections 158, 159, 163, 165 and 168 of the Water Industry Act 1991**]]** by virtue of subsection (5) above, give notice of their intention to do so to the district council, and the **[**F151sewerage undertaker**]** within whose area the powers are proposed to be exercised **[**F152; and where the highway authority are a metropolitan district council they shall, before so exercising any powers under that Act, give such notice to the **[**F151sewerage undertaker**]** within whose area the powers are proposed to be exercised.**]**

[F153(6A) In subsection (6) above, "the district council" shall be read, in relation to Wales, as "the Welsh council".

(6B) Where the highway authority are a Welsh council—

(a) subsection (6) above does not apply; but

(b) before exercising any powers under sections 158, 159, 163, 165 and 168 of the M20Water Industry Act 1991 by virtue of subsection (5) above, they shall give notice of their intention to do so—

(i) to the sewerage undertaker; and

(ii) where they propose to exercise those powers outside their county or county borough, to the Welsh council or, as the case may be, the district council

within whose area the powers are proposed to be exercised.**]**

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(7) A person who is liable to maintain a highway by reason of tenure, enclosure or prescription shall, for the purpose of draining it, have the like powers as are conferred on a highway authority by subsections (1) and (2) above for that purpose, and subsections (3) and (4) above shall have effect in relation to a highway so maintainable as if references therein to a highway authority and to subsection (1) or (2) above included references to the person liable to maintain that highway and to this subsection respectively.

(8) This section is without prejudice to any enactment the purpose of which is to protect water against pollution.

(9) In this section—

"drain" includes a ditch, gutter, watercourse, soak-away, bridge, culvert, tunnel and pipe; and

"owner", in relation to any land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple in the land, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the land under a lease the unexpired term of which exceeds 3 years.

Textual Amendments

F149 Words substituted 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. 62(4)(a), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

F150 Words in s. 100(5)(6) substituted (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2, 4(2), **Sch. 1 para. 36(1)**

F151 Words substituted 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. 62(4)(b), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

F152 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 21**

F153 S. 100(6A)(6B) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.9** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

Marginal Citations

M20 1991 c. 56.

101 Power to fill in roadside ditches etc. E+W

(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—

(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) A highway authority shall pay compensation to the owner or occupier of any land who suffers damage by reason of the exercise by the authority of any power under subsection (1) above.

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(3) If a person, without the consent of the highway authority, opens up or keeps open any ditch which has been filled in under subsection (1) above (except as may be reasonably necessary for the purpose of doing work on any pipes placed in the ditch), then—

(a) the authority may carry out any work of repair or reinstatement necessitated by his action and may recover from him the expenses reasonably incurred by them in so doing; and

(b) without prejudice to their right to exercise that power, he is guilty of an offence and liable to a fine not exceeding three times the amount of those expenses.

(4) Nothing in section 263 of the [M21]Public Health Act 1936 (which prohibits the culverting of watercourses in certain districts without the approval of the local authority) applies to anything done under subsection (1) above.

(5) A highway authority shall not exercise their powers under subsection (1) above 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 14 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 14 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.

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

Marginal Citations

M21 1936 c. 49.

102 Provision of works for protecting highways against hazards of nature. E+W

(1) The highway authority for a highway maintainable at the public expense may provide and maintain such barriers or other works as they consider necessary for the purpose of affording to the highway protection against snow, flood, landslide or other hazards of nature; and those works may be provided on the highway or on land which, or rights over which, has or have been acquired by the highway authority in the exercise of highway land acquisition powers for that purpose.

(2) The powers conferred by subsection (1) above to provide any works shall include power to alter or remove them.

(3) A highway authority shall pay compensation to any person who suffers damage by reason of the execution by them under this section of any works on a highway.

103 Provision of posts to indicate depth of flood water. E+W

(1) It shall be the duty of a highway authority to provide, in connection with any highway for which they are the highway authority and which is subject to flooding to any considerable depth, graduated posts or stones in any case where they consider the

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provision thereof necessary or desirable for the purpose of indicating the depth of water covering the highway.

(2) A highway authority may alter or remove any post or stone provided by them under this section.

104 Mitigating nuisance of dust. E+W

A highway authority may, in relation to a highway maintainable at the public expense by them, treat the highway for mitigating the nuisance of dust.

105 Power to improve road-ferries. E+W

A highway authority may improve any road-ferry provided by them under this Act.

[F154 PART VA E+W

ENVIRONMENTAL ASSESSMENT]

Textual Amendments

F154 Part VA (s. 105A) inserted by S.I. 1988/1241, **reg. 2**

105A Environmental assessment of certain highway projects. E+W

(1) In any case where the Secretary of State has under consideration the construction of a new highway or the improvement of an existing highway, he shall determine before the date of publication of details of the project whether or not it falls within Annex I or Annex II to Council Directive No.85/337/EEC on the assessment of the effects of certain public and private projects on the environment.

(2) [F155Where it appears to him] that it falls within Annex I, or that it falls within Annex II and has such characteristics that it should be made subject to an environmental assessment in accordance with the Directive, he shall publish not later than the date of publication of details of the project an environmental statement, that is, a statement [F156identifying, describing and assessing in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11 of the Directive, the direct and indirect effects of the project on the factors mentioned in Article 3 of the Directive and]containing the information referred to an Annex III to the Directive to the extent that he considers—

(a) that it is relevant to the specific characteristics of the project and of the environmental features likely to be affected by it; and

(b) that (having regard in particular to current knowledge and methods of assessment) the information may reasonably be gathered,

including at least—

(i) a description of the project comprising information on the site, design and size of the project;

(ii) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;

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(iii) the data required to identify and assess the main effects which the project is likely to have on the environment:

(iv) a non-technical summary of the information mentioned in paragraphs (i) to (iii) above.

[F157(2A) Any project for the construction or improvement of a special road which falls within Annex II to the Directive shall be treated as having such characteristics that it should be made subject to an environmental assessment in accordance with the Directive.**]**

(3) If the Secretary of State publishes an environmental statement, he shall ensure that the public concerned is given an opportunity to express an opinion before the project is initiated.

(4) If on completion of the project any part of the highway would lie on, or within 100 metres of, land comprised—

(a) in a National Park or nature reserve within the meaning of the National Parks and Access to the Countryside Act M22 1949;

(b) in a conservation area within the meaning of **[**F158the Planning (Listed Buildings and Conservation Areas) Act M23 1990**]**, or

(c) in an area notified under section 28 of the Wildlife and Countryside Act M24 1981 as an area of special scientific interest or in relation to which the Secretary of State has made an order under section 29 of that Act,

he shall ensure that the appropriate environmental body is given an opportunity to express an opinion before the project is initiated.

(5) the Secretary of State—

(a) shall consider—

(i) the environmental statement;

(ii) any opinion expressed by a member of the public; and

(iii) if the statement relates to land such as is mentioned in subsection (4) above, any opinion expressed by the appropriate environmental body; and

(b) shall publish his decision as to whether or not to initiate the project **[**F159and in his decision he shall state that he has considered the matters set out in paragraph (a)**]**.

(6) In this section "the appropriate environmental body" means—

(a) the Countryside Commission, if the proposal relates to land **[**F160in England**]** falling within paragraph (a) of subsection (4) above **[**F160or the Countryside Council for Wales, if it relates to land in Wales falling within that paragraph of that subsection**]**;

(b) the local planning authority, if it relates to land falling within paragraph (b); and

[F161(c) the Nature Conservancy Council for England or the Countryside Council for Wales, if it relates to land in England or, as the case may be, in Wales, falling within paragraph (c).**]**

(7) This section does not apply—

(a) where a draft order or scheme relating to construction or a draft order relating to improvement is published before the coming into force of the Highway (Assessment of Environmental Effects) Regulation 1988; or

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(b) where the Secretary of State has under consideration before that date construction or improvement without an order.

Textual Amendments

F155 Words in s. 105A(2) substituted (11.5.1994) by S.I. 1994/1002, **reg. 2(a)**.

F156 Words in s. 105A(2) inserted (11.5.1994) by S.I. 1994/1002, **reg. 2(b)**.

F157 S. 105A(2A) inserted (01.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 19**; S.I. 1991/2288, art. 3, **Sch.**

F158 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(5)**

F159 Words in s. 105A(5) added (11.5.1994) by S.I. 1994/1002, **reg. 2(c)**.

F160 Words in s. 105A(6)(a) inserted (*1.4.1991*) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 130(1), **Sch. 8 para. 5(2)**; S.I. 1991/685, **art. 3**

F161 S. 105A(6)(c) substituted (*1.4.1991*) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 132(1), **Sch. 9 para. 9**; S.I. 1991/685, **art. 3**

Marginal Citations

M22 1949 c.97 (**46:1**).

M23 1990 c.9 (**123:1**).

M24 1981 c.69 (**4:5**).

VALID FROM 13/03/1999

F162 105B Procedure E+W

(1) The Secretary of State must ensure that any determination made by him as to whether or not a relevant project should be made subject to an environmental impact assessment in accordance with the Directive is published.

(2) Any project for the construction or improvement of a special road which falls within Annex II is to be treated as having characteristics that require it to be made subject to an environmental impact assessment.

(3) An environmental statement must be published so as to ensure that members of the public who are likely to be concerned are given a reasonable opportunity to express their opinion before the Secretary of State decides whether to proceed with the construction or improvement to which the assessment relates.

(4) The Secretary of State must ensure that the consultation bodies are given an opportunity to express an opinion on the published details of the project and the environmental statement before he decides whether to proceed with the construction or improvement to which the assessment relates.

(5) Before deciding whether to proceed with the construction or improvement in relation to which an environmental impact assessment has been made, the Secretary of State must take into consideration–

(a) the environmental statement; and

(b) any opinion on that statement expressed by a member of the public, by any of the consultation bodies or by any Member State consulted under section 105C.

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(6) When the Secretary of State has decided whether to proceed with the construction or improvement for which an environmental impact assessment has been made, he must publish his decision together with a statement confirming that he has complied with subsection (5) and must make available to the public documents containing–

(a) the content of the decision and any conditions attached thereto;

(b) the main reasons and considerations on which the decision is based; and

(c) where his decision is to proceed with the construction or improvement, a description of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project.

(7) Publication by the Secretary of State in accordance with subsections (1), (3) and (6) shall be in the London Gazette and in at least one local newspaper circulating in the area in which the project for the construction or improvement of the highway is situated.

(8) In this section–

"the consultation bodies" means–

(a) any principal council as defined in subsection (1) of section 270 of the [M25]Local Government Act 1972 for the area where the land is situated;

(b) where the land is situated in England, the Countryside Commission, English Heritage and the Nature Conservancy Council for England;

(c) where the land is situated in Wales, Cadw and the Countryside Council for Wales; and

(d) the Environment Agency.

Textual Amendments

F162 Pt. VA substituted (13.3.1999) by S.I. 1999/369, **reg.2**

Marginal Citations

M25 1972 c. 70.

VALID FROM 13/03/1999

[F163]105C Other Member States. E+W

(1) This section applies if–

(a) it appears to the Secretary of State that a project to which section 105A(3) applies is likely to have a significant effect on the environment in another Member State; or

(b) a Member State the environment of which is likely to be significantly affected by such a project asks the Secretary of State for information about it.

(2) The Secretary of State must give the Member State–

(a) a description of the project, together with any information available to him which suggests that it may have a significant effect on the environment in the Member State;

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(b) any information which he has on the nature of the decision which may be taken on the project;

(c) information about the environmental impact assessment procedure (if he considers it appropriate); and

(d) a reasonable period within which to indicate whether it wishes to participate in that procedure.

(3) Subsection (2)(a) and (b) must be complied with no later than the date of publication of the determination referred to in Section 105B(1).

(4) If the Member State indicates that it wishes to participate in the environmental impact assessment procedure, the Secretary of State must give it–

(a) a copy of the environmental statement for the project (if he has not already done so); and

(b) any information about the environmental impact assessment procedure which he considers it appropriate to give and which has not already been given to the Member State.

(5) The Secretary of State, so far as he is concerned, must also–

(a) arrange for the information which he has given to the Member State to be made available, within a reasonable time, to–

(i) the authorities referred to in Article 6(1) of the Directive; and

(ii) members of the public in the Member State who are likely to be concerned; and

(b) ensure that those authorities and the public concerned are given a reasonable opportunity to give him their views before he decides whether to proceed with the project to which the environmental impact assessment relates.

(6) The Secretary of State must, in accordance with Article 7(4) of the Directive–

(a) enter into consultations with the Member State concerned regarding, among other matters, the potential significant effects of the project on the environment of that Member State and the measures envisaged to reduce or eliminate those effects; and

(b) agree with that Member State a reasonable period for those consultations.

(7) Where a Member State has been consulted in accordance with subsection (4), on the determination of the application concerned the Secretary of State must inform the Member State of the decision and must give it documents containing the matters referred to in section 105B(6).

(8) In this section "Member State" has the same meaning as in the Directive.

Textual Amendments

F163 Pt. VA substituted (13.3.1999) by S.I. 1999/369, **reg.2**

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VALID FROM 26/04/2007

[F164[F165105D Validity of decisions E+W

(1) If a person aggrieved by a decision of the Secretary of State to proceed with the construction or improvement for which an environmental statement has been made desires to question the validity of the decision on the ground that—

(a) it is not within the powers of this Act; or

(b) any requirement of this Part of this Act has not been complied with in relation to the decision;

he may, within 6 weeks from the date on which the decision is first published under section 105B (6), make an application for the purpose to the High Court.

(2) On any such application, the Court—

(a) may by interim order suspend the operation of the decision, or any aspect of it, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings; and

(b) if satisfied that the decision is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any requirement of this Part of this Act, may quash the decision or any aspect of it, either generally or in so far as it affects any property of the applicant.

(3) Subject to subsection (2), a decision to which subsection (1) applies shall not be questioned in any legal proceedings whatever.**]]**

Textual Amendments

F164 Pt. VA substituted (13.3.1999) by S.I. 1999/369, **reg.2**

F165 S. 105D inserted (26.4.2007) by The Highways (Environmental Impact Assessment) Regulations 2007 (S.I. 2007/1062), **reg. 5** (with reg. 7)

PART VI E+W

CONSTRUCTION OF BRIDGES OVER AND TUNNELS UNDER NAVIGABLE WATERS AND DIVERSION ETC. OF WATERCOURSES

Construction of bridges over and tunnels under navigable waters

106 Orders and schemes providing for construction of bridges over or tunnels under navigable waters. E+W

(1) Provision may be made by an order made by the Minister under this subsection or under section 10 above (orders for trunk roads) for the construction of a bridge over or a tunnel under any specified navigable waters as part of a trunk road.

(2) Provision may be made by a scheme under section 16 above (schemes for special roads) for the construction of a bridge over or a tunnel under specified navigable waters as part of a special road.

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(3) Provision may be made by a scheme made by a local highway authority under this subsection, and confirmed by the Minister, for the construction of a bridge over or a tunnel under specified navigable waters as part of a highway or proposed highway which is or is to be a highway (other than a special road) maintainable at the public expense by the authority.

(4) Provision may be made by an order under section 14 above (roads that cross or join trunk or classified roads) or section 18 above (supplementary orders relating to special roads)—

(a) for the construction of a bridge over or tunnel under specified navigable waters as part of a highway which is to be altered or constructed in pursuance of the order;

(b) where the order authorises the highway authority by whom it is made to provide a new means of access to any premises from a highway, for the access to be provided by means of a bridge over specified navigable waters and for the construction of the bridge.

(5) Parts I and III of Schedule 1 to this Act have effect as to the making of an order under subsection (1) above, Parts II and III of that Schedule have effect as to the making of a scheme under subsection (3) above and Schedule 2 to this Act has effect as to the validity and date of operation of any such order or scheme.

(6) A scheme under subsection (3) above may be submitted to the Minister jointly by any two or more local highway authorities, and any such scheme may determine which of those authorities is to be the highway authority for the bridge or tunnel or any part of it, and may provide—

(a) for the performance by that authority, in relation to the bridge or tunnel or that part of it, of any of the highway functions of any other authority who are party to the application, and

(b) for the making of contributions by that other authority to the highway authority in respect of expenditure incurred in the performance of those functions.

(7) References in this section, in relation to any order or scheme, to specified navigable waters are references to such navigable waters (whether the sea, a river or other waters) as may be specified in the order or scheme.

(8) References in the following provisions of this Part of this Act to an order or scheme which provides for the construction of a bridge over or a tunnel under navigable waters are references to any order or scheme made under or by virtue of subsection (1), (2), (3) or (4) above.

107 Provisions supplementary to section 106. E+W

(1) Before making or confirming an order or scheme which provides for the construction of a bridge over or a tunnel under navigable waters, the Minister shall take into consideration the reasonable requirements of navigation over the waters affected by the order or scheme.

(2) An order or scheme which provides for the construction of such a bridge shall include such plans and specifications as may be necessary to indicate the position and dimensions of the proposed bridge including its spans, headways and waterways, and

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in the case of a swing bridge shall contain such provisions as the Minister considers expedient for regulating its operation.

(3) An order or scheme which provides for the construction of such a tunnel shall include such plans and specifications as may be necessary to indicate the position and dimensions of the proposed tunnel, including its depth below the bed of the navigable waters.

(4) If objection to an order or scheme proposed to be made or, as the case may be, to an order or scheme made and proposed to be confirmed, is duly made in accordance with Schedule 1 to this Act by **[**F166the National Rivers Authority or any navigation authority**]** on whom notice is required to be served under paragraph 3 or, as the case may be, paragraph 11 of that Schedule, on the ground that the bridge or tunnel is likely to obstruct or impede the performance of their functions under any enactment, or to interfere with the reasonable requirements of navigation over the waters affected by the order or scheme, as the case may be, and the objection is not withdrawn, the order or scheme, as the case may be, shall be subject to special parliamentary procedure.

Textual Amendments

F166 Words substituted 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. 62(5), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

Diversion etc. of watercourses

108 Power to divert navigable watercourses. E+W

(1) An order made under this subsection may authorise a highway authority to divert such part of any navigable watercourse as may be specified in the order if, in the opinion of the authority, the diversion of that part is necessary or desirable in connection with—

(a) the construction, improvement or alteration of a highway;

(b) the provision of a new means of access to any premises from a highway; or

(c) the provision of a maintenance compound or, if that authority are a special road authority, of a service area.

(2) An order under subsection (1) above shall—

(a) if the authority proposing to divert the watercourse is the Minister, be made by him; and

(b) if that authority are a local highway authority, be made by that authority and confirmed by the Minister.

(3) Parts I and III of Schedule 1 to this Act have effect as to the making of any order under subsection (1) above, and Schedule 2 to this Act has effect as to the validity and date of operation of any such order.

(4) An order or scheme which provides for the construction of a bridge over or a tunnel under any navigable waters may authorise the highway authority by whom the bridge or tunnel is to be constructed to divert such part of any navigable watercourse as may be specified in the order or scheme if, in the opinion of that authority, the diversion of that part is necessary or desirable for purposes connected with the bridge or tunnel, or its construction.

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(5) An order under section 14 or 18 above may authorise the highway authority by whom the order is made to divert such part of any navigable watercourse as may be specified in the order if, in the opinion of that authority, the diversion of that part is necessary or desirable in connection with—

(a) the construction or improvement of the trunk road, special road or classified road, as the case may be, to which the order relates;

(b) the construction or alteration of any other highway to which the order relates;

(c) the provision in pursuance of the order of a new means of access to any premises; or

(d) the provision of a maintenance compound in connection with the trunk road, special road or classified road, as the case may be, to which the order relates or, in the case of an order under section 18, the provision of a service area.

(6) Where by virtue of an order under subsection (1) above or an order or scheme falling within subsection (4) or (5) above a highway authority are authorised to divert any part of a navigable watercourse they may also divert any towing path or other way adjacent to that part.

109 Provisions supplementary to section 108. E+W

(1) Where a navigable watercourse is to be diverted in pursuance of an order under section 108(1) above or of any order or scheme falling within section 108(4) or (5) above, any new length of watercourse provided in pursuance of the order or scheme shall be such as will or, but for any bridge or tunnel constructed over or under it in pursuance of any order or scheme falling within section 108(4), would be navigable in a reasonably convenient manner by vessels of a kind which immediately before the date of the coming into operation of the order or scheme were accustomed to use that part of the watercourse which is to be replaced by the new length.

(2) Where works for the diversion of a watercourse are carried out by a highway authority in accordance with any such order or scheme and any person suffers damage in consequence thereof by the depreciation of any interest in any land to which he is entitled or by reason of the fact that his right of access to a watercourse is extinguished or interfered with then, unless the works are carried out on land, or in the exercise of rights, acquired compulsorily in the exercise of highway land acquisition powers, that person is entitled to recover from the highway authority compensation under this subsection in respect of that damage.

110 Power to divert non-navigable watercourses and to carry out other works on any watercourse. E+W

(1) Subject to the provisions of this section, a highway authority may divert any part of a watercourse, other than a navigable watercourse, or carry out any other works on any part of a watercourse, including a navigable watercourse, if, in the opinion of that authority, the carrying out of the works is necessary or desirable in connection with—

(a) the construction, improvement or alteration of a highway;

(b) the provision of a new means of access to any premises from a highway; or

(c) the provision of a maintenance compound, a trunk road picnic area, a lorry area or a service area.

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(2) This section does not apply to any works which a highway authority are authorised to carry out by virtue of an order or scheme which has been made or confirmed in accordance with Schedule 1 to this Act.

(3) Before carrying out any works under this section, the highway authority shall consult every council in whose area the works are to be carried out.

(4) Where works are carried out by a highway authority under this section and any person suffers damage in consequence thereof by the depreciation of any interest in any land to which he is entitled or by reason of the fact that his right of access to a watercourse is extinguished or interfered with, then, unless the works are carried out on land, or in the exercise of rights, acquired compulsorily in the exercise of highway land acquisition powers, that person is entitled to recover from the highway authority compensation under this subsection in respect of the damage.

(5) Subject to subsection (7) below, a highway authority who propose to carry out any works under this section shall serve on the owner and the occupier of the land affected a notice stating their intention to carry out those works and describing them and informing him that he may within 28 days after service of the notice on him by notice to the authority object to the proposed works.

(6) If within that period the owner or occupier of the land affected objects to the proposed works and the objection is not withdrawn, then—

(a) if the objection is to works proposed to be carried out by the Minister, he shall consider the objection before carrying them out; and

(b) if the objection is to works proposed to be carried out by a local highway authority, they shall not carry them out without the consent of the Minister who may grant such consent either unconditionally or subject to such terms and conditions as he thinks just.

(7) Subsections (5) and (6) above do not have effect in relation to works that are to be carried out—

(a) on land that has been acquired by the highway authority in question, either compulsorily or by agreement, in the exercise of highway land acquisition powers, for the purpose of carrying out those works, or

(b) in the exercise of rights so acquired by that authority for that purpose.

Interpretation

111 Interpretation of Part VI. E+W

(1) In this Part of this Act "navigable waters" and "navigable watercourse" means waters or a watercourse, as the case may be, over which a public right of navigation exists; and any waterway comprised in the undertaking of the British Waterways Board which is for the time being specified in Part I or Part II of Schedule 12 to the [M26]Transport Act 1968 (commercial and cruising waterways) is to be deemed to be navigable waters and a navigable watercourse for the purposes of this Part of this Act.

(2) References in this Part of this Act to an order or scheme which provides for the construction of a bridge over or a tunnel under navigable waters are to be construed in accordance with section 106(8) above.

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Marginal Citations

M26 1968 c. 73.

PART VII E+W

PROVISION OF SPECIAL FACILITIES FOR HIGHWAYS

112 Provision of picnic sites and public conveniences for users of trunk roads. E+W

(1) The Minister may provide on land adjoining, or in the vicinity of, a trunk road that is not a special road a picnic site for motorists and others likely to use the road with space for parking vehicles and a means of access to and from a highway.

An area of any such land as aforesaid in which there are, or are to be, provided such a picnic site, parking space and means of access as aforesaid is in this Act referred to as a "trunk road picnic area".

(2) The Minister may erect buildings and execute works on a trunk road picnic area for the purpose of providing all or any of the following:—

(a) parking places for vehicles,

(b) a means of access to or from the area from or to a highway,

(c) public sanitary conveniences (including lavatories), and

(d) facilities for the provision and consumption of meals and refreshments,

and may equip buildings erected by him under this subsection with such furniture and apparatus as may be necessary for the purpose of providing such conveniences or facilities.

(3) The Minister may manage a trunk road picnic area, but may not provide meals or refreshments on such an area.

(4) The Minister may make arrangements with some other person, other than a council,—

(a) for such conveniences or facilities as are referred to in subsection (2) above to be provided by that other person, or

(b) for meals or refreshments to be provided on the trunk road picnic area by that other person;

and the powers of the Minister under this subsection include power to lease the trunk road picnic area or any part of it to that other person.

(5) The Minister may provide public sanitary conveniences (including lavatories) in proper and convenient situations on or under land forming part of a trunk road that is not a special road, or adjoining, or in the vicinity of, such a road and may manage such conveniences.

(6) The Minister shall pay compensation to any person who sustains damage by reason of the execution by him under this section of any works on or under a trunk road.

(7) A council may contribute towards any expenses incurred by the Minister under this section.

F167(8) . . . . . .

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Textual Amendments

F167 S. 112(8) repealed by Building Act 1984 (c. 55, SIF 15), s. 133(2), **Sch. 7**

113 Exercise by council of functions of Minister with respect to management or provision of picnic sites etc. E+W

(1) The Minister may by agreement with a council delegate to the council all or any of his functions with respect to the management of a trunk road picnic area or with respect to the management of public sanitary conveniences provided by him under section 112(5) above.

(2) Subsections (2) to (4) of section 6 above (discharge of functions delegated by Minister to council and termination of delegation) apply in relation to functions delegated, and a delegation, to a council under subsection (1) above as they apply in relation to functions delegated, and a delegation, to a council under subsection (1) of that section.

(3) The Minister may enter into agreements with a council—

(a) for the provision by the council on a trunk road picnic area of a picnic site for motorists and others likely to use the road,

(b) for the doing by the council of anything which he has power to do on that area under section 112(2) or (3) above, or

(c) for the discharge by the council of all or any of his functions under section 112(5) above,

so, however, that subsections (2) and (3) of section 6 above apply to the discharge of the functions of a council under any such agreement and to the conditions to be included in any such agreement as they apply to the discharge of functions delegated under that section to a council and to the conditions to be attached to any such delegation.

(4) Plant or materials belonging to a council to whom functions are delegated under subsection (1) above or with whom an agreement is made under subsection (3) above may be used by them for the purposes of those functions or of that agreement, subject to the terms of the delegation or agreement.

(5) Where any functions of the Minister as respects a trunk road picnic area stand delegated to a council under subsection (1) above, or are functions of a council by virtue of an agreement under subsection (3) above, then, except in so far as any conditions attached to the delegation or included in the agreement, as the case may be, otherwise provide, that council—

(a) shall make available any relevant facilities and services for those who do not normally reside in the area of the council as freely as for those who do;

(b) shall have power to make reasonable charges for any relevant facilities or sevices;

(c) may arrange for any relevant facilities or services to be provided by some other person and, when they make such arrangements, may authorise that person to make reasonable charges for them; and

(d) may arrange with some other person, other than another council, for the provision by that other person of meals or refreshments on the trunk road picnic area.

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References in this subsection to relevant facilities and services are references to facilities and services provided by the council in exercise of powers exercisable by them by virtue of the delegation or agreement referred to in this subsection.

(6) Any power to provide buildings or other premises, or any services or facilities, or anything else, exercisable by a council by virtue of any such delegation or agreement as is referred to in subsection (5) above includes power to enter into agreements with some other person for the use, on such terms as may be agreed, of anything, or any facilities or services, provided by, or under the control of, that other person and, if it appears convenient, for the services of any staff employed in connection therewith.

(7) Where any functions of the Minister with respect to the management or provision of public sanitary conveniences stand delegated to a council under subsection (1) above, or are functions of a council by virtue of an agreement under subsection (3) above, the council may make byelaws as to the conduct of persons using or entering those conveniences.

114 Provision of public conveniences by county council for users of roads for which they are the highway authority. E+W

(1) Where the highway authority for a highway or proposed highway are or, as the case may be, will be a county council **[**F168or metropolitan district council**]** they may provide public sanitary conveniences (including lavatories) in proper and convenient situations on or under land adjoining, or in the vicinity of, the highway or proposed highway, and may manage such conveniences.

(2) Before providing any conveniences under subsection (1) above a county council shall give notice of their intention to do so to the council of the district in which the conveniences will be situated.

[F169(2A) In subsection (2) above, the reference to the council of the district in which the conveniences will be situated shall be read in relation to Wales as a reference to the Welsh council in whose area the conveniences will be situated.

F169(2B) Where the highway authority referred to in subsection (1) above are or, as the case may be, will be a Welsh council—

(a) subsection (2) above does not apply; but

(b) before providing any conveniences under subsection (1) above outside their county or county borough they shall give notice of their intention to do so to the Welsh council or, as the case may be, the district council in whose area the conveniences will be situated.**]**

(3) A county council **[**F168or metropolitan district council**]** who provide conveniences under subsection (1) above may make byelaws as to the conduct of persons using or entering them.

(4) The powers in subsection (1) above are without prejudice to section 87 of the M27Public Health Act 1936 (provision of public conveniences by local authorities). . . F170

Textual Amendments

F168 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 22**

F169 S. 114(2A)(2B) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.10** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

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F170 Words repealed by Building Act 1984 (c. 55, SIF 15), s. 133(2), **Sch. 7**

Marginal Citations

M27 1936 c. 49.

115 Provision of areas for parking heavy goods vehicles, etc. E+W

(1) A highway authority may provide on land adjoining, or in the vicinity of, a highway or proposed highway for which they are or, as the case may be, will be the highway authority an area, which may be used for all or any of the following purposes;

(a) the parking of heavy goods vehicles;

(b) the transfer of goods to or from any such vehicle from or to any other vehicle; and

(c) the temporary storage of goods which have been or are to be carried or hauled by heavy goods vehicles.

An area provided under this section is in this Act referred to as a "lorry area".

(2) For the purpose of enabling a lorry area to be used as mentioned in subsection (1) above, the highway authority by whom the area is provided may erect buildings and execute works on the area for the purpose of providing all or any of the following:

(a) parking places for heavy goods vehicles and, if the lorry area is to be used for either or both of the purposes mentioned in subsection (1)(b) and (c) above, parking places for other vehicles which will be on the area in connection with that purpose or those purposes;

(b) a means of access to or from the area from or to a highway;

(c) facilities for the accommodation of persons who will be on the lorry area in connection with any purpose for which the area may be used in pursuance of subsection (1) above or with the provision on the area of any such facilities as are mentioned in this subsection;

(d) facilities for the provision of meals and refreshments for such persons as are mentioned in paragraph (c) above;

(e) facilities for handling and storing goods which have been or are to be carried or hauled by heavy goods vehicles;

(f) service station facilities for such vehicles and for other vehicles entitled to be on the lorry area;

(g) sanitary conveniences (including lavatories) for such persons as are mentioned in paragraph (c) above;

and may install or provide in buildings erected by them under this subsection or elsewhere on the lorry area such equipment, furniture and apparatus as may be necessary for the purpose of providing such facilities or conveniences.

(3) A highway authority may make arrangements with some other person, other than a council, for anything which that authority have power to do under subsection (2) above to be done by that other person and may lease the lorry area or any part of it to that other person, but may not themselves operate any such facilities as are mentioned in paragraphs (c), (d), (e) and (f) of that subsection.

(4) Where a lorry area is provided by the Minister under this section he may enter into agreements with a council for the exercise by the council of all or any of his powers

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under subsection (2) above or of the powers conferred on him in his capacity as a highway authority by virtue of subsection (6) below.

(5) Subsections (2) and (3) of section 6 above (discharge of functions delegated by the Minister to a council) apply to the exercise of the powers of a council under any agreement made under subsection (4) above and to the conditions to be included in any such agreement as they apply to the discharge of functions delegated under that section to a council and to the conditions to be attached to any such delegation.

(6) **[**F171Section 35 of the Road Traffic Regulation Act 1984**]** (power to make orders as to use of certain parking places) applies in relation to a lorry area as it applies in relation to an off-street parking place provided under **[**F172section 32**]** of that Act, as if for references to a local authority and such a parking place there were substituted references to a highway authority and a lorry area respectively; and **[**F173section 112 of and Parts I, II, III and IV of Schedule 9 to**]** that Act (provisions with respect to certain orders and offences, including orders and offences under **[**F174the said section 35**]**) have effect as if—

(a) references therein to **[**F174the said section 35**]** and a local authority included references to that section as applied by this subsection and a local highway authority respectively;

(b) references in **[**F175Part IV of Schedule 9**]** to a parking place included references to a lorry area; and

(c) the reference in **[**F176section 112(2)**]** to the local authority for the parking place included a reference to the highway authority by whom the lorry area was provided.

(7) A council may contribute towards any expenses incurred by the Minister under this section.

(8) In this section—

"goods" includes goods or burden of any description;

"heavy goods vehicle" means a motor vehicle constructed or adapted for use for the carriage or haulage of goods and having an unladen weight of 2 tons or more, or a trailer;

"motor vehicle" has the same meaning as in **[**F177the Road Traffic Act 1988**]**;

"trailer" means a vehicle constructed or adapted for use for the carriage of goods and drawn or intended to be drawn by a motor vehicle.

Textual Amendments

F171 Words substituted by Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), s. 146, **Sch. 13 para 43**(*a*)

F172 Words substituted by Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), s. 146, **Sch. 13 para 43**(*b*)

F173 Words substituted by Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), s. 146, **Sch. 13 para 43**(*c*)

F174 Words substituted by Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), s. 146, **Sch. 13 para 43**(*d*)

F175 Words substituted by Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), s. 146, **Sch. 13 para 43**(*e*)

F176 Words substituted by Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), s. 146, **Sch. 13 para 43**(*f*)

F177 Words substituted by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 4, **Sch. 3 para. 21(1)**

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[F178 PART VIIA E+W

PROVISION OF AMENITIES ON CERTAIN HIGHWAYS

Textual Amendments

F178 Pt. VIIA (ss. 115A–115K) inserted by Local Government (Miscellaneous Provisions) Act 1982 (c. 30, SIF 81:1), s. 20, **Sch. 5 para. 1**

115A Scope of Part VIIA. E+W

(1) This part of this Act applies—

(a) to a highway in relation to which a pedestrian planning order is in force;

(b) to a bridleway;

(c) to a footpath (including a walkway as defined in section 35(2) above);

(d) to a footway;

(e) to a subway constructed under section 69 above;

(f) to a footbridge constructed under section 70 above;

(g) to a highway of a description not mentioned in any of the preceding paragraphs of this definition whose use by vehicular traffic is prohibited by a traffic order but whose use by other traffic is not prohibited or restricted or regulated by such an order; and

(h) to a local Act walkway.

(2) In this Part of this Act—

"local Act walkway" means a way or place which is declared in pursuance of a local enactment to be a walkway, city walkway or pedestrian way;

"pedestrian planning order" means an order made under **[**F179section 249(2) of the Town and Country Planning Act 1990**]**; and

"traffic order" means an order made under section 1 or 6 of the Road Traffic Regulation Act **[**F180**]**1984**]** (traffic regulation orders) or under section 9 of that Act (experimental traffic orders); and

"walkway consent" means—

(a) in relation to a walkway as defined in section 35(2) above, the consent—

(i) of any person who is an occupier of the building in which the walkway subsists and to whom subsection (3) below applies; and

(ii) of the persons whose agreement would be needed for the creation of the walkway if it did not already subsist; and

(b) in relation to a local Act walkway, the consent—

(i) of any person who is an owner or occupier of premises adjoining the walkway and to whom subsection (3) below applies; and

(ii) of the owner of the land on, under or above which the walkway subsists.

(3) The persons to whom this subsection applies are persons who, in the opinion of a council, are likely to be materially affected—

(a) by the exercise of a power which the council may not exercise until they have first obtained walkway consent; or

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(b) by a grant of permission which the council may not grant unless they have first obtained walkway consent.

(4) In the following provisions of this Part of this Act "walkway" includes both a walkway as defined in section 35(2) above and a local Act walkway.

(5) Any reference in this Part of this Act to a highway to which this Part of this Act applies includes a reference to a local Act walkway which but for this subsection—

(a) is not a highway; or

(b) is a highway only for certain purposes.

(6) The use of a highway by vehicular traffic is to be taken as prohibited for the purposes of this Part of this Act where its use by such traffic is prohibited over the whole width of the highway even if the prohibition is contained in a traffic order which does not prohibit certain vehicles or certain classes of vehicle using the highway or part of it or using the highway or part of it at certain times or on certain days or during certain periods.

(7) In this Part of this Act "frontagers" means the owners and occupiers of any premises adjoining the part of a highway on, in or over which an object or structure would be placed or on which facilities for recreation or refreshment or both have been, are being or would be provided; but frontagers have an interest under this Part of this Act only in proposals to place objects or structures or provide or operate facilities wholly or partly between their premises and the centre of the highway.

(8) References to a council in this Part of this Act include references to the Council of the Isles of Scilly.

Textual Amendments

F179 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123: 1, 2), s. 4, **Sch. 2 para. 45(6)**

F180 Words substituted by Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), s. 146, **Sch. 13 para. 44**

115B Provision etc. of services and amenities by councils. E+W

(1) Subject to subsections (4), (5) and (7) below, a council shall have power—

(a) to carry out works on, in or over a highway to which this Part of this Act applies; and

(b) to place objects or structures on, in or over such a highway, for the purpose—

(i) of giving effect to a pedestrian planning order;

(ii) of enhancing the amenity of the highway and its immediate surroundings; or

(iii) of providing a service for the benefit of the public or a section of the public.

(2) A council shall have power to maintain—

(a) any works carried out under paragraph (a) of subsection (1) above; and

(b) any objects or structures placed on, in or over a highway under paragraph (b) of that subsection.

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(3) Without prejudice to the generality of this section, the amenity of a highway may be enhanced by providing lawns, trees, shrubs or flowers.

(4) A council may not exercise the powers conferred by this section on, in or over a walkway unless they have first obtained walkway consent.

(5) Where subsection (6) below applies, a council may not, in the exercise of the power conferred by subsection (1)(b) above, place an object or structure on, in or over a highway—

(a) for a purpose which will result in the production of income; or

(b) for the purpose of providing a centre for advice or information, unless they have first obtained the consent of the frontagers with an interest—

(i) to the placing of the object or structure; and

(ii) to the purpose for which it is to be placed.

(6) This subsection applies where the object or structure would be placed—

(a) on, in or over a footpath;

(b) on, in or over a bridleway; or

(c) on, in or over a footway in relation to which no pedestrian planning order or traffic order is in force.

(7) Where a council propose—

(a) to place an object or structure on, in or over a highway to which this Part of this Act applies—

(i) for a purpose which will result in the production of income; or

(ii) for the purpose of providing a centre for advice or information; and

(b) to grant a person permission under section 115E below to use the object or structure,

they may not exercise the power conferred by subsection (1)(b) above unless they have first obtained the consent of the frontagers with an interest—

(i) to the placing of the object or structure;

(ii) to the purpose for which it would be placed; and

(iii) to the proposed grant of permission.

Modifications etc. (not altering text)

C39 S. 115B applied in part (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. I**; S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

115C Provision of recreation and refreshment facilities by councils. E+W

(1) Subject to subsections (2) and (3) below, a council shall have power to provide, maintain and operate facilities for recreation or refreshment or both on a highway to which this Part of this Act applies.

(2) A council may not exercise the powers conferred by this section on a walkway unless they have first obtained walkway consent.

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(3) Where subsection (4) below applies, a council may not exercise the powers conferred by this section unless they have first obtained the consent of the frontagers with an interest.

(4) This subsection applies where the facilities are to be provided—

(a) on a footpath; or

(b) on a bridleway; or

(c) on a footway in relation to which no pedestrian planning order or traffic order is in force.

Modifications etc. (not altering text)

C40 S. 115C applied in part (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. I**; S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

115D Limits of powers under ss. 115B and 115C. E+W

A council may exercise their powers under section 115B or 115C above to restrict the access of the public to any part of a highway to which this Part of this Act applies, but shall not so exercise them—

(a) as to prevent traffic, other than vehicular traffic,—

(i) entering the highway at any place where such traffic could enter it before, as the case may be, the making of a pedestrian planning order or a traffic order in relation to it or the exercise in relation to it of a power conferred by this Part of this Act; or

(ii) passing along it; or

(iii) having normal access to premises adjoining it; or

(b) as to prevent any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order; or

(c) as to prevent statutory undertakers. . . [F181] having access to any apparatus of theirs under, in, on or over the highway **[**[F182]; or**]**

[[F182](d) as to prevent the operator of a telecommunications code system having access to any telecommunication apparatus kept installed for the purposes of that system under, in, on or over the highway.**]**

Textual Amendments

F181 Words repealed 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**

F182 Words inserted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 76(3), **Sch. 5 para. 45**

115E Execution of works and use of objects etc. by persons other than councils. E+W

(1) Subject to subsections (2) to (4) below, a council may grant a person permission—

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(a) to do on, in or over a highway to which this Part of this Act applies anything which the council could do on, in or over such a highway under section 115B(1) to (3) or 115C above; or

(b) to use objects or structures on, in or over a highway to which this Part of this Act applies—

(i) for a purpose which will result in the production of income;

(ii) for the purpose of providing a centre for advice or information; or

(iii) for the purpose of advertising.

(2) A council may not grant a person permission under subsection (1)(a) above to place an object or structure on, in or over a highway to which this Part of this Act applies—

(a) for a purpose which will result in the production of income; or

(b) for the purpose of providing a centre for advice or information,

unless they have first obtained the consent of the frontagers with an interest—

(i) to the placing of the object or structure;

(ii) to the purpose for which it would be placed; and

(iii) to the proposed grant of permission.

(3) A council may not grant a person permission to do anything which the council could only do under section 115C above unless they have first obtained the consent of the frontagers with an interest.

(4) A council may not grant a person permission—

(a) to carry out works on, in or over a walkway;

(b) to place an object or structure on, in or over a walkway; or

(c) to provide, maintain or operate facilities for recreation or refreshment or both on a walkway,

unless they have first obtained walkway consent.

115F Power to impose conditions on permissions under section 115E. E+W

(1) Subject to subsections (2) to (4) below, a council may grant a permission under section 115E above upon such conditions as they think fit, including conditions requiring the payment to the council of such reasonable charges as they may determine.

(2) Except where the council are the owners of the subsoil beneath the part of the highway in relation to which the permission is granted, the charges may not exceed the standard amount.

(3) In subsection (2) above, "the standard amount" means—

(a) in relation to permission to use an object or structure provided by a council, the aggregate—

(i) of the cost of providing it; and

(ii) of such charges as will reimburse the council their reasonable expenses in connection with granting the permission;

(b) in relation to permission to operate facilities provided by a council for recreation or refreshment or both, the aggregate—

(i) of the cost of providing them; and

(ii) of such charges as will reimburse the council their reasonable expenses in connection with granting the permission; and

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(c) in any other case, such charges as will reimburse the council their reasonable expenses in connection with granting the permission.

(4) Nothing in this section shall prejudice the right of a council to require an indemnity against any claim in respect of injury, damage or loss arising out of the grant of the permission; but this subsection is not to be taken as requiring any person to indemnify a council against any claim in respect of injury, damage or loss which is attributable to the negligence of the council.

115G Notices to be given before exercise of powers under Part VIIA. E+W

(1) Subject to subsection (4) below, a council shall not—

(a) exercise any power conferred by section 115B or 115C above; or

(b) grant any permission under section 115E above unless they have first published a notice under this section.

(2) A council shall publish a notice under this section—

(a) by affixing it in a conspicuous position at or near the place to which the proposal relates; and

(b) by serving a copy of the notice on the owner and occupier of any premises appearing to the council to be likely to be materially affected.

(3) A notice under this section—

(a) shall give details of the proposal; and

(b) shall specify a period (being not less than 28 days after the publication of the notice) during which representations regarding the proposal may be made to the council.

(4) No notice under this section is required where a council propose to exercise a power conferred by section 115B or 115C above in relation to a highway in relation to which a pedestrian planning order or a traffic order has been made.

(5) Where a council have published a notice under this section, they shall not exercise the power or grant the permission to which the notice relates until they have taken into consideration all representations made to them in connection with the proposal within the period specified in the notice.

115H Duties to consult or obtain consent of other authorities. E+W

(1) Subject to **[**F183subsection (3)**]** below, a council shall not—

(a) exercise any power conferred by section 115B or 115C above; or

(b) grant any permission under section 115E above, in relation to a highway unless they have consulted—

(i) any authority other than themselves who are the highway authority for the highway; and

(ii) any authority other than themselves who are a local planning authority, as defined in **[**F184the Town and Country Planning Act 1990**]** for the area in which, as the case may be, they propose to exercise the power or to which the proposed permission would relate.

(2) F185

(3) **[**F186Subsection (1) above shall have effect in relation to a highway—

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(a) to which this Part of this Act applies; and

(b) in relation to which there is no pedestrian planning order in force, as**]** if the requirement to consult the highway authority were a requirement to obtain their consent to the exercise of the power or the granting of the permission.

(4) Where a highway to which this Part of this Act applies is maintained by the British Railways Board or **[**[F187]London Regional Transport or any subsidiary of London Regional Transport (within the meaning of the London Regional Transport Act 1984)**]**, a council shall not exercise any power conferred by section 115B or 115C above or grant a permission in relation to it under section 115E above except with the consent of the Board or, as the case may be, **[**[F188]London Regional Transport or that subsidiary of London Regional Transport**]**.

Textual Amendments

F183 Words substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 23**

F184 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(7)**

F185 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F186 Words substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 23**

F187 Words substituted by London Regional Transport Act 1984 (c. 32, SIF 126), **s. 71(3)**(*a*), Sch. 6 para. 16(*a*)

F188 Words substituted by London Regional Transport Act 1984 (c. 32, SIF 126), **s. 71(3)**(*a*), Sch. 6 para. 16(*b*)

115J Consents not to be unreasonably withheld. E+W

(1) Consent to which this section applies is not to be unreasonably withheld but may be given subject to any reasonable conditions.

(2) Without prejudice to the generality of subsection (1) above, it may be reasonable for consent to which this section applies to be given for a specified period of time or subject to the payment of a reasonable sum.

(3) Consent is to be treated as unreasonably withheld for the purposes of this section if—

(a) the council have served a notice asking for consent on the person whose consent is required; and

(b) he fails within 28 days of the service of the notice to give the council notice of his consent or his refusal to give it.

(4) Any question whether consent is unreasonably withheld or is given subject to reasonable conditions shall be referred to and determined by an arbitrator to be appointed, in default of agreement, by the President of the Chartered Institute of Arbitrators.

(5) If—

(a) the arbitrator determines that consent has been unreasonably withheld; but

(b) it appears to him that there are conditions subject to which it would be reasonable to give it,

he may direct that it shall be treated as having been given subject to those conditions.

(6) If—

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(a) the arbitrator determines that any condition subject to which consent has been given is unreasonable; but

(b) it appears to him that there are conditions subject to which it would have been reasonable to give it,

he may direct that it shall be treated as having been given subject to those conditions.

(7) Subject to subsection (8) below, the expenses and remuneration of the arbitrator shall be paid by the council seeking the consent.

(8) Where the arbitration concerns the consent of the British Railways Board or **[**[F189]London Regional Transport or any subsidiary of London Regional Transport (within the meaning of the London Regional Transport Act 1984)**]** under section 115H(4) above, the arbitrator may give such directions as he thinks fit as to the payment of his expenses and remuneration.

(9) This section applies to consent required under any provision of this Part of this Act except section 115H(1) above.

Textual Amendments

F189 Words substituted by London Regional Transport Act 1984 (c. 32, SIF 126), **s. 71(3)**(*a*), Sch. 6 para. 17

115K Failure to comply with terms of permission. E+W

(1) If it appears to a council that a person to whom they have granted a permission under section 115E above has committed any breach of the terms of that permission, they may serve a notice on him requiring him to take such steps to remedy the breach as are specified in the notice within such time as is so specified.

(2) If a person on whom a notice is served under subsection (1) above fails to comply with the notice, the council may take the steps themselves.

(3) Where a council have incurred expenses in the exercise of the power conferred on them by subsection (2) above, those expenses, together with interest at such reasonable rate as the council may determine from the date of service of a notice of demand for the expenses, may be recovered by the council from the person on whom the notice under subsection (1) above was served.**]**

PART VIII E+W

STOPPING UP AND DIVERSION OF HIGHWAYS AND STOPPING UP OF MEANS OF ACCESS TO HIGHWAYS

Stopping up and diversion of highways

116 Power of magistrates' court to authorise stopping up or diversion of highway. E+W

(1) Subject to the provisions of this section, if it appears to a magistrates' court, after a view, if the court thinks fit, by any two or more of the justices composing the

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court, that a highway (other than a trunk road or a special road) as respects which the **[**F190highway**]** authority have made an application under this section—

(a) is unnecessary, or

(b) can be diverted so as to make it nearer or more commodious to the public,

the court may by order authorise it to be stopped up or, as the case may be, to be so diverted.

(2) F191

(3) If an authority propose to make an application under this section for an order relating to any highway (other than a classified road) they shall give notice of the proposal to—

[F192(a) if the highway is in a non-metropolitan district, the council of that district; and**]**

[F193(aa) if the highway is in Wales, the Welsh council for the area in which it is situated if they are not the highway authority for it; and**]**

(b) if the highway is in England, the council of the parish (if any) in which the highway is situated or, if the parish does not have a separate parish council, to the chairman of the parish meeting; and

(c) if the highway is in Wales, the council (if any) of the community in which the highway is situated;

and the application shall not be made if within 2 months from the date of service of the notice by the authority notice is given to the authority by the district council **[**F194or Welsh council**]** or by the parish or community council or, as the case may be, by the chairman of the parish meeting that the council or meeting have refused to consent to the making of the application.

(4) An application under this section may be made, and an order under it may provide, for the stopping up or diversion of a highway for the purposes of all traffic, or subject to the reservation of a footpath or bridleway.

(5) An application or order under this section may include 2 or more highways which are connected with each other.

(6) A magistrates' court shall not make an order under this section unless it is satisfied that the applicant authority have given the notices required by Part I of Schedule 12 to this Act.

(7) On the hearing of an application under this section the applicant authority, any person to whom notice is required to be given under paragraph 1 of Schedule 12, any person who uses the highway and any other person who would be aggrieved by the making of the order applied for, have a right to be heard.

(8) An order under this section authorising the diversion of a highway—

(a) shall not be made unless the written consent of every person having a legal interest in the land over which the highway is to be diverted is produced to and deposited with the court; and

(b) except in so far as the carrying out of the diversion may necessitate temporary interference with the highway, shall not authorise the stopping up of any part of the highway until the new part to be substituted for the part to be stopped up (including, where a diversion falls to be carried out under orders of 2 different courts, any necessary continuation of the new part in the area of the other court) has been completed to the satisfaction of 2 justices of the peace acting for the same petty sessions area as the court by which the order was made and

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a certificate to that effect signed by them has been transmitted to the clerk of the applicant authority.

(9) Every order under this section shall have annexed to it a plan signed by the chairman of the court and shall be transmitted by the clerk of the court to the proper officer of the applicant authority, together with any written consents produced to the court under subsection (8) above.

(10) Part II of Schedule 12 to this Act applies where, in pursuance of an order under this section, a highway is stopped up or diverted and, immediately before the order is made, there is under, in, upon, over, along or across the highway any apparatus belonging to or used by any statutory undertakers for the purpose of their undertaking.

[[F195](11) In this section "statutory undertakers" includes operators of driver information systems.**]**

Textual Amendments

F190 Word substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 24**(*a*)

F191 S. 116(2) repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F192 S. 116(3)(*a*) substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 24**(*b*)

F193 S. 116(3)(aa) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.11** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F194 Words in s. 116(3) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.11** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F195 S. 116(11) inserted by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), s. 13(1), **Sch. 4 para. 3(3)**

117 Application for order under section 116 on behalf of another person. E+W

A person who desires a highway to be stopped up or diverted but is not authorised to make an application for that purpose under section 116 above may request the highway authority. . . [F196] to make such an application; and if the authority grant the request they may, as a condition of making the application, require him to make such provision for any costs to be incurred by them in connection with the matter as they deem reasonable.

Textual Amendments

F196 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

118 Stopping up of footpaths and bridleways. E+W

(1) Where it appears to a council as respects a footpath or bridleway in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.

An order under this section is referred to in this Act as a "public path extinguishment order".

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(2) The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

(3) A public path extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.

(4) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.

(5) Where, in accordance with regulations made under paragraph 3 of the said Schedule 6, proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order **[**F197, public path diversion order or rail crossing diversion order**]** then, in considering—

(a) under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use, or

(b) under subsection (2) above to what extent (if any) that path or way would apart from the order be likely to be used by the public,

the council or the Secretary of State, as the case may be, may have regard to the extent to which the public path creation order **[**F198, public path diversion order or rail crossing diversion order**]** would provide an alternative path or way.

(6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.

(7) In this section and in sections **[**F199118A**]** to 121 below "council" includes a joint planning board, within the meaning of **[**F200the Town and Country Planning Act 1990**]**, for an area which comprises any part of a National Park.

Textual Amendments

F197 Words in s. 118(5) substituted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 2(2)**; S. I. 1992/3144, **arts. 2**, 3,Sch.

F198 Words in s. 118(5) substituted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 2(2)**; S.I. 1992/3144, **arts. 2**, 3,Sch.

F199 Words in s. 118(7) substituted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 2(3)**; S.I. 1992/3144, **arts. 2**, 3,Sch.

F200 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(7)**

Modifications etc. (not altering text)

C41 S. 118 extended by Norfolk and Suffolk Broads Act 1988 (c. 4, SIF 81:1), ss. 2(5)(6), 23(2), 27(2), **Sch. 3 para. 47(1)**

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C42 S. 118-121 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 11(c)** (with ss. 7(6), 115, 117, Sch. 8 para. 7).

PROSPECTIVE

[F201 118ZA Application for a public path extinguishment order. E+W

(1) The owner, lessee or occupier of any land used for agriculture, forestry or the breeding or keeping of horses may apply to a council for the area in which the land is situated for the making of a public path extinguishment order in relation to any footpath or bridleway which crosses the land.

(2) An application under this section shall be in such form as may be prescribed and shall be accompanied by a map, on such scale as may be prescribed, showing the land over which it is proposed that the public right of way should be extinguished, and by such other information as may be prescribed.

(3) Regulations may provide—

(a) that a prescribed charge is payable on the making of an application under this section, and

(b) that further prescribed charges are payable by the applicant if the council make a public path extinguishment order on the application.

(4) An application under this section is not to be taken to be received by the council until the requirements of regulations under section 121A below have been satisfied in relation to it.

(5) A council which receives an application under this section shall determine the application as soon as reasonably practicable.

(6) Before determining to make a public path extinguishment order on an application under this section, the council may require the applicant to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards, any compensation which may become payable under section 28 above as applied by section 121(2) below.

(7) Where—

(a) an application under this section has been made to a council, and

(b) the council have not determined the application within four months of receiving it,

the Secretary of State may, at the request of the applicant and after consulting the council, by direction require the council to determine the application before the end of such period as may be specified in the direction.

(8) As soon as practicable after determining an application under this section, the council shall—

(a) give to the applicant notice in writing of their decision and the reasons for it, and

(b) give a copy of the notice to such other persons as may be prescribed.

(9) The council to whom an application under this section has been made may make a public path extinguishment order on the application only if the land over which the

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public right of way is to be extinguished by the order is that shown for the purposes of subsection (2) above on the map accompanying the application.

(10) Any reference in this Act to the map accompanying an application under this section includes a reference to any revised map submitted by the applicant in prescribed circumstances in substitution for that map.

(11) This section has effect subject to the provisions of sections 121A and 121C below.

(12) In this section—

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Secretary of State.**]**

Textual Amendments

F201 S. 118ZA inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 7**

[F202 118A Stopping up of footpaths and bridleways crossing railways. E+W

(1) This section applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath or bridleway in their area which crosses a railway, otherwise than by tunnel or bridge, should be stopped up.

(2) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way—

(a) on the crossing itself, and

(b) for so much of its length as they deem expedient from the crossing to its intersection with another highway over which there subsists a like right of way (whether or not other rights of way also subsist over it).

(3) An order under this section is referred to in this Act as a "rail crossing extinguishment order".

(4) The Secretary of State shall not confirm a rail crossing extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient to do so having regard to all the circumstances, and in particular to—

(a) whether it is reasonably practicable to make the crossing safe for use by the public, and

(b) what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.

(5) Before determining to make a rail crossing extinguishment order on the representations of the operator of the railway crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards, any expenses which the council may incur in connection with the erection or maintenance of barriers and signs.

(6) A rail crossing extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.

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***Changes to legislation:** Highways Act 1980 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of rail crossing extinguishment orders.

(8) In this section—

"operator", in relation to a railway, means any person carrying on an undertaking which includes maintaining the permanent way;

"railway" includes tramway but does not include any part of a system where rails are laid along a carriageway.**]**

Textual Amendments

F202 S. 118A inserted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para.3**; S.I. 1992/3144, **arts. 2**, 3,Sch.

Modifications etc. (not altering text)

C43 S. 118-121 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 11(c)** (with ss. 7(6), 115, 117, Sch. 8 para. 7).

C44 S. 118A applied (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. I**; S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

VALID FROM 12/02/2003

[F203 118B Stopping up of certain highways for purposes of crime prevention, etc. E+W

(1) This section applies where it appears to a council—

(a) that, as respects any relevant highway for which they are the highway authority and which is in an area designated by the Secretary of State by order for the purposes of this section, the conditions in subsection (3) below are satisfied and it is expedient, for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, that the highway should be stopped up, or

(b) that, as respects any relevant highway for which they are the highway authority and which crosses land occupied for the purposes of a school, it is expedient, for the purpose of protecting the pupils or staff from—

(i) violence or the threat of violence,

(ii) harassment,

(iii) alarm or distress arising from unlawful activity, or

(iv) any other risk to their health or safety arising from such activity,

that the highway should be stopped up.

(2) In subsection (1) above "relevant highway" means—

(a) any footpath, bridleway or restricted byway,

(b) any highway which is shown in a definitive map and statement as a footpath, a bridleway, or a restricted byway, but over which the public have a right of way for vehicular and all other kinds of traffic, or

(c) any highway which is shown in a definitive map and statement as a byway open to all traffic,

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but does not include a highway that is a trunk road or a special road.

(3) The conditions referred to in subsection (1)(a) above are—

(a) that premises adjoining or adjacent to the highway are affected by high levels of crime, and

(b) that the existence of the highway is facilitating the persistent commission of criminal offences.

(4) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the highway.

(5) An order under subsection (4) above is in this Act referred to as a "special extinguishment order".

(6) Before making a special extinguishment order, the council shall consult the police authority for the area in which the highway lies.

(7) The Secretary of State shall not confirm a special extinguishment order made by virtue of subsection (1)(a) above, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the conditions in subsection (3) above are satisfied, that the stopping up of the highway is expedient as mentioned in subsection (1)(a) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to—

(a) whether and, if so, to what extent the order is consistent with any strategy for the reduction of crime and disorder prepared under section 6 of the [M28]Crime and Disorder Act 1998,

(b) the availability of a reasonably convenient alternative route or, if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the highway under section 119B below rather than stopping it up, and

(c) the effect which the extinguishment of the right of way would have as respects land served by the highway, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

(8) The Secretary of State shall not confirm a special extinguishment order made by virtue of subsection (1)(b) above, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the stopping up of the highway is expedient as mentioned in subsection (1)(b) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to—

(a) any other measures that have been or could be taken for improving or maintaining the security of the school,

(b) whether it is likely that the coming into operation of the order will result in a substantial improvement in that security,

(c) the availability of a reasonably convenient alternative route or, if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the highway under section 119B below rather than stopping it up, and

(d) the effect which the extinguishment of the right of way would have as respects land served by the highway, account being taken of the provisions as

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to compensation contained in section 28 above as applied by section 121(2) below.

(9) A special extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be prescribed, defining the land over which the public right of way is thereby extinguished.

(10) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of special extinguishment orders.**]**

Textual Amendments

F203 S. 118B inserted (12.2.2003 for E., 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 8; S.I. 2003/272, **art. 2(a)(e)**; S.I. 2005/1314, **art. 3(b)**

Marginal Citations

M28 1998 c. 37.

PROSPECTIVE

[F204 118C Application by proprietor of school for special extinguishment order. E+W

(1) The proprietor of a school may apply to a council for the making by virtue of section 118B(1)(b) above of a special extinguishment order in relation to any highway for which the council are the highway authority and which—

(a) crosses land occupied for the purposes of the school, and

(b) is a relevant highway as defined by section 118B(2) above.

(2) Subsections (2) to (11) of section 118ZA above shall apply to applications under this section as they apply to applications under that section, with the substitution for references to a public path extinguishment order of references to a special extinguishment order; and regulations made under that section by virtue of this subsection may make different provision for the purposes of this section and for the purposes of that section.**]**

Textual Amendments

F204 S. 118C inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 8**

119 Diversion of footpaths and bridleways. E+W

(1) **[**F205Where it appears to a council as respects a footpath or bridleway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or**]** of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,—

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(a) create, as from such date as may be specified in the order, any such new footpath or bridleway as appears to the council requisite for effecting the diversion, and

(b) extinguish, as from such date as may be so specified in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.

An order under this section is referred to in this Act as a "public path diversion order".

(2) A public path diversion order shall not alter a point of termination of the path or way—

(a) if that point is not on a highway, or

(b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.

(3) Where it appears to the council that work requires to be done to provide necessary facilities for the convenient exercise of any such new public right of way as is mentioned in subsection (1)(a) above, the date specified under subsection (1)(b) above shall be later than the date specified under subsection (1)(a) by such time as appears to the council requisite for enabling the work to be carried out.

(4) A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.

(5) Before determining to make a public path diversion order **[**F206on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him**]** to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—

(a) any compensation which may become payable under section 28 above as applied by section 121(2) below, or

(b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public, or

(c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.

(6) The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—

(a) the diversion would have on public enjoyment of the path or way as a whole,

(b) the coming into operation of the order would have as respects other land served by the existing public right of way, and

(c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,

so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) above.

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(7) A public path diversion order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed,—

(a) showing the existing site of so much of the line of the path or way as is to be diverted by the order and the new site to which it is to be diverted,

(b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a footpath or bridleway, and

(c) where some part of the new site is already so comprised, defining that part.

(8) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path diversion orders.

(9) Section 27 above (making up of new footpaths and bridleways) applies to a footpath or bridleway created by a public path diversion order with the substitution, for references to a public path creation order, of references to a public path diversion order and, for references to section 26(2) above, of references to section 120(3) below.

Textual Amendments

F205 Words substituted by Wildlife and Countryside Act 1981 (c. 69, SIF 4:5), ss. 53, 54, Sch. 16 paras. 5(1), **10(1)**

F206 Words substituted by Wildlife and Countryside Act 1981 (c. 69, SIF 4:5), ss. 53, 54, Sch. 16 paras. 5(1), **10(1)**

Modifications etc. (not altering text)

C45 S. 119 extended by Norfolk and Suffolk Broads Act 1988 (c. 4, SIF 81:1), ss. 2(5)(6), 23(2), 27(2), **Sch. 3 para. 47(1)**

C46 S. 118-121 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 11(c)** (with ss. 7(6), 115, 117, Sch. 8 para. 7).

C47 S. 119: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**

PROSPECTIVE

[F207 119ZA Application for a public path diversion order. E+W

(1) Subject to subsection (2) below, the owner, lessee or occupier of any land used for agriculture, forestry or the breeding or keeping of horses may apply to a council for the area in which the land is situated for the making of a public path diversion order in relation to any footpath or bridleway which crosses the land, on the ground that in his interests it is expedient that the order should be made.

(2) No application may be made under this section for an order which would create a new footpath or bridleway communicating with—

(a) a classified road,

(b) a special road,

(c) a GLA road, or

(d) any highway not falling within paragraph (a) or (b) above for which the Minister is the highway authority,

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unless the application is made with the consent of the highway authority for the way falling within paragraph (a), (b), (c) or (d) above.

(3) No application under this section may propose the creation of a new right of way over land covered by works used by any statutory undertakers for the purposes of their undertaking or the curtilage of such land, unless the application is made with the consent of the statutory undertakers; and in this subsection "statutory undertaker" and "statutory undertaking" have the same meaning as in Schedule 6 to this Act.

(4) An application under this section shall be in such form as may be prescribed and shall be accompanied by a map, on such scale as may be prescribed—

(a) showing the existing site of so much of the line of the path or way as it is proposed to divert and the new site to which it is proposed to be diverted,

(b) indicating whether it is proposed to create a new right of way over the whole of the new site or whether some of it is already comprised in a footpath or bridleway, and

(c) where some part of the new site is already so comprised, defining that part,

and by such other information as may be prescribed.

(5) Regulations may provide—

(a) that a prescribed charge is payable on the making of an application under this section, and

(b) that further prescribed charges are payable by the applicant if the council make a public path diversion order on the application.

(6) An application under this section is not to be taken to be received by the council until the requirements of regulations under section 121A below have been satisfied in relation to it.

(7) A council which receives an application under this section shall determine the application as soon as reasonably practicable.

(8) Where—

(a) an application under this section has been made to a council, and

(b) the council have not determined the application within four months of receiving it,

the Secretary of State may, at the request of the applicant and after consulting the council, by direction require the council to determine the application before the end of such period as may be specified in the direction.

(9) As soon as practicable after determining an application under this section, the council shall—

(a) give to the applicant notice in writing of their decision and the reasons for it, and

(b) give a copy of the notice to such other persons as may be prescribed.

(10) The council to whom an application under this section has been made may make a public path diversion order on the application only if—

(a) the land over which the public right of way is to be extinguished by the order, and

(b) the new site to which the path or way is to be diverted,

are those shown for the purposes of subsection (4) above on the map accompanying the application.

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(11) Any reference in this Act to the map accompanying an application under this section includes a reference to any revised map submitted by the applicant in prescribed circumstances in substitution for that map.

(12) This section has effect subject to the provisions of sections 121A and 121C below.

(13) In this section—

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Secretary of State.**]**

Textual Amendments

F207 S. 119ZA inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 10**

[F208 119A Diversion of footpaths and bridleways crossing railways. E+W

(1) This section applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath or bridleway in their area which crosses a railway, otherwise than by tunnel or bridge, should be diverted (whether on to land of the same or of another owner, lessee or occupier).

(2) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order—

(a) create, as from such date as may be specified in the order, any such new path or way as appears to the council requisite for effecting the diversion, and

(b) extinguish, as from such date as may be so specified, the public right of way over the crossing and over so much of the path or way of which the crossing forms part as appears to the council requisite as aforesaid.

(3) An order under this section is referred to in this Act as a "rail crossing diversion order".

(4) The Secretary of State shall not confirm a rail crossing diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient to do so having regard to all the circumstances, and in particular to—

(a) whether it is reasonably practicable to make the crossing safe for use by the public, and

(b) what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.

(5) A rail crossing diversion order shall not alter a point of termination of a path or way diverted under the order—

(a) if that point is not on a highway over which there subsists a like right of way (whether or not other rights of way also subsist over it), or

(b) (where it is on such a highway) otherwise than to another point which is on the same highway, or another such highway connected with it.

(6) A rail crossing diversion order may make provision requiring the operator of the railway to maintain all or part of the footpath or bridleway created by the order.

(7) Where it appears to the council that work requires to be done to provide necessary facilities for the convenient exercise of any such new right of way as is mentioned

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in subsection (2)(a) above, the date specified under subsection (2)(b) shall be later than the date specified under subsection (2)(a) by such time as appears to the council requisite for enabling the work to be carried out.

(8) Before determining to make a rail crossing diversion order on the representations of the operator of the railway crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—

(a) any compensation which may become payable under section 28 above as applied by section 121(2) below;

(b) any expenses which the council may incur in connection with the erection or maintenance of barriers and signs;

(c) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use by the public;

(d) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (11) below.

(9) A rail crossing diversion order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed—

(a) showing the existing site of so much of the line of the path or way as is to be diverted by the order and the new site to which it is to be diverted,

(b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a footpath or bridleway, and

(c) where some part of the new site is already so comprised, defining that part.

(10) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of rail crossing diversion orders.

(11) Section 27 above (making up of new footpaths and bridleways) applies to a footpath or bridleway created by a rail crossing diversion order with the substitution, for references to a public path creation order, of references to a rail crossing diversion order and, for references to section 26(2) above, of references to section 120(3) below.

(12) In this section and in section 120 below—

"operator", in relation to a railway, means any person carrying on an undertaking which includes maintaining the permanent way;

"railway" includes tramway but does not include any part of a system where rails are laid along a carriageway.**]**

Textual Amendments

F208 S. 119A inserted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para.4**; S.I. 1992/3144, **arts. 2**, 3,Sch.

Modifications etc. (not altering text)

C48 S. 118-121 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 11(c)** (with ss. 7(6), 115, 117, Sch. 8 para. 7).

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 12/02/2003

[F209 119B Diversion of certain highways for purposes of crime prevention, etc. E+W

(1) This section applies where it appears to a council—

(a) that, as respects any relevant highway for which they are the highway authority and which is in an area designated by the Secretary of State by order under section 118B(1)(a) above, the conditions in subsection (3) below are satisfied and it is expedient, for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, that the line of the highway, or part of that line should be diverted (whether on to land of the same or another owner, lessee or occupier), or

(b) that, as respects any relevant highway for which they are the highway authority and which crosses land occupied for the purposes of a school, it is expedient, for the purpose of protecting the pupils or staff from—

(i) violence or the threat of violence,

(ii) harassment,

(iii) alarm or distress arising from unlawful activity, or

(iv) any other risk to their health or safety arising from such activity,

that the line of the highway, or part of that line, should be diverted (whether on to land of the same or another owner, lessee or occupier).

(2) In subsection (1) above "relevant highway" means—

(a) any footpath, bridleway or restricted byway,

(b) any highway which is shown in a definitive map and statement as a footpath, a bridleway, or a restricted byway, but over which the public have a right of way for vehicular and all other kinds of traffic, or

(c) any highway which is shown in a definitive map and statement as a byway open to all traffic,

but does not include a highway that is a trunk road or a special road.

(3) The conditions referred to in subsection (1)(a) above are—

(a) that premises adjoining or adjacent to the highway are affected by high levels of crime, and

(b) that the existence of the highway is facilitating the persistent commission of criminal offences.

(4) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order—

(a) create, as from such date as may be specified in the order, any such—

(i) new footpath, bridleway or restricted byway, or

(ii) in a case falling within subsection (2)(b) or (c) above, new highway over which the public have a right of way for vehicular and all other kinds of traffic,

as appears to the council requisite for effecting the diversion, and

(b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (8) below, the public right of way over so much of the highway as appears to the council to be requisite for the purpose mentioned in paragraph (a) or (b) of subsection (1) above.

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Changes to legislation: *Highways Act 1980 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) An order under subsection (4) above is in this Act referred to as a "special diversion order".

(6) Before making a special diversion order, the council shall consult the police authority for the area in which the highway is situated.

(7) A special diversion order shall not alter a point of termination of the highway—

(a) if that point is not on a highway, or

(b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it.

(8) Where it appears to the council that work requires to be done to bring the new site of the highway into a fit condition for use by the public, the council shall—

(a) specify a date under subsection (4)(a) above, and

(b) provide that so much of the order as extinguishes (in accordance with subsection (4)(b) above) a public right of way is not to come into force until the local highway authority for the new highway certify that the work has been carried out.

(9) A right of way created by a special diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.

(10) The Secretary of State shall not confirm a special diversion order made by virtue of subsection (1)(a) above, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the conditions in subsection (3) above are satisfied, that the diversion of the highway is expedient as mentioned in subsection (1)(a) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to—

(a) whether and, if so, to what extent the order is consistent with any strategy for the reduction of crime and disorder prepared under section 6 of the [M29]Crime and Disorder Act 1998,

(b) the effect which the coming into operation of the order would have as respects land served by the existing public right of way, and

(c) the effect which any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,

so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

(11) The Secretary of State shall not confirm a special diversion order made by virtue of subsection (1)(b) above, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the diversion of the highway is expedient as mentioned in subsection (1)(b) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to—

(a) any other measures that have been or could be taken for improving or maintaining the security of the school,

(b) whether it is likely that the coming into operation of the order will result in a substantial improvement in that security,

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(c) the effect which the coming into operation of the order would have as respects land served by the existing public right of way, and

(d) the effect which any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,

so, however, that for the purposes of paragraphs (c) and (d) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

(12) A special diversion order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed—

(a) showing the existing site of so much of the line of the highway as is to be diverted by the order and the new site to which it is to be diverted,

(b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a highway, and

(c) where some part of the new site is already so comprised, defining that part.

(13) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of special diversion orders.

(14) Section 27 above (making up of new footpaths and bridleways) applies to a highway created by a special diversion order with the substitution—

(a) for references to a footpath or bridleway of references to a footpath, a bridleway, a restricted byway or a highway over which the public have a right of way for vehicular and all other kinds of traffic,

(b) for references to a public path creation order of references to a special diversion order, and

(c) for references to section 26(2) above of references to section 120(3) below.

(15) Neither section 27 nor section 36 above is to be regarded as obliging a highway authority to provide on any highway created by a special diversion order a metalled carriage-way.**]**

Textual Amendments

F209 S. 119B inserted (12.2.2003 for E., 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 12; S.I. 2003/272, **art. 2(a)(h)**; S.I. 2005/1314, **art. 3(c)**

Marginal Citations

M29 1998 c. 37.

PROSPECTIVE

[F210 119C Application by proprietor of school for special diversion order. E+W

(1) The proprietor of a school may apply to a council for the making by virtue of section 119B(1)(b) above of a special diversion order in relation to any highway for which the council are the highway authority and which—

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(a) crosses land occupied for the purposes of the school, and

(b) is a relevant highway as defined by section 119B(2) above.

(2) No application may be made under this section for an order which would create a new highway communicating with—

(a) a classified road,

(b) a special road,

(c) a GLA road, or

(d) any highway not falling within paragraph (a) or (b) above for which the Minister is the highway authority,

unless the application is made with the consent of the highway authority for the way falling within paragraph (a), (b), (c) or (d) above.

(3) Before determining to make a special diversion order on an application under this section, the council may require the applicant to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards—

(a) any compensation which may become payable under section 28 above as applied by section 121(2) below, or

(b) to the extent that the council are the highway authority for the highway in question, any expenses which they may incur in bringing the new site of the highway into fit condition for use by the public, or

(c) to the extent that the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by section 119B(14) above.

(4) Subsections (3) to (12) of section 119ZA above shall apply to applications under this section as they apply to applications under that section, with the substitution—

(a) for references to a public path diversion order of references to a special diversion order, and

(b) for references to a footpath or bridleway of references to a highway,

and regulations made under that section by virtue of this subsection may make different provision for the purposes of this section and for the purposes of that section.**]**

Textual Amendments

F210 S. 119C inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 12**

VALID FROM 21/05/2007

[F211 119D Diversion of certain highways for protection of sites of special scientific interest. E+W

(1) Subsection (3) below applies where, on an application made in accordance with this section by the appropriate conservation body, it appears to a council, as respects any relevant highway for which they are the highway authority and which is in, forms part of, or is adjacent to or contiguous with, a site of special scientific interest—

(a) that public use of the highway is causing, or that continued public use of the highway is likely to cause, significant damage to the flora, fauna or

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geological or physiographical features by reason of which the site of special scientific interest is of special interest, and

(b) that it is expedient that the line of the highway, or part of that line should be diverted (whether on to land of the same or another owner, lessee or occupier) for the purpose of preventing such damage.

(2) In subsection (1) "relevant highway" means—

(a) a footpath, bridleway or restricted byway,

(b) a highway which is shown in a definitive map and statement as a footpath, a bridleway or a restricted byway but over which the public have a right of way for vehicular and all other kinds of traffic, or

(c) any highway which is shown in a definitive map and statement as a byway open to all traffic,

but does not include any highway that is a trunk road or special road.

(3) Where this subsection applies, the council may, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,—

(a) create, as from such date as may be specified in the order, any such—

(i) new footpath, bridleway or restricted byway, or

(ii) in a case falling within subsection (2)(b) or (c) above, new highway over which the public have a right of way for vehicular and all other kinds of traffic,

as appears to the council requisite for effecting the diversion, and

(b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (6) below, the public right of way over so much of the way as appears to the council to be requisite for the purpose mentioned in subsection (1)(b) above.

(4) An order under this section is referred to in this Act as an "SSSI diversion order".

(5) An SSSI diversion order shall not alter a point of termination of the highway—

(a) if that point is not on a highway, or

(b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it.

(6) Where it appears to the council that work requires to be done to bring the new site of the highway into a fit condition for use by the public, the council shall—

(a) specify a date under subsection (3)(a) above, and

(b) provide that so much of the order as extinguishes (in accordance with subsection (3)(b) above) a public right of way is not to come into force until the local highway authority for the new highway certify that the work has been carried out.

(7) A right of way created by an SSSI diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.

(8) Before determining to make an SSSI diversion order, the council may require the appropriate conservation body to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—

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(a) any compensation which may become payable under section 28 above as applied by section 121(2) below,

(b) to the extent that the council are the highway authority for the highway, any expenses which they may incur in bringing the new site of the highway into fit condition for use for the public, or

(c) to the extent that the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by section 119E(6) below.

(9) The Secretary of State shall not confirm an SSSI diversion order, and a council shall not confirm such an order as an unopposed order, unless he, or as the case may be, they are satisfied that the conditions in subsection (1)(a) and (b) are satisfied, and that it is expedient to confirm the order having regard to the effect which—

(a) the diversion would have on public enjoyment of the right of way as a whole;

(b) the coming into operation of the order would have as respects other land served by the existing public right of way; and

(c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,

so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (8)(a) above.

(10) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of SSSI diversion orders.

(11) This section has effect subject to section 119E below.

(12) In this section—

"the appropriate conservation body" means—

(a) as respects England, **[**[F212]Natural England**]** , and

(b) as respects Wales, the Countryside Council for Wales;

"site of special scientific interest" has the same meaning as in the [M30]Wildlife and Countryside Act 1981.**]**

Textual Amendments

F211 S. 119D inserted (21.5.2007 for E. and otherwise prosp.) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 12; S.I. 2007/1493, **art. 2**

F212 Words in s. 119D(12) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), s. 105(1), **Sch. 11 Pt. 1 para. 64**; S.I. 2006/2541, **art. 2**

Marginal Citations

M30 1981 c. 69.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 21/05/2007

[F213 119E Provisions supplementary to section 119D. E+W

(1) An application under section 119D above shall be in such form as may be prescribed and shall be accompanied by—

(a) a map, on such scale as may be prescribed,—

(i) showing the existing site of so much of the line of the highway as would be diverted if the order were made and the new site to which it would be diverted,

(ii) indicating whether a new right of way would be created by the order over the whole of the new site or whether some of it is already comprised in a highway, and

(iii) where some part of the new site is already so comprised, defining that part,

(b) by an assessment in the prescribed form of the effects of public use of the right of way on the site of special scientific interest, and

(c) by such other information as may be prescribed.

(2) At least fourteen days before making an application under section 119D above, the appropriate conservation body shall give a notice in the prescribed form of their intention to do so—

(a) to any owner, lessee or occupier of land over which the proposed order would create or extinguish a public right of way; **[**F214 and**]**

(b) to such other persons as may be prescribed; F215 . . .

(c) F215 . . . . . .

(3) A council, in determining whether it is expedient to make or confirm an SSSI diversion order, and the Secretary of State, in determining whether to confirm such an order, shall, in particular, have regard to the following questions—

(a) whether the council would be able to prevent damage of the kind referred to in section 119D(1) above by making a traffic regulation order, and

(b) if so, whether the making of a traffic regulation order would cause less inconvenience to the public than that which would be caused by the diversion of the highway.

(4) The Secretary of State, in determining whether it is expedient to make an SSSI diversion order under section 120(3) below in a case where by virtue of section 22(4) of the M31 Road Traffic Regulation Act 1984 he has power to make a traffic regulation order shall, in particular, have regard to the following questions—

(a) whether he would be able to prevent damage of the kind referred to in section 119D(1) above by making a traffic regulation order, and

(b) if so, whether the making of a traffic regulation order would cause less inconvenience to the public than that which would be caused by the diversion of the highway.

(5) An SSSI diversion order shall be in such form as may be prescribed and shall contain a map, on such scale as may be prescribed,—

(a) showing the existing site of so much of the line of the highway as is to be diverted by the order and the new site to which it is to be diverted,

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(b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a highway, and

(c) where some part of the new site is already so comprised, defining that part.

(6) Section 27 above (making up of new footpaths**[**F216, bridleways and restricted byways**]**) applies to a highway created by an SSSI diversion order with the substitution—

(a) for references to a footpath**[**F217, bridleway or restricted byway**]** of references to a footpath, a bridleway, a restricted byway or a highway over which the public have a right of way for vehicular and all other kinds of traffic,

(b) for references to a public path creation order, of references to an SSSI diversion order, and

(c) for references to section 26(2) above, of references to section 120(3) below.

(7) Neither section 27 nor section 36 above is to be regarded as obliging a highway authority to provide on any highway created by an SSSI diversion order a metalled carriage-way.

(8) In this section—

"the appropriate conservation body" has the same meaning as in section 119D above;

"prescribed" means prescribed by regulations made by the Secretary of State;

"site of special scientific interest" has the same meaning as in the M32Wildlife and Countryside Act 1981;

"traffic regulation order" means an order under section 1 or 6 of the Road Traffic Regulation Act 1984.**]**

Textual Amendments

F213 S. 119E inserted (21.5.2007 for E. and otherwise prosp.) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 12; S.I. 2007/1493, **art. 2**

F214 Words in s. 119E(2)(a) inserted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), s. 105(1), **Sch. 11 para. 65**; S.I. 2006/2541, **art. 2**

F215 S. 119E(2)(c) and preceding word repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), s. 105, **Sch. 11 para. 65**, **Sch. 12**; S.I. 2006/2541, **art. 2**

F216 Words in s. 119E(6) substituted (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)

F217 Words in s. 119E(6)(a) substituted (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)

Marginal Citations

M31 1984 c. 27.

M32 1981 c. 69.

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120 Exercise of powers of making public path extinguishment and diversion orders. E+W

(1) Where a footpath or bridleway lies partly within and partly outside the area of a council the powers conferred by sections 118 **[**F218to 119A**]** above on the council extend, subject to subsection (2) below, to the whole of the path or way as if it lay wholly within their area.

(2) The powers of making **[**F219orders under sections 118 to 119A**]** above are not exercisable by a council—

(a) with respect to any part of a footpath or bridleway which is within their area, without prior consultation with **[**F220any**]** other council in whose area that part of the footpath or bridleway is situated;

(b) with respect to any part of a footpath or bridleway which is outside their area, without the consent of every council in whose area it is; and

(c) with respect to any part of a footpath or bridleway in a National Park, without prior consultation with the Countryside Commission **[**F221(if the National Park is in England) or the Countryside Council for Wales (if the National Park is in Wales)**]**.

(3) Where it appears to the Secretary of State as respects a footpath or bridleway that it is expedient as mentioned in section 118(1) **[**F222or 118A(1) or 119A(1)**]** above that the path or way should be stopped up **[**F223or diverted**]**, or where an owner, lessee or occupier of land crossed by a footpath or bridleway satisfies the Secretary of State that a diversion of it is expedient as mentioned in section 119(1) above, then if—

(a) no council having power to do so have made and submitted to him a public path extinguishment order **[**F224, a rail crossing extinguishment order, a rail crossing diversion order**]** or a public path diversion order, as the case may be, and

(b) the Secretary of State is satisfied that, if such an order were made and submitted to him, he would have power to confirm the order in accordance with the provisions in that behalf of sections 118 **[**F225to 119A**]** above,

he may himself make the order after consultation **[**F226(subject to subsection (3A) below)**]**with the appropriate authority.

[F227(3A) Where—

(a) the operator of a railway makes a request to a council to make an order under section 118A or 119A above in respect of a crossing over the railway,

(b) the request is in such form and gives such particulars as are prescribed by regulations made by the Secretary of State, and

(c) the council have neither confirmed the order nor submitted it to the Secretary of State within 6 months of receiving the request,

the power conferred on the Secretary of State by subsection (3) above may be exercised without consultation with the council.**]**

(4) A council proposing to make a public path diversion order **[**F228or a rail crossing diversion order**]** such that the authority who will be the highway authority for a part of the path or way after the diversion will be a different body from the authority who before the diversion are the highway authority for it shall, before making the order, notify the first mentioned authority.

(5) Where under subsection (3) above the Secretary of State decides to make a public path diversion order, **[**F229or, on the representations of the operator of the railway concerned,

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a rail crossing diversion order, he may require the person**]** on whose representations he is acting to enter into an agreement with such council as he may specify **[**F230for that person**]** to defray, or to make such contribution as may be specified in the agreement towards any such compensation or expenses as are specified in paragraphs (a), (b) and (c) of section 119(5) **[**F231, or as the case may be 119A(8),**]** above.

Textual Amendments

F218 Words in s. 120(1) substituted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 5(2)**; S.I. 1992/3144, arts. 2, 3, **Sch.**

F219 Words in s. 120(2) substituted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 5(3)**; S.I. 1992/3144, arts. 2, 3, **Sch.**

F220 Word in s. 120(2)(a) substituted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.12** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F221 Words inserted (5.11.1990) by Environmental Protection Act 1990 (c. 43, SIF 46:4), ss. 130(1), 164(3), **Sch. 8 para. 5(3)**

F222 Words in s. 120(3) inserted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 5(4)(a)**; S.I. 1992/3144, arts. 2, 3, **Sch.**

F223 Words in s. 120(3) inserted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 5(4)(b)**; S.I. 1992/3144, arts. 2, 3, **Sch.**

F224 Words in s. 120(3)(a) added (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 5(4)(c)**; S.I. 1992/3144, arts. 2, 3, **Sch.**

F225 Words in s. 120(3)(b) substituted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 5(4)(d)**; S.I. 1992/3144, arts. 2, 3, **Sch.**

F226 Words in s. 120(3) inserted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 5(4)(e)**; S.I. 1992/3144, arts. 2, 3, **Sch.**

F227 S. 120(3A) inserted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 5(5)**; S.I. 1992/3144, arts. 2, 3, **Sch.**

F228 Words in s. 120(4) inserted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 5(6)**; S.I. 1992/3144, arts. 2, 3, **Sch.**

F229 Words in s. 120(5) substituted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 5(7)(a)**; S.I. 1992/3144, arts. 2, 3, **Sch.**

F230 Words in s. 120(5) substituted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 5(7)(b)**; S.I. 1992/3144, arts. 2, 3, **Sch.**

F231 Words in s. 120(5) inserted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 5(7)(e)**; S.I. 1992/3144, arts. 2, 3, **Sch.**

Modifications etc. (not altering text)

C49 S. 120 extended by Norfolk and Suffolk Broads Act 1988 (c. 4, SIF 81:1), ss. 2(5)(6), 23(2), 27(2), **Sch. 3 para. 47(1)**

C50 S. 118-121 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 11(c)** (with ss. 7(6), 115, 117, Sch. 8 para. 7).

121 Supplementary provisions as to public path extinguishment and diversion orders. E+W

(1) A public path extinguishment order **[**F232, a rail crossing extinguishment order, a public path diversion order or a rail crossing diversion order**]** affecting in any way the area of more than one council may contain provisions requiring one of the councils to defray, or contribute towards, expenses incurred in consequence of the order by another of the councils; and a public path diversion order **[**F233or a rail crossing diversion order**]** diverting a part of the line of a path or way from a site in the area of one local highway

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authority to a site in the area of another may provide that the first mentioned authority are to continue to be the highway authority for that part of the path or way after the diversion.

(2) Section 28 above (compensation for loss caused by public path creation order) applies in relation to public path extinguishment orders **[**F234, rail crossing extinguishment orders, public path diversion orders and rail crossing diversion orders**]** as it applies in relation to public path creation orders but as if the references in it to section 26(2) above were references to section 120(3) above.

(3) Section 29 above (protection for agriculture and forestry) applies in relation to the making of public path extinguishment orders **[**F235, rail crossing extinguishment orders, public path diversion orders and rail crossing diversion orders**]** as it applies in relation to the making of public path creation agreements and public path creation orders.

(4) The Secretary of State shall not make or confirm a public path extinguishment order **[**F236, a rail crossing extinguishment order, a public path diversion order or a rail crossing diversion order**]**, and a council shall not confirm such an order as an unopposed order, if the order extinguishes a right of way over land under, in, upon, over, along or across which there is any apparatus belonging to or used by any statutory undertakers for the purpose of their undertaking unless the undertakers have consented to the making or, as the case may be, confirmation of the order.

(5) A consent under subsection (4) above may be given subject to the condition that there are included in the order such provisions for the protection of the undertakers as they reasonably require, but a consent under that subsection shall not be unreasonably withheld, and any question whether the withholding of such a consent is unreasonable or whether any requirement is reasonable shall be determined by the appropriate Minister.

(6) In subsection (5) above the "appropriate Minister" means—

(a) in relation to statutory undertakers carrying on an undertaking for the supply of. . . F237,. . . F238, **[**F239or hydraulic power**]**, the Secretary of State; and

(b) in relation to any other statutory undertakers, the Minister.

Textual Amendments

F232 Words in s. 121(1) substituted (31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 6(2)(a)**; S.I. 1992/3144, **art. 3**,Sch.

F233 Words in s. 121(1) added (31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 6(2)(b)**; S.I. 1992/3144, **art. 3**,Sch.

F234 Words in s. 121(2) substituted (31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 6(3)**; S.I. 1992/3144, **art. 3**,Sch.

F235 Words in s. 121(3) substituted (31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 6(4)**; S.I. 1992/3144, **art. 3**,Sch.

F236 Words in s. 121(4) substituted (31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 6(5)**; S.I. 1992/3144, **art. 3**,Sch.

F237 Word repealed by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(3)(4), Sch. 17 para. 35(1), **Sch. 18**

F238 Word repealed by Gas Act 1986 (c. 44, SIF 44:2), s. 67(4), **Sch. 9 Pt. I**

F239 Words substituted 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. 62(6), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

Modifications etc. (not altering text)

C51 S. 121 modified by Gas Act 1986 (c. 44, SIF 44:2), s. 67(1)(3), **Sch. 7 para. 2(10)**(*c*), Sch. 8 para. 33

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C52 S. 121 modified by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 3(2)(g), Sch. 17 paras. 33, **35(1)**

C53 S. 121 modified 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. 1(10)(vii), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

C54 S. 121 extended by Norfolk and Suffolk Broads Act 1988 (c. 4, SIF 81:1), **ss. 2(5)(6)**, 23(2), 27(2) Sch. 3 para. 47(1)

C55 S. 118-121 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 11(c)** (with ss. 7(6), 115, 117, Sch. 8 para. 7).
S. 121 modified (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(11)(c)**; S.I. 1996/218, **art.2**.

PROSPECTIVE

[F240 121A Regulations with respect to applications for orders. E+W

(1) The Secretary of State may by regulations make provision as respects applications under section 118ZA, 118C, 119ZA or 119C above—

(a) requiring the applicant to issue a certificate as to the interests in, or rights in or over, the land to which the application relates and the purpose for which the land is used,

(b) requiring the applicant to give notice of the application to such persons as may be prescribed,

(c) requiring the applicant to certify that any requirement of regulations under this section has been complied with or to provide evidence that any such requirement has been complied with,

(d) as to the publicising of any application,

(e) as to the form, content and service of such notices and certificates, and

(f) as to the remission or refunding in prescribed circumstances of the whole or part of any prescribed charge.

(2) If any person—

(a) issues a certificate which purports to comply with any requirement imposed by virtue of subsection (1) above and contains a statement which he knows to be false or misleading in a material particular; or

(b) recklessly issues a certificate which purports to comply with any such requirement and contains a statement which is false or misleading in a material particular,

he shall be guilty of an offence.

(3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Notwithstanding section 127 of the Magistrates' Courts Act 1980 (limitation of time for taking proceedings) summary proceedings for an offence under this section may be instituted at any time within three years after the commission of the offence.]

Textual Amendments

F240 S. 121A inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 15**

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VALID FROM 21/11/2005

[F241 121B Register of applications. E+W

(1) Every council shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect to applications under section 118ZA, 118C, 119ZA or 119C above.

(2) The register shall contain such information as may be prescribed with respect to the manner in which such applications have been dealt with.

(3) Regulations may make provision for the register to be kept in two or more parts, each part containing such information relating to applications under section 118ZA, 118C, 119ZA or 119C above as may be prescribed.

(4) Regulations may make provision—

(a) for a specified part of the register to contain copies of applications and of the maps submitted with them, and

(b) for the entry relating to any application, and everything relating to it, to be removed from any part of the register when the application (including any appeal to the Secretary of State) has been finally disposed of (without prejudice to the inclusion of any different entry relating to it in another part of the register).

(5) Every register kept under this section shall be available for inspection by the public free of charge at all reasonable hours.

(6) In this section—

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Secretary of State.]

Textual Amendments

F241 S. 121B inserted (21.11.2005 for W. and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), Sch. 6 Pt. I para. 15; S.I. 2005/1314, **art. 4(b)(ii)**

PROSPECTIVE

[F242 121C Cases where council may decline to determine applications. E+W

(1) A council may decline to determine an application under section 118ZA, 118C, 119ZA or 119C above if, within the period of three years ending with the date on which the application is received, the Secretary of State—

(a) has refused to make an order on an appeal under section 121D(1)(a) below in respect of a similar application, or

(b) has refused to confirm an order which is similar to the order requested.

(2) Before declining under subsection (1) above to determine an application under section 118C or 119C above, the council shall consider whether since the previous

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decision of the Secretary of State was made the risks referred to in subsection (1)(b)(i) to (iv) of section 118B or of section 119B have substantially increased.

(3) A council may decline to determine an application under section 118ZA, 118C, 119ZA or 119C above if—

(a) in respect of an application previously made to them under that section which is similar to the current application or relates to any of the land to which the current application relates, the council have not yet determined whether to make a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order, or

(b) the council have made a similar order or an order which relates to any of the land to which the current application relates but no final decision as to the confirmation of the order has been taken.

(4) For the purposes of this section an application or order is similar to a later application or order only if they are, in the opinion of the council determining the later application, the same or substantially the same, but an application or order may be the same or substantially the same as a later application or order even though it is made to or by a different council.**]**

Textual Amendments

F242 S. 121C inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 15**

PROSPECTIVE

[F243121D Right of appeal to Secretary of State in respect of applications for orders. E+W

(1) Subject to the provisions of this section, where, in relation to an application made under section 118ZA, 118C, 119ZA or 119C above, the council to which the application was made—

(a) refuse to make an order on the application,

(b) refuse to confirm as an unopposed order an order made on the application, or

(c) refuse to submit to the Secretary of State an order which is made on the application and against which any representation or objection has been duly made and not withdrawn,

the applicant may, by giving notice to the Secretary of State, appeal to the Secretary of State.

(2) Subsection (1)(a) above does not confer any right to appeal to the Secretary of State where—

(a) the council have no power to make the order requested without the consent of another person and that consent has not been given, or

(b) the reason, or one of the reasons, for the refusal to make the order is that the applicant has refused to enter into an agreement required by the council—

(i) in the case of a public path extinguishment order, under subsection (6) of section 118ZA above,

(ii) in the case of a special extinguishment order, under that subsection as applied by section 118C(2) above,

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(iii) in the case of a public path diversion order, under section 119(5) above,

(iv) in the case of a special diversion order, under section 119C(3) above.

(3) Paragraph (b) of subsection (1) above does not confer any right to appeal to the Secretary of State in a case where the council has no power to confirm the order without the consent of another person and that consent has not been given; and paragraph (c) of that subsection does not confer any right to appeal to the Secretary of State in a case where, if the order had been unopposed, the council would have had no power to confirm it without the consent of another person and that consent has not been give**]**

Textual Amendments

F243 S. 121D inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 15**

PROSPECTIVE

[F244 121E Determination of appeals. E+W

(1) Where an appeal to the Secretary of State is brought under section 121D(1)(a) above, the Secretary of State shall—

(a) prepare a draft of a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order under section 120(3) above giving effect to the application and containing such other provisions as, after consultation with such persons as he thinks fit, the Secretary of State may determine,

(b) give notice of the draft order in accordance with paragraph 1(2) of Schedule 6 to this Act, and

(c) subject to subsection (6) below and to paragraph 2 of that Schedule, determine whether to make the order (with or without modifications) under section 120(3) above.

(2) Where an appeal to the Secretary of State is brought under section 121D(1)(b) or (c) above, the order made on the application shall be treated as having been submitted to him for confirmation (with or without modifications).

(3) Where an appeal to the Secretary of State is brought under section 121D(1) above, the Secretary of State may not make or confirm a public path diversion order or special diversion order if it appears to him that—

(a) work is necessary to bring the new highway created by the order into a fit condition for use by the public,

(b) if the order were made, the work could not be carried out by the highway authority without—

(i) the consent of another person, or

(ii) any authorisation (however described) which is required by or under any enactment, and

(c) the consent or authorisation has not been obtained.

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(4) Where an appeal to the Secretary of State is brought under section 121D(1) above, the Secretary of State may not—

(a) make a public path diversion order or special diversion order so as to create a public right of way over land covered by works used for the purposes of a statutory undertaking or the curtilage of such land, or

(b) modify such an order so as to create such a public right of way,

unless the statutory undertaker has consented to the making or modification of the order.

(5) In subsection (4) above "statutory undertaker" and "statutory undertaking" have the same meaning as in Schedule 6 to this Act.

(6) Subsection (1)(c) above does not apply where any consent required by section 121(4) above has not been obtained.

(7) The Secretary of State may by regulations make further provision with respect to appeals under section 121D(1) above.

(8) Regulations under subsection (7) above may, in particular, make provision—

(a) as to the manner in which, and time within which, notice of an appeal is to be given,

(b) as to the provision of information to the Secretary of State by the council to which the application to which the appeal relates was made,

(c) for the payment by the applicant of any expenses incurred by the Secretary of State—

(i) in preparing a draft order,

(ii) in giving any notice required by subsection (1)(b) above or Schedule 6 to this Act,

(d) requiring the production by the council to whom the application was made of any certificates required by regulations under section 121A(1)(a) above,

(e) requiring the applicant to give notice of the appeal to such persons as may be prescribed,

(f) requiring the applicant to certify that any requirement of regulations under this section has been complied with or to provide evidence that any such requirement has been complied with,

(g) as to the publicising of any appeal,

(h) as to the form, content and service of such notices and certificates,

(i) modifying the provisions of Schedule 6 to this Act in their application to the procedure on appeals under section 121D(1) above, and

(j) as to the remission or refunding in prescribed circumstances of any prescribed charge.

(9) The Secretary of State may by regulations provide that section 28 above, as applied by section 121(2) above, is to have effect in cases where a public path extinguishment order, special extinguishment order, public path diversion order or special diversion order is made under section 120(3) above on an appeal under section 121D(1)(a) above, as if the reference to such one of the authorities referred to as may be nominated by the Secretary of State were a reference to such one of those authorities as may be specified in or determined in accordance with, the regulations.

(10) Subsections (2) to (4) of section 121A above shall apply in relation to any certificate purporting to comply with a requirement imposed by virtue of this section as they

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apply to a certificate purporting to comply with a requirement imposed by virtue of subsection (1) of that section.

(11) For the purposes of this section—

(a) a draft public path extinguishment order or special extinguishment order gives effect to an application under section 118ZA or 118C above only if the land over which the public right of way is to be extinguished by the order is that shown for the purposes of subsection (2) of section 118ZA above (or that subsection as applied by section 118C(2) above) on the map accompanying the application, and

(b) a draft public path diversion order or draft special diversion order gives effect to an application made to a council under section 119ZA or 119C above only if—

(i) the land over which the public right of way is to be extinguished by the order, and

(ii) the new site to which the highway is to be diverted,

are those shown for the purposes of subsection (4) of section 119ZA above (or that subsection as applied by section 119C(4) above) on the map accompanying the application.

(12) In this section "prescribed" means prescribed by regulations made by the Secretary of State.**]**

Textual Amendments

F244 S. 121E inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 15**

122 Power to make temporary diversion where highway about to be repaired or widened. E+W

(1) A highway authority who are about to repair or widen a highway, and a person who is about to repair or widen a highway maintainable by him by reason of tenure, enclosure or prescription, may, subject to the provisions of this section, construct on adjoining land a temporary highway for use while the work is in progress.

(2) Where any damage is sustained by the owner or occupier of any land in consequence of the construction of a highway on that land in exercise of a power conferred by this section the owner or occupier of the land may recover compensation in respect of that damage from the authority or other person by whom the highway was constructed.

(3) Nothing in this section authorises interference with land which is part of the site of a house, or is a garden, lawn, yard, court, park, paddock, plantation, planted walk or avenue to a house, or is inclosed land set apart for building or as a nursery for trees.

123 Saving and interpretation. E+W

(1) The provisions of any enactment contained in the foregoing provisions of this Part of this Act do not prejudice any power conferred by any other enactment (whether contained in this Part of this Act or not) to stop up or divert a highway, and do not otherwise affect the operation of any enactment not contained in this Part of this Act relating to the extinguishment, suspension, diversion or variation of public rights of way.

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(2) Unless the context otherwise requires, expressions in the foregoing provisions of this Part of this Act, other than expressions to which meanings are assigned by sections 328 and 329 below, have the same meanings respectively as in **[**[F245]the Town and Country Planning Act 1990**]**.

Textual Amendments

F245 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 45(7)**

Stopping up of means of access to highways

124 Stopping up of private access to highways. E+W

(1) Subject to subsection (3) below, where the highway authority for a highway consider that a private means of access from the highway to any premises is likely to cause danger to, or to interfere unreasonably with, traffic on the highway, they may be authorised by an order made in accordance with this section to stop up the means of access.

(2) An order under this section shall be made by the highway authority for the highway in question and, if they are a local highway authority, shall be confirmed either by the Minister or, where subsection (5) below allows, by the highway authority themselves.

(3) No order under this section relating to an access to any premises shall be made by the Minister or, in the case of an order made by a local highway authority, confirmed either by the Minister or by that authority unless the Minister or, as the case may be, the confirming authority is or are satisfied—

(a) that no access to the premises from the highway in question is reasonably required, or

(b) that another reasonably convenient means of access to the premises is available or will be provided by the Minister or, as the case may be, the local highway authority.

(4) Subject to subsection (5) below, the Minister may make regulations for prescribing the procedure to be followed in connection with the making and confirmation of orders under this section, and such regulations shall in particular make provision—

(a) for the publication in such manner as may be prescribed by the regulations of notice of the order proposed to be made or confirmed and for service on such persons as may be so prescribed of a copy of that notice and of such other documents, if any, as may be so prescribed;

(b) as to the content of that notice;

(c) for objections to the making of an order by the Minister received within such period as may be so prescribed and not withdrawn, to be considered by him;

(d) for objections to the confirmation of an order made by a local highway authority to be considered by the Minister if any of the objections to the confirmation of the order received within such period as may be so prescribed and not withdrawn was made by an owner, lessee or occupier of any premises with a private means of access which the order would authorise the highway authority to stop up;

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(e) for objections to the confirmation of an order made by a local highway authority received within such period as may be so prescribed and not withdrawn to be considered by the local highway authority if there is no objection received within that period from an owner, lessee or occupier such as is mentioned in paragraph (d) above or if all such objections so received are withdrawn before the order is referred to the Minister for confirmation;

(f) for the making of modifications in the order, whether in consequence of any objections or otherwise, before the order is made or confirmed.

(5) In the case of an order made by a local highway authority under this section—

(a) if no objection to the confirmation of the order is received within the period prescribed by regulations under subsection (4) above; or

(b) if every such objection so received is withdrawn; or

(c) if every such objection so received from an owner, lessee or occupier of any premises with a private means of access which the order would authorise the highway authority to stop up is withdrawn,

the local highway authority may themselves confirm the order, with or without modifications.

(6) Before confirming an order with modifications the local highway authority, if they consider that the proposed modifications will make a substantial change in the order, shall inform every such owner, lessee or occupier as is mentioned in subsection (5)(c) above and every other person who appears to them to be likely to be affected by the modifications to the order—

(a) of their intention to make the order; and

(b) of the form in which they propose to make it.

(7) The local highway authority shall give every such person as is mentioned in subsection (6) above an opportunity to make representations with regard to the order, and shall consider any representations with regard to it which any such person makes.

(8) Schedule 2 to this Act has effect as to the validity and date of operation of any order under this section.

125 Further powers to stop up private access to premises. E+W

(1) Subject to subsection (2) below an order under section 14 or 18 above (orders for certain purposes connected with trunk, classified or special roads) and an order under **[**F246section 248 of the Town and Country Planning Act 1990**]** (order by Minister to stop up or divert highway that crosses etc. a main highway) may authorise the appropriate authority—

(a) to stop up any private means of access to premises adjoining or adjacent to land comprised in the route of the relevant road, or forming the site of any works authorised by the order or by any previous order made under the same enactment;

(b) to provide a new means of access to any such premises.

(2) For the purposes of subsection (1) above—

(a) the appropriate authority in the case of an order under **[**F247section 248 of the Town and Country Planning Act 1990**]** is the highway authority for the main highway, and in any other case is the authority by whom the order is made; and

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(b) the relevant road is the trunk road, classified road, special road or, as the case may be, main highway to which the order relates.

(3) No order authorising the stopping up of a means of access to premises shall be made or confirmed by the Minister by virtue of subsection (1)(a) above unless he is satisfied—

(a) that no access to the premises is reasonably required, or

(b) that another reasonably convenient means of access to the premises is available or will be provided in pursuance of an order made by virtue of subsection (1)(b) above or otherwise.

(4) **[**F248Section 252 of the Town and Country Planning Act 1990**]** (procedure for making certain orders) in its application to an order under **[**F248section 248 of that Act**]** which by virtue of subsection (1)(a) above authorises the stopping up of a private means of access to premises has effect as if the persons on whom the Minister is required by **[**F248section 252(2), (3), (10) and (11)**]** to serve certain documents relating to the order included the owner and the occupier of those premises.

In this subsection "owner" in relation to any premises, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple in the premises, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the premises under a lease the unexpired term of which exceeds 3 years.

Textual Amendments

F246 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s.4, **Sch. 2 para. 45(8)(a)**

F247 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(8)(a)**

F248 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(8)(b)**

Modifications etc. (not altering text)

C56 S. 125 modified (18.12.1996) by 1996 c. 61, s. 44, **Sch. 12 Pt. III para. 10(1)**.

126 Provisions supplementary to sections 124 and 125 etc. E+W

(1) Where—

(a) an order under section 124 above, or

(b) an order, by virtue of section 125 above, under section 14 or 18 above or under **[**F249section 248 of the Town and Country Planning Act 1990**]**,

authorises a highway authority to stop up a private means of access to any premises, then, notwithstanding anything in section 80(3) above, that authority may stop up the access in any way that seems to them appropriate, but not, if the order in question is under section 124 above, so as to obstruct any highway.

(2) Where a means of access to any premises—

(a) is stopped up in pursuance of any such order as is specified in subsection (1) above, or

(b) is limited by virtue of any restrictions imposed on the use (including the crossing) of a special road under Part II of this Act, or by section 13 of

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the [M33]Road Traffic Regulation Act 1967, or by regulations made under that section,

and any person suffers damage in consequence thereof by the depreciation of any interest in the premises to which he is entitled or by being disturbed in his enjoyment of the premises he is entitled to recover compensation in respect of that damage from the appropriate authority.

(3) The appropriate authority for the purpose of subsection (2) above in cases falling within paragraph (a) of that subsection is the highway authority authorised by the order to stop up the means of access and in cases falling within paragraph (b) of that subsection is the special road authority.

(4) Where any person is entitled to compensation in respect of any matter under subsection (2) above he is not entitled to recover compensation in respect of the same matter under any other enactment.

Textual Amendments

F249 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(9)**

Marginal Citations

M33 1967 c. 76.

127 Stopping up private access to premises by agreement. E+W

The highway authority for a highway may agree with the occupier of any premises and any other person having an interest in them that any private means of access to the premises from the highway shall be stopped up by that authority in any way which seems to them appropriate but not so as to obstruct any highway; and an agreement under this section may make provision for the payment by the highway authority to the other party of compensation in respect of the damage (if any) suffered by him in consequence of the stopping up of the means of access.

128 Penalty for using access which has been stopped up. E+W

Any person who uses an access which has been stopped up by virtue of section 124, 125 or 127 above other than a person exercising a public right of way is guilty of an offence and liable to a fine not exceeding **[**[F250]level 3 on the standard scale**]**.

Textual Amendments

F250 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

129 Further provisions with respect to new means of access. E+W

(1) Without prejudice to their power to provide a new means of access to any premises when authorised to do so by an order made under any enactment, a highway authority—

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(a) who by virtue of an order under section 124 above or an agreement under section 127 above have stopped up a means of access to any premises or propose to do so; or

(b) who consider it necessary or expedient in connection with the construction, improvement or alteration of a highway to provide a new means of access to any premises,

may, subject to subsection (2) below, provide a new means of access to those premises from any highway or proposed highway.

(2) If a highway authority proposing to provide a new means of access under subsection (1) above are not the highway authority for the highway from which the access will be provided or, as the case may be, will not become the highway authority for it on the completion of its construction, they shall not provide the access without the consent of the authority who are, or will become, the highway authority for that highway.

(3) Where a private means of access to any premises is proposed to be stopped up by virtue of section 124 or 125 above and another means of access to those premises from a highway is available or is to be provided, then, in determining for the purposes of section 124 or 125 whether that other means of access is or, as the case may be, will be reasonably convenient the Minister or, in the case of an order under section 124 which a local highway authority have power to confirm, that authority shall have regard—

(a) to the need, if any, for a means of access from the highway to different places on those premises, and

(b) to any roads, paths or other ways on those or other premises which are or will be capable of providing such a means.

(4) The provision of a new means of access to any premises from a highway under this section or under or by virtue of section 124, 125 or 127 above includes the provision of a road, path or other way on those or any other premises.

VALID FROM 16/03/2006

[F251 PART 8A E+W

RESTRICTION OF RIGHTS OVER HIGHWAY

Textual Amendments

F251 Pt. 8A inserted (16.3.2006 for W. for specified purposes, 1.4.2006 for E. and 19.2.2007 for W. in so far as not already in force) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **s. 2**; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(2)**; S.I. 2006/2797, **art. 3**; S.I. 2007/306, **art. 1(2)**

129A Gating orders E+W

(1) A council may in accordance with this Part make an order under this section in relation to any relevant highway for which they are the highway authority.

(2) An order under this section is to be known as a "gating order".

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(3) Before making a gating order in relation to a relevant highway the council must be satisfied that—

(a) premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour;

(b) the existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour; and

(c) it is in all the circumstances expedient to make the order for the purposes of reducing crime or anti-social behaviour.

(4) The circumstances referred to in subsection (3)(c) include—

(a) the likely effect of making the order on the occupiers of premises adjoining or adjacentto the highway;

(b) the likely effect of making the order on other persons in the locality; and

(c) in a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.

(5) In this section "relevant highway" means a highway other than—

(a) a special road;

(b) a trunk road;

(c) a classified or principal road;

(d) a strategic road, within the meaning of sections 60 and 61 of the Traffic Management Act 2004 (strategic roads in London);

(e) a highway of such other description as the appropriate person may by regulations prescribe.

129B Effect of gating orders E+W

(1) A gating order restricts, to the extent specified in the order, the public right of way over the highway to which it relates.

(2) A gating order may in particular—

(a) restrict the public right of way at all times, or in respect of such times, days or periods as may be specified in the order;

(b) exclude persons of a description specified in the order from the effect of the restriction.

(3) A gating order may not be made so as to restrict the public right of way over a highway for the occupiers of premises adjoining or adjacent to the highway.

(4) A gating order may not be made so as to restrict the public right of way over a highway which is the only or principal means of access to any dwelling.

(5) In relation to a highway which is the only or principal means of access to any premises used for business or recreational purposes, a gating order may not be made so as to restrict the public right of way over the highway during periods when those premises are normally used for those purposes.

(6) A gating order may authorise the installation, operation and maintenance of a barrier or barriers for the purpose of enforcing the restriction provided for in the order.

(7) A council may install, operate and maintain any barrier authorised under subsection (6).

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(8) A highway in relation to which a gating order is made shall not cease to be regarded as a highway by reason of the restriction of the public right of way under the order (or by reason of any barrier authorised under this section).

(9) In subsection (4) "dwelling" means any building or part of a building occupied, or intended to be occupied, as a separate dwelling.

129C Procedure for gating orders E+W

(1) Before making a gating order in relation to a highway a council must notify the occupiers of premises adjacent to or adjoining the highway, in such manner as the appropriate person may by regulations prescribe, of—

(a) the proposed order; and

(b) the period within which they may make representations about it.

(2) The appropriate person must by regulations make provision as to further procedure to be complied with by a council in relation to the making of a gating order.

(3) Regulations under subsection (2) must include provision as to—

(a) the publication of a proposed order;

(b) public availability of copies of a proposed order;

(c) notification of persons (other than those referred to in subsection (1)) likely to be affected by a proposed order;

(d) the making of representations about a proposed order.

(4) Regulations under subsection (2) may include provision—

(a) requiring a council to hold a public inquiry in such circumstances as may be specified in the regulations;

(b) permitting a council to hold a public inquiry at their discretion in such circumstances as may be so specified.

(5) The appropriate person may by regulations specify requirements as to form and content with which a gating order must comply.

129D Validity of gating orders E+W

(1) A person may apply to the High Court for the purpose of questioning the validity of a gating order on the ground that—

(a) the council had no power to make it; or

(b) any requirement under this Part was not complied with in relation to it.

(2) An application under this section must be made within a period of six weeks beginning with the date on which the gating order is made.

(3) On an application under this section the High Court may by order suspend the operation of the gating order, or any of its provisions, until the final determination of the proceedings.

(4) If on an application under this section the High Court is satisfied that—

(a) the council had no power to make the order, or

(b) the interests of the applicant have been substantially prejudiced by any failure to comply with a requirement under this Part,

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the High Court may quash the order or any of its provisions.

(5) A gating order, or any of its provisions, may be suspended under subsection (3) or quashed under subsection (4)—

(a) generally; or

(b) so far as may be necessary for the protection of the interests of the applicant.

(6) Except as provided for by this section, a gating order may not, either before or after it has been made, be questioned in any legal proceedings.

129E Publication and availability of gating orders E+W

(1) The appropriate person may by regulations make provision imposing requirements on councils in relation to—

(a) the publication of gating orders;

(b) public availability of copies of gating orders;

(c) the keeping and inspection of registers of gating orders.

(2) Regulations under subsection (1)(b) may provide that a council need not provide a person with a copy of a gating order otherwise than on payment of a reasonable charge.

129F Variation and revocation of gating orders E+W

(1) A council may vary a gating order made by them so as further to restrict any public right of way over the highway to which the order relates, if they are satisfied that in all the circumstances it is expedient to do so for the purpose of reducing crime or anti-social behaviour.

(2) A council may vary a gating order made by them so as to reduce the restriction imposed by the order, if and to the extent that they are satisfied that the restriction is no longer expedient in all the circumstances for the purpose of reducing crime or anti-social behaviour.

(3) A council may revoke a gating order made by them, if they are satisfied that the restriction imposed by the order is no longer expedient in all the circumstances for the purpose of reducing crime or anti-social behaviour.

(4) Before varying or revoking a gating order in relation to a highway a council must notify the occupiers of premises adjacent to or adjoining the highway, in such manner as the appropriate person may by regulations prescribe, of—

(a) the proposed variation or revocation; and

(b) the period within which they may make representations about it.

(5) The appropriate person must by regulations make further provision as to the procedure to be followed by a council in relation to the variation or revocation of a gating order.

(6) Regulations under subsection (5) must include provision as to—

(a) publication of any proposed variation or revocation;

(b) notification of persons (other than those referred to in subsection (4)) likely to be affected by a proposed variation or revocation;

(c) the making of representations about a proposed variation or revocation.

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(7) Regulations under subsection (5) may include provision—

(a) requiring a council to hold a public inquiry in such circumstances as may be specified in the regulations;

(b) permitting a council to hold a public inquiry at their discretion in such circumstances as may be so specified.

129G Interpretation E+W

For the purposes of this Part—

"anti-social behaviour" means behaviour by a person which causes or is likely to cause harassment, alarm or distress to one or more other persons not of the same household as himself;

"appropriate person" means—

(a) the Secretary of State, in relation to England;

(b) the National Assembly for Wales, in relation to Wales.**]**

PART IX E+W

LAWFUL AND UNLAWFUL INTERFERENCE WITH HIGHWAYS AND STREETS

Protection of public rights

130 Protection of public rights. E+W

(1) It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it.

(2) Any council may assert and protect the rights of the public to the use and enjoyment of any highway in their area for which they are not the highway authority, including any roadside waste which forms part of it.

(3) Without prejudice to subsections (1) and (2) above, it is the duty of a council who are a highway authority to prevent, as far as possible, the stopping up or obstruction of—

(a) the highways for which they are the highway authority, and

(b) any highway for which they are not the highway authority, if, in their opinion, the stopping up or obstruction of that highway would be prejudicial to the interests of their area.

(4) Without prejudice to the foregoing provisions of this section, it is the duty of a local highway authority to prevent any unlawful encroachment on any roadside waste comprised in a highway for which they are the highway authority.

(5) Without prejudice to their powers under section 222 of the [M34]Local Government Act 1972, a council may, in the performance of their functions under the foregoing provisions of this section, institute legal proceedings in their own name, defend any legal proceedings and generally take such steps as they deem expedient.

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(6) If the council of a parish or community or, in the case of a parish or community which does not have a separate parish or community council, the parish meeting or a community meeting, represent to a local highway authority—

(a) that a highway as to which the local highway authority have the duty imposed by subsection (3) above has been unlawfully stopped up or obstructed, or

(b) that an unlawful encroachment has taken place on a roadside waste comprised in a highway for which they are the highway authority,

it is the duty of the local highway authority, unless satisfied that the representations are incorrect, to take proper proceedings accordingly and they may do so in their own name.

(7) Proceedings or steps taken by a council in relation to an alleged right of way are not to be treated as unauthorised by reason only that the alleged right is found not to exist.

Modifications etc. (not altering text)

C57 S. 130: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**

Marginal Citations

M34 1972 c. 70.

VALID FROM 13/02/2004

[F252 130A Notices to enforce duty regarding public paths. E+W

(1) Any person who alleges, as respects any highway for which a local highway authority other than an inner London authority are the highway authority—

(a) that the highway falls within subsection (2) below, and

(b) that it is obstructed by an obstruction to which this section applies,

may serve on the highway authority notice requesting them to secure the removal of the obstruction from the highway.

(2) A highway is within this subsection if it is—

(a) a footpath, bridleway, or restricted byway, or

(b) a way shown in a definitive map and statement as a restricted byway or a byway open to all traffic.

(3) Subject to subsection (4) below, this section applies to an obstruction of the highway if the obstruction is without lawful authority and either—

(a) the powers conferred by section 143, 149 or 154 below are exercisable in respect of it, or

(b) it is of a description prescribed by regulations made by the Secretary of State and the authority have power (otherwise than under any of those sections) to secure its removal.

(4) This section does not apply to an obstruction if—

(a) it is or forms part of—

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(i) a building (whether temporary or permanent) or works for the construction of a building, or

(ii) any other structure (including a tent, caravan, vehicle or other temporary or movable structure) which is designed, adapted or used for human habitation,

(b) an order may be made in respect of it under section 56 above, or

(c) the presence of any person constitutes the obstruction.

(5) A person serving a notice under subsection (1) above must include in the notice the name and address, if known to him, of any person who it appears to him may be for the time being responsible for the obstruction.

(6) A highway authority on whom a notice under subsection (1) above is served shall, within one month from the date of service of the notice, serve—

(a) on every person whose name and address is, pursuant to subsection (5) above, included in the notice and, so far as reasonably practicable, on every other person who it appears to them may be for the time being responsible for the obstruction, a notice informing that person that a notice under subsection (1) above has been served in relation to the obstruction and stating what, if any, action the authority propose to take, and

(b) on the person who served the notice under subsection (1) above, a notice containing the name and address of each person on whom notice is served under paragraph (a) above and stating what, if any, action the authority propose to take in relation to the obstruction.

(7) For the purposes of this section the persons for the time being responsible for an obstruction include the owner and any other person who for the time being—

(a) has possession or control of it, or

(b) may be required to remove it.

(8) A notice under subsection (1) or (6) above shall be in such form and contain such information as may be prescribed by regulations made by the Secretary of State.

(9) In this section "inner London authority" means Transport for London, the council of an inner London borough or the Common Council of the City of London.

(10) Subsection (2) above has effect until the commencement of section 47 of the Countryside and Rights of Way Act 2000 with the substitution for the references to a restricted byway and to a way shown in a definitive map and statement as a restricted byway of a reference to a way shown in a definitive map and statement as a road used as a public path.**]**

Textual Amendments

F252 S. 130A inserted (13.2.2004 for E. and 1.4.2004 for W.) by 2000 c. 37, s. 63(1); S.I. 2004/292, **art. 2(a)**; S.I. 2004/315, **art. 2(a)**

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VALID FROM 13/02/2004

[F253 130B Orders following notice under section 130A. E+W

(1) Where a notice under section 130A(1) above has been served on a highway authority in relation to any obstruction, the person who served it, if not satisfied that the obstruction has been removed, may apply to a magistrates' court in accordance with section 130C below for an order under this section.

(2) An order under this section is an order requiring the highway authority to take, within such reasonable period as may be fixed by the order, such steps as may be specified in the order for securing the removal of the obstruction.

(3) An order under this section shall not take effect—

(a) until the end of the period of twenty-one days from the day on which the order is made; or

(b) if an appeal is brought in respect of the order within that period (whether by way of appeal to the Crown Court or by way of case stated for the opinion of the High Court), until the final determination or withdrawal of the appeal.

(4) Subject to subsection (5) below, the court may make an order under this section if it is satisfied—

(a) that the obstruction is one to which section 130A above applies or, in a case falling within subsection (4)(a)(ii) of that section, is one to which that section would apply but for the obstruction having become used for human habitation since service of the notice relating to it under subsection (1) of that section,

(b) that the way obstructed is a highway within subsection (2) of that section, and

(c) that the obstruction significantly interferes with the exercise of public rights of way over that way.

(5) No order shall be made under this section if the highway authority satisfy the court—

(a) that the fact that the way obstructed is a highway within section 130A(2) above is seriously disputed,

(b) on any other grounds, that they have no duty under section 130(3) above to secure the removal of the obstruction, or

(c) that, under arrangements which have been made by the authority, its removal will be secured within a reasonable time, having regard to the number and seriousness of obstructions in respect of which they have such a duty.

(6) A highway authority against whom an order is made under this section shall, as soon as practicable after the making of the order, cause notice of the order and of the right to appeal against it to be displayed in such manner and at such places on the highway concerned as may be prescribed by regulations made by the Secretary of State, and the notice shall be in such form and contain such information as may be so prescribed.

(7) An order under this section may be varied on the application of the highway authority to whom it relates.**]**

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Textual Amendments

F253 S. 130B inserted (13.2.2004 for E. and 1.4.2004 for W.) by 2000 c. 37, s. 63(1); S.I. 2004/292, **art. 2(a)**; S.I. 2004/315, **art. 2(a)**

VALID FROM 13/02/2004

[F254 130C Section 130B: procedure. **E+W**

(1) A person proposing to make an application under section 130B above shall before making the application serve notice of his intention to do so on the highway authority concerned.

(2) A notice under subsection (1) above shall be in such form and contain such information as may be prescribed by regulations made by the Secretary of State.

(3) The notice may not be served before the end of two months beginning with the date of service on the highway authority of the notice under section 130A(1) above ("the request notice").

(4) An application in respect of which notice has been served under subsection (1) above may be made at any time—

(a) after the end of five days beginning with the date of service of that notice, and

(b) before the end of six months beginning with the date of service on the highway authority of the request notice.

(5) On making the application the applicant must give notice to the court of the names and addresses of which notice was given to the applicant under section 130A(6)(b) above.

(6) On the hearing of the application any person who is, within the meaning of section 130A above, a person for the time being responsible for the obstruction to which the application relates has a right to be heard as respects the matters mentioned in section 130B(4) above.

(7) Notice of the hearing, of the right to be heard under subsection (6) above and of the right to appeal against a decision on the application shall be given by the court to each person whose name and address is notified to the court under subsection (5) above.**]**

Textual Amendments

F254 S. 130C inserted (13.2.2004 for E. and 1.4.2004 for W.) by 2000 c. 37, s. 63(1); S.I. 2004/292, **art. 2(a)**; S.I. 2004/315, **art. 2(a)**

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VALID FROM 13/02/2004

[F255 130D Section 130B: costs. E+W

Where an application under section 130B above is dismissed by virtue of paragraph (a), (b) or (c) of subsection (5) of that section, the court, in determining whether and if so how to exercise its power under section 64(1) of the M35 Magistrates' Courts Act 1980 (costs), shall have particular regard to any failure by the highway authority to give the applicant appropriate notice of, and information about, the grounds relied on by the authority under that paragraph.**]**

Textual Amendments

F255 S. 130D inserted (13.2.2004 for E. and 1.4.2004 for W.) by 2000 c. 37, s. 63(1); S.I. 2004/292, **art. 2(a)**; S.I. 2004/315, **art. 2(a)**

Marginal Citations

M35 1980 c. 43.

Damage to highways, streets etc.

131 Penalty for damaging highway etc. E+W

(1) If a person, without lawful authority or excuse—

(a) makes a ditch or excavation in a highway which consists of or comprises a carriageway, or

(b) removes any soil or turf from any part of a highway, except for the purpose of improving the highway and with the consent of the highway authority for the highway, or

(c) deposits anything whatsoever on a highway so as to damage the highway, or

(d) lights any fire, or discharges any firearm or firework, within 50 feet from the centre of a highway which consists of or comprises a carriageway, and in consequence thereof the highway is damaged,

he is guilty of an offence.

(2) If a person without lawful authority or excuse pulls down or obliterates a traffic sign placed on or over a highway, or a milestone or direction post (not being a traffic sign) so placed, he is guilty of an offence; but it is a defence in any proceedings under this subsection to show that the traffic sign, milestone or post was not lawfully so placed.

(3) A person guilty of an offence under this section is liable to a fine not exceeding **[**F256 level 3 on the standard scale**]**.

Textual Amendments

F256 Words in s. 131(3) substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 35**, 37, 38, 46 (with s. 47)

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[F257 131A Disturbance of surface of certain highways. E+W

(1) A person who, without lawful authority or excuse, so disturbs the surface of—

(a) a footpath,

(b) a bridleway, or

(c) any other highway which consists of or comprises a carriageway other than a made-up carriageway,

as to render it inconvenient for the exercise of the public right of way is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(2) Proceedings for an offence under this section shall be brought only by the highway authority or the council of the non-metropolitan district, parish or community in which the offence is committed; and, without prejudice to section 130 (protection of public rights) above, it is the duty of the highway authority to ensure that where desirable in the public interest such proceedings are brought.**]**

Textual Amendments

F257 S. 131A inserted by Rights of Way Act 1990 (c. 24, SIF 59), **s. 1(2)**

132 Unauthorised marks on highways. E+W

(1) A person who, without either the consent of the highway authority for the highway in question or an authorisation given by or under an enactment or a reasonable excuse, paints or otherwise inscribes or affixes any picture, letter, sign or other mark upon the surface of a highway or upon any tree, structure or works on or in a highway is guilty of an offence and liable to a fine not exceeding **[**F258level 4 on the standard scale**]**.

(2) The highway authority for a highway may, without prejudice to their powers apart from this subsection and whether or not proceedings in respect of the matter have been taken in pursuance of subsection (1) above, remove any picture, letter, sign or other mark which has, without either the consent of the authority or an authorisation given by or under an enactment, been painted or otherwise inscribed or affixed upon the surface of the highway or upon any tree, structure or works on or in the highway.

Textual Amendments

F258 Words in s. 132(1) substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 35**, 37 , 38, 46 (with s. 47)

133 Damage to footways of streets by excavations. E+W

If the footway of a street that is a highway maintainable at the public expense is damaged by or in consequence of any excavation or other work on land adjoining the street, the highway authority for the highway may make good the damage and recover the expenses reasonably incurred by them in so doing from the owner of the land in question or the person causing or responsible for the damage.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** Highways Act 1980 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F259 134 Ploughing etc. of footpath or bridleway. E+W

(1) Where in the case of any footpath or bridleway (other than a field-edge path) which passes over a field or enclosure consisting of agricultural land, or land which is being brought into use for agriculture—

(a) the occupier of the field or enclosure desires in accordance with the rules of good husbandry to plough, or otherwise disturb the surface of, all or part of the land comprised in the field or enclosure, and

(b) it is not reasonably convenient in ploughing, or otherwise disturbing the surface of, the land to avoid disturbing the surface of the path or way so as to render it inconvenient for the exercise of the public right of way,

the public right of way shall be subject to the condition that the occupier has the right so to plough or otherwise disturb the surface of the path or way.

(2) Subsection (1) above does not apply in relation to any excavation or any engineering operation.

(3) Where the occupier has disturbed the surface of a footpath or bridleway under the right conferred by subsection (1) above he shall within the relevant period, or within an extension of that period granted under subsection (8) below,—

(a) so make good the surface of the path or way to not less than its minimum width as to make it reasonably convenient for the exercise of the right of way; and

(b) so indicate the line of the path or way on the ground to not less than its minimum width that it is apparent to members of the public wishing to use it.

(4) If the occupier fails to comply with the duty imposed by subsection (3) above he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(5) Proceedings for an offence under this section in relation to a footpath or bridleway shall be brought only by the highway authority or the council of the non-metropolitan district, parish or community in which the offence is committed.

(6) Without prejudice to section 130 (protection of public rights) above, it is the duty of the highway authority to enforce the provisions of this section.

(7) For the purposes of this section "the relevant period",—

(a) where the disturbance of the surface of the path or way is the first disturbance for the purposes of the sowing of a particular agricultural crop, means fourteen days beginning with the day on which the surface of the path or way was first disturbed for those purposes; or

(b) in any other case, means twenty-four hours beginning with the time when it was disturbed.

(8) On an application made to the highway authority before the disturbance or during the relevant period, the authority may grant an extension of that period for an additional period not exceeding twenty-eight days.

(9) In this section "minimum width", in relation to a highway, has the same meaning as in Schedule 12A to this Act.**]**

Textual Amendments

F259 S. 134 substituted by Rights of Way Act 1990 (c. 24, SIF 59), **ss. 1(3)**, 6(3)

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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[F260 135 Authorisation of other works disturbing footpath or bridleway. E+W

(1) Where the occupier of any agricultural land, or land which is being brought into use for agriculture, desires to carry out in relation to that land an excavation or engineering operation, and the excavation or operation—

(a) is reasonably necessary for the purposes of agriculture, but

(b) will so disturb the surface of a footpath or bridleway which passes over that land as to render it inconvenient for the exercise of the public right of way,

he may apply to the highway authority for an order that the public right of way shall be subject to the condition that he has the right to disturb the surface by that excavation or operation during such period, not exceeding three months, as is specified in the order ("the authorisation period").

(2) The highway authority shall make an order under subsection (1) above if they are satisfied either—

(a) that it is practicable temporarily to divert the path or way in a manner reasonably convenient to users; or

(b) that it is practicable to take adequate steps to ensure that the path or way remains sufficiently convenient, having regard to the need for the excavation or operation, for temporary use while it is being carried out.

(3) An order made by a highway authority under subsection (1) above—

(a) may provide for the temporary diversion of the path or way during the authorisation period, but shall not divert it on to land not occupied by the applicant unless written consent to the making of the order has been given to the occupier of that land, and by any other person whose consent is needed to obtain access to it;

(b) may include such conditions as the authority reasonably think fit for the provision, either by the applicant or by the authority at the expense of the applicant, of facilities for the convenient use of any such diversion, including signposts and other notices, stiles, bridges, and gates;

(c) shall not affect the line of a footpath or bridleway on land not occupied by the applicant;

and the authority shall cause notices of any such diversion, together with a plan showing the effect of the diversion and the line of the alternative route provided, to be prominently displayed throughout the authorisation period at each end of the diversion.

(4) An order made by a highway authority under subsection (1) above may include such conditions as the authority reasonably think fit—

(a) for the protection and convenience during the authorisation period of users of the path or way;

(b) for making good the surface of the path or way to not more than its minimum width before the expiration of the authorisation period;

(c) for the recovery from the applicant of expenses incurred by the authority in connection with the order.

(5) An order under this section shall not authorise any interference with the apparatus or works of any statutory undertakers.

(6) If the applicant fails to comply with a condition imposed under subsection (3)(b) or (4)(a) or (b) above he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

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(7) Proceedings for an offence under this section in relation to a footpath or bridleway shall be brought only by the highway authority or (with the consent of the highway authority) the council of the non-metropolitan district, parish or community in which the offence is committed.

(8) Without prejudice to section 130 (protection of public rights) above, it is the duty of the highway authority to enforce the provisions of this section.

(9) In this section "minimum width", in relation to a highway, has the same meaning as in Schedule 12A to this Act.**]**

Textual Amendments

F260 S. 135 substituted by Rights of Way Act 1990 (c. 24, SIF 59), **ss. 1(4)**, 6(3)

Modifications etc. (not altering text)

C58 S. 135 applied (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. I**; S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

PROSPECTIVE

[F261 135A Temporary diversion for dangerous works. E+W

(1) Where works of a prescribed description are likely to cause danger to users of a footpath or bridleway which passes over any land, the occupier of the land may, subject to the provisions of this section, temporarily divert—

(a) so much of the footpath or bridleway as passes over that land, and

(b) so far as is requisite for effecting that diversion, so much of the footpath or bridleway as passes over other land occupied by him.

(2) A person may not under this section divert any part of a footpath or bridleway if—

(a) the period or periods for which that part has been diverted under this section, and

(b) the period or periods for which any other part of the same footpath or bridleway passing over land occupied by him has been diverted under this section,

amount in aggregate to more than fourteen days in any one calendar year.

(3) Where a person diverts a footpath or bridleway under this section—

(a) he shall do so in a manner which is reasonably convenient for the exercise of the public right of way, and

(b) where the diversion is by means of a temporary footpath or bridleway, he shall so indicate the line of the temporary footpath or bridleway on the ground to not less than the minimum width that it is apparent to members of the public wishing to use it.

(4) This section does not authorise a person—

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(a) to divert a footpath or bridleway on to land not occupied by him without the consent of the occupier of that land and of any other person whose consent is needed to obtain access to it,

(b) to divert a footpath onto a highway other than a footpath or bridleway, or

(c) to divert a bridleway onto a highway other than a bridleway.

(5) The person by whom a footpath or bridleway is diverted under this section shall—

(a) at least fourteen days before the commencement of the diversion, give notice of the diversion in accordance with subsection (6) below,

(b) at least seven days before the commencement of the diversion, publish notice of the diversion in a local newspaper circulating in the area in which the footpath or bridleway is situated, and

(c) display such notices as may be prescribed at such places, in such manner and at such times before or during the diversion as may be prescribed.

(6) Notice under subsection (5)(a) above shall be given—

(a) to the highway authority for the footpath or bridleway,

(b) if the footpath or bridleway is on or contiguous with access land in England, to **[**F262Natural England**]** , and

(c) if the footpath or bridleway is on or contiguous with access land in Wales, to **[**F263the Natural Resources Body for Wales**]**.

(7) A notice under subsection (5)(a), (b) or (c) above shall be in such form and contain such information as may be prescribed.

(8) If a person—

(a) in a notice which purports to comply with the requirements of subsection (5)(a) or (b) above, makes a statement which he knows to be false in a material particular,

(b) by a notice displayed on or near a footpath or bridleway, falsely purports to be authorised under this section to divert the footpath or bridleway, or

(c) in diverting a footpath or bridleway under this section, fails to comply with subsection (3) above,

he shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(9) In this section—

" access land " has the same meaning as in Part I of the Countryside and Rights of Way Act 2000;

" minimum width " in relation to a temporary footpath or bridleway, means the minimum width, within the meaning of Schedule 12A to this Act, of the footpath or bridleway diverted;

" prescribed " means prescribed by regulations made by the Secretary of State. **]**

Textual Amendments

F261 S. 135A inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 16**

F262 Words in s. 135A(6)(b) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), s. 105(1), **Sch. 11 para. 67**; S.I. 2006/2541, **art. 2**

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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F263 Words in s. 135A(6)(c) substituted by 2000 c. 37 Sch. 6 para 16 (as amended) (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 411(3)** (with Sch. 7)

PROSPECTIVE

[F264 135B Temporary diversion for dangerous works: supplementary. E+W

(1) The person by whom a footpath or bridleway is diverted under section 135A above shall, before the diversion ceases to be authorised by that section, make good any damage to the footpath or bridleway resulting from the works mentioned in subsection (1) of that section, and remove from the footpath or bridleway any obstruction resulting from those works.

(2) Any person who fails to comply with the duty imposed on him by subsection (1) above is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(3) The highway authority may make good any damage, or remove any obstruction, in respect of which any person has failed to comply with that duty and recover from that person the amount of any expenses reasonably incurred by them in or in connection with doing so.

(4) Paragraph 3(1) of Schedule 12A to this Act does not apply in relation to any disturbance of the surface of a footpath or bridleway which subsection (1) above requires any person to make good; but paragraphs 7 and 8 of that Schedule apply for the purposes of subsection (3) above as if—

(a) references to the authority were references to the highway authority,

(b) references to the work were references to work carried out under subsection (3) above in relation to a footpath or bridleway, and

(c) references to the relevant land were references to the land over which the footpath or bridleway passes.

(5) The diversion of a footpath or bridleway under section 135A above does not—

(a) affect the liability of any person for anything done in relation to the path or way otherwise than for the purposes of or in consequence of the works mentioned in subsection (1) of that section, or

(b) authorise any interference with the apparatus or works of any statutory undertakers.

(6) Without prejudice to section 130 (protection of public rights of way) above, it is the duty of the highway authority to enforce the provisions of section 135A and this section.]

Textual Amendments

F264 S. 135B inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 16**

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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136 Damage to highway consequent on exclusion of sun and wind. E+W

(1) If a highway which consists of or comprises a carriageway is being damaged in consequence of the exclusion from it of the sun and wind by a hedge or tree (other than a tree planted for ornament or for shelter to a building, courtyard or hop ground), a magistrates' court may by order require the owner or occupier of the land on which the hedge or tree is growing, so to cut, prune or plash the hedge or prune or lop the tree as to remove the cause of damage.

(2) The power of a magistrates' court to make an order under subsection (1) above is exercisable on a complaint made by the highway authority for the highway, or, in the case of a highway maintainable by reason of tenure, enclosure or prescription, by the person liable to maintain the highway.

(3) If a person against whom an order under subsection (1) above is made fails to comply with it within 10 days from such date as may be specified in the order, he is guilty of an offence and liable to a fine not exceeding **[**F265level 1 on the standard scale**]**, and the highway authority or other person on whose complaint the order was made may carry out the work required by the order and may recover the expenses reasonably incurred by them or him in so doing from the person in default.

(4) No person shall be required by an order made under this section, nor is any person permitted by subsection (3) above, to cut or prune a hedge at any time **[**F266except**]** between the last day of September and the first day of April.

Textual Amendments

F265 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

F266 Word inserted by Wildlife and Countryside Act 1981 (c. 69, SIF 4:5), **s. 72(13)**

Obstruction of highways and streets

137 Penalty for wilful obstruction. E+W

(1) If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to a fine not exceeding **[**F267level 3 on the standard scale**]**.

F268(2) . . . . . .

Textual Amendments

F267 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

F268 S. 137(2) repealed by Police and Criminal Evidence Act 1984 (c. 60, SIF 95), s. 119, **Sch. 7 Pt. I**

Modifications etc. (not altering text)

C59 S. 137 modified (16.8.2006) by The Dover Harbour Revision Order 2006 (S.I. 2006/2167), **art. 27**

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 30/01/2001

[F269 137ZA Power to order offender to remove obstruction. E+W

(1) Where a person is convicted of an offence under section 137 above in respect of the obstruction of a highway and it appears to the court that—

(a) the obstruction is continuing, and

(b) it is in that person's power to remove the cause of the obstruction,

the court may, in addition to or instead of imposing any punishment, order him to take, within such reasonable period as may be fixed by the order, such steps as may be specified in the order for removing the cause of the obstruction.

(2) The time fixed by an order under subsection (1) above may be extended or further extended by order of the court on an application made before the end of the time as originally fixed or as extended under this subsection, as the case may be.

(3) If a person fails without reasonable excuse to comply with an order under subsection (1) above, he is guilty of an offence and liable to a fine not exceeding level 5 on the standard scale; and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding one-twentieth of that level for each day on which the offence is so continued.

(4) Where, after a person is convicted of an offence under subsection (3) above, the highway authority for the highway concerned exercise any power to remove the cause of the obstruction, they may recover from that person the amount of any expenses reasonably incurred by them in, or in connection with, doing so.

(5) A person against whom an order is made under subsection (1) above is not liable under section 137 above in respect of the obstruction concerned—

(a) during the period fixed under that subsection or any extension under subsection (2) above, or

(b) during any period fixed under section 311(1) below by a court before whom he is convicted of an offence under subsection (3) above in respect of the order.]

Textual Amendments

F269 S. 137ZA inserted (30.1.2001) by 2000 c. 37, **ss. 64(1)(2)**, 103(2)

[F270 137A Interference by crops. E+W

(1) Where a crop other than grass has been sown or planted on any agricultural land the occupier of the land shall from time to time take such steps as may be necessary—

(a) to ensure that the line on the ground of any relevant highway on the land is so indicated to not less than its minimum width as to be apparent to members of the public wishing to use the highway; and

(b) to prevent the crop from so encroaching on any relevant highway, whether passing over that or adjoining land, as to render it inconvenient for the exercise of the public right of way.

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(2) For the purposes of subsection (1) above, a crop shall be treated as encroaching on a highway if, and only if, any part of the crop grows on, or otherwise extends onto or over, the highway in such a way as to reduce the apparent width of the highway to less than its minimum width.

(3) For the purposes of the application of subsection (1) above in the case of a particular crop, the crop shall be treated as grass if, and only if—

(a) it is of a variety or mixture commonly used for pasture, silage or haymaking, whether or not it is intended for such a use in that case; and

(b) it is not a cereal crop.

(4) If the occupier fails to comply with the duty imposed by subsection (1) above he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(5) Without prejudice to section 130 (protection of public rights) above, it is the duty of the highway authority to enforce the provisions of this section.

(6) In this section—

"minimum width", in relation to a highway, has the same meaning as in Schedule 12A to this Act; and

"relevant highways" means—

(a) a footpath,

(b) a bridleway, or

(c) any other highway which consists of or comprises a carriageway other than a made-up carriageway.**]**

Textual Amendments

F270 S. 137A inserted by Rights of Way Act 1990 (c. 24, SIF 59), **s. 1(5)**

138 Penalty for erecting building, etc., in highway. E+W

If a person, without lawful authority or excuse, erects a building or fence, or plants a hedge, in a highway which consists of or comprises a carriageway he is guilty of an offence and liable to a fine not exceeding **[**[F271]level 3 on the standard scale**]**.

Textual Amendments

F271 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

139 Control of builders' skips. E+W

(1) A builders' skip shall not be deposited on a highway without the permission of the highway authority for the highway.

(2) A permission under this section shall be a permission for a person to whom it is granted to deposit, or cause to be deposited, a skip on the highway specfied in the permission, and a highway authority may grant such permission either unconditionally or subject to such conditions as may be specified in the permission including, in particular, conditions relating to—

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(a) the siting of the skip;
(b) its dimensions;
(c) the manner in which it is to be coated with paint and other material for the purpose of making it immediately visible to oncoming traffic;
(d) the care and disposal of its contents;
(e) the manner in which it is to be lighted or guarded;
(f) its removal at the end of the period of permission.

(3) If a builder's skip is deposited on a highway without a permission granted under this section, the owner of the skip is, subject to subsection (6) below, guilty of an offence and liable to a fine not exceeding **[**F272level 3 on the standard scale**]**.

(4) Where a builder's skip has been deposited on a highway in accordance with a permission granted under this section, the owner of the skip shall secure—

(a) that the skip is properly lighted during the hours of darkness **[**F273and, where regulations made by the Secretary of State under this section require it to be marked in accordance with the regulations (whether with reflecting or fluorescent material or otherwise), that it is so marked**]**;
(b) that the skip is clearly and indelibly marked with the owner's name and with his telephone number or address;
(c) that the skip is removed as soon as practicable after it has been filled;
(d) that each of the conditions subject to which that permission was granted is complied with;

and, if he fails to do so, he is, subject to subsection (6) below, guilty of an offence and liable to a fine not exceeding **[**F274level 3 on the standard scale**]**.

(5) Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.

(6) In any proceedings for an offence under this section it is a defence, subject to subsection (7) below, for the person charged to prove that the commission of the offence was due to the act or default of another person and that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(7) A person charged with an offence under this section is not, without leave of the court, entitled to rely on the defence provided by subsection (6) above unless, within a period ending 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(8) Where any person is charged with an offence under any other enactment for failing to secure that a builder's skip which has been deposited on a highway in accordance with a permission granted under this section was properly lighted during the hours of darkness, it is a defence for the person charged to prove that the commission of the offence was due to the act or default of another person and that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(9) Where a person is charged with obstructing, or interrupting any user of, a highway by depositing a builder's skip on it, it is a defence for the person charged to prove

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that the skip was deposited on it in accordance with a permission granted under this section and either—

(a) that each of the requirements of subsection (4) above had been complied with; or

(b) that the commission of any offence under that subsection was due to the act or default of another person and that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(10) Nothing in this section is to be taken as authorising the creation of a nuisance or of a danger to users of a highway or as imposing on a highway authority by whom a permission has been granted under this section any liability for any injury, damage or loss resulting from the presence on a highway of the skip to which the permission relates.

(11) In this section **[**[F275], section 140 and section 140A**]** below—

"builder's skip" means a container designed to be carried on a road vehicle and to be placed on a highway or other land for the storage of builders' materials, or for the removal and disposal of builders' rubble, waste, household and other rubbish or earth; and

"owner", in relation to a builder's skip which is the subject of a hiring agreement, being an agreement for a hiring of not less than one month, or a hire purchase agreement, means the person in possession of the skip under that agreement.

Textual Amendments

F272 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

F273 Words inserted by Transport Act 1982 (c. 49, SIF 107:1), **s. 65**

F274 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

F275 Words in s. 139(11) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8**, Part I, para1; S.I. 1992/2984, art. 2(2), **Sch. 2**.

Modifications etc. (not altering text)

C60 S. 139: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**

140 Removal of builders' skips. E+W

(1) The following provisions of this section have effect in relation to a builder's skip deposited on a highway notwithstanding that it was deposited on it in accordance with a permission granted under section 139 above.

(2) The highway authority for the highway or a constable in uniform may require the owner of the skip to remove or reposition it or cause it to be removed or repositioned.

(3) A person required to remove or reposition, or cause to be removed or repositioned, a skip under a requirement made by virtue of subsection (2) above shall comply with the requirement as soon as practicable, and if he fails to do so he is guilty of an offence and liable to a fine not exceeding **[**[F276]level 3 on the standard scale**]**.

(4) The highway authority for the highway or a constable in uniform may themselves remove or reposition the skip or cause it to be removed or repositioned.

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(5) Where a skip is removed under subsection (4) above, the highway authority or, as the case may be, the chief officer of police shall, where practicable, notify the owner of its removal, but if the owner cannot be traced, or if after a reasonable period of time after being so notified he has not recovered the skip, the highway authority or chief officer of police may dispose of the skip and its contents.

(6) Any expenses reasonably incurred by a highway authority or chief officer of police in the removal or repositioning of a skip under subsection (4) above or the disposal of a skip under subsection (5) above may be recovered from the owner of the skip in any court of competent jurisdiction or summarily as a civil debt.

(7) Any proceeds of the disposal of a skip under subsection (5) above shall be used in the first place to meet the expenses reasonably incurred in the removal and disposal of the skip and thereafter any surplus shall be given to the person entitled to it if he can be traced and if not may be retained by the highway authority or the chief officer of police, as the case may be; and any surplus so retained by a chief officer of police shall be paid into the police fund.

(8) References in this section to expenses incurred in the removal of a skip include references to expenses incurred in storing the skip until it is recovered by the owner or, as the case may be, disposed of.

(9) The owner of a skip is not guilty of an offence under section 139(4) above of failing to secure that a condition relating to the siting of the skip was complied with if the failure resulted from the repositioning of the skip under subsection (3) or (4) above.

Textual Amendments

F276 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

[F277 140A Builder's skips: charge for occupation of highway. E+W

(1) The Minister may make provision by regulations requiring the owner of a builder's skip deposited on a highway maintainable at the public expense to pay a charge to the highway authority where—

(a) the period for which the skip remains in the highway exceeds such period as may be prescribed, and

(b) the skip is not removed within a reasonable period.

(2) For this purpose "a reasonable period" means such period as is agreed by the authority and the owner of the skip to be reasonable or, in default of such agreement, is determined by arbitration to be reasonable in the circumstances.

In default of agreement, the authority's view as to what is a reasonable period shall be acted upon pending the decision of the arbitrator.

(3) The regulations may provide that if a person applying to the highway authority for permission under section 139 above submits together with his application an estimate of the likely duration of the occupation of the highway, the period stated in the estimate shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Highways Act 1980 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) The regulations may also provide that if it appears to the owner of the skip that by reason of matters not previously foreseen or reasonably foreseeable the duration of the occupation of the highway—

(a) is likely to exceed the prescribed period,

(b) is likely to exceed the period stated in his previous estimate, or

(c) is likely to exceed the period previously agreed or determined to be a reasonable period,

he may submit an estimate or revised estimate accordingly, and that if he does so any previous estimate, agreement or determination shall cease to have effect and the period stated in the new estimate shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.

(5) The amount of the charge shall be determined in such manner as may be prescribed by reference to the period for which the highway is occupied by the skip and the extent of the occupation.

Different rates of charge may be prescribed according to the place and time of the occupation and such other factors as appear to the Minister to be relevant.

(6) The regulations may make provision as to the time and manner of making payment of any charge.

(7) The regulations shall provide that a highway authority may reduce the amount, or waive payment, of a charge in any particular case, in such classes of case as they may decide or as may be prescribed, or generally.

(8) In this section "prescribed" means prescribed by the Minister by regulations.**]**

Textual Amendments

F277 S. 140A inserted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Part I para.2**; S.I. 1992/2984, art. 2(2), **Sch. 2** .

PROSPECTIVE

[F278 140B Builders' skips: charge determined by reference to duration of occupation of highway E+W

(1) The Secretary of State may make provision by regulations requiring the owner of a builder's skip deposited on a highway maintainable at the public expense to pay to the highway authority a charge determined, in the prescribed manner, by reference to the period for which the highway is occupied by the skip.

(2) The regulations shall not require charges to be paid to a local highway authority unless the Secretary of State has, by order, approved the authority for the purposes of the regulations.

(3) The regulations may require disputes of any prescribed description to be referred to an arbitrator appointed in accordance with the regulations.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Highways Act 1980 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Subsections (4) and (8) to (20) of section 140A apply in relation to regulations under subsection (1) of this section as they apply in relation to regulations under subsection (1) of that section.**]**

Textual Amendments

F278 S. 140B inserted (prosp.) by Traffic Management Act 2004 (c. 18), **ss. 67**, 99 (with s. 38)

PROSPECTIVE

[F279 140C Regulations under sections 140A and 140B E+W

Nothing shall be taken to prevent the imposition of charges by both regulations under section 140A and regulations under section 140B in respect of the same builder's skip at the same time.**]**

Textual Amendments

F279 S. 140C inserted (prosp.) by Traffic Management Act 2004 (c. 18), **ss. 70(2)**, 99 (with s. 38)

141 Restriction on planting of trees etc. in or near carriageway. E+W

(1) Subject to sections 64 and 96 above and section 142 below, no tree or shrub shall be planted in a made-up carriageway, or within 15 feet from the centre of a made-up carriageway.

(2) If a tree or shrub is planted in contravention of this section the highway authority for the highway or, in the case of a highway maintainable by reason of tenure, enclosure or prescription, the person liable to maintain the highway, may by notice given either to the owner or to the occupier of the land in which the tree or shrub is planted require him to remove it within 21 days from the date of service of the notice.

(3) If a person fails to comply with a notice under subsection (2) above he is guilty of an offence and liable to a fine not exceeding **[**F280 level 1 on the standard scale**]** and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding 50p for each day on which the offence is so continued.

Textual Amendments

F280 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

Modifications etc. (not altering text)

C61 S. 141 excluded (18.12.1996) by 1996 c. 61, s. 38, **Sch. 10 para. 5(2)**.

C62 S. 141 excluded (22.7.2008) by Crossrail Act 2008 (c. 18), s. 40, **Sch. 14 para. 7(2)**

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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142 Licence to plant trees, shrubs, etc., in a highway. E+W

(1) The highway authority for a highway may by a licence granted under this section permit the occupier or the owner of any premises adjoining the highway to plant and maintain, or to retain and maintain, trees, shrubs, plants or grass in such part of the highway as may be specified in the licence.

(2) The highway authority may, as they think fit—

(a) grant a licence under this section to the person who at the time of the grant is the occupier of such premises and insert in the licence provisions prohibiting assignment of the licence and providing for its duration; or

(b) grant such a licence to the owner of such premises and his successors in title and insert in the licence provisions providing for the licence to be annexed to those premises and providing for its duration;

and references in this section to the licensee are references to the person who is for the time being entitled by virtue of such a licence to do anything permitted by it to be done.

(3) No fine, rent or other sum of money is payable in respect of such a licence except—

(a) a reasonable sum in respect of legal or other expenses incurred in connection with the grant of the licence; and

(b) an annual charge of a reasonable amount for administering the licence;

and any such sum is recoverable from the licensee.

(4) It shall be a condition of every licence granted by virtue of subsection (2)(b) above that within one month after any change in the ownership of the premises in question takes place the licensee is to inform the highway authority of it.

(5) A highway authority may attach to any such licence such conditions as they consider necessary to ensure the safety and convenience of passengers in the highway and to prevent traffic therein being delayed, to prevent any nuisance or annoyance being caused to the owners or occupiers of other premises adjoining the highway and to protect the apparatus of statutory undertakers, [F281]. . . **[**[F282]and the operators of telecommunications code systems**][**[F283]or driver information systems**]**.

(6) A highway authority may by notice served on the licensee withdraw a licence granted by them under this section—

(a) on the expiration of such period as may be specified in the notice, being a period of not less than 7 days beginning with the date of service of the notice on the licensee, if any condition of the licence is contravened by the licensee;

(b) on the expiration of such period as may be so specified, being a period of not less than 3 months beginning with the said date, if the authority consider the withdrawal of the licence is necessary for the purpose of the exercise of their functions as a highway authority.

(7) Where a licence under this section expires or is withdrawn or surrendered, the highway authority by whom it was granted—

(a) may remove all or any of the trees, shrubs, plants or grass to which the licence relates and reinstate the highway and may recover the expenses reasonably incurred by them in so doing from the last licensee; or

(b) if satisfied that the last licensee can, within such reasonable time as they may specify, remove such trees, shrubs, plants or grass or such of them as they may specify and reinstate the highway, may authorise him to do so at his own expense.

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In this subsection "the last licensee" means the person who immediately before the expiration, withdrawal or surrender of the licence in question was the licensee or, if that person has died, his personal representatives.

(8) The licensee and the person who immediately before the expiration, withdrawal or surrender of a licence under this section was the licensee or, if that person has died, his personal representatives shall indemnify the highway authority against any claim in respect of injury, damage or loss arising out of—

(a) the planting or presence in a highway of trees, shrubs, plants or grass to which the licence relates, or

(b) the execution by any person of any works authorised by the licence or by the highway authority under subsection (7) above, or

(c) the execution by or on behalf of the highway authority of any works under subsection (7) above;

but this subsection is not to be taken as requiring any person to indemnify the highway authority against any claim in respect of injury, damage or loss which is attributable to the negligence of that authority.

(9) If any person plants a tree or shrub in a highway otherwise than in pursuance of a licence granted under this section, the tree or shrub is to be deemed, for the purposes of section 141 above, to have been planted in contravention of that section.

(10) Where the land on which a highway is situated is owned by the highway authority for the highway, nothing in subsection (3) above is to be taken as affecting the rights of that authority as the owner of that land to grant to any person, for such consideration as they think fit, the right to plant any thing in that land.

Textual Amendments

F281 Words repealed 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**

F282 Words substituted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 76(4), **Sch. 5 para. 45**

F283 Words inserted by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), s. 13(1), **Sch. 4 para. 3(4)**

Modifications etc. (not altering text)

C63 S. 142: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**

143 Power to remove structures from highways. E+W

(1) Where a structure has been erected or set up on a highway otherwise than under a provision of this Act or some other enactment, a competent authority may by notice require the person having control or possession of the structure to remove it within such time as may be specified in the notice.

For the purposes of this section the following are competent authorities—

(a) in the case of a highway which is for the time being maintained by a **[**F284non-metropolitan**]** district council by virtue of section 42 or 50 above, that council and also the highway authority, and

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(b) in the case of any other highway, the highway authority.

(2) If a structure in respect of which a notice is served under this section is not removed within the time specified in the notice, the competent authority serving the notice may, subject to subsection (3) below, remove the structure and recover the expenses reasonably incurred by them in so doing from the person having control or possession of the structure.

(3) The authority shall not exercise their power under subsection (2) above until the expiration of one month from the date of service of the notice.

(4) In this section "structure" includes any machine, pump, post or other object of such a nature as to be capable of causing obstruction, and a structure may be treated for the purposes of this section as having been erected or set up notwithstanding that it is on wheels.

Textual Amendments

F284 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 25**

144 Power to erect flagpoles etc. on highways. E+W

(1) Subject to subsection (2) below, a local authority may—

(a) erect flagpoles, pylons and other structures on any highway in their area for the purpose of displaying decorations;

(b) make slots in such a highway for the purpose of erecting the structures; and

(c) remove any structure erected or slot made by the authority in pursuance of paragraph (a) or (b) above;

and any structures or slots which may be erected or made by virtue of this subsection are hereafter in this section referred to as "relevant works".

(2) A local authority are not entitled to exercise the powers conferred on them by subsection (1) above in respect of a highway for which they are not the highway authority except with the consent in writing of the highway authority for the highway, and are not entitled to exercise those powers in respect of so much of a highway as—

(a) is carried by a bridge which a body other than the local authority and the highway authority has a duty to maintain; or

(b) forms part of the approaches to such a bridge and is supported or protected by works or materials which a body other than the local authority and the highway authority has a duty to maintain.

except with the consent in writing of that body.

In this subsection "bridge" includes a structure which carries a highway superimposed over a cutting.

(3) A highway authority or other body may give their consent in pursuance of subsection (2) above on such terms as they think fit (including in particular, without prejudice to the generality of the preceding provisions of this subsection, terms providing for the highway authority or body to remove any of the relevant works and reinstate the highway and to recover the reasonable cost of doing so from the local authority to whom the consent was given).

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(4) It is the duty of an authority by whom relevant works are erected or made by virtue of the preceding provisions of this section—

(a) to ensure that the works are erected or made so as to obstruct the highway in question as little as is reasonably possible, so as not to obscure or conflict with traffic signs connected with the highway and so as to interfere as little as is reasonably possible with the enjoyment of premises adjacent to the highway and with, and with access to, any apparatus in or on the highway which belongs to or is used or maintained by statutory undertakers; and

(b) to ensure that while the works are retained they are properly maintained and, so far as it is necessary to light them to avoid danger to users of the highway, are properly lit; and

(c) if the authority are not the highway authority for the highway, to indemnify the highway authority against any payments falling to be made by the highway authority in consequence of the works.

(5) A person who without lawful authority interferes with or removes any relevant works is guilty of an offence and liable to a fine not exceeding **[**F285level 3 on the standard scale**]**.

(6) In this section—

"local authority" means any of the following, namely, the council of a county, district or London borough, F286. . . the Common Council, the Council of the Isles of Scilly and a parish or community council; and

"statutory undertakers" means any of the following, namely, any body which is a statutory undertaker within the meaning provided by section 329(1) below, the Post Office, F287. . . F288. . . **[**F289any licensee under a street works licence**][**F290and the operator of a telecommunications code system**][**F291or a driver information system**]**.

Textual Amendments

F285 Words in s. 144(5) substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 35**, 37, 38, 46 (with s. 47)

F286 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F287 Words repealed 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**

F288 Word repealed by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, **Sch. 7**

F289 S. 144(6): words in definition of "statutory undertakers" substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Part I para.3**; S.I. 1992/2984, art. 2(2), **Sch.2**.

F290 Words inserted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 76(5), **Sch. 5 para. 45**

F291 S. 144(6): words in definition of "statutory undertakers" inserted by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), s. 13(1), **Sch. 4 para. 3(5)**

Modifications etc. (not altering text)

C64 By Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 3(1), **Sch. 5 para. 45** it is provided that references to British Telecommunications in s. 144(6) cease to have effect

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Changes to legislation: *Highways Act 1980 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

145 Powers as to gates across highways. E+W

(1) Where there is a gate of less than the minimum width across so much of a highway as consists of a carriageway, or across a highway that is a bridleway, the highway authority for the highway may by notice to the owner of the gate require him to enlarge the gate to that width or remove it.

In this subsection "the minimum width" means, in relation to a gate across so much of a highway as consists of a carriageway, 10 feet and, in relation to a gate across a bridleway, 5 feet, measured in either case between the posts of the gate.

(2) If a person on whom a notice under subsection (1) above is served fails to comply, within 21 days from the date of service of the notice on him, with a requirement of the notice, he is guilty of an offence and liable to a fine not exceeding 50p for each day during which the failure continues.

146 Duty to maintain stiles etc. on footpaths and bridleways. E+W

(1) Any stile, gate or other similar structure across a footpath or bridleway shall be maintained by the owner of the land in a safe condition, and to the standard of repair required to prevent unreasonable interference with the rights of the persons using the footpath or bridleway.

(2) If it appears to the appropriate authority that the duty imposed by subsection (1) above is not being complied with, they may, after giving to the owner and occupier not less than 14 days' notice of their intention, take all necessary steps for repairing and making good the stile, gate or other works.

For the purposes of this section the appropriate authority is—

(a) in the case of a footpath or bridleway which is for the time being maintained by a **[**F292non-metropolitan**]** district council by virtue of section 42 or 50 above, that council, and

(b) in the case of any other footpath or bridleway, the highway authority.

(3) The appropriate authority may recover from the owner of the land the amount of any expenses reasonably incurred by the authority in and in connection with the exercise of their powers under subsection (2) above, or such part of those expenses as the authority think fit.

(4) The appropriate authority shall contribute not less than a quarter of any expenses shown to their satisfaction to have been reasonably incurred in compliance with subsection (1) above, and may make further contributions of such amount in each case as, having regard to all the circumstances, they consider reasonable.

(5) Subsection (1) above does not apply to any structure—

(a) if any conditions for the maintenance of the structure are for the time being in force under section 147 below, or

(b) if and so long as, under an agreement in writing with any other person, there is a liability to maintain the structure on the part of the appropriate authority or, where the appropriate authority are a **[**F292non-metropolitan**]** district council, on the part of either the appropriate authority or the highway authority.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Highways Act 1980 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F292 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 25**

Modifications etc. (not altering text)

C65 S. 146 applied (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. I**; S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

147 Power to authorise erection of stiles etc. on footpath or bridleway. E+W

(1) The following provisions of this section apply where the owner, lessee or occupier of agricultural land, or of land which is being brought into use for agriculture, represents to a competent authority, as respects a footpath or bridleway that crosses the land, that for securing that the use, or any particular use, of the land for agriculture shall be efficiently carried on, it is expedient that stiles, gates or other works for preventing the ingress or egress of animals should be erected on the path or way.

For the purposes of this section the following are competent authorities—

(a) in the case of a footpath or bridleway which is for the time being maintained by a **[**F293non-metropolitan**]** district council by virtue of section 42 or 50 above, that council and also the highway authority, and

(b) in the case of any other footpath or bridleway, the highway authority.

(2) Where such a representation is made the authority to whom it is made may, subject to such conditions as they may impose for maintenance and for enabling the right of way to be exercised without undue inconvenience to the public, authorise the erection of the stiles, gates or other works.

(3) Where an authorisation in respect of a footpath or bridleway is granted under this section the public right of way is to be deemed to be subject to a condition that the stiles, gates or works may be erected and maintained in accordance with the authorisation and so long as the conditions attached to it are complied with.

(4) For the purposes of section 143 above, any stile, gate or works erected in pursuance of an authorisation under this section is to be deemed to be erected under this section only if the provisions of the authorisation and any conditions attached to it are complied with.

(5) In this section references to agricultural land and to land being brought into use for agriculture include references to land used or, as the case may be, land being brought into use, for forestry.

(6) Nothing in this section prejudices any limitation or condition having effect apart from this section.

Textual Amendments

F293 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 25**

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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Modifications etc. (not altering text)

C66 S. 147: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**

VALID FROM 06/12/2006

[F294 147ZA Agreements relating to improvements for benefit of persons with mobility problems. E+W

(1) With respect to any relevant structure, a competent authority may enter into an agreement with the owner, lessee or occupier of the land on which the structure is situated which provides—

(a) for the carrying out by the owner, lessee or occupier of any qualifying works and the payment by the competent authority of the whole or any part of the costs incurred by him in carrying out those works, or

(b) for the carrying out by the competent authority of any qualifying works at their own expense or subject to the payment by the owner, lessee or occupier of the whole or any part of the costs incurred in carrying out those works.

(2) In this section—

(a) "competent authority" has the same meaning as in section 147 above,

(b) "relevant structure" means a stile, gate or other structure which—

(i) is authorised by a condition or limitation subject to which the public right of way over the footpath or bridleway was created, or

(ii) is authorised under section 147 above,

but does not include a structure to which an agreement falling within section 146(5)(b) above relates, and

(c) "qualifying works", in relation to a relevant structure, means works for replacing or improving the structure which will result in a structure that is safer or more convenient for persons with mobility problems.

(3) An agreement under this section may include such conditions as the competent authority think fit.

(4) Those conditions may in particular include conditions expressed to have enduring effect—

(a) for the maintenance of the structure as replaced or improved, and

(b) for enabling the public right of way to be exercised without undue inconvenience to the public.

(5) Where an agreement under this section has been entered into in relation to any structure—

(a) the public right of way is to be deemed to be subject to a condition that the structure as replaced or improved may be erected and maintained in accordance with the agreement so long as any conditions included by virtue of subsection (4) above are complied with,

(b) in a case falling within subsection (2)(b)(i) above, as from the effective date the previous condition or limitation relating to the relevant structure shall cease to have effect, and

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(c) in a case falling within subsection (2)(b)(ii) above, as from the effective date the previous authorisation under section 147 above shall cease to have effect in relation to the relevant structure.

(6) In subsection (5) above "the effective date" means—

(a) the first anniversary of the day on which the agreement was entered into, or

(b) such earlier date as may be specified for the purposes of this subsection in the agreement.

(7) For the purposes of section 143 above, any stile, gate or other structure replaced or improved in pursuance of an agreement under this section is to be deemed to be erected under this section only if any conditions included by virtue of subsection (4) above are complied with.

(8) A competent authority may not enter into an agreement under this section except with the consent of every owner, lessee or occupier of the land on which the relevant structure is situated who is not a party to the agreement.

(9) The Secretary of State may issue guidance to competent authorities as to matters to be taken into account for the purposes of this section; and in exercising their powers under this section competent authorities shall have regard to any such guidance issued to them.**]**

Textual Amendments

F294 S. 147ZA inserted (6.12.2006 for W. for certain purposes, 1.4.2007 for W. in so far as not already in force, 1.10.2007 for E.) by 2000 c. 37, s. 69(3); S.I. 2006/3257, **arts. 2(b)**, 3; S.I. 2007/2595, **art. 2**

[F295**147A Road-side sales.** E+W

(1) Subject to subsection (4) below, no person shall, for the purpose of selling anything, or offering or exposing anything for sale, use any stall or similar structure or any container or vehicle, kept or placed on—

(a) the verge of a trunk road or a principal road;

(b) a lay-by on any such road; or

(c) unenclosed land within 15 metres of any part of any such road,

where its presence or its use for that purpose causes or is likely to cause danger on the road or interrupts or is likely to interrupt any user of the road.

(2) Any person who contravenes this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding **[**F296level 3 on the standard scale**]**.

(3) It shall be a defence for a person charged with an offence under this section to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.

(4) This section does not apply—

(a) to the sale or offer or exposure for sale of things from or on a vehicle which is used only for the purposes of itinerant trading with the occupiers of premises, or is used only for that purpose and for purposes other than trading;

(b) to the sale or offer or exposure for sale of newspapers;

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(c) to anything done at a market in respect of which tolls, stallages or rents are payable; or

(d) to the sale or offer or exposure for sale of anything by way of street trading which has been authorised under Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 or under any local enactment which makes provision similar to that made by that Schedule, either by the person so authorised or by a person acting as assistant to the person so authorised.**]**

Textual Amendments

F295 S. 147A inserted by Local Government (Miscellaneous Provisions) Act 1982 (c. 30, SIF 81:1), **s. 23**

F296 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

148 Penalty for depositing things or pitching booths etc. on highway. E+W

If, without lawful authority or excuse—

(a) a person deposits on a made-up carriageway any dung, compost or other material for dressing land, or any rubbish, or

(b) a person deposits on any highway that consists of or comprises a made-up carriageway any dung, compost or other material for dressing land, or any rubbish, within 15 feet from the centre of that carriageway, or

(c) a person deposits any thing whatsoever on a highway to the interruption of any user of the highway, or

(d) a hawker or other itinerant trader pitches a booth, stall or stand, or encamps, on a highway.

he is guilty of an offence and liable to a fine not exceeding **[**[F297]level 3 on the standard scale**]**.

Textual Amendments

F297 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

149 Removal of things so deposited on highways as to be a nuisance etc. E+W

(1) If any thing is so deposited on a highway as to constitute a nuisance, the highway authority for the highway may by notice require the person who deposited it there to remove it forthwith and if he fails to comply with the notice the authority may make a complaint to a magistrates' court for a removal and disposal order under this section.

(2) 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 and disposal order from a magistrates' court under this section,

the authority may remove the thing forthwith.

(3) The highway authority by whom a thing is removed in pursuance of subsection (2) above may either—

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(a) 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, or

(b) make a complaint to a magistrates' court for a disposal order under this section.

(4) A magistrates' court may, on a complaint made under this section, make an order authorising the complainant authority—

(a) either to remove the thing in question and dispose of it or, as the case may be, to dispose of the thing in question, and

(b) after payment out of any proceeds arising from the disposal of the expenses incurred in the removal and disposal, to apply the balance, if any, of the proceeds to the maintenance of highways maintainable at the public expense by them.

(5) If the thing in question is not of sufficient value to defray the expenses of removing it, the complainant authority may recover from the person who deposited it on the highway the expenses, or the balance of the expenses, reasonably incurred by them in removing it.

(6) A magistrates' court composed of a single justice may hear a complaint under this section.

Modifications etc. (not altering text)

C67 S. 149: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**

150 Duty to remove snow soil etc. from highway. E+W

(1) If an obstruction arises in a highway from accumulation of snow or from the falling down of banks on the side of the highway, or from any other cause, the highway authority shall remove the obstruction.

(2) If a highway authority fail to remove an obstruction which it is their duty under this section to remove, a magistrates' court may, on a complaint made by any person, by order require the authority to remove the obstruction within such period (not being less than 24 hours) from the making of the order as the court thinks reasonable, having regard to all the circumstances of the case.

(3) In considering whether to make an order under this section and, if so, what period to allow for the removal of the obstruction, the court shall in particular have regard to—

(a) the character of the highway to which the complaint relates, and the nature and amount of the traffic by which it is ordinarily used,

(b) the nature and extent of the obstruction, and

(c) the resources of manpower, vehicles and equipment for the time being available to the highway authority for work on highways and the extent to which those resources are being, or need to be, employed elsewhere by that authority on such work.

(4) Where they are under a duty to remove an obstruction under subsection (1) above, a highway authority may—

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(a) take any reasonable steps (including the placing of lights, signs and fences on the highway) for warning users of the highway of the obstruction;

(b) sell any thing removed in carrying out the duty, unless the thing is claimed by its owner before the expiration of 7 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 paragraph (b) above, from its previous owner, the expenses reasonably incurred as respects the obstruction in carrying out the duty and in exercising any powers conferred by this subsection, but so that no such expenses are 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.

(5) Where a highway authority sell any thing in exercise of their powers under subsection (4) above, then—

(a) if any expenses are recoverable under that subsection by the authority 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.

(6) The foregoing provisions of this section apply to a person liable to maintain a highway by reason of tenure, enclosure or prescription as they apply to the highway authority for that highway, and references in those provisions to a highway authority are to be construed accordingly.

151 Prevention of soil etc. being washed on to street. E+W

(1) A competent authority may, by notice to the owner or occupier of any land adjoining a street which is a highway maintainable at the public expense, require him, within 28 days from the date of service of the notice, to execute such works as will prevent soil or refuse from that land from falling, or being washed or carried, on to the street or into any sewer or gully in it in such quantities as to obstruct the street or choke the sewer or gully.

For the purposes of this section the following are competent authorities—

(a) in relation to a street outside Greater London, the highway authority for the street and also **[**F298, if the street is situated in a non-metropolitan district, the council of that district; and**]**

(b) in relation to a street within Greater London, the council of the London borough in which the street is situated or, if it is situated in the City of London, the Common Council F299. . .

[F300(1A) In relation to a street in Wales, the competent authorities for the purposes of this section are the highway authority for the street and, if different, the Welsh council in whose area the street is situated.**]**

(2) A person aggrieved by a requirement under this section may appeal to a magistrates' court.

(3) Subject to any order made on appeal, if a person on whom a notice is served under this section fails to comply with it within the period specified in subsection (1) above,

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he is guilty of an offence and liable to a fine not exceeding **[**F301level 3 on the standard scale**]**; and if the offence is continued after conviction, he is guilty of a further offence and liable to a fine not exceeding £1 for each day on which the offence is so continued.

Textual Amendments

F298 Words substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 26**

F299 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F300 S. 151(1A) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 13** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

F301 Words in s. 151(3) substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 35**, 37, 38, 46 (with s. 47)

152 Powers as to removal of projections from buildings. E+W

(1) A competent authority may by notice to the occupier of any building require him to remove or alter any porch, shed, projecting window, step, cellar, cellar door, cellar window, sign, signpost, sign iron, showboard, window shutter, wall, gate, fence or other obstruction or projection which has been erected or placed against or in front of the building and is an obstruction to safe or convenient passage along a street.

(2) A notice under subsection (1) above may, at the option of the authority, be served on the owner of the building instead of on the occupier or may be served on both the owner and the occupier.

(3) A person aggrieved by a requirement under subsection (1) above may appeal to a magistrates' court.

(4) Subject to any order made on appeal, if a person on whom a notice under subsection (1) above is served fails to comply, within 14 days from the date of service of the notice on him, with a requirement of the notice, he is guilty of an offence and liable to a fine not exceeding **[**F302level 1 on the standard scale**]**.

(5) Where an authority serve a notice under subsection (1) above on any person and he is guilty of an offence by reason of his failure to comply with a requirement of the notice within the time specified in subsection (4) above then, whether or not proceedings are taken against him in respect of the offence, the authority may remove the obstruction or projection to which the notice relates and may recover the expenses reasonably incurred by them in so doing from the owner or occupier of the building if, in either case, he is a person on whom the notice was served.

(6) In a case where a requirement under subsection (1) above is made in connection with an obstruction or projection not erected or placed by the occupier of the relevant building Schedule 13 to this Act applies in relation to any sum paid by the occupier in complying with a requirement under that subsection or, where the requirement is not complied with, in reimbursing the relevant authority for expenses reasonably incurred by them under subsection (5) above.

(7) Subsection (1) above does not apply in respect of any such obstruction or projection as is there mentioned if it was erected or placed before the date when section 69 of the **M36**Towns Improvement Clauses Act 1847 first applied in the area in which the building in question is situated.

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(8) If any such obstruction or projection was erected or placed before that date against or in front of a building in a street, a competent authority may, on the expiration of 30 days from the date of service on either the owner or the occupier of the building of a notice of their intention, remove or alter the obstruction or projection as they think fit, and, if the obstruction or projection was lawfully erected or placed, the authority shall pay reasonable compensation to every person who suffers damage by reason of its removal or alteration.

(9) For the purposes of this section—

(a) the competent authorities are the local authority in whose area the street is situated and also, where the street is a highway, the highway authority for it;

(b) a projection which is erected or placed against or in front of a building, and which by reason of its being insecurely fixed or of defective construction or otherwise is a source of danger to persons lawfully using a street, is to be deemed to be an obstruction to safe or convenient passage along the street.

Textual Amendments

F302 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

Marginal Citations

M36 1847 c. 34.

153 Doors etc. in streets not to open outwards. E+W

(1) A door, gate or bar which is put up on any premises and opens on a street shall be so put up as not to open outwards unless, in the case of a door, gate or bar put up on a public building, the local authority for the area in which the building is situated and also, if the street is a highway, the highway authority consent to its being otherwise put up.

(2) Where a door, gate or bar is put up on any premises in contravention of subsection (1) above the local authority for the area in which the premises are situated or alternatively, if the street concerned is a highway, the highway authority may, by notice to the occupier, require him to alter, so as not to open outwards, the door, gate or bar.

(3) A notice under subsection (2) above may, at the option of the highway authority or local authority, be served on the owner of the premises instead of on the occupier or may be served on both the owner and the occupier of the premises.

(4) A person aggrieved by the refusal of a consent under subsection (1) above or by a requirement under subsection (2) above may appeal to a magistrates' court.

(5) Subject to any order made on appeal, if a person on whom a notice under subsection (2) above is served fails to comply, within 8 days from the date of service of the notice on him, with a requirement of the notice, he is guilty of an offence and liable to a fine not exceeding **[**F303level 1 on the standard scale**]**.

(6) Where a highway authority or local authority serve a notice under subsection (2) above on any person and he is guilty of an offence by reason of his failure to comply with a requirement of the notice within the time specified in subsection (5) above, then, whether or not proceedings are taken against him in respect of the offence, the authority may do the work required by the notice and recover the expenses reasonably

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incurred by them in so doing from the owner or occupier of the premises if, in either case, he is a person on whom the notice was served.

(7) Where a requirement under subsection (2) above is made in connection with a door, gate or bar not put up by the occupier of the premises Schedule 13 to this Act applies in relation to any sum paid by the occupier in complying with a requirement under subsection (2) above or, where the requirement is not complied with, in reimbursing the authority for expenses reasonably incurred by them under subsection (6) above.

Textual Amendments

F303 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

154 Cutting or felling etc. trees etc. that overhang or are a danger to roads or footpaths. E+W

(1) Where a hedge, tree or shrub overhangs a highway or any other road or footpath to which the public has access so as to endanger or obstruct the passage of vehicles or pedestrians, or obstructs or interferes with the view of drivers of vehicles or the light from a public lamp, a competent 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 growing, require him within 14 days from the date of service of the notice so to lop or cut it as to remove the cause of the danger, obstruction or interference.

For the purposes of this section the following are competent authorities—

(a) in relation to a highway for which the Minister is the highway authority and which is in a district or London borough, the Minister and also the council of the district or, as the case may be, borough;

(b) in relation to a highway for which a local highway authority are the highway authority, that authority and also **[**F304, if the highway is situated in a non-metropolitan district, the council of that district;**]**

(c) in relation to a road or footpath that is not a highway, the local authority in whose area the road or footpath is situated;

and "hedge, tree or shrub" includes vegetation of any description.

[F305(1A) In subsection (1)(a) above, any reference to a district includes a reference to a Welsh county or county borough.**]**

(2) Where it appears to a competent 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

(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 14 days from the date of service of the notice so to cut or fell it as to remove the likelihood of danger.

(3) A person aggrieved by a requirement under subsection (1) or (2) above may appeal to a magistrates' court.

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(4) Subject to any order made on appeal, if a person on whom a notice is served under subsection (1) or (2) above fails to comply with it within the period specified in those subsections, the authority who served the notice may carry out the work required by the notice and recover the expenses reasonably incurred by them in so doing from the person in default.

Textual Amendments

F304 Words substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 27**

F305 S. 154(1A) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.14** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

155 Penalties in connection with straying animals. E+W

(1) If any horses, cattle, sheep, goats or swine are at any time found straying or lying on or at the side of a highway their keeper is guilty of an offence; but this subsection does not apply in relation to a part of a highway passing over any common, waste or unenclosed ground.

In this section "keeper", in relation to any animals, means a person in whose possession they are.

(2) A person guilty of an offence under this section is liable to a fine not exceeding **[**F306level 3 on the standard scale**]**.

(3) A person guilty of an offence under this section is also liable to pay the reasonable expenses of removing any animal so found straying or lying to the premises of their keeper, or to the common pound, or to such other place as may have been provided for the purpose, and any person who incurs such expenses is entitled to recover them summarily as a civil debt.

For the purposes of this subsection "expenses", in a case where an animal has been removed to the common pound, includes the usual fees and charges of the authorised keeper of the pound.

(4) If a person, without lawful authority or excuse, releases any animal seized for the purpose of being impounded under this section from the pound or other place where it is impounded, or on the way to or from any such place, or damages any such place, he is guilty of an offence and liable to a fine not exceeding **[**F307level 2 on the standard scale**]**.

(5) Nothing in this section prejudices or affects any right of pasture on the side of a highway.

Textual Amendments

F306 Words in s. 155(2) substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 35**, 37, 38, 46 (with s. 47)

F307 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 37**, 46

F308156 . . . . . E+W

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Textual Amendments

F308 S. 156 repealed (1.1.1993)by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108) s. 168(2), Sch. 9 (with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch. 2**.

157— 159. ..... F309 E+W

Textual Amendments

F309 Ss. 157–159 repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F310**160** ..... E+W

Textual Amendments

F310 S. 160 repealed (1.1.1993)by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108) s. 168(2),Sch. 9 (with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch.2**.

[F311160A Further powers of highway authorities and district council in relation to highways. E+W

Schedule 12A to this Act shall have effect.**]**

Textual Amendments

F311 S. 160A inserted by Rights of Way Act 1990 (c. 24, SIF 59), **s. 1(6)**

Danger or annoyance to users of highways and streets

161 Penalties for causing certain kinds of danger or annoyance. E+W

(1) If a person, without lawful authority or excuse, deposits any thing whatsoever on a highway in consequence of which a user of the highway is injured or endangered, that person is guilty of an offence and liable to a fine not exceeding **[**F312level 3 on the standard scale**]**.

[F313(2) If a person without lawful authority or excuse—

(a) lights any fire on or over a highway which consists of or comprises a carriageway; or

(b) discharges any firearm or firework within 50 feet of the centre of such a highway,

and in consequence a user of the highway is injured, interrupted or endangered, that person is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.**]**

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(3) If a person plays at football or any other game on a highway to the annoyance of a user of the highway he is guilty of an offence and liable to a fine not exceeding **[**F314level 1 on the standard scale**]**.

(4) If a person, without lawful authority or excuse, allows any filth, dirt, lime or other offensive matter or thing to run or flow on to a highway from any adjoining premises, he is guilty of an offence and liable to a fine not exceeding **[**F315level 1 on the standard scale**]**.

Textual Amendments

F312 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

F313 S. 161(2) substituted by Highways (Amendment) Act 1986 (c. 13, SIF 59), **s. 1(2)**

F314 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

F315 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

[F316**161A Danger or annoyance caused by fires lit otherwise than on highways.** E+W

(1) If a person—

(a) lights a fire on any land not forming part of a highway which consists of or comprises a carriageway; or

(b) directs or permits a fire to be lit on any such land,

and in consequence a user of any highway which consists of or comprises a carriageway is injured, interrupted or endangered by, or by smoke from, that fire or any other fire caused by that fire, that person is guilty of an offence and liable to a fine not exceeding level 5 on the standard scale.

(2) In any proceedings for an offence under this section it shall be a defence for the accused to prove—

(a) that at the time the fire was lit he was satisfied on reasonable grounds that it was unlikely that users of any highway consisting of or comprising a carriageway would be injured, interrupted or endangered by, or by smoke from, that fire or any other fire caused by that fire; and

(b) either—

(i) that both before and after the fire was lit he did all he reasonably could to prevent users of any such highway from being so injured, interrupted or endangered, or

(ii) that he had a reasonable excuse for not doing so.**]**

Textual Amendments

F316 S. 161A inserted by Highways (Amendment) Act 1986 (c. 13, SIF 59), **s. 1(3)**

162 Penalty for placing rope, etc. across highway. E+W

A person who for any purpose places any rope, wire or other apparatus across a highway in such a manner as to be likely to cause danger to persons using the highway is, unless he proves that he had taken all necessary means to give adequate warning of the danger, guilty of an offence and liable to a fine not exceeding **[**F317level 3 on the standard scale**]**.

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Textual Amendments

F317 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

163 Prevention of water falling on or flowing on to highway. E+W

(1) A competent authority may, by notice to the occupier of premises adjoining a highway, require him within 28 days from the date of service of the notice to construct or erect and thereafter to maintain such channels, gutters or downpipes as may be necessary to prevent—

(a) water from the roof or any other part of the premises falling upon persons using the highway, or

(b) so far as is reasonably practicable, surface water from the premises flowing on to, or over, the footway of the highway.

For the purposes of this section the competent authorities, in relation to any highway, are the highway authority and also (where they are not the highway authority) the local authority for the area in which the highway is situated.

(2) A notice under subsection (1) above may, at the option of the authority, be served on the owner of the premises in question instead of on the occupier or may be served on both the owner and the occupier of the premises.

(3) A person aggrieved by a requirement under this section may appeal to a magistrates' court.

(4) Subject to any order made on appeal, if a person on whom a notice is served under this section fails to comply with the requirement of the notice within the period specified in subsection (1) above he is guilty of an offence and liable to a fine not exceeding **[**F318level 1 on the standard scale**]**; and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding £2 for each day on which the offence is so continued.

Textual Amendments

F318 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

164 Power to require removal of barbed wire. E+W

(1) Where on land adjoining a highway there is a fence made with barbed wire, or having barbed wire in or on it, and the wire is a nuisance to the highway, a competent authority may by notice served on the occupier of the land require him to abate the nuisance within such time, not being less than one month nor more than 6 months from the date of service of the notice, as may be specified in it.

For the purposes of this section—

(a) the competent authorities, in relation to any highway, are the highway authority and also (where they are not the highway authority) the local authority for the area in which the highway is situated;

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(b) "barbed wire" means wire with spikes or jagged projections, and barbed wire is to be deemed to be a nuisance to a highway if it is likely to be injurious to persons or animals lawfully using the highway.

(2) If at the expiration of the time specified in the notice the occupier has failed to comply with the notice, a magistrates' court, if satisfied on complaint made by the authority that the wire is a nuisance to the highway, may order the occupier to abate the nuisance and, if he fails to comply with the order within a reasonable time, the authority may do whatever may be necessary in execution of the order and recover from him the expenses reasonably incurred by them in so doing.

(3) If the local authority who are a competent authority in relation to the highway concerned are the occupiers of the land in question proceedings under this section may be taken against them by any ratepayer within the area of that local authority and the foregoing provisions apply accordingly in relation to him and to the authority as they apply in relation to an authority and to an occupier of land.

165 Dangerous land adjoining street. E+W

(1) If, in or on any land adjoining a street, there is an unfenced or inadequately fenced source of danger to persons using the street, the local authority in whose area the street is situated may, by notice to the owner or occupier of that land, require him within such time as may be specified in the notice to execute such works of repair, protection, removal or enclosure as will obviate the danger.

(2) A person aggrieved by a requirement under subsection (1) above may appeal to a magistrates' court.

(3) Subject to any order made on appeal, if a person on whom a notice is served under this section fails to comply with the notice within the time specified in it, the authority by whom the notice was served may execute such works as are necessary to comply with the notice and may recover the expenses reasonably incurred by them in so doing from that person.

(4) Where the power conferred by subsection (1) above is exercisable in relation to land adjoining a street and has not been exercised by the local authority empowered to exercise it, then, if that authority are not the highway authority for the street, the highway authority for the street may request the local authority to exercise the power.

(5) If the local authority refuse to comply with a request made under subsection (4) above or fail within a reasonable time after the request is made to them to do so, the highway authority may exercise the power (and where they do so subsections (2) and (3) above apply accordingly).

166 Forecourt abutting on streets. E+W

(1) If it appears to a competent authority that the forecourt of premises abutting on a street, or any steps or projection or goods (whether for sale or not) placed in such a forecourt, is or are a source of danger, obstruction or inconvenience to the public, the authority may by notice require the owner or occupier of the forecourt to fence the forecourt from the street or, at his election, to take such other steps as may be specified in the notice to obviate the danger, obstruction or inconvenience to the public.

For the purposes of this section the following are competent authorities—

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(a) in the case of a street outside Greater London which is a highway, a local authority and also the highway authority;

(b) in the case of any other street, a local authority.

(2) If it appears to a competent authority that a stall or other erection on a forecourt of premises abutting on a street is by reason of its character injurious to the amenities of the street, the authority may by notice require the owner or occupier of the forecourt to make such alterations in the stall or other erection as may be necessary to prevent its being injurious to the amenities of the street or, at his election, to remove it.

This subsection does not apply to any erection which has been in position in the forecourt of any premises at all times since 10th November 1960.

(3) A competent authority does not have power under subsection (1) or (2) above to give a notice applying to any advertisement as defined in **[**F319section 336(1) of the Town and Country Planning Act 1990**]**, or under subsection (2) above to give a notice applying to anything erected in conformity with planning permission granted on an application under Part III of that Act.

(4) The provisions of Part XII of the M37Public Health Act 1936 with respect to appeals against, and the enforcement of, notices requiring the execution of works apply in relation to any notice under this section as if this section were contained in that Act (and as if the references to the local authority included references to the highway authority); and section 290(6) of that Act shall authorise the authority at their election to take either of the courses which were open to the person on whom the notice was served in order to comply with it.

(5) In this section, "local authority" means any of the following, namely, the council of a district or London borough, the Common Council, the sub-treasurer of the Inner Temple, the under-treasurer of the Middle Temple, **[**F320a Welsh council**]**and the Council of the Isles of Scilly.

Textual Amendments

F319 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s.4, **Sch. 2 para. 45(10)**

F320 Words in s. 166(5) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.15** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**.

Modifications etc. (not altering text)

C68 S. 166 modified (22.7.2008) by Transport for London Act 2008 (c. i), ss. 1(1), **37** (subject to s. 37(2)-(4) and with s. 48)

Marginal Citations

M37 1936 c. 49.

167 Powers relating to retaining walls near streets. E+W

(1) This section applies to any length of a retaining wall, being a length—

(a) any cross-section of which is wholly or partly within 4 yards of a street; and

(b) which is at any point of a greater height than 4 feet 6 inches above the level of the ground at the boundary of the street nearest that point;

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but does not apply to any length of a retaining wall erected on land belonging to any transport undertakers so long as that land is used by them primarily for the purpose of their undertaking or to any length of a retaining wall for the maintenance of which a highway authority are responsible.

(2) No length of retaining wall, being a length which when erected will be a length of retaining wall to which this section applies, shall be erected otherwise than in accordance with plans, sections and specifications approved by the local authority in whose area the street is situated; and before giving such approval that authority, if they are not the highway authority for the street, shall consult the highway authority.

(3) Any person aggrieved by the refusal of a local authority to approve any plans, sections and specifications submitted to them under this section may appeal to a magistrates' court.

(4) If a person erects a length of retaining wall in contravention of this section, he is guilty of an offence and liable to a fine not exceeding **[**[F321]level 3 on the standard scale**]**.

(5) If a length of retaining wall to which this section applies is in such condition (whether for want of repair or some other reason) as to be liable to endanger persons using the street, the local authority in whose area the street is situated may, by notice served on the owner or occupier of the land on which that length of wall is, require him to execute such works as will obviate the danger.

(6) Where the power conferred by subsection (5) above is exercisable in relation to a length of wall and has not been exercised by the local authority empowered to exercise it, then, if that authority are not the highway authority for the street in question, the highway authority may request the local authority to exercise the power; and if the local authority refuse to comply with the request or fail within a reasonable time after the request is made to them to do so, the highway authority may exercise the power.

(7) Subsections (2) to (7) of section 290 of the [M38]Public Health Act 1936 (appeals against and the enforcement of, certain notices under that Act) apply to any notice served under subsection (5) above as they apply to such notices as are mentioned in subsection (1) of that section, but subject to the following modifications:—

(a) references to the local authority are to be construed as including references to the highway authority;

(b) for paragraph (f) of subsection (3) there is substituted the following paragraph—

"(f) that some other person ought to contribute towards the expense of executing any works required by the notice"

(8) Sections 300 to 302 of the Public Health Act 1936 (supplementary provisions relating to appeals under the said section 290) apply, with the necessary modifications, to appeals brought by virtue of subsection (7) above.

(9) In this section "retaining wall" means a wall, not forming part of a permanent building, which serves, or is intended to serve, as a support for earth or other material on one side only.

Textual Amendments

F321 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

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Modifications etc. (not altering text)
C69 S. 167 excluded (18.12.1996) by 1996 c. 61, s. 38, **Sch. 10** Pt. para. 5(3).
C70 S. 167 excluded (22.7.2008) by Crossrail Act 2008 (c. 18), s. 40, **Sch. 14 para. 7(3)**

Marginal Citations
M38 1936 c. 49.

Precautions to be taken in doing certain works in or near streets or highways

168 Building operations affecting public safety. E+W

(1) If in the course of the carrying out of any building operation in or near a street there occurs an accident which—

(a) gives rise to the risk of serious bodily injury to a person in the street, whether or not the death or disablement of any person is caused thereby; or

(b) would have given rise to such risk but for the fact that a local authority or highway authority had in the exercise of their powers under **[**F322section 78 of the Building Act 1984**]** (emergency measures to deal with dangerous buildings) or any other enactment taken steps to ensure that if an accident occurred it would not give rise to such risk,

then, subject to the provisions of this section, the owner of the land or building on which the building operation is being carried out is, without prejudice to any liability to which he or any other person may be subject apart from this section, guilty of an offence and liable to a fine not exceeding **[**F323level 5 on the standard scale**]**.

(2) Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.

(3) In any proceedings for an offence under this section it is a defence, subject to subsection (4) below, for the person charged to prove—

(a) that he took all reasonable precautions to secure that the building operation was so carried out as to avoid causing danger to persons in a street; or

(b) that the commission of the offence was due to the act or default of another person and that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(4) A person charged with an offence under this section is not, without leave of the court, entitled to rely on the defence provided by subsection (3)(b) above unless, within a period ending 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(5) In this section "building operation" means the construction, structural alteration, repair or maintenance of a building (including re-pointing, external re-decoration and external cleaning), the demolition of a building, the preparation for, and laying the foundations of, an intended building and the erection or dismantling of cranes or scaffolding.

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Textual Amendments

F322 Words substituted by Building Act 1984 (c. 55, SIF 15), s. 133(1), **Sch. 6 para. 20**

F323 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

169 Control of scaffolding on highways. E+W

(1) Subject to subsection (6) below no person shall, in connection with any building or demolition work or the alteration, repair, maintenance or cleaning of any building, erect or retain on or over a highway any scaffolding or other structure which obstructs the highway (hereafter in this section referred to as a "relevant structure") unless he is authorised to do so by a licence in writing issued for the purposes of this section by the highway authority (hereafter in this section referred to as "a licence") and complies with the terms of the licence; and a licence may contain such terms as the authority issuing it thinks fit.

(2) If a person applies to a highway authority for a licence in respect of any relevant structure and furnishes the authority with such particulars in connection with the structure as the authority reasonably demand, it is the duty of the authority to issue a licence to him in respect of the structure unless the authority consider—

(a) that the structure would cause unreasonable obstruction of a highway; or

(b) that a relevant structure erected otherwise than as proposed by the applicant would cause less obstruction of a highway than the structure proposed by him and could conveniently be used for the work in question.

(3) If on an application for a licence in connection with a highway the highway authority refuse to issue a licence or issue a licence containing terms to which the applicant objects, the applicant may appeal to a magistrates' court against the refusal or terms; and on such an appeal the court may—

(a) in the case of an appeal against a refusal, direct the highway authority to issue a licence in pursuance of the application;

(b) in the case of an appeal against the terms of the licence, alter the terms.

(4) Subject to subsection (6) below, it is the duty of a person to whom a licence is issued by a highway authority in respect of a relevant structure—

(a) to ensure that the structure is adequately lit at all times between half an hour after sunset and half an hour before sunrise;

(b) to comply with any directions given to him in writing by the authority with respect to the erection and maintenance of traffic signs in connection with the structure; and

(c) to do such things in connection with the structure as any statutory undertakers reasonably request him to do for the purpose of protecting or giving access to any apparatus belonging to or used or maintained by the undertakers.

In this subsection and in section 171(2) below "statutory undertakers" means any of the following, namely, any body who are statutory undertakers within the meaning provided by section 329(1) below, the Post Office,. . . [F324]. . . [F325][F326]any licensee under a street works licence][F327]and the operator of a telecommunications code system][F328]or a driver information system].

(5) A person who contravenes the provisions of subsection (1) above otherwise than by failing to comply with the terms of a licence or who fails without reasonable

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excuse to comply with the terms of a licence or to perform a duty imposed on him by subsection (4) above, is guilty of an offence and liable to a fine not exceeding **[**F329level 5 on the standard scale**]**.

(6) Nothing in the preceding provisions of this section applies to a relevant structure erected before 14th February 1977 or erected or retained by the British Railways Board, the British Waterways Board or **[**F330London Regional Transport or any subsidiary of theirs (within the meaning of the London Regional Transport Act 1984)**]** in the exercise of powers conferred on the body in question by any enactment; and nothing in paragraph (a) or (b) of subsection (4) above applies to a relevant structure if no part of it is less than 18 inches in a horizontal direction from a carriageway of the relevant highway and no part of it over a footway of the relevant highway is less than 8 feet in a vertical direction above the footway.

(7) No civil or criminal proceedings lie in respect of any obstruction of a highway which is caused by a relevant structure if the structure is on or over the highway in accordance with a licence and the person to whom the licence is issued performs the duties imposed on him in respect of the structure by subsection (4) above; and a highway authority by whom a licence is issued do not incur any liability by reason of the issue of the licence.

Textual Amendments

F324 Words repealed 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**

F325 Word repealed by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, **Sch. 7 Pt. I**

F326 Words in s. 169(4) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Part I para.4**(with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch.2**.

F327 Words inserted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 76(8), **Sch. 5 para. 45**

F328 Words inserted by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), s. 13(1), **Sch. 4 para. 3(7)**

F329 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

F330 Words substituted by London Regional Transport Act 1984 (c. 32, SIF 126), **s. 71(3)**(*a*), Sch. 6 para. 19

Modifications etc. (not altering text)

C71 S. 169: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**

C72 S. 169(1) excluded (18.12.1996) by 1996 c. 61, s. 38, **Sch. 10 para. 5(1)(b)**.

C73 S. 169(4): by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 3(1), **Sch. 5 para. 45** it is provided that references to British Telecommunications in s. 169(4) cease to have effect

170 Control of mixing of mortar etc. on highways. E+W

(1) Subject to subsection (2) below, a person who mixes or deposits on a highway any mortar or cement or any other substance which is likely to stick to the surface of the highway or which, if it enters drains or sewers connected with the highway, is likely to solidify in the drains or sewers is guilty of an offence and liable to a fine not exceeding **[**F331level 4 on the standard scale**]**.

(2) Nothing in subsection (1) above applies to any mixing or deposit—

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(a) in a receptacle or on a plate which prevents the substance in question from coming into contact with the highway and from entering any drains and sewers connected with the highway;

(b) by the highway authority or a local authority in connection with the maintenance or alteration of the highway or a bridge over which or a tunnel through which the highway passes;

(c) by a body having a duty under an enactment to maintain—

(i) a bridge over which or a tunnel through which the highway passes, or

(ii) works or materials supporting or protecting the highway where it forms part of the approaches to such a bridge or tunnel,

if the mixing or deposit is in connection with the maintenance or alteration of the bridge, tunnel, works or materials;

(d) by statutory undertakers in connection with apparatus in or the placing of apparatus in the highway;

(e) by **[**F332any licensee under a street works licence**]** if the mixing or deposit cannot reasonably be done elsewhere than on the highway.

(3) In subsection (2) above—

"local authority" means any of the following, namely, the council of a county, district or London borough,. . . F333 the Common Council and the Council of the Isles of Scilly; and

"statutory undertakers" means any of the following, namely, any body who are statutory undertakers within the meaning provided by section 329(1) below, the Post Office. . . F334 . . . F335**[**F336and the operator of a telecommunications code system**][**F337or a driver information system**]**.

Textual Amendments

F331 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

F332 Words in s. 170(2)(e) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Part I para.5** (with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch.2**

F333 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F334 Word repealed by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, **Sch. 7 Pt. I**

F335 Words repealed by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 10(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**

F336 Words inserted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 76(9), **Sch. 5 para. 45**

F337 Words inserted by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), s. 13(1), **Sch. 4 para. 3(8)**

Modifications etc. (not altering text)

C74 S. 170(3): by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 3(1), **Sch. 5 para. 45** it is provided that references to British Telecommunications in s. 170(3) cease to have effect

171 Control of deposit of building materials and making of excavations in streets. E+W

(1) A person may, with the consent of the highway authority for a street that is a highway maintainable at the public expense, temporarily deposit building materials, rubbish or other things in the street or make a temporary excavation in it.

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(2) A highway authority may give their consent under subsection (1) above subject to such conditions as they think fit including in particular, without prejudice to the generality of the foregoing, conditions for preventing damage or ensuring access to apparatus of statutory undertakers.

In this subsection "statutory undertakers" has the meaning provided by section 169(4) above.

(3) A person aggrieved by the refusal of consent under subsection (1) above, and a person to whom such a consent is given subject to conditions, may appeal to a magistrates' court against the refusal or, as the case may be, the conditions.

(4) It is the duty of a person who makes such a deposit or excavation as is mentioned in subsection (1) above to comply with any directions given to him in writing by the highway authority with respect to the erection and maintenance of traffic signs in connection with the deposit or excavation.

(5) Where a person places any building materials, rubbish or other thing in, or makes an excavation in, a street he shall—

(a) cause the obstruction or excavation to be properly fenced and during the hours of darkness to be properly lighted, and

(b) if required so to do by the highway authority for the street or, in the case of a street that is not a highway, by the local authority in whose area the street is situated, remove the obstruction or, as the case may be, fill in the excavation;

and in any case he shall not allow the obstruction or excavation to remain in the street longer than is necessary.

(6) A person who—

(a) without reasonable excuse contravenes any condition subject to which a consent is given to him under subsection (1) above, or

(b) without reasonable excuse fails to perform the duty imposed on him by subsection (4) above, or

(c) fails to perform a duty imposed on him by subsection (5) above,

is guilty of an offence and liable to a fine not exceeding £10 in respect of each day on which the contravention or failure occurs.

The liability of any person to a fine under this subsection by virtue of paragraph (b) or (c) above is without prejudice to any other liability to which he may be subject apart from this subsection.

(7) Where an offence under this section by virtue of subsection (6)(c) above is committed in a street, the highway authority for the street or, in the case of a street that is not a highway, the local authority in whose area the street is situated, may remove the obstruction or, as the case may be, fill in the excavation and recover the expenses reasonably incurred by them in so doing from the person convicted of the offence.

Modifications etc. (not altering text)

C75 S. 171: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**

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[F338 171A Works under s. 169 or s. 171: charge for occupation of the highway. E+W

(1) The Minister may make provision by regulations requiring a person carrying out any of the following works in a highway maintainable at the public expense—

(a) erecting or retaining a relevant structure within the meaning of section 169(1) above, or

(b) depositing building materials, rubbish or other things, or making a temporary excavation, as mentioned in section 171(1) above,

to pay a charge to the highway authority if the duration of the works exceeds such period as may be prescribed and the works are not completed within a reasonable period.

(2) For this purpose "a reasonable period" means such period as is agreed by the authority and the person executing the works to be reasonable or, in default of such agreement, is determined by arbitration to be reasonable in the circumstances.

In default of agreement, the authority's view as to what is a reasonable period shall be acted upon pending the decision of the arbitrator.

(3) The regulations may provide that if a person applying to the highway authority for a licence under section 169 or consent under section 171 submits together with his application an estimate of the likely duration of the works, the period stated in the estimate shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.

(4) The regulations may also provide that if it appears to the person carrying out the works that by reason of matters not previously foreseen or reasonably foreseeable the duration of the works—

(a) is likely to exceed the prescribed period,

(b) is likely to exceed the period stated in his previous estimate, or

(c) is likely to exceed the period previously agreed or determined to be a reasonable period,

he may submit an estimate or revised estimate accordingly, and that if he does so any previous estimate, agreement or determination shall cease to have effect and the period stated in the new estimate shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.

(5) The amount of the charge shall be determined in such manner as may be prescribed by reference to the time taken to complete the works and the extent to which the surface of the highway is affected by the works.

Different rates of charge may be prescribed according to the description of works, the place and time at which they are executed and such other factors as appear to the Minister to be relevant.

(6) The regulations may make provision as to the time and manner of making payment of any charge.

(7) The regulations shall provide that a highway authority may reduce the amount, or waive payment, of a charge in any particular case, in such classes of case as they may decide or as may be prescribed, or generally.

(8) In this section "prescribed" means prescribed by the Minister by regulations.**]**

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Textual Amendments

F338 S. 171A inserted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8**, Part I, para.6 (with s. 25(5)); S.I. 1992/2984, art. 2(2), **Sch. 2**

PROSPECTIVE

[F339 171B Scaffolding, building materials and excavations: charge determined by reference to duration of occupation of highway E+W

(1) The Secretary of State may make provision by regulations requiring a person who—

(a) erects a relevant structure on or over a highway maintainable at the public expense,

(b) deposits building materials, rubbish or other things in such a highway, or

(c) makes a temporary excavation in such a highway,

to pay a charge to the highway authority.

(2) The reference in subsection (1)(a) to the erection of a relevant structure is a reference to the erection, in connection with any building or demolition work or the alteration, repair, maintenance or cleaning of any building, of any scaffolding or other structure that obstructs the highway.

(3) The charge shall be determined in the prescribed manner, by reference to the period (in this section, the "relevant period") for which—

(a) a relevant structure is on or over the highway,

(b) things are deposited in the highway, or (as the case may be)

(c) there is an excavation in the highway.

(4) The regulations shall not require charges to be paid to a local highway authority unless the Secretary of State has, by order, approved the authority for the purposes of the regulations.

(5) The regulations may require disputes of any prescribed description to be referred to an arbitrator appointed in accordance with the regulations.

(6) Subsections (6) and (10) to (22) of section 171A apply in relation to regulations under subsection (1) of this section as they apply in relation to regulations under subsection (1) of that section.**]**

Textual Amendments

F339 S. 171B inserted (prosp.) by Traffic Management Act 2004 (c. 18), **ss. 69**, 99 (with s. 38)

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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PROSPECTIVE

[F340 171C Regulations under sections 171A and 171B E+W

Nothing shall be taken to prevent the imposition of charges by both regulations under section 171A and regulations under section 171B in respect of the same structure, things or excavation at the same time.**]**

Textual Amendments

F340 S. 171C inserted (prosp.) by Traffic Management Act 2004 (c. 18), **ss. 70(3)**, 99 (with s. 38)

172 Hoardings to be set up during building etc. E+W

(1) Subject to subsection (2) below, a person proposing to erect or take down a building in a street or court, or to alter or repair the outside of a building in a street or court, shall, before beginning the work, erect a close boarded hoarding or fence to the satisfaction of the appropriate authority so as to separate the building from the street or court.

For the purposes of this section the appropriate authority, in relation to any street or court, is the council of the county **[**F341, metropolitan district**]** or London borough in which it is situated or, if it is situated in the City, the Common Council.

(2) The obligation to erect a hoarding or fence imposed by subsection (1) above may be dispensed with if the appropriate authority so consent.

(3) Where a person has erected a hoarding or fence in compliance with subsection (1) above, he shall—

(a) if the appropriate authority so require, make a convenient covered platform and handrail to serve as a footway for pedestrians outside the hoarding or fence;

(b) maintain the hoarding or fence and any such platform and handrail in good condition to the satisfaction of the authority during such time as the authority may require;

(c) if the authority so require, sufficiently light the hoarding or fence and any such platform and handrail during the hours of darkness; and

(d) remove the hoarding or fence and any such platform and handrail when required by the authority.

(4) A person aggrieved by the refusal of a consent under subsection (2) above or by a requirement under subsection (3) above may appeal to a magistrates' court.

(5) Subject to any order made on appeal, if a person contravenes this section he is guilty of an offence and liable to a fine not exceeding **[**F342level 3 on the standard scale**]**; and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding £2 for each day on which the offence is so continued.

Textual Amendments

F341 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1) s. 8, Sch. 4 para. 7

F342 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

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Modifications etc. (not altering text)
C76 S. 172 applied (27.7.1993) by 1993 c. xv, **s. 38(13)**
S. 172 applied (21.7.1994) by 1994 c. xv, **s. 39(12)**.
C77 S. 172: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**

173 Hoardings to be securely erected. E+W

(1) No person shall use for any purpose a hoarding or similar structure that is in, or adjoins, any street unless it is securely fixed to the satisfaction of the council who, in relation to that street, are the appropriate authority for the purposes of section 172 above.

(2) If a person contravenes this section he is guilty of an offence and liable to a fine not exceeding **[**F343level 1 on the standard scale**]**; and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding £1 for each day on which the offence is so continued.

Textual Amendments
F343 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

Modifications etc. (not altering text)
C78 S. 173 applied (27.7.1993) by 1993 c. xv, **s. 38(13)**
S. 173 applied (21.7.1994) by 1994 c. xv, **s. 39(12)**.

174 Precautions to be taken by persons executing works in streets. E+W

(1) **[**F344Where a person is executing works of any description in a street (other than street works within the meaning of Part III of the New Roads and Street Works Act 1991), he**]**—

(a) shall erect such barriers and traffic signs for preventing danger to traffic, for regulating traffic, and for warning traffic of danger, as may be necessary and remove them as soon as they cease to be needed for any of those purposes;

(b) shall cause the works to be properly guarded and lighted during the hours of darkness; and

(c) where the nature of the works so requires, shall cause any building adjoining the street to be shored up or otherwise protected.

(2) Subject to subsection (3) below, if any person fails to satisfy an obligation to which he is subject by virtue of subsection (1) above he is guilty of an offence and, without prejudice to any other liability to which he may be subject apart from this subsection, is liable to a fine not exceeding £10 in respect of each day of such failure.

(3) Where a person is subject to the same obligation by virtue of subsection (1) above and by virtue of some other enactment, then, without prejudice to section 18 of the M39Interpretation Act 1978 (offences under two or more laws), if a failure by him to satisfy that obligation is an offence under an enactment other than subsection (2) above, subsection (2) above does not apply in relation to a failure by him to satisfy that obligation.

(4) If a person, without lawful authority or excuse,—

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(a) takes down, alters or removes any barrier, traffic sign, support or light erected or placed in pursuance of subsection (1) above or any fence, barrier, traffic sign or light erected or placed on or near a street in pursuance of any other enactment for the purpose of warning users of the street of any obstruction, whether caused by the execution of works in or near the street or otherwise, or of protecting them from danger arising out of such an obstruction, or

(b) extinguishes any light so placed,

he is guilty of an offence and liable to a fine not exceeding **[**F345level 3 on the standard scale**]**.

(5) For the purposes of section 312 below in its application to an offence under this section statutory undertakers and the Post Office are each to be deemed to be a person aggrieved.

Textual Amendments

F344 Words in s. 174(1) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Part I para.7** (with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch. 2**

F345 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

Marginal Citations

M39 1978 c. 30.

175 Liability of certain persons in respect of materials left on highway. E+W

If—

(a) any officer or servant of the highway authority for a highway, or

(b) any officer or servant of a **[**F346non-metropolitan**]** district council maintaining a highway by virtue of section 42 or 50 above, or

(c) a person liable to maintain a highway by reason of tenure, enclosure or prescription,

causes any heap of materials or any other object to be laid on the highway, he is, if he allows it to remain there at night to the danger of traffic without taking all reasonable precautions for the prevention of accidents, guilty of an offence and liable to a fine not exceeding **[**F347level 1 on the standard scale**]**.

Textual Amendments

F346 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 25**

F347 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

[F348**175A Duty to have regard to needs of disabled and blind in executing works, etc.** E+W

(1) In executing works in a street which may impede the mobility of disabled persons or blind persons highway authorities, local authorities and any other person exercising a statutory power to execute works on a highway shall have regard to the needs of such persons.

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(2) Any such authority or person as is mentioned in subsection (1) above shall have regard to the needs of disabled persons and blind persons when placing lamp-posts, bollards, traffic-signs, apparatus or other permanent obstructions in a street.

(3) Highway authorities shall have regard to the needs of disabled persons when considering the desirability of providing ramps at appropriate places between carriageways and footways.

(4) In executing in a street any such works as are mentioned in subsection (1) above, any such authority or person as is mentioned in that subsection shall have regard to the need of blind persons to have any openings, whether temporary or permanent, in the street, properly protected.

(5) Section 28 of the Chronically Sick and Disabled Persons Act 1970 (power to define certain expressions for the purposes of provisions of that Act) shall have effect as if any reference in it to a provision of that Act included a reference to this section.**]**

Textual Amendments

F348 S. 175A inserted by Disabled Persons Act 1981 (c. 43, SIF 81:3), **s. 1(1)**

Miscellaneous

176 Restriction on construction of bridges over highways. E+W

(1) The highway authority for a highway may grant to the owner or occupier of any premises adjoining the highway a licence to construct a bridge over the highway on such terms and conditions, and to use it for such period and on such terms and conditions, as the authority think fit.

(2) No fine, rent or other sum of money, except a reasonable sum in respect of legal or other expenses, is payable in respect of a licence under this section.

(3) A licence under this section shall not authorise any interference with the convenience of persons using the highway, or affect the rights of owners of premises adjoining the highway, or the rights of tramway, railway, dock, harbour or electricity undertakers.

(4) It shall be a condition of every licence under this section that the person to whom it is granted is, at his own expense, to remove the bridge or alter it in such manner as the authority may require, if at any time they consider the removal or alteration necessary or desirable in connection with the carrying out of improvements to the highway.

The decision of the authority that the removal or alteration is necessary or desirable in that connection shall be final, and the condition shall be enforceable by the authority against the owner for the time being of the premises.

(5) Subject to subsection (6) below, a person aggrieved by the refusal of an authority to grant a licence under this section or by the period for which the licence is granted or by a term or condition of the licence (other than the condition mentioned in subsection (4) above) may appeal to the Crown Court.

(6) No appeal lies under subsection (5) above against any term or condition of a licence granted by the Minister under this section if he declares the term or condition to be

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necessary for the purpose of securing the safety of persons using the highway or of preventing interference with traffic on it.

(7) If a person, except in the exercise of statutory powers—

(a) constructs a bridge over a highway without a licence under this section, or

(b) constructs or uses a bridge otherwise than in accordance with the terms and conditions of such a licence, or

(c) fails to remove or alter a bridge when required to do so in accordance with any condition of the licence or within one month from the date of the expiration of the licence,

he is guilty of an offence and is liable to a fine not exceeding **[**F349level 2 on the standard scale**]**, and if the offence is continued after conviction he is guilty of a further offence and is liable to a fine not exceeding £5 for each day on which the offence is so continued.

(8) In this section "bridge" means a structure the sole purpose of which is to provide a way over a highway.

Textual Amendments

F349 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

Modifications etc. (not altering text)

C79 S. 176 extended by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 2(5)(c)(9), Sch. 17 paras. 33, **35(1)**

177 Restriction on construction of buildings over highways. E+W

(1) No person shall—

(a) except in the exercise of statutory powers, construct a building over any part of a highway maintainable at the public expense (whether it is intended to span the highway or not), or alter a building so constructed, without a licence granted under this section by the highway authority for that highway or otherwise than in accordance with the terms and conditions of a licence so granted;

(b) use a building so constructed or altered in pursuance of a licence so granted otherwise than in accordance with the terms and conditions thereof:

and any person who contravenes any provision of this subsection is guilty of an offence and liable to a fine not exceeding **[**F350level 5 on the standard scale**]**; and if the offence is continued after conviction, he is guilty of a further offence and liable to a fine not exceeding £50 for each day on which the offence is so continued.

(2) Subject to subsections (3) and (4) below, a licence under this section may contain such terms and conditions, including terms and conditions with respect to the construction (including the headway over the highway), maintenance, lighting and use of the building, as the highway authority think fit; and, any such term or condition is binding on the successor in title to every owner, and every lessee and occupier, of the building.

(3) No fine, rent or other sum of money is payable in respect of a licence granted under this section except—

(a) a reasonable sum in respect of legal or other expenses incurred in connection with the grant of the licence; and

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(b) an annual charge of a reasonable amount for administering the licence;

and any sum payable by virtue of paragraph (a) above is recoverable from the applicant for the licence and any sum payable by virtue of paragraph (b) above is recoverable from the owner of the building.

(4) No such licence shall authorise any interference with the convenience of persons using the highway, or affect the rights of the owners of premises adjoining the highway, or the rights of **[**F351statutory undertakers or the operator of a telecommunications code system**][**F352or a driver information system**]**.

(5) Where a licence under this section makes provision for the execution of any works or the provision of any facilities which in the opinion of the highway authority require to be executed or provided by them in connection with the building or its construction or alteration, the authority may execute those works or, as the case may be, provide those facilities and may recover the expenses reasonably incurred by them in so doing from the licensee or from the owner of the building.

(6) A person aggrieved by the refusal of a highway authority to grant a licence under this section or by a term or condition of the licence may appeal to the Crown Court, except that no such appeal lies—

(a) if the land on which the highway in question is situated is owned by the highway authority, or

(b) against any term or condition which the highway authority declare to be necessary for the purpose of securing the safety of persons using the highway or of preventing interference with traffic thereon.

(7) Where a person has constructed or altered a building for the construction, or, as the case may be, alteration, of which a licence is required by this section without such a licence or otherwise than in accordance with the terms and conditions of the licence, the highway authority may by notice served on the licensee or the owner of the building require him to demolish the building within such time as may be specified in the notice or, as the case may be, to make such alterations therein and within such time as may be so specified.

(8) Where there has been a failure to comply with any terms or conditions of a licence under this section with respect to the maintenance or use of a building, the highway authority may by notice served on the licensee or the owner of the building require him to execute such works or take such steps as are necessary to secure compliance with those terms or conditions within such time as may be specified in the notice.

(9) If a person on whom a notice is served under subsection (7) or (8) above fails to comply with the notice within the time specified in it, the highway authority may demolish the building or, as the case may be, execute such works or take such steps as are necessary to comply with the notice and may recover the expenses reasonably incurred by them in so doing from that person.

(10) Where by virtue of subsection (9) above a highway authority demolish a building, they may dispose of the materials resulting from the demolition.

(11) In relation to any prohibition or restriction on the use of a building imposed by the Minister by virtue of any term or condition contained in a licence granted by him under this section, section 1(1)(c) of the M40Local Land Charges Act 1975 has effect as if the references to the date of the commencement of that Act were references to 1st November 1971.

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[F353(12) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply, for the purposes of works authorised or required by a licence under this section to be executed, to the licensee.**]**

(13) This section does not apply to a building which constitutes a bridge within the meaning of section 176 above, but subject to that in this section "building" includes any structure and any part of a building.

(14) Where the land on which a highway is situated is owned by the highway authority, nothing in subsection (3) above is to be taken as affecting the rights of that authority as the owner of that land to sell or lease the air-space above the surface of that land or grant any rights in relation to it.

Textual Amendments

F350 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

F351 Words substituted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, **Sch. 4 para. 76(10)**(*a*), Sch. 5 para. 45

F352 Words inserted by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), s. 13(1), **Sch. 4 para. 3(9)**

F353 S. 177(12) substituted by Telecommunications Act 1984 (c.12, SIF 96), s. 109, **Sch. 4 para. 76(10)**(*b*), Sch. 5 para. 45

Marginal Citations

M40 1975 c. 76.

178 Restriction on placing rails, beams etc. over highways. E+W

(1) No person shall fix or place any overhead beam, rail, pipe, cable, wire or other similar apparatus over, along or across a highway without the consent of the highway authority for the highway, and the highway authority may attach to their consent such reasonable terms and conditions as they think fit.

(2) Subject to subsection (3) below, a person aggrieved by the refusal of a consent under subsection (1) above, or by any terms or conditions attached to such a consent, may appeal to a magistrates' court.

(3) No appeal lies under subsection (2) above against any term or condition attached by the Minister to a consent given by him under this section if he declares the term or condition to be necessary for the purpose of securing the safety of persons using the highway to which the consent relates or of preventing interference with traffic on it.

(4) If a person contravenes subsection (1) above, or the terms or conditions of any consent given under that subsection, he is guilty of an offence and liable to a fine not exceeding **[**F354level 1 on the standard scale**]**; and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding £1 for each day on which the offence is so continued.

(5) This section does not apply to any works or apparatus belonging to any statutory undertakers, and for this purpose the Civil Aviation Authority and **[**F355the Post Office and the operator of a telecommunications code system **[**F356or a driver information system**]** are to be deemed to be statutory undertakers**]**.

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Textual Amendments

F354 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

F355 Words inserted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 76(11), **Sch. 5 para. 45**

F356 Words inserted by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), s. 13(1), **Sch. 4 para. 3(10)**

Modifications etc. (not altering text)

C80 S. 178: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**

C81 S. 178(5): by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 3(1), **Sch. 5 para. 45** it is provided that references to British Telecommunications in s. 178(5) cease to have effect

179 Control of construction of cellars etc. under street. E+W

(1) **[**F357No person shall construct works to which this section applies under any part of a street without the consent of the appropriate authority, and the authority may by notice served on a person who has constructed such works in contravention of this section require him to remove them, or to alter or deal with them in such a manner as may be specified in the notice.**]**

For the purposes of this section the appropriate authority is—

(i) in relation to a street outside Greater London which is a highway, the highway authority for the street; and

(ii) in relation to any other street, the local authority in whose area the street is situated.

(2) A person aggrieved by the refusal of a consent, or by a requirement of a notice, under subsection (1) above may appeal to a magistrates' court.

(3) A person who constructs **[**F358works to which this section applies**]** in contravention of this section is guilty of an offence and is liable to a fine not exceeding **[**F359level 1 on the standard scale**]**; and, subject to any order made on appeal, if he fails to comply with a requirement of a notice served on him under subsection (1) above he is guilty of a further offence and is liable to a fine not exceeding £2 for each day during which the failure continues.

(4) The appropriate authority may also cause **[**F360works to which this section applies**]** constructed in contravention of this section to be removed, altered or otherwise dealt with as they think fit, and may recover the expenses reasonably incurred by them in so doing from the offender.

[F361(5) As soon as may be after an authority consent to the construction of works to which this section applies under a street they shall give notice of their consent to any public utility undertakers having any apparatus under the street.

(6) Subject to subsection (7) below, the works to which this section applies are—

(a) any part of a building; and

(b) without prejudice to the generality of paragraph (a) above, a vault, arch or cellar, whether forming part of a building or not.

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(7) This section does not apply to **[**F362street works within the meaning of Part III of the New Roads and Street Works Act 1991**].]**

Textual Amendments

F357 Paragraph substituted by Local Government (Miscellaneous Provisions) Act 1982 (c. 30, SIF 81:1), **s. 22(1)**

F358 Words substituted by Local Government (Miscellaneous Provisions) Act 1982 (c. 30, SIF 81:1), **s. 22(2)**

F359 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

F360 Words substituted by Local Government (Miscellaneous Provisions) Act 1982 (c. 30, SIF 81:1), **s. 22(2)**

F361 S. 179(5)–(7) substituted for subsection (5) by Local Government (Miscellaneous Provisions) Act 1982 (c. 30, SIF 81:1), **s. 22(3)**

F362 Words in s. 179(7) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8**, Part I, para.7 (with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch. 2**

Modifications etc. (not altering text)

C82 S. 179: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**

180 Control of openings into cellars etc. under streets, and pavement lights and ventilators. E+W

(1) No person shall make an opening in the footway of a street as an entrance to a cellar or vault thereunder without the consent of the appropriate authority, and where an authority give consent under this subsection they shall require the person to whom the consent is given to provide a door or covering constructed in such manner and of such materials as they direct.

For the purposes of this section the appropriate authority is the same as for the purposes of section 179 above.

(2) No person shall carry out any works in a street to provide means for the admission of air or light to premises situated under, or abutting on, the street without the consent of the local authority, and the local authority in giving any consent under this subsection may impose any requirement as to the construction of the works.

(3) A person aggrieved by the refusal of a consent, or by a requirement, under subsection (1) above may appeal to a magistrates' court and a person who applies for consent under subsection (2) above may appeal to such a court against a refusal of consent, or a requirement, under subsection (2).

(4) Subject to any order made on appeal—

(a) a person who—

(i) makes an opening in the footway of a street in contravention of subsection (1) above, or

(ii) fails to comply with a requirement made to him under that subsection,

is guilty of an offence and, without prejudice to any other liability to which he may be subject, liable to a fine not exceeding **[**F363level 1 on the standard scale**]**;

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(b) a person who—

(i) carries out any works in contravention of subsection (2) above, or

(ii) fails to comply with a requirement made to him under that subsection,

is guilty of an offence and, without prejudice to any other liability to which he may be subject, liable to a fine not exceeding **[**F364level 1 on the standard scale**]**.

(5) As soon as may be after an authority give consent under either subsection (1) or subsection (2) above they shall give notice thereof to any public utility undertakers having any apparatus under the street.

(6) The following, namely—

(a) every vault, arch and cellar under a street,

(b) every opening in the surface of any street into any such vault, arch or cellar,

(c) every door or covering to any such opening,

(d) every cellar-head, grating, light and coal hole in the surface of a street, and

(e) all landings, flags or stones of the street by which any of the above are supported,

shall be kept in good condition and repair by the owner or occupier of the vault, arch or cellar, or of the premises to which it belongs.

(7) If default is made in complying with subsection (6) above, the appropriate authority may, after the expiration of 24 hours from the service of a notice of their intention to do so on any person in default, cause any thing as respects which there has been such a default to be repaired or put into good condition, and may recover the expenses reasonably incurred by them in so doing from the owner or occupier thereof or of the premises to which it belongs.

Textual Amendments

F363 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

F364 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

Modifications etc. (not altering text)

C83 S. 180: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**

F365181 . . . . . E+W

Textual Amendments

F365 S. 181 repealed (1.1.1993)by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 168(2)**,Sch. 9 (with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch.2**.

F366182 . E+W

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Textual Amendments

F366 S. 182 repealed (1.1.1993)by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108) s. 168(2),Sch. 9 (with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch.2**.

F367183 . . . . . E+W

Textual Amendments

F367 S. 183 repealed (1.1.1993)by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 169(2)**,Sch. 9 (with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch.2**.

184 Vehicle crossings over footways and verges. E+W

(1) Where the occupier of any premises adjoining or having access to a highway maintainable at the public expense habitually takes or permits to be taken a mechanically propelled vehicle across a kerbed footway or a verge in the highway to or from those premises, the highway authority for the highway may, subject to subsection (2) below, serve a notice on the owner and the occupier of the premises—

(a) stating that they propose to execute such works for the construction of a vehicle crossing over the footway or verge as may be specified in the notice; or

(b) imposing such reasonable conditions on the use of the footway or verge as a crossing as may be so specified.

(2) A highway authority is not entitled by virtue of subsection (1) above to construct a vehicle crossing on, or on any part of, the site of a made-up vehicle crossing which has been constructed either under this section or under section 40 of the M41Highways Act 1971 (which this section replaces) or before the commencement of the said section 40, or to impose conditions on the use of such a crossing.

(3) Where any land is being, or is to be, developed in accordance with a planning permission granted, or deemed to have been granted, under **[**F368the Town and Country Planning Act 1990**]**, and it appears to the highway authority for a highway maintainable at the public expense that the development makes it necessary—

(a) to construct a crossing over a kerbed footway or a verge in the highway so as to provide an access for mechanically propelled vehicles to or from the carriageway of the highway from or to premises adjoining or having access to the highway; or

(b) to improve or otherwise alter a made-up vehicle crossing that provides such an access as is mentioned in paragraph (a) above (whenever constructed),

that authority may serve on the owner and the occupier of the premises a notice stating that they propose to execute such works for the construction or, as the case may be, alteration of the crossing as may be specified in the notice.

(4) Unless the development giving rise to a notice under subsection (3) above consists solely of the provision of a new means of access to or from a highway from or to premises, there may be specified in a notice under that subsection works for the construction as part of the vehicle crossing proposed to be constructed or altered, as the case may be, of acceleration and deceleration lanes.

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(5) In determining whether to exercise their powers under subsection (1) or (3) above, a highway authority shall have regard to the need to prevent damage to a footway or verge, and in determining the works to be specified in a notice under subsection (1)(a) or (3) an authority shall have regard to that and the following other matters, namely—

(a) the need to ensure, so far as practicable, safe access to and egress from premises; and

(b) the need to facilitate, so far as practicable, the passage of vehicular traffic in highways.

(6) Schedule 14 to this Act has effect with respect to the making of objections to a notice under subsection (1) or (3) above and to the date on which such a notice becomes effective.

(7) Where a notice under subsection (1)(a) or (3) above has become effective, the highway authority by whom the notice was served may execute such works as are specified in the notice, subject to such modifications (if any) as may have been made by the Minister, and may recover the expenses reasonably incurred by them in so doing from the owner or occupier of the premises in question.

(8) A notice under subsection (1) or (3) above shall inform the person on whom it is served of his right to object to the notice and (except in the case of a notice under subsection (1)(b)) shall state the effect of subsection (7) above.

(9) Where a person who is carrying out, or proposes to carry out, such a development as is referred to in subsection (3) above offers to execute the works specified in a notice under that subsection, the highway authority by whom the notice was served may authorise him to execute those works in accordance with plans approved by them.

F369 . . .

(10) If a person authorised under subsection (9) above to execute any works fails to execute them to the satisfaction of the highway authority before the development is completed, the authority may execute the works or alter the works executed by that person and recover the expenses reasonably incurred by them in so doing from him.

(11) Any person may request the highway authority for a highway maintainable at the public expense to execute such works as are specified in the request for constructing a vehicle crossing over a footway or verge in the highway, and the authority may approve the request with or without modification, or may propose alternative works or reject the request; and in determining how to exercise their powers under this subsection an authority shall have regard to the matters mentioned in subsection (5) above.

(12) An authority to whom a request under subsection (11) above is made shall notify the person making the request of their decision and if they approve, with or without modification, the works proposed in the request or propose alternative works, they shall supply him with a quotation of the cost of the works as approved or proposed by them, and he may, on depositing with them the amount quoted, require them to execute those works.

(13) As soon as practicable after such a deposit has been made with an authority the authority shall execute the works as approved or proposed by them.

F370(14) . . . . . .

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(15) The expenses recoverable under subsection (7) or (10) above and the cost of the works for the purposes of subsection (12) above include **[**F371the cost of any measures needing to be taken in relation to undertaker's apparatus, in accordance with section 84 of the New Roads and Street Works Act 1991,**]** in consequence of the construction of the crossing.

(16) Nothing in this section imposes on any person other than a highway authority any obligation to maintain a vehicle crossing.

(17) If a person knowingly uses a footway or verge as a crossing in contravention of any condition imposed under subsection (1)(b) above, or knowingly permits it to be so used, he is guilty of an offence and liable to a fine not exceeding **[**F372level 3 on the standard scale**]**.

Textual Amendments

F368 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(11)**

F369 Words in s. 184(9) repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1)(2), Sch. 8 Pt. I para. 9(a), **Sch. 9** (with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch. 2**

F370 S. 184(14) repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1)(2), Sch. 8 Pt. I para. 9(b), **Sch. 9** (with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch. 2**

F371 Words in s. 184(15) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. I para. 9** (with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch. 2**.

F372 Words in s. 184(17) substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 35**, 37, 38, 46 (with s. 47)

Marginal Citations

M41 1971 c. 41.

185 Power to install refuse or storage bins in streets. E+W

(1) Subject to the provisions of this section, a competent authority may provide and maintain in or under a street orderly bins or other receptacles, of such dimensions and in such positions as the authority may determine, for the collection and temporary deposit of street refuse and waste paper, or the storage of sand, grit or other materials.

For the purposes of this section the following are competent authorities—

(a) in relation to a street that is a highway, the highway authority for the highway and **[**F373if different**]** the local authority in whose area it is situated acting with the consent of the highway authority;

(b) in relation to any other street, the local authority in whose area the street is situated.

(2) An authority does not have power by virtue of this section to place a bin or other receptacle on a bridge over a railway, or under a bridge carrying a railway over a street, or within 10 feet of the abutments of a bridge carrying a railway over a street, except with the consent of the railway undertakers concerned.

(3) An authority shall not exercise the power conferred by this section so as to obstruct or render less convenient the access to or exit from—

(a) a station or goods yard belonging to railway undertakers; or

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(b) premises belonging to canal, inland navigation, dock, harbour, tramway, electricity, gas [F374water or sewerage undertakers], or to persons authorised by an enactment to carry on any other public undertaking, and used by those undertakers or persons for the purposes of their undertaking.

(4) Nothing in this section is to be taken as empowering an authority to hinder the reasonable use of a street by the public or any person entitled to use it or as empowering an authority to create a nuisance to the owner or occupier of premises adjacent to a street.

Textual Amendments

F373 Words in s. 185(1)(a) substituted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.16** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F374 Words substituted 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. 62(7), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

Modifications etc. (not altering text)

C84 S. 185 extended by Electricity Act 1989 (c. 29, SIF 44:1), s.112(1)(3), Sch. 16 para. 2(5)(c)(9), Sch. 17 paras. 33, **35(1)**

F375PART X E+W

. . .

Textual Amendments

F375 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

Modifications etc. (not altering text)

C85 Pt. X (ss. 186-202) applied (3.4.1995) by 1994 c. 19, s. 66(7), **Sch. 17 Pt. II para. 19(2)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/852, art. 9(1), **Sch.5**

New street byelaws

Modifications etc. (not altering text)

C86 Pt. X (ss. 186-202) applied (3.4.1995) by 1994 c. 19, s. 66(7), **Sch. 17 Pt. II para. 19(2)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/852, art. 9(1), **Sch.5**.

F376186 . . . . . E+W

Textual Amendments

F376 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

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F377187 . . . . . E+W

Textual Amendments

F377 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

F378188 . . . . . E+W

Textual Amendments

F378 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

F379189 . . . . . E+W

Textual Amendments

F379 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

F380190 . . . . . E+W

Textual Amendments

F380 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

F381Passing of plans deposited under byelaws

Textual Amendments

F381 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

F382191 . . . . . E+W

Textual Amendments

F382 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

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[F383]192 . . . . . E+W

Textual Amendments

F383 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

[F384] Requirements and prohibitions as to new streets

Textual Amendments

F384 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

[F385]193 . . . . . E+W

Textual Amendments

F385 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

[F386]194 . . . . . E+W

Textual Amendments

F386 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

[F387]195 . . . . . E+W

Textual Amendments

F387 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt. V** (with s. 84(5)); 1991/2067, art.3

[F388]196 . . . . . E+W

Textual Amendments

F388 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

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[F389]*Enforcement of byelaws and requirements of local authority*

Textual Amendments

F389 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

[F390]197 . . . . . E+W

Textual Amendments

F390 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

[F391]198 . . . . . E+W

Textual Amendments

F391 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt. V** (with s. 84(5)); 1991/2067, art.3

[F392]199 . . . . . E+W

Textual Amendments

F392 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

[F393]*Provisions as to regulation of new streets by enactment*

Textual Amendments

F393 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

[F394]200 . . . . . E+W

Textual Amendments

F394 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

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[F395]Supplemental provisions

Textual Amendments

F395 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

[F396]201 . . . . . **E+W**

Textual Amendments

F396 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

[F397]202 . . . . . **E+W**

Textual Amendments

F397 Part X (ss. 186-202) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 81, 84(6), **Sch. 19 Pt.V** (with s. 84(5)); 1991/2067, art.3

PART XI E+W

MAKING UP OF PRIVATE STREETS

Introductory

203 Interpretation of Part XI. E+W

(1) In this Part of this Act (and elsewhere in this Act) "the private street works code" means sections 205 to 218 below; and "the advance payments code" means sections 219 to 225 below.

(2) In this Part of this Act "private street" means a street that is not a highway maintainable at the public expense, and—

(a) includes any land that is deemed to be a private street by virtue of a declaration made under section 232 below, and

(b) for the purpose of the application of the advance payments code or section 229 below in relation to any building, includes—

(i) any land shown as a proposed street on plans deposited with respect to that building either under building regulations or on an application for planning permission under **[**[F398]the Town and Country Planning Act 1990**]**, and

[F399](ii) . . . . . .

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

(3) In this Part of this Act—

"contributory place" has the same meaning as in section 343 of the [M42]Public Health Act 1936;

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

"industrial premises" means premises used or designed or suitable for use for the carrying on of any such process or research as is specified in section 66(1) of the [M43]Town and Country Planning Act 1971, and includes premises used for purposes ancillary to the carrying on of any such process or research;

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

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

"place of public religious worship" means a place of public religious worship which belongs to the Church of England or to the Church in Wales (within the meaning of the [M44]Welsh Church Act 1914), or which is for the time being certified as required by law as a place of religious worship;

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

"street works authority" means—

(a) as respects a street outside Greater London, the council of the county **[**[F400]or metropolitan district**]** in which the street is situated,

(b) as respects a street in a London borough, the council of the borough, and

(c) as respects a street in the City, the Common Council.

(4) For the purposes of the advance payments code and of section 229 below, the frontage of a building or proposed building on a street shall be deemed to be the frontage that the building itself and any land occupied or, as the case may be, proposed to be occupied, with the building and for the purposes of it has or will have on the street.

(5) In ascertaining a majority in number of owners for the purposes of any provision of this Part of this Act, joint owners are to be treated as one owner.

Textual Amendments

F398 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(11)**

F399 S. 203(2)(b)(ii) repealed (25.09.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 84(6), **Sch. 19 Pt.V** (with ss. 81(2), 84(5); S.I. 1991/2067, **art.3**.

F400 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 33**

Modifications etc. (not altering text)

C87 S. 203: definition of "street works" applied (23.7.1991) by S.I. 1991/1760, **art. 10(3)**

Marginal Citations

M42 1936 c. 49.

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M43 1971 c. 78.
M44 1914 c. 91.

204 Purposes and application of private street works code and advance payments code. E+W

(1) The private street works code has effect for securing the execution of street works in private streets anywhere in England or Wales.

(2) The advance payments code has effect for securing payment of the expenses of the execution of street works in private streets adjacent to new buildings, and applies—

(a) in all outer London boroughs;

(b) in all areas in counties in which the advance payments code in the [M45]Highways Act 1959 (which is replaced by the advance payments code in this Act) was in force immediately before 1st April 1974; and

(c) in any parish or community in which the advance payments code in the Highways Act 1959 was, after 1st April 1974, adopted in accordance with Schedule 14 to that Act, or in which the advance payments code is adopted in accordance with Schedule 15 to this Act.

[[F401](3) The areas in which the advance payments code applies by virtue of subsection (2)(b) above shall be taken to include any area in Wales—

(a) which is, or is in, a county borough; and

(b) in which the code applied immediately before 1st April 1996 by virtue of that subsection.**]**

Textual Amendments

F401 S. 204(3) added (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.17** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

Marginal Citations

M45 1959 c. 25.

The private street works code

205 Street works in private streets. E+W

(1) Where a private street is not, to the satisfaction of the street works authority, sewered, levelled, paved, metalled, flagged, channelled, made good and lighted, the authority may from time to time resolve with respect to the street to execute street works and, subject to the private street works code, the expenses incurred by the authority in executing those works shall be apportioned between the premises fronting the street.

(2) Where the authority resolve to execute street works with respect to a part only of the street (other than a part extending for the whole of the length of the street), the expenses incurred by them in executing the works shall be apportioned only between the premises fronting the length of the street which constitutes or comprises that part.

(3) Where an authority have passed a resolution under subsection (1) above, the proper officer of the council shall prepare—

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(a) a specification of the street works referred to in the resolution, with any necessary plans and sections,

(b) an estimate of the probable expenses of the works, and

(c) a provisional apportionment apportioning the estimated expenses between the premises liable to be charged with them under the private street works code;

and the specification, plans, sections, estimate and provisional apportionment shall comprise the particulars specified in paragraphs 1 to 4 of Schedule 16 to this Act and shall be submitted to the authority, who may by a further resolution (hereafter in the private street works code referred to as "the resolution of approval") approve them with or without modification or addition as they think fit.

(4) If, in the case of a street outside Greater London, the street works referred to in the resolution under subsection (1) above include the sewering of the street, the proper officer of the county council shall, when preparing the specification required by subsection (3) above, consult the council of the district in which the street works are to be carried out.

[[F402](4A) In the case of a street in Wales—

(a) subsection (4) above does not apply; but

(b) if the street works referred to in the resolution under subsection (1) above—

(i) are to be carried out in a part of the street which is treated as being in the area of a street works authority other than the local Welsh council for it; and

(ii) include the sewering of the street,

the proper officer of the council which are the street works authority shall, when preparing the specification required by subsection (3) above, consult the local Welsh council for it.**]**

(5) After the resolution of approval has been passed, a notice containing the particulars specified in paragraph 5 of Schedule 16 to this Act shall—

(a) be published once in each of 2 successive weeks in a local newspaper circulating in the area of the street works authority, and

(b) be posted in a prominent position in or near to the street to which the resolution relates once at least in each of 3 successive weeks, and

(c) within 7 days from the date of the first publication under paragraph (a) above, be served on the owners of the premises shown in the provisional apportionment as liable to be charged;

and during one month from the said date a copy of the resolution of approval, and the approved documents or copies of them certified by the proper officer of the council, shall be kept deposited and open to inspection free of charge at all reasonable hours at the offices of the street works authority and also **[**[F403], in the case of a street situated in a non-metropolitan district, at the offices of the council of that district**][**[F404]and, in the case of any part of a street in Wales which is treated as being in the area of a street works authority which are not the local Welsh council for it, at the offices of the local Welsh council.

(5A) For the purposes of this section, the local Welsh council for a street in Wales are the council of the county or county borough in which it is situated.**]**

(6) Where a notice is served on an owner of premises under subsection (5)(c) above it shall be accompanied by a statement of the sum apportioned on those premises by the provisional apportionment.

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Textual Amendments

F402 S. 205(4A) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 18(2)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F403 Words substituted by Local Government Act 1985 (c. 51, SIF 81:1), **s. 8 Sch. 4 para. 34**

F404 Words in s. 205(5) and s. 205(5A) added (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 18(3)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

206 Incidental works. E+W

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

207 Provisional apportionment of expenses. E+W

(1) In a provisional apportionment of expenses of street works under the private street works code, the apportionment of expenses between the premises liable to be charged with them shall, subject to the provisions of this section, be made according to the frontage of the respective premises.

(2) The street works authority may, if they think just, resolve that in settling the apportionment regard shall be had to the following considerations:—

(a) the greater or less degree of benefit to be derived by any premises from the street works;

(b) the amount and value of any work already done by the owners or occupiers of any premises.

(3) The authority may—

(a) if they think just, include in the apportionment any premises which do not front the street, but have access to it through a court, passage, or otherwise, and which will, in the opinion of the authority, be benefited by the works, and

(b) fix, by reference to the degree of benefit to be derived by those premises, the amount to be apportioned on them.

208 Objections to proposed works. E+W

(1) Within one month from the date of the first publication of a notice under section 205(5)(a) above, an owner of premises shown in a provisional apportionment of expenses as liable to be charged with any part of the expenses of executing street works with respect to a private street or a part of a private street may, by notice to the street work authority, object to their proposals on any of the following grounds:—

(a) that the alleged private street is not a private street or, as the case may be, that the alleged part of a private street is not a part of a private street;

(b) that there has been some material informality, defect or error in, or in respect of, the resolution, notice, plans, sections or estimate;

(c) that the proposed works are insufficient or unreasonable;

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(d) that the estimated expenses of the proposed works are excessive;

(e) that any premises ought to be excluded from or inserted in the provisional apportionment;

(f) that the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection or, where the provisional apportionment is made with regard to other considerations than frontage, in respect of the degree of benefit to be derived by any premises, or of the amount or value of any work already done by the owner or occupier of premises.

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

209 Hearing and determination of objections. E+W

(1) If an objection is made under section 208 above within the period there specified, and is not withdrawn, the street works authority may, after the expiration of that period, apply to a magistrates' court to appoint a time for hearing and determining all objections so made within that period, and shall serve on the objectors notice of the time and place so appointed.

(2) At the hearing the court shall hear and determine the objections in the same manner as nearly as may be as if the authority were proceeding summarily against the objectors to enforce payment of a sum of money summarily recoverable.

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

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

210 Power to amend specification, apportionment, etc. E+W

(1) Subject to the provisions of this section, the street works authority may from time to time amend the specification, plans, sections, estimate and provisional apportionment for any street works proposed under section 205 above.

(2) If the street works authority propose to amend the estimate so as to increase the amount of it, then, before the amendment is made, a notice containing the particulars specified in paragraph 6 of Schedule 16 to this Act shall—

(a) be published once in each of 2 successive weeks in a local newspaper circulating in the area of the street works authority, and

(b) be posted in a prominent position in or near to the street to which the resolution of approval relates once at least in each of 3 successive weeks, and

(c) within 7 days from the date of the first publication under paragraph (a) above, be served on the owners of the premises shown in the provisional apportionment as liable to be charged;

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and, during one month from the said date, a document certified by the proper officer of the council giving details of the amendment of the estimate and of the consequential amendment of the provisional apportionment shall be kept deposited and open to inspection free of charge at all reasonable hours at the offices of the street works authority and also **[**[F405], in the case of a street situated in a non-metropolitan district, at the offices of the council of that district**][**[F406]and, in the case of any part of a street in Wales, the Welsh council for the county or county borough in which it is situated, if different from the street works authority in whose area it is treated as situated.**]**

(3) Where a notice is served on an owner of premises under subsecton (2)(c) above it shall be accompanied by a statement of the sum apportioned on those premises by the provisional apportionment as proposed to be amended.

(4) Within one month from the date of the first publication of a notice under subsection (2)(a) above, objections may be made and, if made, shall be heard and determined in like manner, and subject to the like provisions with respect to the persons entitled to be heard and otherwise, as objections under section 208 above.

Textual Amendments

F405 Words substituted by Local Government Act 1985 (c. 51, SIF 81:1), **s. 8 Sch. 4 para. 34**

F406 Words in s. 210(2) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.19** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

211 Final apportionment and objections to it. E+W

(1) When any street works to be executed under the private street works code have been completed, and the expenses of them ascertained, the proper officer of the council shall make a final apportionment by dividing the expenses in the same proportions as those in which the estimated expenses were divided in the original or amended provisional apportionment, as the case may be, and notice of the final apportionment shall be served on the owners of the premises affected by it.

(2) Within one month from the date on which notice of the final apportionment is served on him, the owner of any premises shown in the apportionment as liable to be charged may, by notice to the authority, object to the apportionment on the following grounds, or any of them:—

(a) that there has been an unreasonable departure from the specification, plans and sections;

(b) that the actual expenses have without sufficient reason exceeded the estimated expenses by more than 15 per cent;

(c) that the apportionment has not been made in accordance with this section

Objections under this section shall be determined in the like manner, and subject to the like provisions with respect to the persons entitled to be heard and otherwise, as objections to the provisional apportionment.

(3) The final apportionment, subject to any amendment made to it by a court on the hearing of objections to it under this section, is conclusive for all purposes.

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212 Recovery of expenses and charge thereof on premises. E+W

(1) A street works authority may from time to time recover from the owner for the time being of any premises in respect of which any sum is due for expenses of street works the whole or any portion of that sum together with interest at such reasonable rates as the authority may determine from the date of the final apportionment.

(2) The sum apportioned on any premises by the final apportionment or, as the case may be, by that apportionment as amended by a court, together with interest from the date of the final apportionment is, until recovered, a charge on the premises and on all estates and interests therein.

(3) A street works authority, for the purpose of enforcing a charge under subsection (2) above before it is registered under the [M46]Local Land Charges Act 1975, have the same powers and remedies under the [M47]Law of Property Act 1925 and otherwise as if they were mortgagees by deed having powers of sale and lease and of appointing a receiver.

(4) A street works authority may by order declare the expenses apportioned on any premises by a final apportionment made by the proper officer of the council or, as the case may be, by that apportionment as amended by a court, to be payable by annual instalments within a period not exceeding 30 years, together with interest from the date of the final apportionment; and any such instalment and interest, or any part thereof, may be recovered from the owner or occupier for the time being of the premises.

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

Marginal Citations
M46 1975 c. 76.
M47 1925 c. 20.

213 Power for limited owners to borrow for expenses. E+W

The owners of any premises, if they are persons who under the [M48]Compulsory Purchase Act 1965 are empowered to sell and convey or release lands, may charge those premises with—

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

(b) the expenses of making such a charge;

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

Marginal Citations
M48 1965 c. 56.

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214 Financial provisions. E+W

(1) A street works authority shall keep separate accounts of all money expended and recovered by them in the execution of the private street works code.

(2) A street works authority may from time to time borrow money for the purpose of providing temporarily for expenses of street works in private streets.

(3) If the whole or a part of a loan raised in respect of expenses of street works is outstanding at the date when any sum is recovered in respect of the expenses of those street works under section 212 above, the sum so recovered shall be applied in repayment of the loan.

215 Exemption for place of public religious worship. E+W

(1) The incumbent or minister, or trustee, of a place of public religious worship is not liable to expenses of street works under the private street works code as the owner of that place, or of a churchyard or burial ground attached to it, and the proportion of expenses in respect of which an exemption is allowed under this section shall be borne by the street works authority.

(2) No such expenses as aforesaid are to be deemed—

(a) to be a charge on such a place, or churchyard or burial ground, or

(b) to subject such a place, or churchyard or burial ground, to distress, execution or other legal process.

216 Certain railways and canals not to be chargeable with expenses. E+W

(1) No railway undertakers or canal undertakers shall be deemed to be owners or occupiers for the purposes of the private street works code of land upon which a street wholly or partly fronts if the land has no direct communication with the street and at the time of the laying out of the street was used solely as part of their line of railway, canal, or siding, station, towing path, or works—

(a) by the undertakers, or

(b) in a case where the rights of other railway or canal undertakers in respect of the land under section 22 of the [M49]Private Street Works Act 1892, are vested in the undertakers, by those other railway undertakers or canal undertakers.

(2) The amount of any expenses incurred by a street works authority under the private street works code which, but for subsection (1) above, the undertakers would be liable to pay shall be paid to the authority by the owners of the other premises included in the final apportionment in such proportion as may be settled by the proper officer of the council.

(3) If the undertakers subsequently make a communication with the street, they shall pay to the authority the amount of the expenses which, but for subsection (1) above, the undertakers or such other undertakers as aforesaid would in the first instance have been liable to pay, and the authority shall divide among the owners for the time being of the other premises included in the final apportionment the amount so paid by the undertakers, less the costs and expenses attendant upon the division, in such proportion as may be settled by the proper officer of the council.

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(4) This section does not apply to a street existing at the date when the [M50]Private Street Works Act 1892 or the code of 1892 under the [M51]Highways Act 1959, as the case may be, first became applicable in the area in which the street is situated.

Marginal Citations

M49 1892 c. 57.
M50 1892 c. 57.
M51 1959 c. 25.

217 Objections only to be made as provided by private street works code. E+W

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

218 Saving for Thames Water Authority and Port of London Authority. E+W

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

The advance payments code.

219 Payments to be made by owners of new buildings in respect of street works. E+W

(1) Subject to the provisions of this section, where—

(a) it is proposed to erect a building for which plans are required to be deposited with the local authority in accordance with building regulations, and

(b) the building will have a frontage on a private street in which the street works authority have power under the private street works code to require works to be executed or to execute works,

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

(2) If work is done in contravention of subsection (1) above, the owner of the land on which the building is to be erected and, if he is a different person, the person undertaking the erection of the building is guilty of an offence and liable to a fine not exceeding **[**[F407]level 3 on the standard scale**]**, and any further contravention in respect of the same building constitutes a new offence and may be punished accordingly.

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

(3) Where the person undertaking the erection of the building is not the owner of the land on which it is to be erected and is charged with an offence under subsection (2) above, it shall be a defence for him to prove that he had reasonable grounds for believing that

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the sum required under section 220 below had been paid or secured by the owner of the land in accordance with subsection (1) above.

(4) This section does not apply—

(a) where the owner of the land on which the building is to be erected will be exempt, by virtue of a provision in the private street works code, from liability to expenses incurred in respect of street works in the private street in question;

(b) where the building proposed to be erected will be situated in the curtilage of, and be appurtenant to, an existing building;

(c) where the building is proposed to be erected in a parish or community and plans for the building were deposited with the district council or, according to the date of deposit, the rural district council before the date on which the [M52]New Streets Act 1951, or the advance payments code (either in this Act or in the [M53]Highways Act 1959) was applied in the parish or community or as the case may require, in the part of the parish or community in which the building is to be erected;

(d) where an agreement has been made by any person with the street works authority under section 38 above providing for the carrying out at the expense of that person of street works in the whole of the street or a part of the street comprising the whole of the part on which the frontage of the building will be, and for securing that the street or the part thereof, on completion of the works, will become a highway maintainable at the public expense;

(e) where the street works authority, being satisfied that the whole of the street or such a part thereof as aforesaid is not, and is not likely within a reasonable time to be, substantially built-up or in so unsatisfactory a condition as to justify the use of powers under the private street works code for securing the carrying out of street works in the street or part thereof, by notice exempt the building from this section;

(f) where the street works authority, being satisfied that the street is not, and is not likely within a reasonable time to become, joined to a highway maintainable at the public expense, by notice exempt the building from this section;

(g) where the whole street, being less than 100 yards in length, or a part of the street not less than 100 yards in length and comprising the whole of the part on which the frontage of the building will be, was on the material date built-up to such an extent that the aggregate length of the frontages of the buildings on both sides of the street or part constituted at least one half of the aggregate length of all the frontages on both sides of the street or part;

(h) where (in a case not falling within paragraph (g) above) the street works authority, being satisfied that the whole of the street was on the material date substantially built-up, by notice exempt the building from this section;

(i) where the building is proposed to be erected on land belonging to, or in the possession of—

(i) the British Railways Board,. . . [F408], the British Waterways Board, **[**[F409]London Regional Transport**]**,. . . [F410] . . . [F411] any wholly-owned subsidiary (within the meaning of the [M54]Transport Act 1968) or joint subsidiary (within the meaning of section 51(5) of that Act) of any of those bodies **[**[F412]other than London Regional Transport, or any subsidiary (whether wholly-owned or not) of London Regional Transport (within the meaning of the London Regional Transport Act 1984)**]**;

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(ii) the council of a county, district or London borough. . . [F413] or the Common Council;

(iii) the Commission for the New Towns or a new town development corporation;

(j) where the building is to be erected by a company the objects of which include the provision of industrial premises for use by persons other than the company, being a company the constitution of which prohibits the distribution of the profits of the company to its members, and the cost of the building is to be defrayed wholly or mainly by a government department;

(k) where the street works authority, being satisfied—

(i) that more than three-quarters of the aggregate length of all the frontages on both sides of the street, or of a part of the street not less than 100 yards in length and comprising the whole of the part on which the frontage of the building will be, consists, or is at some future time likely to consist, of the frontages of industrial premises, and

(ii) that their powers under the private street works code are not likely to be exercised in relation to the street, or to that part of it, as the case may be, within a reasonable time,

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

[[F414](4A) In subsection (4)(c) above, "district council" is to be read in relation to plans deposited on or after 1st April 1996 for a building to be erected in Wales as "Welsh council".**]**

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

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

(6) For the purposes of this section " the material date" is—

(a) in relation to a building proposed to be erected in an area which before 1st April 1974 was a rural district or a contributory place within a rural district, the date on which the [M55]New Streets Act 1951 or the advance payments code (either in this Act or in the [M56]Highways Act 1959) was applied in that area;

(b) in relation to a building proposed to be erected anywhere else, 1st October 1951.

Textual Amendments

F407 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

F408 Words repealed by Transport Act 1981 (c. 56, SIF 126), s. 40, **Sch. 12 Pt. I**

F409 Words substituted by London Regional Transport Act 1984 (c. 32, SIF 126), **s. 71(3)**(*a*), Sch. 6 para. 20(*a*)

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F410 Words repealed by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), **Sch. 1 Pt. X**
F411 Word repealed by London Regional Transport Act 1984 (c. 32, SIF 126), **s. 71(3)**(*a*)(*b*), Sch. 6 para. 20(*b*), Sch. 7
F412 Words added by London Regional Transport Act 1984 (c. 32, SIF 126), **s. 71(3)**(*a*), Sch. 6 para. 20(*c*)
F413 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**
F414 S. 219(4A) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.20** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

Modifications etc. (not altering text)
C88 S. 219 modified by Building Act 1984 (c. 55, SIF 15), **ss. 48(2)(3)**, 49(8)

Marginal Citations
M52 1951 c. 40.
M53 1959 c. 25.
M54 1968 c. 73.
M55 1951 c. 40.
M56 1959 c. 25.

220 Determination of liability for, and amount of, payments. E+W

(1) In a case to which section 219 above applies the street works authority shall, within 6 weeks from the passing of any required plans relating to the erection of a building deposited with them or, in the case to which subsection (2) **[**F415or (2A)**]**below applies, with the district council **[**F415or Welsh council**]**, serve a notice on the person by or on whose behalf the plans were deposited requiring the payment or the securing under section 219 above of a sum specified in the notice.

In this subsection and **[**F416subsections (2) and (2A)**]**below "required plans" means plans required to be deposited with the local authority in accordance with building regulations.

(2) Where (outside Greater London) the advance payments code is in force in the whole or any part of a **[**F417non-metropolitan**]** district, the district council, in any case to which section 219 above may be applicable, shall within one week from the date of the passing of any required plans deposited with them relating to the erection of a building in an area in which that code is in force inform the street works authority that the plans have been passed.

[F418(2A) Where any required plans which—

(a) are deposited with a Welsh council; and

(b) relate to the erection of a building in an area—

(i) in which the advance payments code is in force; but

(ii) which is treated as being within the area of a street works authority other than that Welsh council,

are passed, the Welsh council shall, in any case to which section 219 above may be applicable, within one week inform the street works authority of that event.**]**

(3) Subject to the provisions of this section, the sum to be specified in a notice under subsection (1) above is such sum as, in the opinion of the street works authority, would be recoverable under the private street works code in respect of the frontage of the proposed building on the private street if the authority were then to carry out such

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street works in the street as they would require under that code before declaring the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense.

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

(4) If, at any time after the service of a notice under subsection (1) above, the street works authority—

(a) are of opinion that the sum specified in the notice exceeds such sum as in their opinion would be recoverable as mentioned in subsection (3) above if they were then to carry out such street works as are so mentioned, or

(b) are of opinion that no sum would be so recoverable,

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

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

(5) Where, under a local Act, the erection of buildings on land having a frontage on a new street is prohibited until works for the constrution or sewering of the street have been carried out in accordance with byelaws, the amount of the sum to be specified in a notice served under this section shall be calculated as if those works had been carried out.

(6) Where a notice is served on any person under this section (other than a notice intimating that no sum falls to be paid or secured) that person or, if he is a different person, the owner of the land on which the building is to be, or has been, erected, may, not later than one month from the date of the service of the notice, appeal to the Minister and the Minister may subsitute a smaller sum for the sum specified by the street works authority.

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

(7) Where a sum has been paid or secured in compliance with a notice served under subsection (1) above and a notice is subsequently served under subsection (4) above substituting a smaller sum for the sum specified in the first-mentioned notice or intimating that no sum falls to be paid or secured, the street works authority—

(a) if the sum was paid, shall refund the amount of the excess or, as the case may be, the whole sum to the person who is for the time being owner of the land on which the building is to be, or has been, erected;

(b) if the sum was secured and the person whose property is security for the payment of it is for the time being owner of that land, shall release the security to the extent of the excess or, as the case may be, the whole security;

(c) if the sum was secured and the person whose property is security for the payment of it is not for the time being owner of that land, shall pay to that owner an amount equal to the excess or, as the case may be, the whole sum,

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and are entitled to realise the security for the purpose of recovering the amount so paid.

(8) Where land in respect of which a sum has been paid or secured in compliance with a notice under subsection (1) above is subsequently divided into 2 or more parts so that 2 or more owners would, if street works were carried out, incur liability in respect of it, the sum is to be treated as apportioned between those owners according to their respective frontages and, if the sum was secured and the security is the property of one only of those owners, the street works authority—

(a) are required under subsection (7)(b) above to release the security only to the extent of the amount apportioned to that owner, and

(b) are entitled to realise the security for the purpose of recovering the amount or amounts paid to the other owner or owners under subsection (7)(c) above.

(9) Where a security is realised for the purpose of recovering an amount paid by a street works authority under subsection (7)(c) above, and the sum produced by realising the security exceeds the amount so paid, the amount of the excess shall be held by the authority and dealt with under the advance payments code as if it had been an amount paid under section 219 above on the date on which the security was realised.

Textual Amendments

F415 Words in s. 220(2) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.21** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F416 Words in s. 220(2) substituted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.21** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

F417 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 35**

F418 S. 220(2A) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.21** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**.

Modifications etc. (not altering text)

C89 S. 220 modified by Building Act 1984 (c. 55, SIF 15), **ss. 48(2)(3)**, 49(8)

221 Refunds etc. where work done otherwise than at expense of street works authority. E+W

(1) Where—

(a) a sum has been paid or secured under section 219 above by the owner of land in respect of the cost of street works to be carried out in the private street on which that land has a frontage, and

(b) any street works are subsequently carried out in the private street in respect of that frontage to the satisfaction of but otherwise than at the expense of the street works authority,

the authority may refund to the person at whose expense the works are carried out the whole or such proportion of that sum or, as the case may be, release the whole or such part of the security, as in their opinion represents the amount by which the liability of the owner of that land in respect of street works has been reduced as a result of the carrying out of the street works in question.

Where the person at whose expense the works are carried out is not the person who is for the time being owner of that land no refund or release shall be made under this subsection unless the owner has been notified of the proposal to make the refund or

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release and has been afforded an opportunity of making representations to the street works authority in relation to it.

(2) Where any land which has a frontage on a private street, and in respect of which a sum has been paid or secured under section 219 above, is subsequently divided into 2 or more parts each having a frontage on that private street, the sum is to be treated as apportioned between the owners thereof according to their respective frontages, and subsection (1) above has effect accordingly.

(3) Where—

(a) a sum has been paid or secured under section 219 above by the owner of land in respect of the cost of street works to be carried out in the private street on which that land has a frontage, and

(b) thereafter the street works authority enter into an agreement with any person under section 38 above providing for the carrying out at the expense of that person of street works in respect of that frontage,

that agreement may also provide for the refund of the said sum or a part of it either without interest or with interest at such rate as may be specified in the agreement, or for the release of the whole or a part of the security, as the case may be.

Modifications etc. (not altering text)
C90 Ss. 221–223 modified by Building Act 1984 (c. 55, SIF 15), **ss. 48(2)(3)**, 49(8)

222 Sums paid or secured to be in discharge of further liability for street works. E+W

(1) Where a sum has been paid or secured under section 219 above by the owner of land in respect of the cost of street works to be carried out in the private street on which that land has a frontage, the liability of that owner or any subsequent owner of that land in respect of the carrying out of street works in that street under the private street works code (" the street works liability") is, as respects that frontage, to be deemed to be discharged to the extent of the sum so paid or secured.

(2) If, when the street is declared to be a highway which for the purposes of this Act is a highway maintainable at the public expense, the said sum is found to exceed the total street works liability in respect of that frontage or there is no such liability because the street was not made up at the expense of the street works authority, the street works authority—

(a) if the sum was paid, shall refund the amount of the excess or, as the case may be, the whole sum to the person who is for the time being owner of the land;

(b) if the sum was secured and the person whose property is security for the payment of it is for the time being owner of the land, shall release the security to the extent of the excess or, as the case may be, the whole security;

(c) if the sum was secured and the person whose property is security for the payment of it is not for the time being owner of the land, shall pay to that owner an amount equal to the excess or, as the case may be, the whole sum, and are entitled to realise the security for the purpose of recovering the amount so paid.

(3) Where land in respect of which a sum has been paid or secured under section 219 above is subsequently divided into 2 or more parts so that 2 or more owners incur or

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

(a) are required under subsection (2)(b) above to release the security only to the extent to which the amount apportioned to that owner exceeds his street works liability or, as the case may be, to the extent of the whole of that amount, and

(b) are entitled to realise the security for the purpose of recovering the amount or amounts paid to the other owner or owners under subsection (2)(c) above.

(4) Where any refund, release or payment has been made under section 220(7) above, or under section 221 above, the foregoing provisions of this section have effect as if for references therein to a sum paid or secured there were substituted references to any sum remaining paid or secured.

Modifications etc. (not altering text)
C91 Ss. 221–223 modified by Building Act 1984 (c. 55, SIF 15), **ss. 48(2)(3)**, 49(8)

223 Determination to cease to have effect when plans not proceeded with. E+W

(1) Where, on the occasion of the deposit of plans for the erection of a building, the amount to be paid or secured under section 219 above has been determined under section 220 above, and subsequently—

(a) the local authority, under **[**F419section 32 of the Building Act 1984**]**, declare the deposit of the plans to be of no effect, or

(b) before any work has been done in or for the purpose of erecting the building the owner gives notice to the local authority of his intention not to proceed with the building,

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

(2) Where by virtue of subsection (1) above a determination is of no effect and a sum has been paid or security given in accordance with it, the street works authority—

(a) if the sum was paid, shall refund it to the person who is for the time being owner of the land;

(b) if the sum was secured and the person whose property is security for the payment of it is for the time being owner of the land, shall release the security;

(c) if the sum was secured and the person whose property is security for the payment of it is not for the time being owner of the land, shall pay to that owner an amount equal to the said sum, and are entitled to realise the security for the purpose of recovering the amount so paid.

(3) Where land in respect of which a sum has been paid or secured as mentioned in subsection (2) above is subsequently divided into 2 or more parts so that 2 or more owners would, if street works were carried out, incur liability in respect thereof, the sum is to be treated as apportioned between those owners according to their respective frontages and, if the sum was secured and the security is the property of one only of those owners, the street works authority—

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(a) are required under subsection (2)(b) above to release the security only to the extent of the amount apportioned to that owner, and

(b) are entitled to realise the security for the purpose of recovering the amount or amounts paid to the other owner or owners under subsection (2)(c) above.

(4) Where any refund, release or payment has been made under section 220(7) above, or under section 221 above, subsections (2) and (3) above have effect as if for references in those subsections to a sum paid and security given there were substituted references to, respectively, any sum remaining paid and any remaining security.

(5) Where—

(a) a person notifies the local authority in accordance with subsection (1)(b) above of his intention not to proceed with the building and by reason thereof a determination is of no effect, and

(b) subsequently notice is given to the local authority by the owner of the land that he intends to proceed with the building in accordance with the plans as originally deposited,

the notice to be served under subsection (1) of section 220 above by the street works authority shall, in lieu of being served as required by that subsection, be served on him within one month from the date of the service of the notice of his intention to proceed with the building, and section 220 has effect accordingly.

(6) Where the advance payments code is in force in the whole or any part of a **[**[F420]non-metropolitan**]** district, the district council, in any case to which this section may be applicable, shall within one week inform the county council of the happening of any of the following events:—

(a) the making of any declaration that the deposit of plans relating to the erection of a building is of no effect,

(b) the giving of any notice by an owner of his intention not to proceed with a building, and

(c) the giving of any notice by an owner of his intention to proceed with the building in accordance with the plans as originally deposited.

[[F421](7) In any case—

(a) to which this section may be applicable; and

(b) which relates to plans for the erection of a building in any part of a street in Wales which is treated as being in the area of a street works authority other than the Welsh council for the county or county borough in which it is situated,

the Welsh council shall within one week inform the street works authority of the happening of any event of a kind described in paragraphs (a) to (c) of subsection (6) above.**]**

Textual Amendments

F419 Words substituted by Building Act 1984 (c. 55, SIF 15), s. 133(1), **Sch. 6 para. 21**

F420 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s.8, **Sch. 4 para. 35**

F421 S. 223(7) added (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.22** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

Modifications etc. (not altering text)

C92 Ss. 221–223 modified by Building Act 1984 (c. 55, SIF 15), **ss. 48(2)(3)**, 49(8)

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224 Certain matters to be local land charges. E+W

(1) The matters specified in subsection (2) below are local land charges.

(2) The matters referred to in subsection (1) above are:—

(a) notices served by a street works authority under section 220(1) or (4) above;

(b) determinations by the Minister under section 220(6) above;

(c) payments made and securities given under section 219 above;

(d) notices served under subsection (4)(e), (f) or (h) of section 219 above exempting a building from that section;

(e) resolutions passed under subsection (4)(k) of section 219 above exempting a street or a part of a street from that section; and

(f) refunds made and releases of securities granted under section 221, 222 or 223 above.

(3) As respects any matter that is a local land charge by virtue of this section, the street works authority for the street concerned are, notwithstanding anything in section 5(4) of the [M57]Local Land Charges Act 1975, to be treated as the originating authority for the purposes of that Act.

Modifications etc. (not altering text)
C93 Ss. 224, 225 modified by Building Act 1984 (c. 55, SIF 15), **ss. 48(2)(3)**, 49(8)

Marginal Citations
M57 1975 c. 76.

225 Interest on sums paid under advance payments code. E+W

(1) Any sum paid by the owner of land to a street works authority under section 219 above, in so far as it continues to be held by the authority, carries simple interest at the appropriate rate from the date of payment until such time as the sum or a part of it remaining so held—

(a) falls to be set off under section 222 above against the liability of the owner of the land in respect of the carrying out of street works; or

(b) falls to be refunded in full under the provisions of the advance payments code;

and the interest shall be held by the authority until that time and dealt with under those provisions as if it formed part of the said sum.

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

(2) For the purposes of the advance payments code interest on any sum held by a street works authority shall be calculated in respect of each financial year during which it accrues at the appropriate rate prevailing at the commencement of that financial year.

(3) In this section "the appropriate rate" means the rate at the material time determined by the Treasury in respect of local loans for periods of 10 years on the security of local rates (being a determination under section 6(2) of the [M58]National Loans Act 1968, and subject to any relevant direction under the said section 6(2)).

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Modifications etc. (not altering text)
C94 Ss. 224, 225 modified by Building Act 1984 (c. 55, SIF 15), **ss. 48(2)(3)**, 49(8)

Marginal Citations
M58 1968 c. 13.

General

226 Power to vary width of carriageway and footway on making up a private street. E+W

(1) A street works authority may include in street works done in relation to a street under the private street works code a variation of the relative widths of the carriageway and of the footway or footways of the street.

(2) No greater charge shall be imposed on a person by reason of any such variation than could have been imposed in respect of a carriageway or footway of the width prescribed for a new street of the same class by a byelaw or enactment with respect to the width of new streets which applied to the street when it was laid out; and any sum in excess of that charge shall be borne by the authority.

227 Widening of highway comprised in private street. E+W

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

228 Adoption of private street after execution of street works. E+W

(1) When any street works have been executed in a private street, the street works authority may, by notice displayed in a prominent position in the street, declare the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense, and on the expiration of one month from the day on which the notice was first so displayed the street shall, subject to subsections (2) to (4) below, become such a highway.

(2) A street shall not become a highway maintainable at the public expense by virtue of subsection (1) above if, within the period there mentioned, the owner of the street or, if more than one, the majority in number of the owners of the street, by notice to the authority object; but within 2 months from the expiration of that period the street works authority may apply to a magistrates' court for an order overruling the objection.

(3) If an order overruling an objection under subsection (2) above is made pursuant to an application under that subsection and no appeal against the order is brought within the time limited for such an appeal, the street or part in question shall become a highway maintainable at the public expense on the expiration of that time.

(4) Where such an order is made or refused and an appeal, or an appeal arising out of that appeal, is brought against or arises out of the order or refusal, then—

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(a) if the final determination of the matter is in favour of the authority, or

(b) the appeal is abandoned by the objectors,

the street shall become a highway maintainable at the public expense on that final determination or, as the case may be, on the abandonment of the appeal.

(5) Notwithstanding anything in any other enactment or provision, for the purposes of this section the time for bringing or seeking leave for any appeal (including an application for certiorari) is 2 months from the date of the decision or of the conclusion of the proceedings appealed against, unless apart from this subsection the time is less than that period; and no power, however worded, to enlarge any such time is exercisable for the purposes of this section.

(6) Where street works have been executed in a part only of a street (other than a part extending for the whole of the length of the street), subsections (1) to (4) above have effect as if for references in those subsections to the street there were substituted references to the length of the street which constitutes or comprises that part.

(7) If all street works (whether or not including lighting) have been executed in a private street to the satisfaction of the street works authority, then, on the application of the majority in rateable value of the owners of premises in the street, the street works authority shall, within the period of 3 months from the date of the application, by notice displayed in a prominent position in the street, declare the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense and thereupon the street shall become such a highway.

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

229 Power of majority of frontagers to require adoption where advance payment made. E+W

(1) Where a majority in number of the owners of land having a frontage on a built-up private street, or as many of those owners as have between them more than half the aggregate length of all the frontages on both sides of the street, by notice request the street works authority to exercise their powers under the private street works code so as—

(a) to secure the carrying out of such street works in that street as the street works authority require under that code before declaring the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense, and

(b) to declare the street to be such a highway,

the street works authority shall proceed to exercise their powers accordingly.

(2) Subsection (1) above does not apply unless, in at least one case, a payment has been made or security has been given under section 219 above by the owner of land having a frontage on the street and the payment has not been refunded, or the security released or realised, under subsection (5) of that section, or under section 223 above.

(3) For the purposes of this section a street is to be deemed to be built-up if the aggregate length of the frontages of the buildings on both sides of the street constitutes at least one half of the aggregate length of all the frontages on both sides of the street.

(4) This section does not apply in relation to a part of a street unless it is a part not less than 100 yards in length which the owners of land having a frontage on that part of the street elect to treat as constituting a street for the purposes of this section.

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230 Urgent repairs to private streets. E+W

(1) Where repairs are needed to obviate danger to traffic in a private street the street works authority may by notice require the owners of the premises fronting the street to execute, within such time as may be specified in the notice, such repairs as may be so specified.

(2) Where such repairs as are mentioned in subsection (1) above are needed in a part only of the street (other than a part extending for the whole of the length of the street), a requirement under that subsection shall be made only of the owners of the premises fronting the length of the street which constitutes or comprises that part.

(3) A person aggrieved by a requirement of a street works authority under this section may appeal to a magistrates' court.

(4) Subject to any order made on appeal and to subsection (5) below, if, within the time specified in a notice served under subsection (1) above, the repairs required thereby have not been executed, the authority may execute the repairs, and may recover the expenses reasonably incurred by them in so doing from the owners in default, the expenses being apportioned between those owners according to the extent to which their respective premises front the street.

(5) If, within the time so specified, the majority in number or rateable value of owners of premises in the street by notice require the street works authority to proceed in relation to the street under the private street works code, the street works authority shall so proceed, and on the completion of the necessary works shall forthwith declare the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense; and thereupon the street shall become such a highway.

(6) Where a requirement under subsection (1) above has been made in respect of a part only of a street (other than a part extending for the whole of the length of the street), subsection (5) above has effect as if for references therein to the street there were substituted references to the length of the street which constitutes or comprises that part.

(7) Without prejudice to the foregoing provisions of this section or to any other enactment for the time being in force relating to private street works, the street works authority and also, in the cases mentioned below, the district council may, in any street that is not a highway maintainable at the public expense, execute such repairs as are in their opinion urgently required to prevent or remove danger to persons or vehicles in the street.

The cases in which the district council may act under this subsection are those in which the street concerned **[**F422is situated in a non-metropolitan district and**]** is a footpath, bridleway or any such road as is mentioned in section 42(2)(c) above (urban roads).

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

Textual Amendments

F422 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 36**

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231 Compensation for damage caused by execution of street works. E+W

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

232 Power to treat as a private street land designated for purposes of this section by development plan. E+W

(1) The provisions of this section apply in relation to land defined by a development plan—

(a) as the site of a proposed road, or

(b) as land required for the widening of an existing road which is of less than byelaw width,

and designated by the plan as land to which this section applies.

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

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

(3) No order shall be made by the authority under subsection (2) above in relation to land which has not been acquired by them at the date of the order (other than land forming part of any such existing road as aforesaid) except with the consent of all persons interested in the land.

(4) In relation to land which is deemed to be a private street by virtue of a declaration under subsection (2) above the provisions of the private street works code apply subject to such exceptions, adaptations and modifications as may be prescribed by regulations made by the Minister of Transport.

(5) Regulations made for the purposes of subsection (4) above shall make provision for securing—

(a) that the amount of the expenses incurred in the execution of street works charged under the private street works code on the owners of adjoining land does not exceed the amount which would, at the date of the commencement of the works, have been the cost of the execution of street works in the course of the construction, widening or improvement if it had been carried out—

(i) so as to comply with the provisions of any byelaws, regulations or other enactments in force in the area, and

(ii) as respects matters for which no such provision is made, so as to comply with such requirements as would have been imposed by the street works authority at the date of the commencement of the works as a condition of declaring the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense;

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(b) that as soon as the street has been made up or widened by or to the satisfaction of the street works authority it becomes a highway maintainable at the public expense;

(c) that no expenses incurred in the execution of street works are recoverable against agricultural land or buildings until the land or buildings cease to be agricultural land or buildings; and

(d) that no expenses incurred in the execution of street works for the purpose of making a new street are recoverable in respect of any land (whether the site of a building or not) unless and until access is provided for and used by persons or vehicles from that land to the new street.

(6) Regulations made for the purposes of subsection (4) above may provide—

(a) for the inclusion in the expenses recoverable as aforesaid in respect of street works carried out by the street works authority of any expenses incurred by a local authority after the date on which the land is defined and designated as mentioned in subsection (1) above, and before it is declared to be a private street under subsection (2) above, in the construction of sewers in or under the land; and

(b) for authorising the street works authority to enter on any land adjoining the street for the purpose of executing street works on land comprised in the street.

(7) A highway constructed by a local highway authority on land deemed to be a private street by virtue of a declaration under subsection (2) above is not by virtue only of section 36(2)(a) above for the purposes of this Act a highway maintainable at the public expense.

(8) The provisions of this section, and any restrictions or powers imposed or conferred by it in relation to land, apply and may be exercised in relation to any land notwithstanding that provision is made for authorising or regulating any development of the [M59]land by any enactment in force on 6th August 1947 or by any local Act passed at any time during the Session of Parliament held during the regnal years 10 and 11 Geo. 6 (that date and that Session being, respectively, the date of passing of the Town and Country Planning Act 1947 and the Session during which that Act was passed, and that Act, now superseded by **[**[F423]the Town and Country Planning Act 1990**]**, being the Act that first made provision for development plans).

(9) In this section—

"byelaw width", in relation to a road, means the width required by any [F424]. . ., regulations or other enactments relating to the construction of streets in the area in which the road is situated;

"construction" and "improvement", in relation to a street, include the planting, laying out, maintenance and protection of trees, shrubs and grass verges in and beside the street;

"development plan" has the meaning provided by **[**[F425]sections **[**[F426]27, 27A**]** and 54 of the Town and Country Planning Act 1990**]** and "local authority" has the same meaning as in that Act.

Textual Amendments

F423 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(12)(a)**

F424 Words in s. 232(9) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34. SIF 123:1), ss. 84(6), Sch. 19 Pt. V (with ss. 81(2), 84(5)); S.I. 1991/2067, **art. 3**

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F425 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(12)(b)**

F426 Words in s. 232(9) substituted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.23** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

Marginal Citations

M59 1947 c. 51.

233 Appeal to Minister under private street works code. E+W

(1) Subject to section 217 above, a person aggrieved by a decision of a street works authority in a case where the authority are empowered by section 212 above to recover any expenses incurred by them may appeal to the Minister, who may make such decision as to him seems equitable; and the decision shall be final and binding on all parties.

(2) The time within which an appeal may be brought under subsection (1) above is 21 days from the date on which a demand for the payment of the expenses, or any part of them, was first served on the person wishing to appeal.

(3) A person appealing under subsection (1) above shall in his appeal state the grounds thereof, and shall serve a copy of his appeal on the street works authority; and any proceedings commenced for the recovery of any such expenses as aforesaid by the street works authority shall, on the service on them of the copy of the appeal, be stayed.

(4) The Minister may, if he thinks fit, by his decision direct the authority to pay to the person so proceeded against such sum as he may consider to be a just compensation for the loss or damage sustained by that person by reason of the proceedings.

234 Provisions as to private street in area of more than one street works authority. E+W

(1) In a case where a part only of a private street is within the area of a street works authority, the authority may, with the consent of the street works authority in whose area any other part of the street is situated, and subject to subsection (3) below, resolve to treat that other part for the purposes of this Part of this Act as if it were within their own area.

(2) Where the authority so resolve, then, without prejudice to the operation of any enactment not contained in this Part of this Act, this Part of this Act applies in relation to that other part of the street as if it, together with the premises fronting it, were within the area of the authority passing the resolution.

(3) A street works authority shall not resolve under subsection (1) above to treat a part of a street as if it were within their own area if that part comprises a length of the street wholly outside that area.

(4) In a case where a private street is within the area of a street works authority but premises fronting the street are wholly or partly outside that area, then, without prejudice to the operation of any enactment not contained in this Part of this Act, this Part of this Act applies in relation to that street as if those premises were wholly within the area of that authority.

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

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

235 Evasion of private street works expenses by owners. E+W

(1) Where a street works authority are empowered by section 212 above to recover any sum from the owner of any premises, and the authority are unable by the exercise of their powers (other than powers conferred by this section) to recover that sum, then if—

(a) the said premises were previously transferred by a person ("the transferor") who at the time of the transfer was the owner of other premises adjoining those premises, and

(b) a magistrates' court is satisfied that the transfer was intended for the purpose of evading the payment of expenses of street works,

the court may make an order under this section.

(2) An order under this section shall provide that, to such extent as the court making the order may determine, the street works authority may recover the said sum, and, where that sum is payable under an order made under section 212(4) above or section 305(2) below, any further sums which may fall due under that order, from the transferor.

(3) In this section "transfer" includes any disposal of land whether by way of sale, lease, exchange, gift or otherwise.

236 Contribution by street works authority to expenses of street works. E+W

(1) A street works authority may at any time resolve to bear the whole or a portion of the expenses of any street works in their area under the private street works code and where an authority so resolve the liabilities of the owners of premises in respect of those expenses are to be treated as discharged or as proportionately reduced, accordingly.

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

237 Power of street works authority to grant charging order. E+W

(1) Where a person has paid, or advanced money for, expenses which by section 212 above a street works authority are empowered to recover, that person may apply to the authority for a charging order, and the authority, on being satisfied as to the amount of the expenditure on private street works, and, in the case of an advance, as to the sum advanced, may make an order accordingly charging on the premises in respect of which the expenses are recoverable, and on all estates and interests therein, an annuity to repay the sum expended or advanced.

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(2) The annuity charged shall be such sum as the street works authority may determine in respect of every £100 of the amount of the expenditure and so in proportion in respect of any fraction of that amount, and shall commence from the date of the order and be payable by equal half-yearly payments for a term of 30 years to the person named in the order, his executors, administrators or assigns.

(3) A person aggrieved by an order of a street works authority under subsection (1) above, or by the refusal of the authority to make an order under that subsection, may appeal to a magistrates' court.

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

PART XII E+W

ACQUISITION, VESTING AND TRANSFER OF LAND ETC.

Modifications etc. (not altering text)
C95 Pt. XII (ss. 238–271) applied by SI 1986/564, art. 4(2)(*a*)

Introductory

238 Interpretation etc. of Part XII. E+W

(1) Any power under sections 239 to 246 below to acquire land, except the power under section 246(2), is exercisable compulsorily or by agreement.

(2) In this Part of this Act "common", "fuel or field garden allotment" and "open space" have the same meaning respectively as in the **[**[F427]Acquisition of Land Act of 1981**]**.

Textual Amendments
F427 Words substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 4 para. 31(2)**

Acquisition of land generally

239 Acquisition of land for construction, improvement etc. of highway: general powers. E+W

(1) Subject to section 249 below, the Minister may acquire land required for the construction of a trunk road, and any highway authority may acquire land required for the construction of a highway which is to be a highway maintainable at the public expense, other than a trunk road.

(2) Subject to section 249 below, the Minister may acquire land which in his opinion is required—

(a) for the carrying out of any works authorised by an order relating to a trunk road under section 14 above, or

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(b) for the provision of buildings or facilities to be used in connection with the construction or maintenance of a trunk road other than a special road.

(3) Subject to section 249 below, a highway authority may acquire land required for the improvement of a highway, being an improvement which they are authorised by this Act to carry out in relation to the highway.

(4) Subject to section 249 below, a special road authority may acquire land which in the opinion of the authority is required—

(a) for the improvement of a highway which is included in the route of the special road but has not been transferred to the authority by means of an order under section 18 above,

(b) for the purposes of any order made in relation to the special road under section 18 above, or

(c) for the provision of service stations or other buildings or facilities to be used in connection with the construction of the special road or with the use or maintenance of it.

(5) Where a highway authority have acquired, or propose to acquire, in exercise of any of the powers conferred by subsections (1) to (4) above, land forming part of a common, open space, or fuel or field garden allotment, and other land is required for the purpose of being given in exchange for the first-mentioned land, the authority may acquire that other land under the subsection in question as if it were land required for the construction or improvement of a highway, and nothing in section 249 below applies to an acquisition by virtue of this subsection.

(6) A highway authority may acquire land required for the improvement or development of frontages to a highway for which they are the highway authority or of the land adjoining or adjacent to that highway.

Modifications etc. (not altering text)

C96 S. 239(3)(4)(c) applied (13.2.1992) by Severn Bridges Act 1992 (c. 3), **s. 32(2)**

C97 S. 239(4)(c) extended (1.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 16(3)**(with ss. 25(2), 167(2)); S.I. 1991/2288, art. 3, **Sch.**

240 Acquisition of land in connection with construction, improvement etc. of highway: further general powers. E+W

(1) Subject to section 249 below, a highway authority may acquire land which is required for, or for use by them in connection with, the carrying out of works authorised by section 129 above, or by an order relating to a classified road under section 14 above.

(2) Without prejudice to any other power conferred by this Act—

(a) a highway authority may acquire land which is required for use by them in connection with the construction or improvement of a highway, or with the carrying out of works authorised by an order relating to a trunk road under section 14 above or an order under section 18 or section 108(1) above; and

(b) any power of a highway authority under subsection (1) above or under any provision of this Part of this Act not contained in this section to acquire land for a purpose whose achievement involves the diversion of a navigable watercourse or the carrying out of works under section 110 above includes

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power to acquire land which is required for carrying out the diversion or, as the case may be, the works.

(3) Subject to section 249 below, the Minister may acquire land which is required for the purpose of—

(a) providing a trunk road picnic area; or

(b) providing public sanitary conveniences in the exercise of his powers under section 112(5) above.

(4) A local highway authority may acquire land which is required for the purpose of providing public sanitary conveniences in the exercise of their powers under section 114 above.

(5) Subject to section 249 below, a highway authority may acquire land which is required for the purpose of providing a lorry area in the exercise of their powers under section 115 above.

(6) Where, in exercise of any of the powers conferred by subsections (1) to (5) above, a highway authority have acquired, or propose to acquire, for any purpose land forming part of a common, open space or fuel or field garden allotment and other land is required for the purpose of being given in exchange for the first-mentioned land, the authority may acquire that other land.

241 Acquisition of land between improvement line and boundary of street. E+W

(1) Where a highway authority have prescribed an improvement line in relation to any street under section 73 above they may acquire any land, not occupied by buildings, lying between the improvement line and the boundary of the street.

(2) Any land acquired under this section shall, at such time or times as the highway authority may determine, be added to and made good as part of the street by the authority, and until it is so added the occupier of the land from which it is severed, and other persons with his permission, are entitled to reasonable access across the land so acquired to and from the street, and have the same rights in regard to the laying, altering, maintaining and removal of **[**F428sewers,**]** drains, mains, pipes or electric lines in that land as if it were already part of the street.

(3) Subsection (11) of section 73 above has effect in relation to this section as it has effect in relation to that section.

Textual Amendments

F428 Word inserted 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. 62(8), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

242 Acquisition of land for execution of works in connection with certain bridges. E+W

(1) A highway authority may, subject to subsection (3) below, acquire land which they require to enable them to comply with a requirement or direction contained in an order made under section 93 above.

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(2) The Minister may, subject to subsection (3) below, authorise the owners of a bridge to acquire land which they require to enable them to comply with a requirement or direction contained in an order made under section 93 above.

(3) Nothing in this section authorises the compulsory acquisition of land which is the property of a council, or which has been acquired by transport undertakers for the purposes of their undertaking, but—

(a) a highway authority may acquire compulsorily a right upon, under or over such land for the purpose of executing any works which they are required or authorised by an order made under section 93 to execute or construct; and

(b) the Minister may authorise the owners of a bridge to acquire compulsorily a right upon, under or over such land for that purpose.

243 Acquisition of land for cattle-grids etc. E+W

A highway authority may acquire land which they require for the purpose of providing, altering or improving a cattle-grid or by-pass in the exercise of powers conferred on them by this Act.

244 Acquisition of land for road-ferries. E+W

A highway authority may acquire land which they require for the purpose of providing or improving a road-ferry in the exercise of powers conferred on them by this Act.

245 Acquisition of land for buildings etc. needed for discharge of functions of highway authority. E+W

Without prejudice to section 239(4) above, a local highway authority may acquire land, whether situated within or without their area, which in their opinion is required for the provision of any buildings or facilities needed for the purposes of their functions as a highway authority.

VALID FROM 04/10/2004

[F429 245A Acquisition of land by Secretary of State or Assembly for buildings etc. needed for traffic management purposes E+W

(1) The Secretary of State may acquire land which in his opinion is required for the provision of any buildings or facilities which are needed—

(a) for use by, or in connection with the activities of, traffic officers in England; or

(b) for other purposes connected with the management of traffic on highways in England for which he is the highway authority.

(2) The National Assembly for Wales may acquire land which in its opinion is required for the provision of any buildings or facilities which are needed—

(a) for use by, or in connection with the activities of, traffic officers in Wales; or

(b) for other purposes connected with the management of traffic on highways in Wales for which it is the highway authority.]

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Textual Amendments

F429 S. 245A inserted (4.10.2004 for E. for specified purposes, 1.5.2009 for W. for specified purposes and otherwise prosp.) by Traffic Management Act 2004 (c. 18), **ss. 13**, 99 (with s. 38); S.I. 2004/2380, **art. 2(b)**; S.I. 2009/1095, **art. 2**

246 Acquisition of land for mitigating adverse effects of constructing or improving highway. E+W

(1) Subject to subsection (3) below, a highway authority may acquire land for the purpose of mitigating any adverse effect which the existence or use of a highway constructed or improved by them, or proposed to be constructed or improved by them, has or will have on the surroundings of the highway.

(2) Subject to subsection (3) below, a highway authority may acquire by agreement (but not compulsorily)—

(a) land the enjoyment of which is seriously affected by the carrying out of works by the authority for the construction or improvement of a highway;

(b) land the enjoyment of which is seriously affected by the use of a highway which the authority have constructed or improved,

[F430if the interest of the vendor is a qualifying interest**]**.

[F431(2A) Where the highway authority propose to carry out works on blighted land for the construction or improvement of a highway, they may acquire by agreement land the enjoyment of which will in their opinion be seriously affected by the carrying out of the works or the use of the highway if the interest of the vendor is a qualifying interest.

(2B) In this section—

"qualifying interest" has the meaning given in section 149(2) of the Town and Country Planning Act 1990, taking references to the relevant date as references to the date on which the purchase agreement is made, and

"blighted land" has the meaning given in section 149(1) of that Act.**]**

(3) The powers conferred by subsection (1) above to acquire land compulsorily and the powers conferred by subsection (2)(a) above shall not be exercisable unless the acquisition is begun before the date on which the highway or, as the case may be, the improved highway is first opened to public traffic ("the opening date"); and the powers conferred by subsection (1) above to acquire land by agreement and the powers conferred by subsection (2)(b) above shall not be exercisable unless the acquisition is begun before the end of one year after the opening date.

(4) For the purposes of subsection (3) above the acquisition of any land is begun—

(a) if it is compulsory, on the date on which the notice required by **[**F432section 11 of the Acquisition of Land Act 1981**]** is first published;

(b) if it is by agreement, on the date on which the agreement is made;

and where the compulsory acquisition of any land under subsection (1) above is begun within the time limited by subsection (3) above but is not proceeded with, any subsequent compulsory acquisition of that land under subsection (1) is to be treated for the purposes of this section as begun within that time.

(5) Where under the powers of this section a highway authority have acquired, or propose to acquire, land forming part of a common, open space or fuel or field garden allotment

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and other land is required for the purpose of being given in exchange for the first-mentioned land, the authority may acquire that other land.

(6) For the purpose of assessing the compensation payable on the compulsory aquisition of land under this section the land is to be treated as if it were being acquired for the construction of the highway or, as the case may be the improvement in question.

(7) In this section references to the construction or improvement of a highway include references to the construction or improvement of a highway by virtue of an order under section 14 or 18 above.

Textual Amendments

F430 Words in s. 246(2) substituted (25.09.1991) by Planning and Compensation Act 1991 (c. 34, SIF 28:1), s. 70, **Sch. 15 para.26**; S.I. 1991/2067,art. 3.

F431 S. 246(2A)(2B) inserted (25.09.1991) by Planning and Compensation Act 1991 (c. 34, SIF 28:1), **s. 62(2)**; S.I. 1991/2067, **art. 3**.

F432 Words substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 4 para. 31(3)**

247 General provision as to acquisition procedure etc. E+W

(1) Any power to acquire land compulsorily conferred by any of the foregoing provisions of this Part of this Act on a local highway authority is exercisable in any particular case on their being authorised to do so by the Minister.

[F433(2) The Acquisition of Land Act 1981 shall, subject to sub-section (5) below, apply to the compulsory acquisition of land under any of the foregoing provisions of this Part of this Act.**]**

(5) Notwithstanding anything in **[**F434Part III of the Acquisition of Land Act 1981**]** an order authorising the owners of a bridge to acquire a right compulsorily pursuant to section 242(3) above is not subject to special parliamentary procedure by reason only of its authorising the acquisition of any such right, nor does anything in the said Part III prevent the acquisition of any right pursuant to section 242(3) above (whether by the owners of a bridge or by a highway authority).

(6) Where under this Part of this Act a highway authority are authorised to acquire land by agreement, the provisions of Part I of the Act of 1965 (so far as applicable) other than sections 4 to 8, section 10 and section 31, apply, and in the said Part I as so applied the word "land" has the meaning provided by section 329 below.

Textual Amendments

F433 S. 247(2) substituted for s. 247(2)–(4) by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 4 para. 31(4)**

F434 Words substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 4 para. 31(5)**

248 Acquisition in advance of requirements. E+W

(1) Any power of the Minister under any of the foregoing provisions of this Part of this Act, other than sections 240 and 246 to acquire by agreement land required for a purpose mentioned in the provision in question is exercisable in respect of

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any land which, in the opinion of the Minister, may be required for that purpose, notwithstanding that the land is not immediately required for that purpose.

(2) Subject to the following provisions of this section, where under any provision of this Act specified in column 1 of Schedule 17 to this Act a highway authority have power to acquire, or have acquired, land ("the initial stage area") for a purpose specified in column 2 of that Schedule, then any power of the authority under this Act to acquire land compulsorily for a purpose specified in column 3 is, in the case of other land adjacent to the initial stage area ("the subsequent stage area"), exercisable by them notwithstanding that the other land is not immediately required for the purpose specified in column 3.

(3) A highway authority shall not acquire land compulsorily by virtue of subsection (2) above unless one or more of the following conditions are satisfied, namely—

(a) the authority intend, when they have acquired the subsequent stage area, forthwith to incorporate it within the boundaries of the highway or proposed highway or, as the case may be, of the service area, maintenance compound, trunk road picnic area or lorry area, for the purposes of which the initial stage area is to be, or has been, acquired;

(b) the authority's proposed use of the initial stage area involves the carrying out of works wholly or partly on, or under or over, the subsequent stage area;

(c) plans for the use of the subsequent stage area (for the purpose for which the authority have power by virtue of this section to acquire it) have been made or approved by the Minister.

(4) A highway authority shall not by virtue of subsection (2) above acquire land compulsorily for any purpose where, apart from this section, they would not have power to acquire it compulsorily if it were required immediately for that purpose.

249 Distance limits from highway applicable to compulsory acquisition. E+W

(1) .Subject to subsection (3) below, a highway authority shall not in the exercise of a power to acquire land under any of the provisions of this Act specified in column 1 of Part I of Schedule 18 to this Act require compulsorily land lying beyond the limit specified in relation to that power in column 2 of that Schedule.

(2) Part II of Schedule 18 has effect with respect to limits specified in Part I of that Schedule.

(3) Nothing in this section applies to land required for purposes connected with the drainage of a highway or proposed highway, or of a maintenance compound, service area, trunk road picnic area or lorry area, or required for the purpose—

(a) of the diversion of a navigable watercourse,

(b) of the carrying out of works authorised by section 110 above, or

(c) of providing protection for a highway or proposed highway against snow, flood, landslide or other hazards of nature.

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Additional provisions with respect to acquisition of rights over land

250 Land acquisition powers to extend to creation as well as acquisition of rights. E+W

(1) A compulsory purchase order made in the exercise of highway land acquisition powers may provide for the acquisition of rights over land by creating them as well as for the acquisition of rights already in existence.

In this Act "highway land acquisition powers" means powers in respect of acquisition of land which are exercisable by a highway authority under any of the following provisions of this Act, namely, sections 239, 240, 242 to 246 and 250(2).

(2) Where rights over land are, or are to be, acquired by a highway authority by means of a compulsory purchase order made in the exercise of highway land acquisition powers, and the land forms part of a common, open space or fuel or field garden allotment and other land is required for the purpose of being given in exchange for those rights, the authority may acquire by agreement or compulsorily that other land; and subsections (1) to (3) of section 247 above apply in relation to this subsection as they apply in relation to the provisions there mentioned.

(3) In section 247(1) to (4) above references to acquisition of land include references to compulsory acquisition of rights by virtue of this section.

[[F435](3A) Schedule 3 to the Acquisition of Land Act 1981 shall apply to the compulsory purchase of a right by virtue of this section.**]**

(4) The Acts of. . . [F436] 1965 have effect with the modifications necessary to make them apply to the compulsory acquisition of a right by virtue of this section as they apply to the compulsory acquisition of land, so that, in appropriate contexts, references in these Acts to land are to be read as referring, or as including references, to the right acquired or to be acquired, or to land over which the right is, or is to be, exercisable, according to the requirements of the particular context.

(5) For the purpose of giving effect to this section, and without prejudice to the general adaptation of enactments under subsection (4) above—

[[F437](a) Part II of Schedule 19 to this Act has effect for the adaptation of Part I of the Act of 1965 to cases of compulsory acquisition of rights**]**

(c) as respects compensation in such cases, the enactments relating to compensation for the compulsory purchase of land apply, with the necessary modifications, as they apply to compensation on the compulsory purchase of land and interests in land.

(6) References in any enactment or instrument to the acquisition of land, in a context relating to compulsory acquisition under highway land acquisition powers, are to be construed (except in so far as the context otherwise requires) as including references to the compulsory acquisition of a right or rights by virtue of this section.

(7) The provisions of this section are without prejudice to section 242(3) above, sections 254 and 255 below and any other provision of this Act which, by virtue of the definition of "land" in section 329(1) below, authorises the acquisition of interests in or rights over land.

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(8) References in this section and in sections 251 and 252 below to rights over land include references to the right to do, or to place and maintain, any thing in, on or under land, or in the air-space above its surface.

Textual Amendments

F435 S. 250(3A) inserted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 4 para. 31(6)**

F436 1946 and repealed by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 6 Pt. I**

F437 S. 250(5)(*a*) substituted for paras. (*a*) and (*b*) by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 4 para. 31(7)**

Modifications etc. (not altering text)

C98 S. 250(4) modified by Dartford-Thurrock Crossing Act 1988 (c. 20, SIF 29), ss. 2, 19, **Sch. 2**, Pt. II para. 2(3)(a)

C99 S. 250(4)(5) applied (with modifications) (13.2.1992) by Severn Bridges Act 1992 (c. 3), s. 2(6), **Sch. 2**, Pt. II, para. 1(3)(a) and (5.11.1993) by 1993 c. 42, s. 5, **Sch. 4 para. 1(2)(3)(a)**

C100 S. 250(5) modified by Dartford-Thurrock Crossing Act 1988 (c. 20, SIF 59), ss. 2, 19, **Sch. 2**, Pt. II, para. 2(3)(a)

251 Rights acquired to be binding on successive owners of the land. E+W

(1) Where by a deed or other instrument in which—

(a) it is stated that it is made in pursuance of a compulsory acquisition of rights by virtue of section 250 above; or

(b) it is certified by a highway authority that the instrument is made in connection with the performance of their functions under this Act,

any person having an interest in the land grants or agrees to grant to a highway authority any right over the land, the grant or agreement is binding upon his successors in title and persons deriving title under him or them (otherwise than by a disposition taking effect before the date of the grant) to the same extent as it is binding upon the grantor, notwithstanding that it would not have been binding upon such persons apart from this subsection.

(2) Where by a deed poll under any provision of the Act of 1965 a highway authority vest in themselves any right over land as against some person having an interest in the land, that right is binding upon that person's successors in title and persons deriving title under him or them (otherwise than by a disposition taking effect before the date of the deed poll) to the same extent as it is, or would have been, binding upon the first-mentioned person.

(3) The foregoing provisions of this section apply whether or not (apart from this section) the right in question is capable in law of binding interests in the land other than the interest of the grantor or, as the case may be, the person first-mentioned in subsection (2) above.

(4) Where under any provisions of this Act any right conferred by a deed or other instrument to which subsection (1) or (2) above applies is transferred from one highway authority to another, this section applies after the transfer in relation to the other highway authority as it applied before the transfer to the first-mentioned authority.

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(5) As respects registered land, nothing in this section prejudices the provisions of the Land Registration Acts 1925 to 1971.

Modifications etc. (not altering text)

C101 S. 251 modified by Dartford-Thurrock Crossing Act 1988 (c. 20, SIF 59), ss. 2, 19, **Sch. 2**, Pt. II para. 2(3)(b)

C102 S. 251 applied (with modifications) (13.2.1992) by Severn Bridges Act 1992 (c. 3), s. 2(6), **Sch. 2 Pt. II para. 1(3)(b)**

C103 S. 251 applied (with modifications) (16.7.1992) by Cattewater Reclamation Act 1992 (c. xiv), **s. 5(2)**

C104 S. 251(1)-(3) applied (with modifications) (5.11.1993) by 1993 c. 42, s. 5, **Sch. 4 para. 1(2)(3)(b)**

C105 S. 251(5) applied (with modifications) (5.11.1993) by 1993 c. 42, s. 5, **Sch. 4 para. 1(2)(3)(b)**

252 Power of landowner affected by rights acquisition to compel acquisition of whole interest. E+W

(1) The following provisions have effect where there has come into force a compulsory purchase order made by a highway authority in the exercise of highway land acquisition powers and providing for the acquisition of a right over land and notice to treat in respect of the right has been served on a person having an interest in the land.

(2) A person for the time being entitled to that interest ("the landowner") may, at any time within 6 weeks of service of the notice to treat, or such longer period as may be agreed in writing by the highway authority, but so long only as the notice has not been withdrawn, serve on the highway authority a counter-notice requiring them, instead of acquiring the right in question, to acquire instead his interest so far as it subsists in the land which is shown in the notice to treat as that over which the right is to be acquired.

(3) As from the date of service of the landowner's counter-notice—

(a) the compulsory purchase order shall, as against the landowner, cease to have effect so far as it authorises the acquisition of the right in respect of which the counter-notice was served and shall have effect instead so as to authorise the authority to acquire compulsorily the landowner's interest in the land referred to in subsection (2) above; and

(b) the notice to treat referred to in subsection (1) above shall be deemed to have been served (on the date on which it was in fact served) in respect of the said interest, instead of in respect of the right (without prejudice to the authority's power under section 31 of the [M60]Land Compensation Act 1961 to withdraw the notice).

(4) Nothing in this section prevents the highway authority from exercising any powers (and, in particular, any power of entry) which they have by virtue of having served notice to treat; and the operation of subsection (3) above does not prejudice any such power of the authority either as respects a previous exercise of it or as respects its continuance by virtue of sub-section (3)(b).

Modifications etc. (not altering text)

C106 S. 252 modified by Dartford-Thurrock Crossing Act 1988 (c. 20, SIF 59), ss. 2, 19, **Sch. 2**, Pt. II para. 2(3)(c)

C107 S. 252 applied (with modifications) (13.2.1992) by Severn Bridges Act 1992 (c. 3), s. 2(6), **Sch. 2 Pt. II para. 1(3)(c)**

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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Marginal Citations
M60 1961 c. 33.

253 Agreements as to use of land near highways. E+W

(1) For the purpose of mitigating any adverse effect which the construction, improvement, existence or use of a highway has or will have on the surrounding of the highway, the highway authority may enter into an agreement with any person interested in land adjoining or in the vicinity of the highway for restricting or regulating the use of the land either permanently or during such period as may be specified in the agreement.

Any such agreement may, in particular, make provision for the planting and maintenance of trees, shrubs or plants of any other description on the land and for restricting the lopping or removal of trees, shrubs or other plants on the land.

(2) An agreement under this section may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the highway authority to be necessary or expedient for the purposes of the agreement.

(3) The provisions of any agreement made under this section with any person interested in land are binding on persons deriving title from that person in respect of the land.

(4) An agreement under this section is a local land charge.

(5) This section is without prejudice to **[**[F438]section 106 of the Town and Country Planning Act 1990**]** (agreements regulating development or use of land).

Textual Amendments
F438 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(14)**

254 Compulsory acquisition for certain purposes of rights in land belonging to local authorities etc. E+W

(1) Subject to the provisions of this section, an order made, or made and confirmed, in the like manner and subject to the like conditions as an order authorising compulsory acquisition of land under section 239 above may authorise a highway authority to acquire compulsorily, subject to such conditions (including conditions as to the persons by whom any works are to be constructed or maintained) as may be imposed by the order, a right upon, under or over any land which is the property of a local authority or which has been acquired, for the purposes of their undertaking, by statutory undertakers, if the acquisition is—

(a) for the purposes of the construction of a bridge or of the approaches to a bridge (not including the reconstruction or alteration of the bridge or approaches in existence at the date of the order) upon, under or over such land;

(b) for the purposes of the execution of any works (other than the reconstruction of a bridge on a different site) for the maintenance, improvement or alteration of the bridge or of the approaches to a bridge transferred to the Minister by virtue of section 266 below or transferred to a special road authority other than the Minister by virtue of section 267 below; or

(c) for the purposes of any system of road drainage;

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and, **[**F439nothing in Part III of, or Schedule 3 to, the Acquisition of Land Act 1981 shall prevent**]** the acquisition of any such right.

(2) The power to acquire a right compulsorily conferred by subsection (1) above may be exercised—

(a) if the acquisition is for a purpose specified in that subsection in connection with a trunk road in a London borough,. . . F440 by the council of that borough and. . . F440 as well as by the Minister, and

(b) if the acquisition is for a purpose so specified in connection with any other trunk road, by the council of the county **[**F441or metropolitan district**]** in which the road is situated as well as by the Minister.

(3) An order authorising the compulsory acquisition of a right under this section shall be made subject to such conditions as the Minister, after consultation with the local authority or statutory undertakers from whom the right is to be acquired, considers necessary for securing—

(a) that the bridge or approaches to be constructed, reconstructed or altered, as the case may be, will be so designed, placed and constructed, or so reconstructed or altered, or

(b) that the drainage system to be provided will be so designed, placed and constructed,

as to avoid unreasonable interference with the functions and future development of the body concerned.

(4) An order authorising the compulsory acquisition under this section of a right for the purposes of a system of road drainage shall be made subject to such conditions as the Minister considers necessary for securing that no highway is drained—

(a) into any watercourse under the control of an internal drainage board or **[**F442the National Rivers Authority without the consent of that board or that Authority**]**, or

(b) into any reservoir, river, canal, dock, harbour, basin, culvert, **[**F443sewer,**]** syphon or other work which belongs to or is under the jurisdiction of a local authority or statutory undertakers without the consent of that authority or those undertakers.

(5) Nothing in this section authorises the compulsory acquisition of a right upon, under or over any land for the purposes of the construction of a bridge under or over the Manchester Ship Canal; but this subsection does not prevent the acquisition of such a right if the acquisition is—

(a) for the purposes of the construction of a bridge for which provision is made by any such order as is mentioned in section 106(1) above, or

(b) for the purposes of the execution of any works (other than the reconstruction of a bridge on a different site) for the maintenance, improvement or alteration of a bridge tranferred to the Minister by virtue of section 266 below.

(6) For the purposes of this section and section 255 below—

"local authority" has the same meaning as in the **[**F444Acquisition of Land Act 1981**]**, and

the Civil Aviation Authority and the Post Office are to be deemed to be statutory undertakers.

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Textual Amendments

F439 Words substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 4 para. 31(8)**

F440 Word(s) repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F441 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 19**

F442 Words substituted 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. 62(9)(a), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

F443 Word inserted 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. 62(9)(b), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

F444 Words substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 4 para. 31(9)**

Modifications etc. (not altering text)

C108 S. 254(6): by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, **Sch. 4 para. 3(1)** it is provided that references to British Telecommunications in s. 254(6) cease to have effect

255 Liability for certain expenses resulting from order under section 254. E+W

(1) Subject to the provisions of this section, an order authorising the compulsory acquisition of a right by a highway authority under section 254 above for a purpose specified in section 254(1)(a) or (b) shall, except so far as may be otherwise agreed, provide that the bridge or approaches to which the order relates is to be constructed, reconstructed or altered, as the case may be, and maintained, at the expense of the highway authority.

(2) Where an order is made authorising the compulsory acquisition of a right by a highway authority under section 254 above for the purpose of substituting a bridge for a level crossing over a railway, the expenses of the construction and maintenance of the bridge and of the approaches to the bridge shall, subject to subsection (3) below, be defrayed either—

(a) wholly by the highway authority, or

(b) partly by the highway authority and partly by the person from whom the right is acquired (hereafter in this section referred to as "the railway owners") as, in default of agreement, may be determined by arbitration.

(3) Unless otherwise agreed—

(a) the railway owners' share of the expenses of such construction and maintenance, except so much of those expenses as is attributable to works executed at the instance of the railway owners for the improvement of their undertaking, shall be an amount equivalent to the saving to the railway owners estimated to result from the substitution of a bridge for the level crossing; and

(b) any additional expense incurred by the railway owners by reason of any alteration of a railway due to the provisions of the order, other than provisions applied for by the railway owners for the improvement of their undertaking, shall be defrayed by the highway authority.

(4) Where by virtue of an agreement or award made under subsection (2) above the railway owners are required to contribute to the expenses of a highway authority the contribution shall, at the option of the railway owners, be paid—

(a) as a lump sum, or

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(b) by annual payments of such amount, and continuing for such number of years, as may be agreed between the railway owners and the highway authority or, in default of agreement, as may be determined by arbitration, or

(c) by perpetual annual payments of such amount as may be so agreed or determined.

(5) Where by means of an order authorising a compulsory acquisition under section 254 above a highway authority acquire a right from a local authority or statutory undertakers any additional expense which, in consequence of—

(a) the construction, reconstruction or alteration of the bridge to which the order relates, or of the approaches to that bridge, or

(b) the construction of the drainage system to which the order relates,

is thereafter incurred by the local authority or statutory undertakers in connection with the widening or alteration, on land which was vested in them before the making or confirmation of the order, of any railway, canal, inland navigation, dock, harbour, works or apparatus belonging to them, shall be defrayed by the highway authority.

(6) Any question whether any such additional expense as is mentioned in subsection (5) above has been incurred as there mentioned, or as to the amount of any such additional expense, shall, in default of agreement, be determined by arbitration.

(7) An order authorising the compulsory acquisition of a right by a highway authority under section 254 above for the purposes of a system of road drainage shall, except so far as may be otherwise agreed, provide that the system is to be constructed and maintained at the expense of the highway authority.

Exchange of land

256 Power to exchange land to adjust boundaries of highways. E+W

(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.

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

(a) publish once at least in each of 2 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 paragraph (a) above ("the publication date"), 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

(c) not later than the publication date, 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 2 months from the publication date and, where an appeal under subsection (3) below

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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 dispenses 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 operates, by virtue of this paragraph, to extinguish the public right of way over the land;

(b) if the land does not belong to the highway authority, the authority may convey the land in accordance with the agreement and the conveyance operates, by virtue of this paragraph, to vest the land in the transferee for an estate in fee simple freed and discharged (subject to subsections (6) and (7) below and section 334(2) below) 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 subsection (4)(b) above 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 any apparatus belonging to or used by statutory undertakers for the purposes of their undertaking Part II of Schedule 12 to this Act applies to the land.

[[F445](6A) In this section "statutory undertakers" includes operators of driver information systems**]**

(7) Nothing in this section affects any mines or minerals under a highway.

Textual Amendments

F445 S. 256(6A) inserted by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), s. 13(1), **Sch. 4 para. 3(12)**

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Further provisions with respect to acquisition procedure for exercise of highway land acquisition powers

257 Compulsory acquisition proceedings taken concurrently with other related proceedings, etc. E+W

(1) Where a compulsory purchase order is made or proposed to be made in the exercise of highway land acquisition powers—

(a) for the purpose of enabling one or more of the orders and schemes to which Schedule 1 to this Act applies ("the related instruments") to be implemented when it or they become operative, or

(b) for a purpose connected with a highway or proposed highway to which one or more of the related instruments relate,

the proceedings required by **[**F446Acquisition of Land Act 1981**]** to be taken for the purpose of confirming or making the compulsory purchase order may be taken concurrently (so far as practicable) with the proceedings required by Schedule 1 to this Act to be taken for the purpose of confirming or making the related instrument or, as the case may be, with two or more of the proceedings thereby required to be taken for the purpose of confirming or making the related instruments.

(2) Where—

(a) a compulsory purchase order is made or proposed to be made in the exercise of highway land acquisition powers for the purpose of the provision of a new means of access to any premises, and

(b) an order under section 124 above authorising the stopping up of a means of access to those premises is made or proposed to be made in connection with the provision of the new means of access,

the proceedings required by **[**F447Acquisition of Land Act 1981**]** to be taken for the purpose of confirming or making the compulsory purchase order may be taken concurrently (so far as practicable) with the proceedings required by section 124 to be taken for the purpose of confirming or making the order under that section.

(3) A compulsory purchase order made in the exercise of highway land acquisition powers for a purpose specified in column 1 of Schedule 20 to this Act may come into operation on the same day as any order or scheme specified in relation thereto in column 2 of that Schedule.

(4) The Minister of Transport may make regulations for securing that proceedings required by **[**F448Acquisition of Land Act 1981**]** to be taken in respect of the compulsory acquisition of any land—

(a) for the purpose of enabling a highway authority or the owners of a bridge to comply with a requirement or direction contained in an order made under section 93 above, or

(b) for the purpose of providing or improving a cattle-grid or by-pass in the exercise of powers conferred by this Act,

may be taken concurrently (so far as practicable) with proceedings required to be taken for the purposes of the order under section 93 or, as the case may be, the purposes of the determination under Schedule 10 to this Act of a question relating to the provision of the cattle-grid or by-pass.

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Textual Amendments

F446 Words substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 4 para. 31(10)**

F447 Words substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 4 para. 31(10)**

F448 Words substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 4 para. 31(10)**

258 Provisions relating to objections to compulsory purchase orders. E+W

(1) Where proceedings required by **[**F449Part II of, or Schedule 1 to, the Acquisition of Land Act 1981**]** to be taken in respect of a compulsory purchase order made or proposed to be made in the exercise of highway land acquisition powers for a purpose specified in column 1 of Schedule 20 to this Act are taken after the confirmation or making by the Minister of an order or scheme specified in relation thereto in column 2 of that Schedule, then—

(a) in the case of a compulsory purchase order proposed to be made by the Minister, the Minister and the Secretary of State acting jointly,

(b) in any other case, the Minister,

may disregard for the purposes of the said Schedule 1 any objection to the compulsory purchase order or draft thereof, as the case may be, which in his or their opinion amounts in substance to an objection to that order or scheme.

(2) Where objections to a compulsory purchase order made or proposed to be made in the exercise of highway land acquisition powers for purposes connected with the construction, improvement, diversion or alteration of a highway are to be the subject of a local inquiry or considered by a person appointed by the Minister, or by the Minister and the Secretary of State acting jointly, the Minister or, as the case may be, those Ministers may, by notice served on the persons making such objections or by the notice announcing the holding of the inquiry or hearing, direct that any person who intends at the inquiry to submit—

(a) that any highway or proposed highway to which the order relates should follow an alternative route, or

(b) that, instead of improving, diverting or altering a highway to which the order relates, a new highway should be constructed on a particular route,

shall send to the Minister within such period as may be specified in the notice, being a period of not less than 14 days and ending not less than 14 days before the date fixed for the holding of the inquiry or hearing, sufficient information about the alternative route or the route of the new highway, as the case may be, to enable it to be identified.

(3) Where the Minister or the Minister and the Secretary of State acting jointly have given a direction under subsection (2) above in relation to an inquiry or hearing, the person holding the inquiry or hearing and the Minister or, as the case may be, those Ministers may disregard so much of any objection as consists of a submission to which the direction applies unless the person making the objection has complied with the direction.

Textual Amendments

F449 Words substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 4 para. 31(11)**

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Modifications etc. (not altering text)

C109 Functions under s. 258 so far as exercisable jointly by Minister of Transport and Secretary of State now exercisable by Secretary of State for Transport: S.I. 1981/238, **art. 2(1)(b)**

C110 S. 258: functions transferred (25.11.2002) by The Transfer of Functions (Transport, Local Government and the Regions) Order 2002 (S.I. 2002/2626), **arts. 5**, 7 (with art. 8)

259 Power to confirm, etc., compulsory purchase order in part and postpone consideration of remainder. E+W

(1) Where in the exercise of highway land acquisition powers a compulsory purchase order authorising the acquisition of any land is submitted to the Minister in accordance with **[**F450Part II of the Acquisition of Land Act 1981**]** or is prepared in draft by him in accordance with **[**F451Schedule 1 to that Act**]**, then, if the Minister—

(a) is satisfied that the order ought to be confirmed or made so far as it relates to a part of the land comprised therein, but

(b) has not for the time being determined whether it ought to be confirmed or made so far as it relates to the remaining part,

he may confirm or, as the case may be, make the order so far as it relates to the part of the land mentioned in paragraph (a) above, and give directions postponing consideration of the order, so far as it relates to the remaining part, until such time as may be specified by or under the directions; and where the Minister confirms or makes part of any such order, that part and the remaining part are each to be deemed for the purposes of this section and the **[**F452Acquisition of Land Act 1981**]** to be a separate order.

(2) Where the Minister gives directions under this section, the notices required by **[**F453section 15 of the Acquisition of Land Act 1981 or as the case may be paragraph 6 of Schedule 1 to that Act**]**, to be published and served shall include a statement of the effect of the directions.

Textual Amendments

F450 Words substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 4 para. 31(12)**(*a*)

F451 Words substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 4 para. 31(12)**(*b*)

F452 Words substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 4 para. 31(12)**(*c*)

F453 Words substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 4 para. 31(13)**

260 Clearance of title to land acquired for statutory purposes. E+W

(1) There may be included in a compulsory purchase order made by a highway authority in the exercise of highway land acquisition powers land in which the authority have already acquired interests by agreement in the exercise of such powers.

(2) Where land is included in a compulsory purchase order as mentioned above, it is to be treated as subject to compulsory purchase for the purposes of the Act of 1965, and that Act shall apply accordingly, except as respects—

(a) the conveyance to the acquiring authority of any interest which they have acquired by agreement before the date of the coming into force of the compulsory purchase order; and

(b) compensation, so far as already paid or the subject of agreement.

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(3) Where—

(a) in the exercise of powers conferred by section 239(4)(c) above, a special road authority have acquired land for the provision of a service area, or

(b) in the exercise of powers conferred by section 240(3)(a) above, the Minister has acquired land for the provision of a trunk road picnic area, or

(c) in exercise of powers conferred by section 240(5) above, a highway authority have acquired land for the provision of a lorry area,

subsection (4) below has effect with respect to any activities carried on on the land in the course of its use for the purposes of a service area, trunk road picnic area or lorry area, as the case may be.

(4) Any such activities are, as against a person who apart from the acquisition would have had a right to restrain such activities, or a right the exercise of which would be calculated to interfere with them, to be treated as activities of the authority in question (that is to say, the special road authority, the Minister or the highway authority, as the case may be) carried on under statutory powers, notwithstanding that they are carried on by other persons under contract to the authority or otherwise.

Special compensation provisions as respects certain compulsory acquisitions for highway purposes

261 Benefit to vendor to be taken into account in assessing compensation on certain compulsory acquisitions for highway purposes. **E+W**

(1) Subject to subsection (3) below, in assessing the compensation payable in respect of the compulsory acquisition of land by a highway authority under section 239 above (except subsection (6) thereof), section 240 above, section 246 above or section 250(2) above, the Lands Tribunal—

(a) shall have regard to the extent to which the remaining contiguous lands belonging to the same person may be benefited by the purpose for which the land is authorised to be acquired;

(b) without prejudice to the generality of paragraph (a) above, shall in the case of land authorised to be acquired for widening a highway set off against the value of the land to be acquired any increase in the value of other land belonging to the same person which will accrue to him by reason of the creation of a frontage to the highway as widened; and

(c) shall take into account, and embody in its award, any undertaking given by the highway authority as to the use to which the land, or any part of it, will be put.

(2) Without prejudice to subsection (1) above, in assessing the compensation payable on a compulsory acquisition by virtue of section 252(3)(a) above the Lands Tribunal shall take into account, and embody in its award, any undertaking given by the acquiring authority as to rights of user or occupation, or other rights, which they are willing to accord to the landowner (or to him and his successors) as respects the land referred to in section 252(2) above.

(3) Where a highway authority, by virtue of section 250(1) above, compulsorily acquire rights under section 239 above (except subsection (6) thereof), section 240 above or section 246 above, then in assessing the compensation payable in respect of the acquisition the Lands Tribunal—

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(a) shall have regard to the extent to which the land over which the right in question is, or is to be, acquired, or any contiguous land belonging to the same person, may be benefited by the purpose for which the right may be authorised to be acquired;

(b) shall, in the case of a right acquired, or to be acquired, in connection with the widening of a highway, take into account as abatement of compensation any increase in the value of the land, or of other land belonging to the same person, which will accrue by reason of the creation of a frontage to the highway as widened; and

(c) shall take into account, and embody in its award, any undertaking given by the highway authority as to the manner in which the right will be exercised.

(4) Where by a compulsory purchase order made in the exercise of a relevant power a highway authority acquire two or more rights over land belonging to the same person, or acquire not only rights (one or more) but also adjoining or adjacent land so belonging, then in applying subsection (1) or subsection (3) above the Lands Tribunal shall consider together the compensation payable in respect of both or all of the rights or, as the case may be, in respect of the right or rights and also the adjoining or adjacent land.

In this subsection "relevant power" means a power under any provision of this Act to which subsection (1) or (3) above relates.

(5) In assessing the compensation payable in respect of the compulsory acquisition by a highway authority under section 241 above of land lying between an improvement line and the boundary of a street, the Lands Tribunal shall take into account any benefit accruing to the vendor by reason of the improvement of the street except in so far as it may have been previously taken into account in the assessment of compensation payable under section 73(9) above.

(6) Section 5 of the [M61]Land Compensation Act 1961 shall, in its application to compulsory acquisition by a highway authority under a provision to which subsection (1), (3) or (5) above relates, have effect subject to subsection (1), (3) or (5) as the case may be.

Modifications etc. (not altering text)

C111 S. 261 modified by Dartford–Thurrock Crossing Act 1988 (c. 20, SIF 59), ss. 2, 19, **Sch. 2 Pt. II para. 7**

C112 S. 261 modified (13.2.1992) by Severn Bridges Act 1992 (c. 3), s. 2(6), **Sch. 2 Pt. II para. 6**

C113 S. 261(2) modified by Dartford–Thurrock Crossing Act 1988 (c. 20, SIF 59), ss. 2, 19, **Sch. 2 Pt. II para. 2(3)(c)**

Marginal Citations

M61 1961 c. 33.

262 Assumptions to be made in assessing compensation on certain compulsory acquisitions of land for service stations etc. and lorry areas for special roads. E+W

(1) Where land is compulsorily acquired—

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(a) under section 239(4)(c) above in a case where the acquisition is authorised by a compulsory purchase order which does not also authorise the acquisition of land required for the provision of the adjacent length of special road, or

(b) in pursuance of a notice under **[**F454section 137 of the Town and Country Planning Act 1990**]** (protection of owners of land affected by certain planning decisions) in a case where the Lands Tribunal is satisfied that there are proposals for using the whole or part of the relevant land for such purposes in connection with the special road as are mentioned in section 239(4)(c) above and that the amount of compensation would apart from this section be affected by the provision or proposed provision of the special road, or

(c) in pursuance of a notice under **[**F455section 150 or 161 of that Act**]** (protection of owner-occupiers in respect of planning blight) in a case where the appropriate enactment for the purposes of **[**F455section 154 of that Act**]** is or includes section 239(4)(c) above,

then subsection (3) below applies for the purpose of assessing compensation in respect of the compulsory acquisition.

(2) Where there are proposals for the provision of a lorry area on land adjoining, or in the vicinity of, a special road or proposed special road then, if that land, or any land of which that land forms part, is compulsorily acquired—

(a) under section 240(5) above in a case where the acquisition is authorised by a compulsory purchase order which does not also authorise the acquisition of land required for the provision of the adjacent length of special road, or

(b) in pursuance of a notice under **[**F456section 137 of the Town and Country Planning Act 1990**]**, in a case where the Lands Tribunal is satisfied that there are proposals for using the whole or part of the relevant land for the purpose of providing a lorry area, in connection with the special road, and that the amount of the compensation would apart from this section be affected by the provision or proposed provision of the special road, or

(c) in pursuance of a notice under **[**F457section 150 or 161 of that Act**]** in a case where the appropriate enactment for the purposes of **[**F458section 154 of that Act**]** is or includes section 240(5) above,

subsection (3) below applies for the purpose of assessing compensation in respect of the compulsory acquisition.

(3) In any such case as is mentioned in subsection (1) or (2) above the value of the relevant interest shall be ascertained—

(a) so far as it is attributable to any relevant planning permission, on the assumption that traffic carried by the special road will not have direct or indirect access to the relevant land; and

(b) so far as it is not attributable to any such planning permission, on the assumption that traffic carried by the special road will not have direct access to the relevant land.

(4) In this section—

"direct access" means access otherwise than by means of a highway which is not a special road and "indirect access" means access by means of a highway which is not a special road;

"lorry area development" means development for the purpose of providing a lorry area for use in connection with a special road or proposed special road;

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"relevant planning permission" means any planning permission for service area development or, as the case may be, lorry area development, which is in force on the date of service of the notice to treat, or as to the grant of which any assumption is required to be made by virtue of section 15 or 16 of the [M62]Land Compensation Act 1961, or the possibility of the grant of which is taken into account in assessing the compensation;

"service area development" means development of the relevant land, or of any part of it, for the purpose of providing such service stations or other buildings or facilities as are mentioned in section 239(4)(c) above or of providing any other buildings or facilities designed to cater to a significant extent for traffic carried or to be carried by the special road;

and any expression which is also used in the [M63]Land Compensation Act 1961 has the same meaning as in that Act.

Textual Amendments

F454 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(15)(a)(i)**

F455 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(15)(a)(ii)**

F456 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(15)(b)(i)**

F457 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(15)(b)(ii)**

F458 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(15)(b)(ii)**

Marginal Citations

M62 1961 c. 33.

M63 1961 c. 33.

Vesting of highways etc.

263 Vesting of highways maintainable at public expense. E+W

(1) Subject to the provisions of this section, every highway maintainable at the public expense, together with the materials and scrapings of it, vests in the authority who are for the time being the highway authority for the highway.

(2) Subsection (1) above does not apply—

(a) to a highway with respect to the vesting of which, on its becoming or ceasing to be a trunk road, provision is made by section 265 below, or

(b) to a part of a trunk road with respect to the vesting of which provision is made by section 266 below, or

(c) to a part of a special road with respect to the vesting of which provision is made by section 267 below.

(3) Where a scheme submitted to the Minister jointly by two or more local highway authorities under section 16 above determines which of those authorities are to be the special road authority for the special road or any part of it ("the designated authority")

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and the designated authority are not the highway authority for the road or that part of it, the road or that part of it vests in the designated authority.

(4) Where—

(a) the responsibility for the maintenance of a bridge or other part of a highway is transferred to a highway authority by means of an order under section 93 above, but the property in it is not so transferred, or

(b) the responsibility for the maintenance of a part of a highway is transferred to a highway authority in pursuance of an agreement made under section 94 above, but the property in that part is not so transferred,

the part of the highway in question does not by virtue of subsection (1) above vest in that highway authority.

(5) Notwithstanding anything in subsection (1) above, any such material as is referred to in that subsection which is removed from a highway by a **[**F459non-metropolitan**]** district council in exercise of their powers under section 42, 50 or 230(7) above vests in the district council and not in the highway authority.

Textual Amendments

F459 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 37**

Modifications etc. (not altering text)

C114 S. 263: certain rights and liabilities transferred by S.I. 1986/148, **art. 9(1)(2)**

264 Vesting of drains etc. of certain roads. E+W

(1) The drains belonging to a road for which the council of a county **[**F460or metropolitan district**]** are the highway authority vest in the council of the county **[**F460or metropolitan district**]** in which the road is situated and where any other drain or any sewer was at the material date used for any purpose in connection with the drainage of such a road, that council continue to have the right of using the drain or sewer for that purpose.

For the purposes of this subsection the material date is—

(a) in the case of any highway which first became maintainable at the public expense before the commencement of this Act, the date on which it first became so maintainable or 1st April 1974, whichever date was later; and

(b) in the case of any highway which first becomes maintainable at the public expense after the commencement of this Act, the date on which it first becomes so maintainable.

[F461(2) The drains belonging to a highway—

(a) which immediately before the date of the abolition of the Greater London Council under the Local Government Act 1985 was a metropolitan road; and

(b) which did not become a trunk road on that date by virtue of an order made under paragraph 53 of Schedule 4 to that Act,

vest in the council of the London borough in which the highway is situated or, if it is situated in the City in the Common Council, and where any other drain or sewer was, at the date when the highway became a metropolitan road, used for any purpose in connection with the drainage of that highway, that council shall have the right of using the drain or sewer for that purpose.**]**

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(3) Any difference arising under this section—

(a) between a county council and a **[**F462non-metropolitan**]** district council—

(i) as to the council in whom a drain is vested, or

(ii) as to the use of a drain or sewer;

(b) F463

(c) between a county council **[**F464, metropolitan district council or London borough council or the Common Council**]**, on the one hand, and a **[**F465sewerage undertaker**]**, on the other, as to the use of a sewer;

shall, if either party to the dispute so elect, be referred to and determined by the Secretary of State.

[F466(4) Subsection (3)(a) above does not apply in Wales.**]**

Textual Amendments

F460 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 38**(*a*)

F461 S. 264(2) substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 38**(*b*)

F462 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para 38**(*c*)

F463 S. 264(3)(*b*) repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F464 Words substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 38**(*c*)

F465 Words substituted 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. 62(10), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

F466 S. 264(4) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.24** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

Modifications etc. (not altering text)

C115 S. 264 saved (1.12.1991) by Water Industry Act 1991 (c. 56, SIF 130), **ss. 115**, 117(5), 219(3)(7), 223(2) (with ss. 82(3), 186(1), 222(1), Sch. 14 para. 6)

Transfer of property and liabilities on change of status of highway etc.

265 Transfer of property and liabilities upon a highway becoming or ceasing to be a trunk road. E+W

(1) Where a highway becomes a trunk road, then, subject to the provisions of this section, as from the date on which the highway becomes a trunk road ("the operative date"), there are transferred to the Minister by virtue of this section—

(a) the highway, in so far as, immediately before the operative date, it was vested in the former highway authority,

(b) the property mentioned in subsection (3) below, in so far as, immediately before the operative date, it was vested—

(i) in the former highway authority for the purposes of their functions in relation to the highway, or

(ii) in a council for the purposes of functions in relation to the highway under any enactment to which this section applies, and

(c) all liabilities incurred by any such authority or council for the purposes of their functions in relation to the highway and not discharged before the operative date, other than loans and loan charges,

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and the highway and other property so transferred vest, by virtue of this section, in the Minister.

(2) There is not transferred to the Minister by virtue of this section any right or liability in respect of—

(a) work done, services rendered, goods delivered, or money due for payment, before the operative date, or

(b) damages or compensation for any act or omission before that date, or

(c) the price of, or compensation for, any land purchased, or for which a contract to purchase has been concluded, before that date.

(3) The property referred to in subsection (1)(b) above is—

(a) land, other than land—

(i) vested in the former highway authority for the purpose of being used for the storage of materials required wholly or mainly for the maintenance and improvement of other highways, or

(ii) acquired for the improvement or development of frontages to the highway, or of land adjoining or adjacent to the highway, and

(b) all other property (including the unexpended balances of any grants paid by the Minister to the former highway authority, or to any council for the purposes of their functions in relation to the highway), other than—

(i) materials to be used for the maintenance or improvement of the highway, and

(ii) the unexpended balances of any loans raised by the former highway authority, or by any council for the purposes of their functions in relation to the highway.

(4) Any property vested in the Minister by virtue of this section shall be held by him subject to all covenants, conditions and restrictions subject to which the property was held by the authority or council from whom it was transferred and to all liabilities affecting the property, except liabilities referred to in subsection (2) above.

(5) The Minister and the former highway authority may agree, on such terms as they think fit—

(a) that any property or liabilities (except loans and loan charges) acquired or incurred by the former highway authority for the purposes of their functions in relation to a highway which has become a trunk road, other than property or liabilities transferred to the Minister by virtue of this section, shall be transferred to him, or

(b) that any property or liabilities transferred to the Minister by virtue of this section shall be re-transferred to the authority.

(6) Any dispute between the Minister and any person as to the property or liabilities transferred by virtue of this section shall be determined by arbitration.

(7) The foregoing provisions of this section apply in a case where a trunk road ceases to be a trunk road (otherwise than by virtue of section 10(8) above) in like manner as they apply where a highway becomes a trunk road, with the substitution—

(a) for the references to the former highway authority and to a council, of references to the Minister, and

(b) for references to the Minister, of references to the council who become the highway authority for the road or, so far as relates to property and liabilities

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vested in or incurred by the Minister for the purposes of any functions under any enactment to which this section applies, to the council who are to exercise those functions in relation to the road.

(8) The former highway authority shall produce to the Minister such documents relating to their functions, property and liabilities in respect of a highway which has become a trunk road, and furnish to him such other information relating to those matters, as he may require.

(9) Schedule 21 to this Act has effect for the purpose of providing for transitional matters arising where a highway becomes a trunk road or a trunk road ceases to be a trunk road.

(10) The enactments to which this section applies are sections 42, 50, 230(7) and 271 of this Act and sections 1, **[**F467 23 and 85 of the Road Traffic Regulation Act 1984**]**.

(11) For the purposes of this section—

"former highway authority" means, in relation to a highway which has become a trunk road, the council in whom the highway was vested immediately before it became a trunk road; and

"property" includes property, rights and powers of every description.

Textual Amendments

F467 Words substituted by Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), s. 146, **Sch. 3**, para. 45

Modifications etc. (not altering text)

C116 S. 265 excluded by Dartford–Thurrock Crossing Act 1988 (c. 20, SIF 59), **ss. 6(1)**, 19

266 Transfer to Minister of privately maintainable bridges carrying trunk roads. E+W

(1) Where a highway comprising a bridge to which this section applies becomes a trunk road, the bridge by which that highway is carried is, subject to subsection (2) below, transferred to the Minister by virtue of this section on the date on which the highway becomes a trunk road ("the transfer date").

(2) If on the transfer date a part of the highway carried by the bridge is not a trunk road, the bridge is not transferred to the Minister by virtue of this section unless and until that part becomes a trunk road.

(3) Where a bridge is transferred to the Minister by virtue of this section, then, subject to subsection (4) below—

(a) the bridge, including any building or structure comprised in it and the highway carried by it, vests by virtue of this section in the Minister for all the estate or interest of the owners therein, and

(b) any statutory provision in force, in relation to the bridge, for the protection or benefit of statutory undertakers has effect, subject to any necessary modifications, as if for any reference therein to the owners of the bridge there were substituted a reference to the Minister.

(4) The Minister and the owners may, by agreement in writing made either before or after the transfer date, agree that the provisions of subsection (3) above with respect to the

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transfer of property shall not apply or, as the case may be, shall be deemed not to have applied, to such property comprised in the bridge as may be specified in the agreement.

(5) In respect of any bridge which is transferred to the Minister by virtue of this section, the Minister shall pay to the owners such sum as may be agreed between the Minister and the owners, or in default of agreement such sum as may be determined by arbitration to represent the value to the owners of the bridge as an asset productive of revenue.

For the purposes of this subsection a bridge is not to be treated as an asset productive of revenue unless at the time when the bridge is transferred by virtue of this section—

(a) a contract is in force under which payments have been made or will accrue to the owners in respect of the use of the bridge; or

(b) the bridge includes a building constructed or adapted for use by the owners for the purposes of their undertaking or for letting to some other person.

(6) Where a bridge transferred to the Minister by virtue of this section carries the highway over a railway, canal, way or other works used for the purposes of an undertaking carried on by the owners, then, so long as those works are so used—

(a) the Minister shall, before entering on any land of the owners for the purpose of executing works for the maintenance, improvement or alteration of the bridge, give notice to the owners specifying the general nature of the works proposed to be executed;

(b) except with the consent of the owners, the Minister shall not reduce the headway or any span of the bridge; and

(c) if the headway of the bridge is reduced in consequence of subsidence due to mining operations, or of works carried out by the owners for the purpose of raising the railway, canal, way or other works to a level not higher than their level before the subsidence occurred, the Minister shall, if so required by the owners, raise the bridge so far as may be necessary to give the same headway as before the subsidence occurred.

(7) A consent required for the execution of works by the Minister under subsection (6) above shall not be unreasonably withheld, and any question whether the withholding of such a consent is unreasonable shall be determined by arbitration.

(8) Any dispute between the Minister and any person as to the property or liabilities transferred by virtue of this section, or as to the liability imposed on the Minister by subsection (6)(c) above to carry out works, shall be determined by arbitration.

(9) This section applies to all bridges (not being highways maintainable at the public expense) which carry the highway over a railway or highway or over a canal, river, watercourse, marsh or other place where water flows or is collected or over a ravine or other depression, other than—

(a) swing bridges,

(b) bridges which carry a railway as well as a highway, and

(c) bridges to which a right to levy tolls is attached;

but this section does not apply to Rochester Bridge.

(10) In this section—

"bridge" includes so much of the approaches thereto as supports or protects the surface of the trunk road;

"owners", in relation to a bridge, means the persons who immediately before the transfer of the bridge to the Minister were responsible for the

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maintenance of it, and includes any persons who, in pursuance of any agreement with the persons so responsible, were then discharging that responsibility on their behalf.

VALID FROM 03/07/2000

[F468 266A Transfer of property and liabilities upon a highway becoming or ceasing to be a GLA road. E+W

(1) This section applies where, by virtue of an order made by the Greater London Authority under section 14B(2) above, a highway or proposed highway becomes, or ceases to be, a GLA road.

(2) As from the operative date there are transferred to the new highway authority by virtue of this section—

(a) the property mentioned in subsection (4) below, in so far as, immediately before the operative date, it was vested in the former highway authority for the purposes of their functions in relation to the transferred highway, and

(b) all liabilities incurred by any such authority for the purposes of its functions in relation to the transferred highway and not discharged before the operative date, other than loans and loan charges,

and the property and liabilities so transferred vest, by virtue of this section, in the new highway authority.

(3) There is not transferred to the new highway authority by virtue of this section any right or liability in respect of—

(a) work done, services rendered, goods delivered, or money due for payment, before the operative date, or

(b) damages or compensation for any act or omission before that date, or

(c) the price of, or compensation for, any land purchased, or for which a contract to purchase has been concluded, before that date.

(4) The property referred to in subsection (2)(a) above is—

(a) land, other than land—

(i) vested in the former highway authority for the purpose of being used for the storage of materials required wholly or mainly for the maintenance and improvement of other highways, or

(ii) acquired for the improvement or development of frontages to the highway, or of land adjoining or adjacent to the highway, and

(b) all other property (including unexpended balances of any grants paid by the Minister to the former highway authority), other than—

(i) materials to be used for the maintenance or improvement of the highway, and

(ii) the unexpended balances of any loans raised by the former highway authority.

(5) Any property vested in the new highway authority by virtue of this section shall be held by it subject to all covenants, conditions and restrictions subject to which the property was held by the former highway authority and to all liabilities affecting the property, except liabilities referred to in subsection (3) above.

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(6) The new highway authority and the former highway authority may agree, on such terms as they think fit—

(a) that any property or liabilities (except loans and loan charges) acquired or incurred by the former highway authority for the purposes of their functions in relation to the transferred highway, other than property or liabilities transferred to the new highway authority by virtue of this section, shall be transferred to the new highway authority, or

(b) that any property or liabilities transferred to the new highway authority by virtue of this section shall be re-transferred to the former highway authority.

(7) Any dispute between the new highway authority and any other person as to the property or liabilities transferred by virtue of this section shall be determined by arbitration.

(8) Paragraphs 1 and 3 to 8 of Schedule 21 to this Act shall have effect for the purpose of providing for transitional matters arising where a highway or proposed highway becomes, or ceases to be, a GLA road as it applies where a highway becomes, or ceases to be, a trunk road; but in having such effect those paragraphs shall be treated as if—

(a) for the references to a trunk road there were substituted references to a GLA road, and

(b) for the references to the Minister there were substituted references to the new highway authority (within the meaning of this section).

(9) For the purposes of this section—

"former highway authority" means the highway authority for the transferred highway immediately before the operative date;

"new highway authority" means the highway authority for the transferred highway immediately after the operative date;

"operative date" means the date on which the highway or proposed highway becomes, or ceases to be, a GLA road;

"property" includes property, rights and powers of every description; and

"transferred highway" means the highway or proposed highway which is the subject of the order under section 14B(2) above.**]**

Textual Amendments

F468 S. 266A inserted (3.7.2000) by 1999 c. 29, **s.264** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch. Pt. 3**

VALID FROM 03/07/2000

[F469 266B Transfer of employees upon a highway becoming or ceasing to be a GLA road. E+W

(1) This section applies where, by virtue of an order made by the Greater London Authority under section 14B(2) above, a highway or proposed highway becomes, or ceases to be, a GLA road.

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(2) The Greater London Authority may, if it is necessary in connection with the highway becoming, or ceasing to be, a GLA road, by order make schemes containing provision for or in connection with the transfer from the former highway authority to the new highway authority of rights and liabilities under contracts of employment.

(3) The rights and liabilities which may be transferred by such a scheme include rights and liabilities which would not otherwise be capable of being transferred or assigned.

(4) Subsections (5) to (7) below apply where any rights or liabilities under a contract of employment are transferred by virtue of this Act.

(5) Anything done by or in relation to the former highway authority in respect of the employee before the day on which the transfer of the rights and liabilities takes effect shall be treated on and after that day as done by or in relation to the new highway authority.

(6) For the purposes of Part XI of the [M64]Employment Rights Act 1996 (redundancy payments etc) the employee shall not be regarded as having been dismissed by virtue of the transfer.

(7) For the purposes of that Act, the employee's period of employment with the former highway authority shall count as a period of employment with the new highway authority, and the change of employment shall not break the continuity of the period of employment.

(8) An order under this section shall be of no effect unless—

(a) it is made with the consent of the relevant highway authority; or

(b) if that consent is refused, it is confirmed (with or without modification) by the Secretary of State.

(9) For the purposes of subsection (8) above, the relevant highway authority is—

(a) in a case where the order under section 14B above directs that a highway or proposed highway shall become a GLA road, the former highway authority; and

(b) in a case where the order directs that a GLA road shall cease to be such a road, the new highway authority.

(10) Section 266A(9) above also applies for the purposes of this section.**]**

Textual Amendments

F469 S. 266B inserted (3.7.2000) by 1999 c. 29, **s.265** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch. Pt. 3**

Marginal Citations

M64 1996 c. 18.

267 Transfer to local highway authorities of privately maintainable bridges carrying special roads. E+W

(1) Where the route prescribed by a scheme under section 16 above authorising the provision of a special road by a local highway authority includes a highway carried

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by a bridge which, if the special road were a trunk road, would be transferred to the Minister by virtue of section 266 above, any order under section 18 above by which the highway is appropriated by or transferred to the special road authority may provide for the transfer of the bridge to that authority.

(2) Where a bridge is so transferred to a special road authority, subsections (3) to (8) of section 266 above apply as they apply in relation to a bridge transferred by virtue of that section and accordingly have effect as if, for references therein to the Minister and to the trunk road there were substituted references to the special road authority and to the special road; and no order shall be made by virtue of section 268 below in respect of liabilities of the owners of the bridge.

(3) In this section "bridge" and "owners" are to be construed in accordance with section 266(10) above, but with the substitution, in the definition of "owners", of a reference to the special road authority for the reference to the Minister.

268 Transfer of property and liabilities in connection with special roads etc. E+W

(1) Where provision is made by an order under section 14 or 18 above—

(a) for transferring a highway from one highway authority to another,

(b) for enabling a highway authority to alter a highway vested in another, or

(c) in the case of an order under section 18 above, for authorising or requiring any functions of a local authority (within the meaning of that section) to be exercised by a highway authority,

the order may, subject to section 267(2) above, transfer to the highway authority to whom the highway is transferred, or in whom it is vested, or by whom those functions are to be exercised, any property, rights or liabilities (other than loans or loan charges) vested in or incurred by the other authority in connection with the highway or the alteration, or for the purposes of those functions, as the case may be.

(2) An order transferring property, rights or liabilities under subsection (1) above may for that purpose (whether or not the highway in question is a trunk road) apply any of the provisions of section 265 above, subject to such modifications as may be specified in the order.

(3) No order relating to a trunk road under section 14 above shall provide for transferring to any authority (except by agreement with that authority) any bridge over or tunnel under the trunk road, as distinct from the highway carried by the bridge or through the tunnel, and from any approaches to the bridge or tunnel.

(4) No order relating to a classified road under section 14 above and no order under section 18 above shall provide for transferring to any authority (except by agreement with that authority) any bridge over or tunnel under a classified road or, as the case may be, a special road, as distinct from the highway carried by the bridge or through the tunnel, and from any approaches to the bridge or tunnel.

269 . . . . . F470 E+W

Textual Amendments

F470 S. 269 repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

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270 Transfer of lighting systems. E+W

(1) In this section—

"footway lighting system" means a system of lighting, provided for a highway, which satisfies the following conditions, namely, that either—

(a) no lamp is mounted more than 13 feet above ground level, or

(b) no lamp is mounted more than 20 feet above ground level and there is at least one interval of more than 50 yards between adjacent lamps in the system.

or such other conditions as may be prescribed by order of the Minister in substitution for the above-mentioned conditions;

"road lighting system" means a lighting system that is not a footway lighting system;

and references in this section, as respects a transfer from a lighting authority to a highway authority, to "the agreed date" are references to such date as may be determined by agreement between the two authorities or, in default of such agreement, as the Minister may direct.

(2) Subsections (3) to (6) below have effect where a road lighting system is at any time provided by a lighting authority for the purposes of a highway for which they are not the highway authority, and this includes cases where a footway lighting system maintained by a lighting authority other than the highway authority becomes a road lighting system—

(a) in consequence of any order made by the Minister under subsection (1) above (as respects the conditions referred to in the definition of "footway lighting system"), or

(b) in consequence of any alterations effected by the lighting authority.

(3) On the agreed date there are transferred to the highway authority—

(a) all lamps, lamp-posts and other apparatus which, immediately before the agreed date, were vested in the lighting authority as part of the road lighting system; and

(b) except as provided by subsection (4) below, all other property or rights which, immediately before the agreed date, were vested in the lighting authority for the purposes of that system, and all liabilities incurred by that authority for those purposes and not discharged before that date;

and any property or rights so transferred vest, by virtue of this section, in the highway authority.

(4) There is not transferred to a highway authority by virtue of this section any right or liability of a lighting authority in respect of work done, services rendered, goods (including gas and electricity) supplied or money due for payment before the agreed date, and there is not transferred to the Minister by virtue of this section any liability of a lighting authority in respect of loans or loan charges.

(5) A highway authority and a lighting authority, or any two or more highway authorities, may make agreements with respect to the transfer of property, rights and liabilities under this section, including agreements—

(a) for defining the property, rights and liabilities thereby transferred to the highway authority or any of those authorities, and

(b) for the transfer or retention of property, rights or liabilities held or incurred for the purposes of two or more road lighting systems, or partly for the purposes of such a lighting system and partly for other purposes.

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(6) Any dispute between the authorities concerned as to the property, rights or liabilities transferred by this section shall be determined—

(a) where the Minister is one of those authorities, by arbitration;

(b) in any other case, by the Minister.

(7) If in the case of a road or part of a road in which a footway lighting system is maintained by a lighting authority other than a highway authority the highway authority propose to provide a road lighting system (either as a separate system or by means of alterations of the footway lighting system), they may give notice to that effect to the lighting authority; and where such notice is given subsections (2) to (6) above apply in relation to the footway lighting system as if for the references in subsections (3) and (4) to the agreed date there were substituted references to such date as may be specified for the purpose in the notice.

271 Provisions with respect to transfer of toll highways to highway authorities. E+W

(1) Where a person has by virtue of a charter or special Act the right to charge tolls in respect of the use of a highway, then, an appropriate authority—

(a) may agree with that person that he shall, on such terms as may be agreed, or

(b) subject to the provisions of this section, may by a notice to treat require that person to,

transfer that right to the appropriate authority, together with the property in the highway and all his other property, rights and obligations under the charter or special Act (being property, rights and obligations connected with the highway), or such of them as may be specified in the agreement or, as the case may be, the notice to treat.

For the purposes of this section the following are appropriate authorities:—

(i) in the case of a trunk road, the Minister;

(ii) in the case of any other highway, except a highway in a London borough or the City, the council of the county **[**[F471]or metropolitan district**]** in which the highway is situated;

(iii) in the case of a highway in a London borough or the City, other than a trunk road, the council of the borough or the Common Council, as the case may be. . . [F472].

(2) Upon the making of the transfer under subsection (1) above the right to charge tolls and any other property, rights or obligations transferred vest in and are exercisable by and imposed upon the appropriate authority.

(3) The consideration to be paid to any person for a compulsory transfer under this section shall, in default of agreement, be determined by the Lands Tribunal, and the rules in section 5 of the [M65]Land Compensation Act 1961 apply to the calculation of any such consideration.

(4) Subject to any agreement with respect to the date of transfer, the person on whom a notice to treat is served under this section shall, on payment to him of the consideration determined as provided by subsection (3) above, transfer to the appropriate authority all such property, rights and obligations vested in or imposed upon him as are required by the notice to treat to be so transferred.

(5) A council in whose area part only of the highway is situated have in relation to that highway the same powers as they would have under subsection (1) above if the

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highway were wholly situated within their area, but shall not exercise those powers except in pursuance of an agreement made under subsection (6) below.

(6) Any two or more councils having under either subsection (1) or subsection (5) above powers in relation to a highway may enter into agreements with respect to the exercise of those powers by one council on behalf of the other or others of them and with respect to the making of contributions by any of them towards the expenses of any action so taken; and where those powers are exercised in pursuance of any such agreement the transfer of the highway and any other property, rights and obligations to be transferred shall be made to such council or councils as may be provided by the agreement.

(7) The provisions of this section with respect to compulsory transfers shall not apply in relation to—

(a) a highway vested in dock undertakers as such,

(b) a highway vested in harbour undertakers as such, or

(c) the property in a bridge vested in railway undertakers.

Textual Amendments

F471 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 19**

F472 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

Marginal Citations

M65 1961 c. 33.

PART XIII E+W

FINANCIAL PROVISIONS

272 Advances for highway purposes. E+W

(1) Subject to subsection (4) below, the Minister may, with the approval of the Treasury, make advances to a highway authority for any of the purposes mentioned in paragraphs (a) to (k) below, or in respect of the expenses mentioned in paragraph (l) or (m) below: —

(a) the construction of a highway which is to be a highway maintainable at the public expense;

(b) the maintenance of a highway;

(c) the improvement of a highway;

(d) the provision, maintenance and improvement of a road-ferry;

(e) the acquisition of highway land;

(f) the provision of a lorry area or the exercise of any other power under section 115 above;

(g) the provision of public sanitary conveniences on or under land forming part of, or adjoining, or in the vicinity of, a highway or proposed highway;

(h) the provision of a new means of access to a highway in pursuance of any such order as is mentioned in paragraph (i) below or under section 129 above;

(i) the stopping up of a private means of access in pursuance of an order made under section 14, 18 or 124 above, or an order made under **[**F473section 248 of

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the Town and Country Planning Act 1990**]**, or in pursuance of an agreement made under section 127 above;

(j) the exercise of any powers conferred by section 246 or 253 above or section 282 below;

(k) the discharge or exercise of any duty or power imposed or conferred on the authority under section 20 of the [M66]Land Compensation Act 1973;

(l) any amount by which the annual expenditure incurred by the authority in maintaining highway land during the period between its acquisition and the construction or improvement of the highway in question, and in the payment of loan charges accruing due during that period in respect of any debt incurred by the authority for the purpose of acquiring the land, exceeds the annual income accruing to the authority from the land during that period;

(m) any loan charges accruing due after the end of the period mentioned in paragraph (l) above in respect of any money borrowed by the authority for the purpose of acquiring highway land;

or may, with the like approval, and in conjuction with a local highway authority, make advances to some other person for any of the said purposes.

In paragraph (e) above "highway land" means land which the Minister is satisfied that the authority have acquired or are to acquire with a view to the construction of a new highway or the improvement of an existing highway, and in pararaphs (l) and (m) above it means land which the Minister is satisfied that the authority have acquired with a view as aforesaid; and in paragraphs (l) and (m) above "loan charges", in relation to any borrowed money, means the sums required for the payment of interest on that money and for the repayment of it either by instalments or by means of a sinking fund.

(2) The purposes for which advances maybe made by the Minister under paragraphs (a) to (k) of subsection (1) above include the carrying out of surveys with a view to ascertaining the need for the construction or improvement of highways (whether or not any such construction or improvement is carried out) and other purposes incidental or conducive to the purposes described in those paragraphs.

(3) The power of the Minister to make advances to himself in his capacity of highway authority for any purpose specified in subsection (1) above is a power conferred on him to expend money for that purpose.

(4) The power of the Minister to make advances to a local highway authority under subsection (1) above is exercisable only in cases where it appears to him that, notwithstanding the grants for which provision is made in Part I of the [M67]Local Government Act 1974, the whole or any part of any expenditure in respect of which any advances could be made under subsection (1) above should not fall on that authority.

(5) The Minister may, with the approval of the Treasury, make advances to a district council in respect of any work done by them in a highway in exercise of their powers under section 96 above.

[[F474](5A) In relation to any work done in exercise of their powers under section 96 by a Welsh council in a highway within their area for which they are not the highway authority, subsection (5) above applies as though the reference to a district council were a reference to the Welsh council.**]**

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(6) The Minister may make advances under this section either by way of grant or by way of loan, or partly in one way and partly in the other, and on such terms and subject to such conditions as he thinks fit.

(7) In deciding whether to make an advance under this section in respect of a work the execution of which will require the employment of labour on a considerable scale, the Minister shall have regard to the general state and prospects of employment.

Textual Amendments

F473 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), **s. 4 Sch. 2 para. 45(16)**

F474 S. 272(5A) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.25** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

Marginal Citations

M66 1973 c. 26.

M67 1974 c. 7.

273 Contributions by county councils to expenses of district councils under section 96. E+W

The council of a county may contribute towards the expenses incurred by the council of any district in the county in exercise of their powers under section 96 above.

Modifications etc. (not altering text)

C117 Ss. 273–275 restricted by Local Government Act 1985 (c. 51, SIF 81:1), s. 91, **Sch. 15 para. 1**

274 Contributions by councils towards expenses of highway authorities. E+W

A council may contribute towards any expenses incurred or to be incurred by a highway authority if, in the opinion of the council, the expenditure is or will be of benefit to the council's area.

Modifications etc. (not altering text)

C118 Ss. 273–275 restricted by Local Government Act 1985 (c. 51, SIF 81:1), s. 91, **Sch. 15 para. 1**

VALID FROM 19/05/1997

[F475 274A Contributions by parish or community councils. E+W

A parish council or community council may contribute towards any expenses incurred or to be incurred by a highway authority in constructing, removing or maintaining—

(a) traffic calming works, or

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(b) other works (including signs or lighting) required in connection with traffic calming works,

if, in the opinion of the council, the expenditure is or will be of benefit to their area.**]**

Textual Amendments

F475 S. 274A inserted (19.5.1997) by 1997 c. 29, **s.30**; S.I. 1997/1097, **art.3**.

275 Contributions by councils and local planning authorities towards expenses incurred in connection with footpaths and bridleways. E+W

A council or a local planning authority may defray or contribute towards, or undertake to defray or contribute towards, the expenses incurred or to be incurred by any other council or local planning authority for the purposes of—

(a) the provisions of Part III of this Act relating to the creation of footpaths and bridleways by means of public path creation agreements or public path creation orders, to the making up of footpaths and bridleways and to the payment of compensation for loss caused by a public path creation order;

(b) the provisions of Part VIII of this Act relating to the making of public path extinguishment orders and public path diversion orders, to the making up of footpaths and bridleways and to the payment of compensation for loss caused by any such order.

Modifications etc. (not altering text)

C119 Ss. 273–275 restricted by Local Government Act 1985 (c. 51, SIF 81:1), s. 91, **Sch. 15 para. 1**

C120 S. 275 applied (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. I**; S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

276 Contributions to land drainage works which will benefit trunk roads. E+W

Where it appears to the Minister that the execution or maintenance by a **[**[F476]the National Rivers Authority**]** or internal drainage board of any drainage works is desirable for the protection or enjoyment of a trunk road, he may make such contributions as he thinks fit towards any expenses incurred by **[**[F477]that Authority**]** or board in the execution or maintenance of those works.

Textual Amendments

F476 Words substituted 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. 62(11)(a), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58

F477 Words substituted 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. 62(11)(b), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

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277 Contribution towards maintenance of bridge where road ceases to be a trunk road. E+W

Where a trunk road carried by a bridge vested in the Minister by virtue of section 266 above ceases to be a trunk road, the Minister may contribute towards the expenses to be incurred in the maintenance of the bridge by the council who become the highway authority for the road.

In this section "bridge" includes the highway carried by the bridge and so much of the approaches thereto as supports or protects the surface of the trunk road.

[F478278 Agreements as to execution of works. E+W

(1) A highway authority may, if they are satisfied it will be of benefit to the public, enter into an agreement with any person—

(a) for the execution by the authority of any works which the authority are or may be authorised to execute, or

(b) for the execution by the authority of such works incorporating particular modifications, additions or features, or at a particular time or in a particular manner,

on terms that that person pays the whole or such part of the cost of the works as may be specified in or determined in accordance with the agreement.

(2) Without prejudice to the generality of the reference in subsection (1) to the cost of the works, that reference shall be taken to include—

(a) the whole of the costs incurred by the highway authority in or in connection with—

(i) the making of the agreement,

(ii) the making or confirmation of any scheme or order required for the purposes of the works,

(iii) the granting of any authorisation, permission or consent required for the purposes of the works, and

(iv) the acquisition by the authority of any land required for the purposes of the works; and

(b) all relevant administrative expenses of the highway authority, including an appropriate sum in respect of general staff costs and overheads.

(3) The agreement may also provide for the making to the highway authority of payments in respect of the maintenance of the works to which the agreement relates and may contain such incidental and consequential provisions as appear to the highway authority to be necessary or expedient for the purposes of the agreement.

(4) The fact that works are to be executed in pursuance of an agreement under this section does not affect the power of the authority to acquire land, by agreement or compulsorily, for the purposes of the works.

(5) If any amount due to a highway authority in pursuance of an agreement under this section is not paid in accordance with the agreement, the authority may—

(a) direct that any means of access or other facility afforded by the works to which the agreement relates shall not be used until that amount has been paid,

(b) recover that amount from any person having an estate or interest in any land for the benefit of which any such means of access or other facility is afforded, and

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(c) declare that amount to be a charge on any such land (identifying it) and on all estates and interests therein.

(6) If it appears to the highway authority that a direction under subsection (5)(a) is not being complied with, the authority may execute such works as are necessary to stop up the means of access or deny the facility, as the case may be, and may for that purpose enter any land.

(7) Where a highway authority recovers an amount from a person by virtue of subsection (5)(b), he may in turn recover from any other person having an estate or interest in land for the benefit of which the means of access or other facility was afforded such contribution as may be found by the court to be just and equitable.

This does not affect the right of any of those persons to recover from the person liable under the agreement the amount which they are made to pay.

(8) The [M68]Local Land Charges Act 1975 applies in relation to a charge under subsection (5)(c) in favour of the Secretary of State as in relation to a charge in favour of a local authority.**]**

Textual Amendments

F478 S. 278 substituted (1.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s.23** (with ss. 25(2), 167(2)); S.I. 1991/2288, art. 3, **Sch.**

Modifications etc. (not altering text)

C121 S. 278 modified (16.5.2008) by The London Gateway Port Harbour Empowerment Order 2008 (S.I. 2008/1261), **art. 58(5)(a)** (with arts. 41(1), 45, 54(2), 55, 56, 57(6))

C122 S. 278 modified (1.4.2011) by The Greater Manchester Combined Authority Order 2011 (S.I. 2011/908), arts. 1, **8(2)**

Marginal Citations

M68 1975 c. 76

279 Borrowing power of councils. E+W

A council may borrow for the purposes of this Act.

280 Application of certain sums payable to local highway authorities. E+W

(1) Any sum paid to, or recovered by, a local highway authority under any of the provisions of this Act mentioned in subsection (2) below, being a sum which for the purpose of any such provision is a lump sum, and so much of any other sum paid to, or recovered by, any such authority under any of those provisions as represents capital, shall be applied by the authority for purposes for which capital money is applicable by them.

(2) The provisions of this Act referred to in subsection (1) above are sections 53(3) and (4), 54(1) and (2), 55(2) to (4) and 255(4), and paragraph 19 of Schedule 11.

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281 Exemption from stamp duty. E+W

If the Minister certifies that any stamp duty which, but for this section, would be payable on any instrument made by, to or with him in relation to a highway or proposed highway which is, or is to become, a trunk road would be payable as an expense incurred by him under this Act, that stamp duty is not payable.

VALID FROM 01/12/2003

[F479 281A Stamp duty land tax E+W

(1) A land transaction to which the Minister is a party is exempt from charge for the purposes of stamp duty land tax if—

(a) the transaction relates to a highway or proposed highway which is, or is to become, a trunk road, and

(b) but for this section stamp duty land tax would be payable in respect of the transaction as an expense incurred by the Minister under this Act.

(2) Relief under this section must be claimed in a land transaction return or an amendment of such a return.

(3) In this section—

"land transaction" has the meaning given by section 43(1) of the Finance Act 2003;

"land transaction return" has the meaning given by section 76(1) of that Act.]

Textual Amendments

F479 S. 281A inserted (1.12.2003) by The Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003 (S.I. 2003/2867), art. 2, **Sch. Pt. 1 para. 12**

PART XIV U.K.

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Miscellaneous powers etc. of highway authorities and local authorities

282 Power of highway authority to execute works for mitigating adverse effect of constructing or improving etc. highway. E+W

(1) A highway authority may carry out—

(a) on land acquired by them under section 246 above;

(b) on any other land belonging to them;

(c) on any highway for which they are the highway authority;

(d) on any highway which they have been authorised to improve or construct by virtue of an order under section 14 or 18 above,

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works for mitigating any adverse effect which the construction, improvement, existence or use of a highway has or will have on the surroundings of the highway.

(2) Without prejudice to the generality of subsection (1) above, the works that may be carried out under that subsection include the planting of trees, shrubs or plants of any other description and the laying out of any area as grassland.

(3) A highway authority may develop or redevelop any land acquired by them under section 246 above, or any other land belonging to them, for the purpose of improving the surroundings of a highway in any manner which they think desirable by reason of its construction, improvement, existence or use.

283 Power of Minister to conduct experiments. E+W

(1) The Minister may, either by himself or through an authority or other organisation approved by him, conduct experiments or trials for the purpose of—

(a) improving the construction of highways, road-ferries or subways, or

(b) testing the effect of various classes of vehicles on various types of highways.

(2) The Minister may construct such highways and works, erect such plant, and provide such accommodation, as may be necessary for the purpose of conducting an experiment or trial under this section.

(3) An experiment or trial under this section shall not be conducted on any highway except with the consent of the highway authority or other person responsible for the maintenance of the highway.

(4) If damage is caused to the property of any person by anything done in exercise of the powers conferred by this section, that person is entitled to recover from the Minister compensation in respect of the damage.

A person is not entitled to compensation under this subsection if the damage was caused by his own negligence; and if his own negligence contributed to the damage the compensation shall be reduced accordingly.

284 Powers of Minister in relation to privately maintainable parts of trunk roads. E+W

Where a trunk road comprises a highway which a person is liable to maintain under a charter or special enactment or by reason of tenure, enclosure or prescription, the Minister is entitled to exercise in relation to that highway any power which he would be entitled to exercise in relation thereto if that highway were a highway maintainable at the public expense.

[F480 284A Trunk roads: miscellaneous functions of Secretary of State. E+W

The persons who may exercise the functions conferred by—

(a) section 40 of the Public Health Acts Amendment Act M69 1890 (cabmen's shelters);

(b) section 42 of that Act (statutes and monuments);

(c) section 14 of the M70 Public Health Act 1925 (public drinking fountains, seats, etc.),

shall, in relation to any trunk road, include the Secretary of State.]

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Textual Amendments

F480 S. 284A inserted by Statute Law (Repeals) Act 1989 (c. 43), s. 1(2), **Sch. 2 para. 14**

Marginal Citations

M69 1890 c.59 (**100:1**).

M70 1925 c.71 (**100:1**).

285 Power of Minister and Greater London Council to execute in Greater London road improvements not involving widening. E+W

(1) Subject to subsection (3) below, where **[**F481the Minister of Transport, after consultation with the highway authority, is**]** of the opinion that, with a view to facilitating the movement of traffic it is expedient for works to be executed for the improvement of a highway in Greater London to which this section applies, being works which the highway authority could execute and which do not involve the widening of the highway, then—

(a) the highway authority shall, within 3 months of being notified of that fact, inform the Minister. . . F482 whether they are prepared to undertake those works and, if so, within what time; and

(b) if the Minister. . . F482 at the expiration of the said 3 months **[**F483is**]** not satisfied that the highway authority will with reasonable dispatch undertake those works (or within the said 3 months **[**F483is**]** satisfied that they will not), the Minister. . . F482 may execute those works or other works appearing to him. . . F482 to secure the same or an equivalent improvement of the highway.

For the purposes of this subsection it is not to be treated as widening a highway to take into the highway land not forming part of it but situated within its outer limits.

(2) The highways to which subsection (1) above applies are highways for which a London borough council or the Common Council are the highway authority. . . F484

(3) The Minister shall exercise his powers under subsection (1) above only if he considers it necessary in connection with any order made or proposed to be made by him under section 6 or section 9 of the Road Traffic Regulation Act **[**F4851984**]** by virtue of **[**F486paragraph 3 or paragraph 7 of Schedule 9 to**]** that Act.

(4) Where the Minister **[**F487executes or proposes**]** to execute works under this section for the improvement of a highway, then for the purpose of or in connection with the execution of those works—

(a) he. . . F488 shall (subject to the following provisions of this section) have all the powers and rights, and be subject to all the obligations and liabilities, of the highway authority; and

(b) he. . . F488 may exercise of his. . . F488 own motion any powers which, if the works were executed by the highway authority, he. . . F488 could exercise on the application of that authority; and

(c) he. . . F488 may do or require the highway authority to do anything which that authority has power to do in some capacity other than that of highway authority.

(5) Where the Minister **[**F489executes**]** works under this section for the improvement of a highway the amount of his. . . F490 expenses in connection therewith, as certified by

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him. . . F490, shall (except. . . F490 in so far as they may be met by any grant made by the Minister) be paid to him. . . F490 on demand by the highway authority; and that authority have the like power of raising money required to make such payment, and the like right to recover the whole or any part of any sum paid, as if the expenses of the Minister. . . F490 had been incurred in executing the works as their agent.

(6) Subsection (4) above does not transfer to the Minister. . . F491 in connection with the execution of any works any powers, rights, obligations or liabilities of a highway authority under any enactment to which this subsection applies; but where the Minister **[**F492proceeds**]** under this section to execute works in a highway, any such enactment applies in relation to those works as if the Minister. . . F491 were acting as agent of the highway authority, but so that the highway authority are to comply with any directions of the Minister. . . F493 as to the exercise of their powers and rights.

This subsection applies to **[**F494Part III of the New Roads and Street Works Act 1991**]** and, in the case of any works, to such other enactments as the Minister. . . F491 may specify for this purpose in a notice given by him. . . F493 to the highway authority.

(7) Without prejudice to the generality of the foregoing provisions of this section, the powers exercisable under this section by the Minister. . . F495 in place of a highway authority include any power of that authority to acquire land, or an interest or right in, over or under land; and any land, or any interest or right in, over or under land, acquired by the Minister. . . F495 by virtue of this section shall be acquired in the name and on behalf of the highway authority, and shall vest in that authority accordingly.

(8) A highway authority shall produce to the Minister. . . F496 such documents relating to matters affecting the exercise of the Minister's. . . F496 powers under this section, and furnish him. . . F496 with such other information relating to those matters, as he. . . F496 may require in connection with the exercise of those powers or any proposal to exercise them.

Textual Amendments

F481 Words substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 39**(*a*)
F482 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**
F483 Word substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 39**(*a*)
F484 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**
F485 1984 substituted by Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), s. 146, **Sch. 13 para. 46**
F486 Words in s. 285(3) substituted by Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), s. 146, **Sch. 13 para. 46**
F487 Words substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 39**(*b*)
F488 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**
F489 Word substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 39**(*c*)
F490 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**
F491 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**
F492 Word substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 39**(*d*)
F493 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**
F494 Words in s. 285(6) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 para.10**; S.I. 1992/2984, art. 2(2), **Sch.2**.
F495 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**
F496 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

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286 Power to require angles of new buildings at corners of streets to be rounded off. E+W

(1) A local authority or, if there is a local highway authority for either of the two streets in question, that highway authority, may require the corner of a building intended to be erected at the corner of two streets in the area of the local authority to be rounded or splayed off to the height of the first storey or to the full height of the building, and to such extent otherwise as they may determine.

(2) A person aggrieved by a requirement of a local authority or local highway authority under this section may appeal to a magistrates' court.

(3) A local authority or local highway authority shall pay compensation for any loss which may be sustained through the exercise by them of their powers under this section.

(4) This section does not apply to a building, other than a dwelling-house, belonging to any of the following undertakers and used by them for the following purposes respectively: —

(a) railway undertakers, for purposes of a railway comprised in the railway undertaking;
(b) canal undertakers, for purposes of a canal comprised in the canal undertaking;
(c) inland navigation undertakers, for purposes of a navigation comprised in the inland navigation undertaking;
(d) dock undertakers, for purposes of a dock comprised in the dock undertaking;
(e) harbour undertakers, for purposes of a harbur comprised in the harbour undertaking;
(f) pier undertakers, for purposes of a pier comprised in the pier undertaking.

287 Power to erect barriers in streets in cases of emergency etc. E+W

(1) Subject to the provisions of this section, for the purpose of securing public order or public safety or preventing congestion of traffic a competent authority may, in any case of emergency or on any occasion on which it is likely by reason of some special attraction that any street will be thronged or obstructed, cause barriers to be erected in any street and kept in position for so long as may be necessary for that purpose.

For the purposes of this section the following are competent authorities—

(a) in the case of a street outside Greater London which is a highway, a local authority and also the highway authority;
(b) in the case of any other street, a local authority.

(2) For the purpose of erecting barriers in a street under this section a competent authority may provide and maintain sockets or slots in or under the surface of the street.

(3) A competent authority shall not exercise the powers conferred by this setion in such a way as to deprive pedestrians of reasonable access to any premises.

(4) Schedule 8 to this Act applies to the powers conferred on competent authorities by this section.

(5) If a person wilfully removes a barrier, socket or slot erected or provided under this section, he is guilty of an offence and liable to a fine not exceeding **[**F497level 1 on the standard scale**]**.

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(6) In this section "local authority" means any of the following, namely, the council of a district or London borough,. . . [F498] the Common Council and the Council of the Isles of Scilly **[**[F499]but in relation to Wales, means a Welsh council**]**.

Textual Amendments

F497 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

F498 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F499 Words in s. 287(6) added (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.26** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.

Modifications etc. (not altering text)

C123 S. 287 modified (22.7.2008) by Transport for London Act 2008 (c. i), ss. 1(1), **39** (with s. 48)

288 Power to require gas and water pipes to be moved. E+W

(1) Section 153 of the [M71]Public Health Act 1875 (power to require gas and water pipes to be moved) applies for the purposes of any provisions of this Act to which this section applies as it applies for the purposes of that Act; but the said section 153 does not apply in any case in which the code in Part II of the [M72]Public Utilities Street Works Act 1950 (relations between an authority carrying out road alterations and undertakers whose apparatus is affected thereby) has effect.

(2) A local authority shall pay compensation to any person who sustains damage by reason of the execution by them of works under this section.

(3) This section applies to section 294 below and to the other provisions of this Act which are specified in Schedule 22 to this Act.

Marginal Citations

M71 1875 c. 55.

M72 1950 c. 39.

289 Powers of entry of highway authority for the purpose of survey. E+W

(1) A person duly authorised in writing by a highway authority may at any reasonable time enter on any land for the purpose of surveying that or any other land in connection with the exercise by that authority, in their capacity as a highway authority, of any of their functions.

(2) The power conferred by this section to enter on land includes power to place and leave on or in the land any apparatus for use in connection with any survey of that or any other land (whether from the air or on the ground) and to remove such apparatus.

(3) The power conferred by this section to survey land includes power to search and bore for the purpose of ascertaining—

(a) the nature of the subsoil or the presence of minerals in it;

(b) whether any damage to a highway maintainable at the public expense for which the authority are the highway authority is being caused or is likely to be

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caused by mining operations or other activities taking place under the highway or in or under land adjoining, or in the vicinity of the highway.

290 Supplementary provisions as to powers of entry for the purpose of survey. E+W

(1) A person authorised under section 289 above to enter on any land shall, if so required, produce evidence of his authority before or after entering on that land.

(2) A person so authorised may take with him on to the land in question such other persons, and such vehicles and equipment, as he may consider necessary.

(3) Subject to subsection (6) below, a person shall not under section 289 above demand admission as of right to any land which is occupied unless at least 7 days' notice of the intended entry has been given to the occupier.

(4) Subject to subsection (6) below, a person shall not, in the exercise of a power conferred by section 289 above, place or leave any apparatus on or in any land or remove any apparatus therefrom unless notice of his intention to do so has been included in the notice required by subsection (3) above and a like notice has been given to the owner of the land.

(5) A person shall not execute any works authorised by section 289(3) above unless notice of his intention to do so was included in the notices required by subsections (3) and (4) above and, where the interests **[**F500of the Coal Authority, of any licensed operator (within the meaning of the Coal Industry Act 1994, or**]** of any. . . F501 or statutory undertakers are liable to be affected by the proposed works, a like notice has been given **[**F500to that Authority or, as the case may be, to the licensed operator or statutory undertakers concerned.**]**

(6) Where a highway authority intend to place and leave apparatus on or in a highway or to remove apparatus therefrom, or to execute in relation thereto such works as are authorised by section 289(3) above, no notice need be given to the occupier or owner of the land over which the highway subsists; but if the highway authority are not the highway authority for the highway, they shall give to that authority such notice as is required by subsections (4) and (5) above to be given to the owner.

(7) If F502. . .any. . . F503 statutory undertakers to whom notice is given under subsection (5) above object to the proposed works on the ground that the execution thereof would be seriously detrimental to the carrying on of their undertaking. . . F503, the works shall not be executed except with the authority of the appropriate Minister.

[F504(8) Where in the exercise of a power conferred by section 289 above works authorised by subsection (3) of that section are to be executed in a street—

(a) section 55 of the New Roads and Street Works Act 1991 (notice of starting date of works), so far as it requires notice to be given to a person having apparatus in the street which is likely to be affected by the works,

(b) section 69 of that Act (requirements to be complied with where works likely to affect another person's apparatus in the street), and

(c) section 82 of that Act (liability for damage or loss caused),

have effect in relation to the works as if they were street works within the meaning of Part III of that Act.**]**

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(9) The Post Office and the Civil Aviation Authority are to be deemed to be statutory undertakers and their respective undertakings statutory undertakings for the purposes of the foregoing provisions of this section.

(10) In this section "the appropriate Minister" means—

(a) F505

(b) in relation to statutory undertakers carrying on any railway, tramway, road transport, dock, harbour or pier undertaking, the Minister of Transport; and

(c) in all other cases, the Secretary of State.

Textual Amendments

F500 Words in s. 290(5) substituted (31.10.1994) by 1994 c. 21, s. 67, **Sch. 9 para. 26(a)** (with s. 40(7)); S.I. 1994/2553, **art.2**.

F501 Words repealed 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**

F502 Words in s. 290(7) repealed (31.10.1994) by 1994 c. 21, s. 67, Sch. 9 para. 26(b), **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art.2**.

F503 Words repealed 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**

F504 S. 290(8) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8**, Part I, para. 11; S.I. 1992/2984, art. 2(2), **Sch. 2**.

F505 S. 290(10)(*a*) repealed 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

Modifications etc. (not altering text)

C124 S. 290 modified 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. 1(10)(vi), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

C125 S. 290(9): by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 3(1), **Sch. 5 para. 45** it is provided that references to British Telecommunications in s. 290(9) cease to have effect

291 Powers of entry of highway authority for purpose of maintaining, etc. certain structures and works. E+W

(1) Where a highway authority have power or a right to maintain, alter or remove any structure or work which is situated on, over or under any land, and that land neither belongs to the highway authority nor forms part of a highway for which they are the highway authority, then, if for the purpose of exercising that power or that right it is necessary for a person to enter on that land or any other land, a person duly authorised in writing by that authority may at any reasonable time enter on that land or any other land for that purpose.

(2) Subsections (1), (2) and (3) of section 290 above have effect in relation to a person authorised under this section to enter on any land as they have effect in relation to a person authorised under section 289 above to enter on any land.

(3) In relation to a bridge to which section 118 of the [M73]Transport Act 1968 (duty of highway authorities, etc. as respects bridges over railways or inland waterways) applies, and which belongs to a highway authority, subsections (1) and (2) above have effect subject to the provisions of that section.

(4) In this section—

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"structure" includes a bridge, fence, barrier or post;

"work" includes a tunnel, ditch, gutter, watercourse, culvert, drain, soak-away or pipe.

(5) Nothing in this section affects the powers of a highway authority under section 100 above.

(6) Nothing in this section affects any agreement for the time being in force between a highway authority having power or a right to maintain, alter or remove a structure or work and any person having an interest in the land on, over or under which it is situated, being an agreement relating to the maintenance of or other dealing with the structure or work.

Marginal Citations
M73 1968 c. 73.

292 Compensation for damage resulting from, and offences connected with, exercise of powers of entry etc. under section 289 or 291. E+W

(1) Where, in the exercise of a power conferred by section 289 or 291 above to enter, or to do anything, on any land, any damage is caused to that land or to any chattels on it, any person interested in that land or those chattels may, subject to subsection (2) below, recover compensation in respect of that damage from the highway authority by whom or on whose behalf the power was exercised; and where in consequence of the exercise of such a power any person interested in the land or in any chattels on it is disturbed in his enjoyment thereof, he may recover from that authority compensation in respect of the disturbance.

(2) Where any person is entitled under **[**F506section 82 of the New Roads and Street Works Act 1991**]**, as applied by section 290(8) above, to compensation in respect of any matter, he is not entitled to recover compensation under subsection (1) above in respect of the same matter.

(3) A person who wilfully obstructs a person acting in the exercise of a power conferred by section 289 or 291 above, or who removes or otherwise interferes with any apparatus placed or left on or in any land in exercise of a power conferred by section 289 above, is guilty of an offence and liable to a fine not exceeding **[**F507level 3 on the standard scale**]**.

(4) If a person who, in compliance with the provisions of section 289 or 291 above, is admitted into a factory, workshop or workplace discloses to any person any information obtained by him therein as to any manufacturing process or trade secret, then, unless the disclosure is made in the course of performing his duty in connection with the purposes for which he was authorised to enter the land, he is guilty of an offence and liable—

(a) on summary conviction to a fine not exceeding the prescribed sum within the meaning of section 32(9) of the M74Magistrates' Courts Act 1980 (£1,000 or such other sum as may be fixed by order under section 143(1) of that Act); or

(b) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine, or both.

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Textual Amendments

F506 Words in s. 292(2) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8**, Part I, para.12; S.I. 1992/2984, art. 2(2), **Sch. 2**.

F507 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

Marginal Citations

M74 1980 c. 43.

293 Powers of entry for purposes connected with certain orders relating to footpaths and bridleways. E+W

(1) A person duly authorised in writing by the Secretary of State or other authority having power under this Act to make a public path creation order, a public path extinguishment order **[**F508, a rail crossing extinguishment order, a public path diversion order or a rail crossing diversion order**]** may enter upon any land for the purpose of surveying it in connection with the making of the order.

(2) For the purpose of surveying land, or of estimating its value, in connection with a claim for compensation payable by an authority in respect of that or any other land under section 28 above, or under that section as applied by section 121(2) above, a person who is an officer of the Valuation Office or who has been duly authorised in writing by the authority from whom the compensation is claimed may enter upon the land.

(3) A person authorised under this section to enter upon any land shall, if so required, produce evidence of his authority before entering; and a person shall not under this section demand admission as of right to any land which is occupied unless at least 7 days' notice in writing of the intended entry has been given to the occupier.

(4) A person who wilfully obstructs a person acting in the exercise of his powers under this section is guilty of an offence and liable to a fine not exceeding **[**F509level 3 on the standard scale**]**.

Textual Amendments

F508 Words in s. 293(1) substituted (31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2**, para.7; S.I. 1992/3144, **art. 3**,Sch.

F509 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

294 Entry, etc., of premises by highway authority or council for certain purposes. E+W

(1) If, in the discharge of functions conferred or imposed on an authority, being a highway authority or council, by a provision of this Act to which this section applies, it becomes necessary for an authorised officer of the authority to enter, examine or lay open any premises for the purpose of—

(a) surveying,
(b) making plans,
(c) executing, maintaining or examining works,
(d) ascertaining the course of sewers or drains,
(e) ascertaining or fixing boundaries, or

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(f) ascertaining whether any hedge, tree or shrub is dead, diseased, damaged or insecurely rooted,

and the owner or occupier of the premises refuses to permit the premises to be entered, examined or laid open for any such purpose, the authority, after giving notice to the owner or occupier of their intention to do so, may make a complaint to a magistrates' court for an order authorising the authority by any authorised officer to enter, examine and lay open the premises for any such purpose.

(2) If on the hearing of the complaint no sufficient cause is shown against the making of the order for which the complaint is made, the court may make the order, and thereupon any authorised officer of the complainant authority may, subject to subsection (3) below, at all reasonable times between the hours of 9 a.m. and 6 p.m., enter, examine or lay open the premises described in the order for such of the purposes mentioned in subsection (1) above as are specified in the order.

(3) Except in a case of emergency, no entry shall be made on any premises, and no works shall be begun therein, under subsection (2) above unless at least 7 days' notice of the intended entry, and of the object thereof, has been given to the occupier of the premises.

(4) Where, in the course of an entry on or examination or laying open of premises authorised by an order under this section, damage is caused to land or to chattels, any person interested in the land or chattels may recover compensation in respect of that damage from the authority on whose complaint the order was made; and where by reason of any such entry, examination or laying open any person is disturbed in his enjoyment of land or chattels, he may recover from that authority compensation in respect of the disturbance.

(5) This section applies to sections 101 and 154(2) above and to the other provisions of this Act specified in Schedule 22 to this Act.

295 Power of councils to dispose of certain materials. E+W

(1) The council of a county or a council who are a local authority may remove, appropriate, or use, sell or otherwise dispose of all old materials existing in any street other than a highway maintainable at the public expense at the time of the execution by the council of any works in the street, unless those materials are removed by the owners of premises in the street within 3 days from the date of service of a notice from the proper officer of the council requiring the owners of those premises to remove the materials.

(2) Where a council remove, appropriate, or use, sell or otherwise dispose of any materials in a street under subsection (1) above, they shall, on demand, pay or allow to the owner of any premises in the street such proportion of the reasonable value of the material as is attributable to those premises, and the amount thereof shall be settled, in case of dispute, by arbitration, or, if the amount claimed does not exceed **[**F510level 3 on the standard scale**]** and either party so requires, by a magistrates' court.

Textual Amendments

F510 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

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296 Power of highway authority or council to execute certain works on behalf of other person. E+W

A highway authority or a council may by agreement with any person execute at his expense any work which they have under this Act (except under Part XI) required him to execute, or any work in connection with a highway which he is otherwise under an obligation or is entitled to execute, and for that purpose they have all such rights as he would have.

297 Power of highway authority or council to require information as to ownership of land. E+W

(1) A highway authority or a council may, for the purpose of enabling them to discharge or exercise any of their functions under this Act, require the occupier of any premises and any person who, either directly or indirectly, receives rent in respect of any premises, to state in writing the nature of his own interest therein and the name and address of any other person known to him as having an interest therein, whether as freeholder, mortgagee, lessee or otherwise.

(2) Any person who, having been required in pursuance of this section to give any information, fails to give that information is guilty of an offence and liable to a fine not exceeding **[**F511level 3 on the standard scale**]**.

(3) Any person who, having been so required to give any information, knowingly makes any mis-statement in respect thereof is guilty of an offence and liable—

(a) on summary conviction to a fine not exceeding the prescribed sum within the meaning of section 32(9) of the M75Magistrates' Courts Act 1980 (£1,000 or such other sum as may be fixed by order under section 143(1) of that Act); or

(b) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine, or both.

Textual Amendments

F511 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46

Marginal Citations

M75 1980 c. 43.

298 Duty of local authorities to furnish information to county councils and the Greater London Council. E+W

(1) Every **[**F512non-metropolitan**]** district council shall furnish, and shall instruct their officers to furnish, any information in their power which may reasonably be required by any county council for the purpose of enabling that council to discharge their functions under this Act.

F513(2) . . . . . .

Textual Amendments

F512 Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 40**

F513 S. 298(2) repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

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299 Right to discharge water. E+W

(1) Where there has been constructed or laid in land, or in the exercise of rights, acquired by a highway authority in the exercise of highway land acquisition powers, any drain or other work for the purpose of draining surface water from a highway, proposed highway, maintenance compound, trunk road picnic area, lorry area or service area, the water may be discharged into or through that drain or other work and into any inland waters, whether natural or artificial, or any tidal waters.

(2) A highway authority shall pay compensation to the owner or occupier of any land who suffers damage by reason of the exercise by the authority of any right under subsection (1) above.

(3) This section is without prejudice to any enactment the purpose of which is to protect water against pollution.

300 Right of local authorities to use vehicles and appliances on footways and bridleways. E+W

(1) No statutory provision prohibiting or restricting the use of footpaths, footways or bridleways shall affect the use by a competent authority of appliances or vehicles, whether mechanically operated or propelled or not, for cleansing, maintaining or improving footpaths, footways or bridleways or their verges, or for maintaining or altering structures or other works situated therein.

For the purposes of this section—

(a) the following are competent authorities, namely, the council of any county, district or London borough, the Common Council, the Council of the Isles of Scilly, any parish or community council, or parish meeting, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple; and

(b) "statutory provision" means a provision contained in, or having effect under, any enactment.

(2) The Minister of Transport and the Secretary of State acting jointly may make regulations prescribing the conditions under which the rights conferred by this section may be exercised, and such regulations may in particular make provision as to—

(a) the construction of any appliances or vehicles used under this section,

(b) the maximum weight of any such appliances or vehicles, or the maximum weight borne by any wheel or axle,

(c) the maximum speed of any such appliances or vehicles,

(d) the hours during which the appliances or vehicles may be used, and

(e) the giving by the Minister of Transport or the Secretary of State of directions dispensing with or relaxing any requirement of the regulations as it applies to a particular authority or in any particular case.

Modifications etc. (not altering text)

C126 Functions under s. 300(2) so far as exercisable jointly by Minister of Transport and Secretary of State now exercisable by Secretary of State for Transport: S.I. 1981/238, **art. 2(1)(b)**

C127 S. 300(2): functions transferred (25.11.2002) by The Transfer of Functions (Transport, Local Government and the Regions) Order 2002 (S.I. 2002/2626), **arts. 5**, 7 (with art. 8)

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301 Restriction on exercise of powers of lighting authorities. E+W

(1) Subject to subsection (2) below, the powers of a lighting authority shall not be exercised for purposes of the lighting of any highway for which they are not the highway authority except with the consent of the highway authority (which may be given either generally or in respect of any particular highway or length of highway, and either without conditions or subject to such conditions as the highway authority think fit).

(2) Subsection (1) above does not apply to the exercise of powers for the purpose only of the operation or maintenance of a lighting system not transferred to the highway authority under Part III of the [M76]Local Government Act 1966 or under section 270 above.

(3) References in this section to the powers of a lighting authority are references to their powers under section 161 of the [M77]Public Health Act 1875 or section 3 of the [M78]Parish Councils Act 1957 or any corresponding local enactment.

Marginal Citations

M76 1966 c. 42.
M77 1875 c. 55.
M78 1957 c. 42.

VALID FROM 08/05/2000

[F514 London borough council affecting roads of another authority]

Textual Amendments

F514 S. 301A and crossheading inserted (8.5.2000 for specified purposes and otherwise 3.7.2000) by 1999 c. 29, **s.266** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(b)(c), Sch. Pts. 2, **3**

F515 301A London borough council exercising powers so as to affect another authority's roads. E+W

(1) No London borough council shall exercise any power under this Act in a way which will affect, or be likely to affect,—

(a) a GLA road, or

(b) a road in another London borough,

unless the requirements of subsections (2) and (3) below have been satisfied.

(2) The first requirement is that the council has given notice of the proposal to exercise the power in the way in question—

(a) to Transport for London; and

(b) in a case where the road concerned is in another London borough, to the council for that borough.

(3) The second requirement is that—

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(a) the proposal has been approved by Transport for London, in the case of a GLA road, or by the London borough council concerned, in the case of any other road; or

(b) the period of one month beginning with the date on which Transport for London and, where applicable, the council received notice of the proposal has expired without Transport for London or the council having objected to the proposal; or

(c) any objection made by Transport for London or the council has been withdrawn; or

(d) where an objection has been made by Transport for London or a London borough council and not withdrawn, the Greater London Authority has given its consent to the proposal after consideration of the objection.

(4) Before deciding whether to give any consent for the purposes of subsection (3)(d) above, the Greater London Authority may cause a public inquiry to be held.

(5) If Transport for London has reason to believe—

(a) that a London borough council is proposing to exercise a power under this Act in a way which will affect, or be likely to affect, a GLA road or a road in another London borough, and

(b) that notice of the proposal is required to be, but has not been, given in accordance with subsection (2) above,

Transport for London may give a direction to the council requiring it not to proceed with the proposal until the requirements of subsections (2) and (3) above have been satisfied.

(6) If a London borough council exercises any power in contravention of this section, Transport for London may take such steps as it considers appropriate to reverse or modify the effect of the exercise of that power.

(7) For the purposes of subsection (6) above, Transport for London shall have power to exercise any power of the London borough council on behalf of that council.

(8) Any reasonable expenses incurred by Transport for London in taking any steps under subsection (6) above shall be recoverable by Transport for London from the London borough council concerned as a civil debt.

(9) The Mayor of London may issue a direction dispensing with the requirements of subsections (2) and (3) above in such circumstances as may be specified in the direction.

(10) A direction under subsection (9) above may, in particular, dispense with those requirements as respects—

(a) all or any of the London borough councils;

(b) all or any of the GLA roads;

(c) all or any of the roads which are neither GLA roads nor trunk roads;

(d) the exercise of such powers as may be specified in the direction in such manner or circumstances as may be so specified.

(11) Any direction under subsection (9) above may be varied or revoked by a further direction under that subsection.

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(12) Any reference in this section to a GLA road includes a reference to a GLA side road, within the meaning of the [M79]Road Traffic Regulation Act 1984 (see sections 124A(9) and 142(1) of that Act).

(13) In this section "road" means any length of highway or of any other road to which the public has access and includes bridges over which a road passes.

(14) Subsection (13) above is without prejudice to the construction of references to GLA roads or GLA side roads.

(15) The functions of the Greater London Authority under this section shall be functions of the Authority which are exercisable by the Mayor of London acting on behalf of the Authority.

(16) For the purposes of this section—

(a) the City of London shall be treated as if it were a London borough;

(b) the Common Council shall be treated as if it were the council for a London borough; and

(c) the Inner Temple and the Middle Temple shall be treated as forming part of the City.

Textual Amendments

F515 S. 301A and cross-heading inserted (8.5.2000 for specified purposes and otherwise 3.7.2000) by 1999 c. 29, **s.266** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(b)(c), Sch. Pts. 2, **3**

Marginal Citations

M79 1984 c. 27.

VALID FROM 03/07/2000

[F516301B Royal Parks or highways in London affected by proposals relating to the other. E+W

(1) The Secretary of State shall not exercise any of his functions in relation to the management of roads or traffic in a Royal Park in such a way as to affect a highway in Greater London unless he has consulted the highway authority for the highway about the exercise of those functions in that way.

(2) A highway authority shall not exercise any of its functions in relation to a highway in Greater London in such a way as to affect a Royal Park unless it has consulted the Secretary of State about the exercise of those functions in that way.

(3) The duty imposed by subsection (1) or (2) above shall not apply if it would not be reasonably practicable for the Secretary of State or, as the case may be, the highway authority to consult the other before exercising functions; but, in such a case, as soon as practicable after so exercising functions the Secretary of State or, as the case may be, the highway authority shall inform the other that those functions have been so exercised.

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(4) In this section "Royal Park" means any park to which the [M80]Parks Regulation Act 1872 applies (see sections 1 and 3 of the [M81]Parks Regulation (Amendment) Act 1926).**]**

Textual Amendments

F516 S. 301B inserted (3.7.2000) by 1999 c. 29, **s.267** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch. Pt. 3**

Marginal Citations

M80 1872 c. 15.
M81 1926 c. 36.

Inquiries

VALID FROM 10/11/1999

302 Provisions as to inquiries. E+W

(1) Subject to subsection (2) below, the Minister and the Secretary of State may each cause such inquiries to be held as he may consider necessary or desirable for the purposes of his functions under this Act, and subsections (2) to (5) of section 250 of the [M82]Local Government Act 1972 (giving of evidence at, and defraying of costs, of inquiries) apply, subject to subsection (2) below, in relation to any inquiry which either of the said Ministers may cause to be held under this section, or in compliance with any requirement of this Act, with the substitution in the case of an inquiry held by the Secretary of State, for references to a Minister, of references to the Secretary of State.

(2) Subsection (4) of the said section 250 (costs of the Minister holding the inquiry to be defrayed by the parties) does not apply in relation to—

(a) an inquiry caused to be held by the Minister for the purposes of his functions under section 93 above, or

(b) an inquiry held in compliance with paragraph 3 of Schedule 10 to this Act, or with paragraph 9 of Schedule 11 to this Act,

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.

Modifications etc. (not altering text)

C128 S. 302 applied (1.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 25(1)(2)**; S.I. 1991/2288, art. 3, **Sch.**

Marginal Citations

M82 1972 c. 70.

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Obstruction of persons executing Act

303 Penalty for obstructing execution of Act. E+W

A person who wilfully obstructs any person acting in the execution of this Act or any byelaw or order made under it is, in any case for which no other provision is made by this Act, guilty of an offence and liable to a fine not exceeding **[**F517level 1 on the standard scale**]**; and if the offence is continued after conviction, he is guilty of a further offence and liable to a fine not exceeding £5 for each day on which the offence is so continued.

Textual Amendments

F517 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

Modifications etc. (not altering text)

C129 S. 303 applied (1.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 25(1)**(with ss. 25(2), 167(2)); S.I. 1991/2288, art. 3, **Sch.**

304 Power to require occupier to permit works to be executed by owner. E+W

If on a complaint made by the owner of any premises, it appears to a magistrates' court that the occupier of the premises prevents the owner from executing any work which he is by this Act required to execute, the court may order the occupier to permit the execution of the work.

Recovery of expenses

305 Recovery of expenses by councils and highway authorities. E+W

(1) Where a council or a highway authority have incurred expenses for the repayment of which the owner of the premises in respect of which the expenses were incurred is liable—

(a) under any of the provisions of this Act to which this section applies, or

(b) by agreement with the council or highway authority,

those expenses, together with interest at such reasonable rate as the council may determine from the date of service of a demand for the expenses, may be recovered by the council or the highway authority from the owner for the time being of the premises; and as from the date of the completion of the works the expenses and interest accrued due thereon are, until recovered, a charge on the premises and on all estates and interests therein.

(2) A council or highway authority may by order declare any expenses and interest recoverable by them under this section to be payable by annual instalments within a period not exceeding 30 years, together with interest on them at such reasonable rate as the authority may determine; and any such instalment and interest, or any part thereof, may be recovered from the owner or occupier for the time being of the premises in respect of which the expenses were incurred.

(3) A person aggrieved by an order of a council or highway authority under subsection (2) above, or by the refusal of a council or highway authority to make such an order, may,

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except in a case where an appeal lies to the Minister under section 233 above, appeal to a magistrates' court.

(4) Schedule 13 to this Act applies in relation to any sum paid by an occupier of premises under the foregoing provisions of this section.

(5) Any sum which a council or highway authority are entitled to recover under this section or any other provision of this Act, and with respect to the mode of recovery of which provision is not made by any other section of this Act, may be recovered either summarily as a civil debt or in any court of competent jurisdiction.

(6) Any charge acquired by the Minister by virtue of subsection (1) above is (without prejudice to the operation of section 1 of the [M83]Local Land Charges Act 1975 as regards any charge acquired by a council by virtue of that subsection) a local land charge.

(7) This section applies to the following provisions of this Act, namely, sections 152, 153, 165, 167, 177, 180, 184 and 230, except 230(7).

Marginal Citations
M83 1975 c. 76.

306 Time-limit for summary proceedings for recovery of expenses. E+W

The time within which summary proceedings may be taken for the recovery of any sum which a highway authority or council are entitled to recover under this Act shall be reckoned—

(a) in all cases except the one mentioned in paragraph (b) below, from the date of the service of a demand for the sum; and

(b) in a case in which an appeal has been made to the Minister under section 233 above, from the date on which the decision on the appeal is notified to the appellant or the appeal is withdrawn, as the case may be.

Determination of disputes as to compensation

307 Disputes as to compensation which are to be determined by Lands Tribunal and related provisions. E+W

(1) Any dispute arising on a claim for compensation under any provision of this Act to which this section applies shall be determined by the Lands Tribunal.

The provisions of this Act to which this section applies are sections 21, 22, 28, 73, 74, 109, 110, 121(2), 126, [F518]. . . and 292.

(2) For the purposes of any reference to the Lands Tribunal under this section, section 4 of the [M84]Land Compensation Act 1961 (costs) has effect with the substitution, for references to the acquiring authority, of references to the authority from whom the compensation in question is claimed.

(3) Rules 2 to 4 of the Rules in section 5 of the said Act of 1961 (rules for valuation on a compulsory acquisition) apply to the calculation of compensation under any provision

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of this Act to which this section applies, in so far as it is calculated by reference to the depreciation of the value of an interest in land.

(4) In determining the amount of compenstion payable under section 109, 110 or 126 above the Lands Tribunal shall have regard to any new means of access to the premises of the claimant or, as the case may be, any new right of access to a watercourse from the premises of the claimant, provided by the highway authority from whom the compensation is claimed.

(5) In determining the amount of compensation payable under section 73 above in respect of injurious affection, the Lands Tribunal—

(a) shall take into account any benefit accruing to the claimant by reason of the improvement of the street in relation to which an improvement line has been prescribed under that section, and

(b) may take into account and embody in their award any undertaking with regard to the exercise of the powers of a highway authority under that section in relation to the property affected which the authority have offered to give to the claimant;

and the terms of any undertaking so embodied in the award are binding on and enforceable against the authority.

(6) In determining the amount of compensation payable under section 74 above, the Lands Tribunal shall take into account any benefit accruing to the claimant by reason of any improvement made or about to be made to the highway in relation to which a building line has been prescribed under that section.

(7) In determining the amount of compensation payable under section 193 or section 200(2) above, the Lands Tribunal shall take into account any benefit accruing to the claimant by reason of the widening of a street under the said section 193 or the said section 200(2), as the case may be.

Textual Amendments

F518 Words in s. 307(1) repealed (25.09.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 84(6), **Sch. 19 Pt.V** (with ss. 81(2), 84(5)); S.I. 1991/2067,art. 3.

Modifications etc. (not altering text)

C130 S. 307 modified (28.4.2003) by The Network Rail (West Coast Main Line) Order 2003 (S.I. 2003/1075), **art. 8(11)**

C131 S. 307(1)-(3) extended by Cycle Tracks Act 1984 (c. 38, SIF 59), **s. 5(3)**

Marginal Citations

M84 1961 c. 33.

308 Disputes as to compensation which are to be determined by arbitration or county court. E+W

(1) Any dispute arising on a claim for compensation under this Act, being a dispute for the determination of which provision is not made by or under any section of this Act other than this section, shall be determined, if the parties so agree, by arbitration or, in default of agreement, by a county court.

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(2) A county court shall have jurisdiction to deal with any dispute which by virtue of subsection (1) above is to be determined by such a court notwithstanding that, by reason of the amount of the claim or otherwise, the case would not, but for this provision, be within the jurisdiction of a county court.

309 Compensation in respect of depreciation in value of interest in land subject to mortgage. E+W

Where an interest in land is subject to a mortgage—

(a) any compensation payable under this Act in respect of the depreciation in value of that interest shall be calculated as if the interest were not subject to the mortgage;

(b) a claim for the payment of any such compensation may be made by any mortgagee of the interest under a mortgage made before the happening of the event giving rise to the compensation, but without prejudice to the making of a claim by any other person;

(c) a mortgagee is not entitled to claim any such compensation in respect of his interest as such; and

(d) any such compensation payable in respect of the interest subject to the mortgage shall be paid to the mortgagee or, where there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

Prosecutions, appeals, etc.

310 Summary proceedings for offences. E+W

All offences under this Act or under byelaws made under it are, except as provided by sections 292(4) and 297(3) above, punishable on summary conviction.

311 Continuing offences. E+W

(1) Where by virtue of any provision of this Act, or of byelaws made under it, a person convicted of an offence is, if the offence in respect of which he was convicted is continued after conviction, guilty of a further offence and liable to a fine for each day on which the offence is so continued, the court before whom the person is convicted of the original offence may fix a reasonable period from the date of conviction for compliance by the defendant with any directions given by the court.

(2) Where a court fixes such a period the defendant is not liable to a fine in respect of the further offence for any day before the expiration of that period.

Modifications etc. (not altering text)
C132 S. 311 applied (22.7.2008) by Transport for London Act 2008 (c. i), ss. 1, **35(4)** (with ss. 35(8), 48)

312 Restriction on institution of proceedings. E+W

(1) **[**[F519]Subject to subsection (3) below, proceedings**]** for an offence under any provision of this Act to which this section applies or under byelaws made under any such

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provision shall not, without the written consent of the Attorney General, be taken by any person other than the person aggrieved, or a highway authority or council having an interest in the enforcement of the provision or byelaws in question.

(2) This section applies to sections 167 and 177 above and to the provisions of this Act specified in Schedule 22 to this Act.

[F520(3) A constable may take proceedings—

(a) for an offence under paragraph (b) of section 171(6) above; or

(b) for an offence under paragraph (c) of that subsection consisting of failure to perform a duty imposed by section 171(5)(a) above; or

(c) for an offence under section 174 above,

without the consent of the Attorney General.**]**

Textual Amendments

F519 Words substituted by Local Government (Miscellaneous Provisions) Act 1982 (c. 30, SIF 81:1), **s. 21(2)**(*a*)

F520 S. 312(3) inserted by Local Government (Miscellaneous Provisions) Act 1982 (c. 30, SIF 81:1), **s. 21(2)**(*b*)

Modifications etc. (not altering text)

C133 S. 312 applied (1.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 25(1)(2)**; S.I. 1991/2288, art. 3, **Sch.**

F521313 . . . . . E+W

Textual Amendments

F521 S. 313 repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. I** Group4

314 Offences by body corporate. E+W

(1) Where an offence under any provision of this Act to which this section applies is committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) This section applies to sections 139, 140, 167, 168, **[**F522and 177**]** above.

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Textual Amendments

F522 Words in s. 314(3) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8**, Part I, para.13; S.I. 1992/2984, art. 2(2), **Sch. 2**.

PROSPECTIVE

[F523 314A Fixed penalties for certain offences under Part 9 E+W

(1) A fixed penalty offence is any offence under Part 9 which—

(a) is listed in the first column in Schedule 22A (and described in general terms in the second column), and

(b) is prescribed in regulations made by the Secretary of State.

(2) Offences listed in that Schedule which are committed by virtue of section 314 (offences committed by bodies corporate, etc.) are not fixed penalty offences.

(3) Schedule 22B (which makes provision about fixed penalties for fixed penalty offences) has effect.

(4) Regulations under subsection (1)(b) may—

(a) make provision for Greater London different from that made for the rest of England;

(b) make consequential provision (including provision disapplying sections 8 to 11 of, and Schedule 2 to, the London Local Authorities and Transport for London Act 2003 in relation to any offence prescribed in such regulations);

(c) make transitional provision.**]**

Textual Amendments

F523 S. 314A inserted (prosp.) by Traffic Management Act 2004 (c. 18), **ss. 64(1)**, 99 (with s. 38)

315 Notice to be given of right of appeal. E+W

Where an appeal lies under this Act to the Crown Court or a magistrates' court against a requirement, order, refusal or other decision of a highway authority or a council, the notice given by the authority or council to the person concerned of the making of the requirement or order or of the refusal or other decision against which such an appeal lies shall state the right of appeal to the Crown Court or a magistrates' court, as the case may be, and the time within which such an appeal may be brought.

316 Appeals and applications to magistrates' courts. E+W

(1) Where any provision of this Act provides—

(a) for an appeal to a magistrates' court against a requirement, order, refusal or other decision of a highway authority or a council, or

(b) for any other matter to be determined by, or an application in respect of any matter to be made to, a magistrates' court,

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the procedure shall be by way of complaint for an order.

(2) The time within which an appeal such as is mentioned in subsection (1)(a) above may be brought is 21 days from the date on which notice of the decision of the highway authority or council is served on the person wishing to appeal, and for the purpose of this subsection the making of the complaint is to be deemed to be the bringing of the appeal.

317 Appeals to the Crown Court from decisions of magistrates' courts. E+W

(1) Where a person aggrieved by an order, determination or other decision of a magistrates' court under this Act is not by any other enactment authorised to appeal to the Crown Court he may appeal to that court.

(2) The applicant for an order under section 116 above or any person who was entitled under subsection (7) of that section to be, and was, or claimed to be, heard on the application may appeal to the Crown Court against the decision made by the magistrates' court on the application.

318 Effect of decision of court upon an appeal. E+W

Where on an appeal under this Act a court varies or reverses a decision of a highway authority or of a council it shall be the duty of the authority or the council to give effect to the order of the court and, in particular, to grant or issue any necessary consent, certificate or other document, and to make any necessary entry in any register.

319 Judges and justices not to be disqualified by liability to rates. E+W

The judge of any court or a justice of the peace is not disqualified for acting in cases arising under this Act by reason only of his being as one of several ratepayers, or as one of any other class of persons, liable in common with the others to contribute to, or to be benefited by, any rate or fund out of which any expenses of a council are to be defrayed.

Modifications etc. (not altering text)
C134 S. 319 applied (1.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 25**(1(2)); S.I. 1991/2288, art. 3, **Sch.**

Notices, etc.

320 Form of notices etc. E+W

All notices, consents, approvals, orders, demands, licences, certificates and other documents authorised or required by or under this Act to be given, made or issued by, or on behalf of, a highway authority or a council, and all notices, consents, requests and applications authorised or required by or under this Act to be given or made to a highway authority or a council, shall be in writing.

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Modifications etc. (not altering text)
C135 S. 320 applied (1.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 25(1)(2)**; S.I. 1991/2288, art. 3, **Sch.**

321 Authentication of documents etc. E+W

(1) Any notice, consent, approval, order, demand, licence, certificate or other document which a council (whether as a highway authority or in any other capacity) are authorised or required by or under this Act to give, make or issue may be signed on behalf of the council—

(a) by the proper officer of the council, or

(b) by any officer of the council authorised by them in writing to sign documents of a particular kind or, as the case may be, the particular document.

(2) Any document purporting to bear the signature of the proper officer of the council, or of an officer expressed to be duly authorised by the council to sign such a document or the particular document, shall for the purposes of this Act, and of any byelaws, regulations and orders made under it, be deemed, until the contrary is proved, to have been duly given, made or issued by the council.

In this subsection "signature" includes a facsimile of a signature by whatever process reproduced.

Modifications etc. (not altering text)
C136 S. 321 applied (1.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 25(1)(2)**; S.I. 1991/2288, art. 3, **Sch.**

322 Service of notices etc. E+W

(1) Any notice, consent, approval, order, demand, licence, certificate or other document required or authorised by or under this Act to be given or served on a corporation is duly given or served if it is given to or served on the secretary or clerk of the corporation.

(2) Subject to the provisions of this section, any notice, consent, approval, order, demand, licence, certificate or other document required or authorised by or under this Act to be given or served on any person may be given or served 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 any such document is sent by post otherwise than in a registered letter, or by the recorded delivery service, it shall be deemed not to have been given or served if it is proved that it was not received by the person to whom it was addressed.

(3) For the purposes of this section, and of section 7 of the [M85]Interpretation Act 1978 in its application to this section, the proper address of any person to or on whom any such document is to be given or served—

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(a) where the person has furnished an address for service in accordance with arrangements agreed to in that behalf, is the address furnished;

(b) where the person has not furnished an address as provided by paragraph (a) above, is

(i) in the case of the secretary or clerk of a corporation, that of the registered or principal office of the corporation, and

(ii) in any other case, the person's usual or last known place of abode.

(4) If the name or the address of any owner, lessee or occupier of premises to or on whom any such document is to be given or served cannot after reasonable inquiry be ascertained by the person seeking to give or serve the document, the document may be given or served by—

(a) addressing it to the person to whom it is to be given or on whom it is to be served by the description of "owner", "lessee", or "occupier" of the premises (describing them) to which the document relates, and

(b) 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, affixing it or a copy of it to some conspicuous part of the premises.

(5) The foregoing provisions of this section do not apply to the service of—

(a) a notice required or authorised to be served under **[**F524Part II of, or Schedule 1 to, the Acquisition of Land Act 1981**]** as applied by this Act, or

(b) a summons.

Textual Amendments

F524 Words substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 4 para. 31(14)**

Modifications etc. (not altering text)

C137 S. 322 applied (1.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 25(1)(2)**; S.I. 1991/2288, art. 3, **Sch.**

Marginal Citations

M85 1978 c. 30.

323 Reckoning of periods. E+W

(1) For the purposes of this Act—

(a) in reckoning any period which is therein expressed to be a period from or before a given date, that date is to be excluded; and

(b) in reckoning any period therein mentioned of 8 days or less which apart from this provision would include a Sunday, Christmas Day, Good Friday or a bank holiday, that day is to be excluded.

(2) In this section "bank holiday" means a day which is a bank holiday under the M86Banking and Financial Dealings Act 1971.

Modifications etc. (not altering text)

C138 S. 323 applied (1.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 25(1)(2)**; S.I. 1991/2288, art. 3, **Sch.**

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Marginal Citations
M86 1971 c. 80.

Regulations, schemes, orders, etc.

324 Regulations for procedure in connection with, and centre line of roads authorised etc. by, certain schemes and orders. E+W

(1) Subject to Schedule 1 to this Act, the Minister of Transport may make regulations for prescribing the procedure to be followed in connection with the making and confirmation of schemes under section 16 above and orders under sections 17 and 18 above.

(2) The Minister shall make regulations for securing that the centre line of—

(a) a special road authorised by a scheme under section 16 above,

(b) a proposed highway directed by an order under section 10 above to become a trunk road, or

(c) a new highway to be constructed in pursuance of an order under section 14 or 18 above,

is indicated on a map on such scale as may be prescribed by the regulations and for securing that any limits of deviation which apply in relation to the centre line of that road or highway or any part thereof by virtue of subsection (3) below are indicated or stated in such manner as may be prescribed by the regulations.

(3) Where any such scheme or order as is referred to in subsection (2) above so provides in relation to a road or highway to which it relates or any part thereof, being such a road or highway as is referred to in that subsection, the centre line of that road or highway or that part thereof, as the case may be, may deviate from the centre line as indicated on the map referred to in that subsection within such limits of deviation, not exceeding 55 yards on either side of the centre of that line, as may be specified in the scheme or order.

325 Provisions as to regulations, schemes and orders. E+W

(1) The following powers conferred by this Act on a Minister of the Crown are exercisable by statutory instrument:—

(a) all powers to make regulations,

(b) the power to make or confirm schemes under section 16 above, and the power to confirm schemes under section 106(3) above,

F525(c) . . . . . .

(d) all powers to make or confirm orders, except those conferred by any of the following provisions of this Act, namely, sections 14, 18, **[**F526**]**20,**]** 26, 27, 108(1), 118, 119, 120 and 124 and paragraph 2 of Schedule 21.

(2) A statutory instrument containing—

(a) regulations made under this Act, other than a statutory instrument containing only regulations made under section **[**F527**]**120(3A) or**]** 257(4) above **[**F528**]**or such regulations as are mentioned in subsection (2A) below**]**, or

(b) an order made under section **[**F529**]**17 above or**]** 344(4) below,

is subject to annulment in pursuance of a resolution of either House of Parliament.

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[F530(2A) A statutory instrument containing—

(a) the first regulations for the purposes of section 140A,

(b) the first regulations for the purposes of section 171A as it applies in relation to erecting or retaining a relevant structure within the meaning of section 169(1) above, or

(c) the first regulations for the purposes of section 171A as it applies in relation to depositing building materials, rubbish or other things, or making a temporary excavation, as mentioned in section 171(1) above, shall not be made unless a draft of them has been laid before and approved by a resolution of each House of Parliament.**]**

F531(3) . . . . . .

Textual Amendments

F525 S. 325(1)(c) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 84(6), **Sch. 19 Pt. V** (with ss. 81(2), 84(5)); S.I. 1991/2067, **art. 3**

F526 Word in s. 325(1)(d) repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(2), **Sch. 9**; S.I. 1992/2984, art. 2(2), **Sch.2**

F527 Words in s. 325(2)(a) inserted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2**, para. 8; S.I. 1992/3144, arts. 2, 3, **Sch.**

F528 Words in s. 325(2)(a) inserted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8**, Part I, para.14; S.I. 1992/2984, art. 2(2), **Sch.2**

F529 Words in s. 325(2)(b) inserted (01.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 20(2)(b)**, (with ss. 25(2), 167(2)); S.I. 1991/2288, art. 3, **Sch.**

F530 S. 325(2A) inserted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8**, Part I, para.14; S.I. 1992/2984, art. 2(2), **Sch.2**

F531 S. 325(3) omitted (01.11.1991) by virtue of New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 20(2)(a)**, (with ss. 25(2), 167(1)); S.I. 1991/2288, art. 3, **Sch.**

326 Revocation and variation of schemes and orders. E+W

(1) Section 14(b) of the M87Interpretation Act 1978 (implied power to revoke or amend orders made by statutory instrument) does not apply to an order made under section 74, 93 F532. . . of this Act.

(2) An order made or confirmed by the Minister, or the Secretary of State, under section 14, 18, F533. . . 27, 108(1), 120, or 124 of, or paragraph 2 of Schedule 21 to, this Act (which confer power to make orders otherwise than by statutory instrument) may be revoked or varied by a subsequent order made or confirmed in the like manner and subject to the like provisions.

(3) F534

(5) Without prejudice to subsection (2) above, an order to which this subsection applies confirmed by the Minister, or the Secretary of State, or confirmed as an unopposed order by the authority making it, may be revoked or varied by a subsequent order made or confirmed in the like manner and subject to the like provisions, except that an order confirmed in either way may be revoked or varied by an order confirmed in the other way.

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This subsection applies to a public path creation order, a public path extinguishment order, a public path diversion order and an order under section 124 above.

(6) Subject to the following provisions of this section, a scheme revoking or varying a scheme made or confirmed under section 16 or section 106(3) above, and an order varying or revoking an order made or confirmed under section 14, 17, 18, 108(1) or 124 above may contain such consequential provisions as appear to the Minister to be expedient.

(7) Where a scheme under section 16 above is revoked by a subsequent scheme, any part of the special road authorised to be provided by the scheme which has been constructed before the date on which the revoking scheme comes into operation and any highway appropriated by or transferred to the special road authority before that date shall cease on that date to be a special road within the meaning of this Act, but shall, where the special road is a trunk road, continue to be a trunk road.

(8) Where a scheme under section 16 above is varied by a subsequent scheme, subsection (7) above applies in relation to any part of the special road which ceases to form part of a route of that road in consequence of the variation.

(9) Subject to the foregoing provisions of this section, the revocation or variation of a scheme under section 16 or section 106(3) above does not affect the validity of anything done in pursuance of the scheme before the date on which the revoking or varying scheme comes into force, or the validity of any order made under section 18 above before that date in connection with the special road to be provided under the scheme.

Textual Amendments

F532 Words in s. 326(1) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34. SIF 123:1), s. 84(6), Sch. 19 Pt. V (with ss. 81(2), 84(5)); S.I. 1991/2067, **art. 3**

F533 Word in s. 326(2) repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(2), **Sch.9**; S.I. 1992/2984, art. 2(2), **Sch. 2**

F534 S. 326(3)(4) repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

Marginal Citations

M87 1978 c. 30.

Crown application

327 Application of Act to Crown land. E+W

(1) The provisions of this section apply in relation to any land belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department.

(2) The appropriate authority in relation to any land and a highway authority may agree that any provisions of this Act specified in the agreement shall apply to that land and, while the agreement is in force, those provisions shall apply to that land accordingly, subject however to the terms of the agreement.

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(3) Any such agreement as is mentioned in subsection (2) above may contain such consequential and incidental provisions, including provisions of a financial character, as appear to the appropriate authority to be necessary or equitable, but provisions of a financial character shall not be included in an agreement made by a government department without approval of the Treasury.

(4) In this section "the appropriate authority" means—

(a) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or other government department having the management of the land in question;

(b) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of that Duchy;

(c) in the case of land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;

(d) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

Modifications etc. (not altering text)

C139 S. 327 applied (1.11.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 167(1)**(with s. 25(2)); S.I. 1991/2288, art. 3, **Sch.**

Interpretation

328 Meaning of "highway". E+W

(1) In this Act, except where the context otherwise requires, "highway" means the whole or a part of a highway other than a ferry or waterway.

(2) Where a highway passes over a bridge or through a tunnel, that bridge or tunnel is to be taken for the purposes of this Act to be a part of the highway.

(3) In this Act, "highway maintainable at the public expense" and any other expression defined by reference to a highway is to be construed in accordance with the foregoing provisions of this section.

329 Further provision as to interpretation. E+W

(1) In this Act, except where the context otherwise requires—

. . . . . F535

"Act of 1965" means the M88Compulsory Purchase Act 1965;

"adjoining" includes abutting on, and "adjoins" is to be construed accordingly;

"advance payments code" has the meaning provided by section 203(1) above;

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens

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and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" is to be construed accordingly;

"apparatus" includes any structure constructed for the lodging therein of apparatus;

"approach", in relation to a bridge or tunnel, means the highway giving access thereto, that is to say, the surface of that highway together with any embankment, retaining wall or other work or substance supporting or protecting the surface;

"bridge" does not include a culvert, but, save as aforesaid, means a bridge or viaduct which is part of a highway, and includes the abutments and any other part of a bridge but not the highway carried thereby;

"bridleway" means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway;

"by-pass" has the meaning provided by section 82(6) above;

"canal undertakers" means persons authorised by any enactment to carry on a canal undertaking;

"carriageway" means a way constituting or comprised in a highway, being a way (other than a cycle track) over which the public have a right of way for the passage of vehicles;

"cattle-grid" has the meaning provided by section 82(6) above;

"City" means the City of London;

"classified road" means a highway or proposed highway which is a classified road in accordance with section 12 above;

"Common Council" means the Common Council of the City of London;

"contravention" in relation to a condition, restriction or requirement, includes failure to comply with that condition, restriction or requirement, and "contravene" is to be construed accordingly;

"council" means a county council. . . F536 or a local authority;

"cycle track" means a way constituting or comprised in a highway, being a way over which the public have the following, but no other, rights of way, that is to say, a right of way on pedal cycles **[**F537(other than pedal cycles which are motor vehicles within the meaning of **[**F538the Road Traffic Act 1988**]]** with or without a right of way on foot;

"dock undertakers" means persons authorised by any enactment to carry on a dock undertaking;

"drainage authority" means **[**F539the National Rivers Authority**]** or an internal drainage board;

[F540"driver information system" has the same meaning as in Part II of the Road Traffic (Driver Licensing and Information Systems) Act 1989, and references to an "operator" of a driver information system are references to an operator licensed under that Part of that Act;**]**

. . . . . F541

"enactment" includes an enactment in a local or private Act of Parliament and a provision of an order, scheme, regulations or other instrument made under or confirmed by a public general, local or private Act of Parliament;

[F542"field-edge path" means a footpath or bridleway that follows the sides or headlands of a field or enclosure;**]**

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"financial year" means a year ending on 31st March;

"footpath" means a highway over which the public have a right of way on foot only, not being a footway;

"footway" means a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only;

"functions" includes powers and duties;

. . . . . F543

"harbour undertakers" means persons authorised by any enactment to carry on a harbour undertaking;

"highway land acquisition powers" has the meaning provided by section 250(1) above;

"highway maintainable at the public expense" means a highway which by virtue of section 36 above or of any other enactment (whether contained in this Act or not) is a highway which for the purposes of this Act is a highway maintainable at the public expense;

"horse" includes pony, ass and mule, and "horseback" is to be construed accordingly;

"hours of darkness" means the time between half an hour after sunset and half an hour before sunrise;

"improvement" means the doing of any act under powers conferred by Part V of this Act and includes the erection, maintenance, alteration and removal of traffic signs, and the freeing of a highway or road-ferry from tolls;

"inland navigation undertakers" means persons authorised by any enactment to carry on an inland navigation undertaking;

"land" includes land covered by water and any interest or right in, over or under land;

"lease" includes an underlease and an agreement for a lease or underlease, but does not include an option to take a lease or mortgage, and "lessee" is to be construed accordingly;

"lighting authority" means a council or other body authorised to provide lighting under section 161 of the M89Public Health Act 1875 or under section 3 of the M90Parish Councils Act 1957 or any corresponding local enactment;

"local authority" means the council of a district or London borough or the Common Council **[**F544but, in relation to Wales, means a Welsh council**]**;

"local highway authority" means a highway authority other than the Minister;

"local planning authority" has the same meaning as in **[**F545the Town and Country Planning Act 1990**]**;

"lorry area" means an area provided under section 115 above;

"made-up carriageway" means a carriageway, or a part thereof, which has been metalled or in any other way provided with a surface suitable for the passage of vehicles;

"maintenance" includes repair, and "maintain" and "maintainable" are to be construed accordingly;

"maintenance compound" means an area of land (with or without buildings) used or to be used in connection with the maintenance of highways, or a particular highway;

. . . . . F546

"the Minister", subject to subsection (5) below, means as respects England, the Minister of Transport and as respects Wales, the Secretary of State; and in

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section 258 of, and paragraphs 7, 8(1) and (3), 14, 15(1) and (3), 18(2), 19 and 21 of Schedule 1 to, this Act, references to the Minister and the Secretary of State acting jointly are to be construed, as respects Wales, as references to the Secretary of State acting alone;

"navigation authority" means persons authorised by any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock;

"owner", in relation to any premises, means a person, other than a mortgagee not in possession, who, whether in his own right or as trustee or agent for any other person, is entitled to receive the rack rent of the premises or, where the premises are not let at a rack rent, would be so entitled if the premises were so let;

"petty sessions area" has the same meaning as in the [M91]Magistrates' Courts Act 1980;

"pier undertakers" means persons authorised by any enactment to carry on a pier undertaking;

"premises" includes land and buildings;

"private street works code" has the meaning provided by section 203(1) above;

"proposed highway" means land on which, in accordance with plans made by a highway authority, that authority are for the time being constructing or intending to construct a highway shown in the plans;

"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 path creation agreement" means an agreement under section 25 above;

"public path creation order" means an order under section 26 above;

"public path diversion order" means an order under section 119 above;

"public path extinguishment order" means an order under section 118 above;

"public utility undertakers" means persons authorised by any enactment to carry on any of the following undertakings, that is to say, an undertaking for the supply of. . . [F547], gas,. . . [F548] or hydraulic power;

"rack rent", in relation to any premises, means a rent which is not less than two-thirds of the rent at which the premises might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes [F549]. . ., and deducting therefrom the probable average annual cost of the repairs, insurance and other expenses (if any) necessary to maintain the same in a state to command such rent;

[[F550]"rail crossing diversion order" means an order under section 119A above;

"rail crossing extinguishment order" means an order under section 118A above;.**]**

"railway" includes a light railway;

"railway undertakers" means persons authorised by any enactment to carry on a railway undertaking;

"reconstruction", in relation to a bridge, includes the construction of a new bridge and approaches thereto in substitution for the existing bridge and the approaches thereto;

"road-ferry" means a ferry connecting the termination of a highway which is, or is to become, a highway maintainable at the public expense with the termination of another highway which is, or is to become, such a highway;

[[F551]"road hump" has the meaning provided by section 90F(1);**]**

"service area" means an area of land adjoining, or in the vicinity of, a special road, being an area in which there are, or are to be, provided service stations or

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other buildings or facilities to be used in connection with the use of the special road;

. . . . . F552

"special enactment" means any enactment other than a public general enactment;

"special road" means a highway, or a proposed highway, which is a special road in accordance with section 16 above;

"special road authority" has the meaning provided by section 16(4) above;

"statutory undertakers" means persons authorised by any enactment to carry on any of the following undertakings:—

(a) a railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or

(b) an undertaking for the supply of. . . F553,. . . F554,. . . F555 or hydraulic power,

and "statutory undertaking" is to be construed accordingly;

[F556 "street" has the same meaning as in Part III of the New Roads and Street Works Act 1991;**]**

[F557"street works licence" means a licence under section 50 of the New Roads and Street Works Act 1991, and "licensee" in relation to such a licence, has the meaning given by subsection (3) of that section;**]**

"swing bridge" includes any opening bridge operated by mechanical means;

"traffic" includes pedestrians and animals;

[F558"traffic calming works", in relation to a highway, means works affecting the movement of vehicular and other traffic for the purpose of promoting safety or preserving or improving the environment through which the highway runs**]**

"traffic sign" has the same meaning as in **[**F559section 64 of the Road Traffic Regulation Act 1984**]**;

"tramway undertakers" means persons authorised by any enactment to carry on a tramway undertaking;

"transport undertakers" means persons authorised by any enactment to carry on any of the following undertakings, that is to say, a railway, canal, inland navigation, dock, harbour or pier undertaking, and "transport undertaking" is to be construed accordingly;

"trunk road" means a highway, or a proposed highway, which is a trunk road by virtue of section 10(1) or section 19 above or by virtue of an order or direction under section 10 above or under any other enactment;

"trunk road picnic area" has the meaning provided by section 112(1) above;

[F560"water undertakers" means the National Rivers Authority or a water undertaker.**]**

[F561"Welsh council" means the council of a Welsh county or county borough.**]**

(2) A highway at the side of a river, canal or other inland navigation is not excluded from the definition in subsection (1) above of either "bridleway" or "footpath", by reason only that the public have a right to use the highway for purposes of navigation, if the highway would fall within that definition if the public had no such right thereover.

[F562(2A) In this Act—

(a) any reference to a county shall be construed in relation to Wales as including a reference to a county borough;

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(b) any reference to a county council shall be construed in relation to Wales as including a reference to a county borough council; and

(c) section 17(4) and (5) of the Local Government (Wales) Act 1994 (references to counties and districts to be construed generally in relation to Wales as references to counties and county boroughs) shall not apply.**]**

(3) In a case where two or more parishes are grouped under a common parish council, references in this Act to a parish are to be construed as references to those parishes.

[F563(3A) In a case where two or more communities are grouped under a common community council, references in this Act to a community are to be construed as references to those communities.**]**

(4) Any reference in this Act to property of railway undertakers, canal undertakers, inland navigation undertakers, dock undertakers, harbour undertakers. . . F564 pier undertakers is, where the undertakers are a body to which this subsection applies, to be taken as a reference to property of that body held or used by them wholly or mainly for the purposes of so much of their undertaking as consists of the carrying on of a railway undertaking or, as the case may be, of a canal undertaking, an inland navigation undertaking, a dock undertaking, a harbour undertaking or a pier undertaking.

This subsection applies to the following bodies, namely, the British Railways Board, the British Transport Docks Board, the British Waterways Board, **[**F565London Regional Transport**]**,. . . F566. . . F567 any wholly-owned subsidiary (within the meaning of the M92Transport Act 1968) or joint subsidiary (within the meaning of section 51(5) of that Act) of any of those bodies **[**F568other than London Regional Transport, or any subsidiary (whether wholly-owned or not) of London Regional Transport (within the meaning of the London Regional Transport Act 1984)**]**.

[F569(4A) Any reference in this Act to apparatus belonging to, or used or maintained by the operator of a telecommunications code system shall have effect as a reference to telecommunication apparatus kept installed for the purposes of that system.**]**

(5) In relation to that part of the road constructed by the Minister of Transport along the line described in Schedule 1 to the M93North of Almondsbury—South of Haysgate Trunk Road Order 1947 and referred to in that Order as "the new road" which lies to the east of the most easterly point before reaching the River Wye at which eastbound traffic of Classes I and II (as specified in Schedule 4 to this Act) can leave that road by another special road, the functions of the Minister under this Act shall be exercisable **[**F570by the Secretary of State for Transport**]**.

Textual Amendments

F535 Definition repealed by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 6 Pt. I**

F536 Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

F537 Words inserted by Cycle Tracks Act 1984 (c. 38, SIF 59), **s. 1(1)(2)**

F538 Words substituted by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 4, **Sch. 3 para. 21(2)**

F539 Words substituted 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. 62(12)(a), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

F540 Definition inserted by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), s. 13(1), **Sch. 4 para 3(13)**

F541 Definition repealed by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(3)(4), Sch. 17 para. 35(1), **Sch. 18**

F542 Definition inserted by Rights of Way Act 1990 (c. 24, SIF 59), **s. 2**

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F543 Definition repealed by Gas Act 1986 (c. 44, SIF 44:2), **s. 67(4) Sch. 9 Pt. I**
F544 Words in s. 329(1) added (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 27(2)(a)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.
F545 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(17)**
F546 Definition repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**
F547 Word repealed by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(3)(4), Sch. 17 para. 35(1), **Sch. 18**
F548 Word repealed 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
F549 Words in s. 329(1) repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. XIV** Group 3
F550 Definitions in s. 329(1) of "rail crossing diversion order" and "rail crossing extinguishment order" inserted (22.12.1992 for certain purposes and otherwise 31.1.1993) by Transport and Works Act 1992 (c. 42), s. 47, **Sch. 2 para. 9**; S.I. 1992/3144, arts. 2, 3, **Sch.**
F551 Definition inserted by Transport Act 1981 (c. 56, SIF 126), s. 32, **Sch. 10 Pt. I para. 3**
F552 Definition repealed 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
F553 Word repealed by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(3)(4), Sch. 17 para. 35(1), **Sch. 18**
F554 Word repealed by Gas Act 1986 (c. 44, SIF 44:2), s. 67(4), **Sch. 9 Pt. I**
F555 Word repealed 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
F556 Definition in s. 329(1) of "street" substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8**, Part I, para. 15(2); S.I. 1992/2984, art. 2(2), **Sch. 2**
F557 Definition in s. 329(1) of "street works licence" inserted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8**, Part I, para. 15(3); S.I. 1992/2984, art. 2(2), **Sch. 2**
F558 S. 329(1): definition of "traffic calming works" in s. 329 inserted (16.5.1992) by Traffic Calming Act 1992 (c. 30), **ss. 1(3)**, 3
F559 Words substituted by Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), s. 146, **Sch. 13 para. 47**
F560 Definition substituted 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. 62(12)(b), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
F561 Definition in s. 329(1) added (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 27(2)(b)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.
F562 S. 329(2A) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 27(3)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.
F563 S. 329(3A) inserted (1.10.1995) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 27(4)** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/2490, art. 4(1), **Sch. 2**.
F564 Word expressed to be repealed by London Regional Transport Act 1984 (c. 32, SIF 126), **s. 71(3)**(*b*), Sch. 7
F565 Words substituted by London Regional Transport Act 1984 (c. 32, SIF 126), **s. 71(3)**(*a*), Sch. 6 para. 21(*a*)
F566 Words repealed by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), **Sch. 1 Pt. X**
F567 Word repealed by London Regional Transport Act 1984 (c. 32, SIF 126), **s. 71(3)**(*a*), Sch. 6 para. 21(*b*)
F568 Words added by London Regional Transport Act 1984 (c. 32, SIF 126), **s. 71(3)**(*a*), Sch. 6 para. 21(*c*)
F569 S. 329(4A) inserted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 76(13), **Sch. 5 para. 45**
F570 Words substituted by S.I. 1981/238, **art. 3(1)**

Marginal Citations

M88 1965 c. 56.
M89 1875 c. 55.
M90 1957 c. 42.
M91 1980 c. 43.
M92 1968 c. 73.

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M93 S. R. & O. 1947/1562.

330 Construction of certain enactments relating to execution of works by statutory undertakers. E+W

(1) Where by any enactment empowering statutory undertakers to execute works under, in, upon, over, along or across a highway the undertakers are thereby required—

(a) to give notice to, or obtain the consent or approval of, a council,

(b) to carry out the works under the superintendence of a council,

(c) to reinstate the highway to the satisfaction of a council, or

(d) to do anything in relation to a road for which a county council **[**F571or metropolitan district council**]** are the highway authority (whether so described or described as a "county road"),

any such requirement, and any provision of the enactment empowering the council to act in default of the undertakers or otherwise to enforce any such requirement, has effect, in relation to a trunk road, with the substitution, for references to the council, of references to the Minister and, for references to a road for which a county council **[**F571or metropolitan district council**]** are the highway authority (or a county road), of references to a trunk road.

(2) Notwithstanding the provisions of any enactment as to the determination of disputes arising between statutory undertakers and a council in connection with the execution of any such works, any such dispute arising in the case of a trunk road between statutory undertakers and the Minister shall be determined by a single arbitrator appointed, in default of agreement between the parties concerned, by the President of the Institution of Civil Engineers.

F572(3) . . . . . .

Textual Amendments

F571 Words inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, **Sch. 4 para. 41**

F572 S. 330(3) repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(2), **Sch.9**; S.I. 1992/2984, art. 2(2), **Sch. 2**

331 References to functions of council as respects any highway. E+W

Except where this Act otherwise requires, any enactment or document relating to the functions of a council as respects any highway is, in relation to functions not exercisable in the case of a trunk road by the Minister, to be construed as if references therein to highways included references to trunk roads.

332 Widening of carriageway not to cease to be improvement by reason of diminution etc. of footway. E+W

For the purposes of this Act and of any other enactment relating to highways, the widening of the carriageway of a highway is not to be treated as being otherwise than an improvement by reason only of the fact that it involves diminution or removal of a footway thereon.

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Savings etc.

[F573 333 Saving for rights and liabilities as to interference with highways. E+W

(1) No provision of this Act relating to obstruction of or other interference with highways is to be taken to affect any right of a highway authority or other person under any enactment not contained in this Act, or under any rule of law, to remove an obstruction from a highway or otherwise abate a nuisance or other interference with the highway, or to affect the liability of any person under such an enactment or rule to proceedings (whether civil or criminal) in respect of any such obstruction or other interference.

(2) Nothing in section 134 or 135 above relating to disturbance of the surface of a highway in any manner is to be taken as affecting any right existing apart from this Act to disturb its surface in that manner.**]**

Textual Amendments

F573 S. 333(2) inserted (the existing provision being renumbered as subsection (1)) as provided by Rights of Way Act 1990 (c. 24, SIF 59), **s. 3**

[F574 334 E+W

(1) Subject to the provisions of this section, nothing in this Act or in any scheme or order made under it affects any rights conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or any duty of any such operator under that code or applies to any telecommunication apparatus kept installed for the purposes of any such system; F575 . . .

(2) Where—

(a) land is conveyed by a highway authority in pursuance of section 256 above, or

(b) a highway is stopped up or diverted in pursuance of an order to which this paragraph applies,

and immediately before the conveyance or, as the case may be, at the beginning of the day on which the order comes into force there is under, in, upon, over, along or across the land conveyed or, as the case may be, the highway stopped up or diverted any telecommunication apparatus kept installed for the purposes of a telecommunications code system, then the provisions of subsection (3) below have effect.

Paragraph (b) above applies to the following orders, namely an order made or confirmed by the Minister under section 14 or 18 above, a public path extinguishment order and a public path diversion order.

(3) In the circumstances mentioned in subsection (2) above, the operator of the telecommunications code system has the same power in respect of the telecommunication apparatus as if the conveyance had not been made or, as the case may be, the order had not come into force; but the transferee of the land or, as the case may be, any person entitled to land over which the stopped up or diverted highway subsisted shall be entitled to require the alteration of the apparatus.

(4) Where in pursuance of an order made by a magistrates' court under section 116 above a highway is stopped up or diverted, the following provisions of this subsection have effect in relation to so much of any telecommunication apparatus kept installed for the purposes of a telecommunications code system as is under, in, upon, over, along or

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across land which by reason of the stopping up or diversion ceases to be a highway ("the affected apparatus")—

(a) the power of the operator of the system to remove the affected apparatus is exercisable notwithstanding the making of the order, so however that the said power is not exercisable, as respects the whole or any part of the affected apparatus, after the expiration of a period of 3 months from the date of the sending of the notice referred to in subsection (5) below unless before the expiration of that period the operator of the system has given notice to the authority on whose application the order was made of his intention to remove the affected apparatus or that part of it, as the case may be;

(b) the operator of the system may by notice in that behalf to the said authority abandon the affected apparatus or any part of it, and is to be deemed, as respects the affected apparatus or any part of it, to have abandoned it at the expiration of the said period of 3 months unless before the expiration of that period he has removed it or given notice of his intention to remove it;

(c) the operator of the system is entitled to recover from the said authority the expense of providing, in substitution for the affected apparatus and any telecommunication apparatus connected with it which is rendered useless in consequence of the removal or abandonment of the affected apparatus, any telecommunication apparatus in such other place as he may require;

(d) where under paragraph (b) above the operator of the system has abandoned the whole or any part of the affected apparatus, it vests in the authority there referred to and shall be deemed, with its abandonment, to cease to be kept installed for the purposes of a telecommunications code system.

(5) As soon as practicable after the making of an order under section 116 above in circumstances in which subsection (4) above applies in relation to the operator of any telecommunications code system the authority on whose application the order was made shall by notice to the operator inform him of the making of the order.

(6) Where an order under section 14 or 18 above provides for the alteration of a highway and, immediately before the date on which the order comes into force, there is under, in, upon, over, along or across the highway any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the highway authority shall be entitled to require the alteration of the apparatus.

This subsection does not have effect so far as it relates to the alteration of any telecommunication apparatus for the purposes of **[**F576major highway works, major bridge works or major transport works within the meaning of Part III of the New Roads and Street Works Act 1991**]**.

(7) Where in pursuance of an order under section 14 or 18 above a highway is stopped up or diverted, or an order under either of those sections provides for the alteration of a highway, and, immediately before the date on which the order comes into force, there is under, in, upon, over, along or across the highway any telecommunication apparatus kept installed for the purposes of a telecommunications code system then, without prejudice to subsections (2), (3) and (6) above, the provisions of subsection (8) below have effect.

(8) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply, for the purposes of the construction or improvement of the trunk road, special road or classified road, as the case may be, to which the order relates and of any works

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authorised by the order, to the Minister or other highway authority by whom the order in question was made.

(9) Without prejudice to **[**F577the provisions of Part III of the New Roads and Street Works Act 1991 relating to major highway works, major bridge works or major transport works**]** the said paragraph 23 shall apply for the purposes of—

(a) any work authorised or required by an order under section 93 above to be done by a highway authority or the owners of a bridge,

(b) any work which a highway authority is authorised to carry out under section 96 above, and

(c) any work authorised or required by a licence under section 176 above to be done by the person to whom the licence is granted,

to the authority or person authorised or required to carry out the work.

(10) Where, in pursuance of any order or scheme made or confirmed under this Act, a navigable watercourse is diverted and, immediately before the date on which the order or scheme comes into force, there is under, in, upon, over, along or across the watercourse, or any towing path or other way adjacent to it, any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system has the same powers in respect of that apparatus as if the order or scheme had not come into force; but—

(a) the highway authority by whom the order or scheme was made, or

(b) any person entitled to land on which so much of the watercourse, towing path or way as is diverted in pursuance of the order or scheme was previously situated,

shall be entitled to require the alteration of the apparatus.

(11) Sub-paragraph (8) of paragraph 23 of the telecommunications code (offence) shall be deemed to be omitted for the purposes of the application by this section of that paragraph to the Minister.

(12) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this section as it applies for the purposes of that code.

(13) Paragraph 21 of the telecommunications code (restriction on removal of telecommunication apparatus) shall apply in relation to any entitlement conferred by this section to require the alteration, moving or replacement of any telecommunication apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.**]**

Textual Amendments

F574 S. 334 substituted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 76(14)(15), **Sch. 5 para. 45**

F575 Words in s. 334(1) repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(2), **Sch.9**; S.I. 1992/2984, art. 2(2), **Sch.2**

F576 Words in s. 334(6) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8**, Part I, para. 16(2); S.I. 1992/2984, art. 2(2), **Sch. 2**

F577 Words in s. 334(9) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Part I para. 16(3)**; S.I. 1992/2984, art. 2(2), **Sch.2**

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Highways Act 1980 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

335 Saving for minerals etc. E+W

(1) Notwithstanding anything in Part XII of this Act all mines and minerals of any description whatsoever under any highway vested in a highway authority by virtue of any provision contained in the said Part XII belong to the person who would be entitled thereto if the highway were not vested in the authority, and the person entitled to any such mine or minerals has the same powers of working and of getting the same as if the highway were not vested in a highway authority.

(2) Nothing in this section affects any liability (whether civil or criminal) of the person entitled to any such mine or minerals in respect of damage to the highway resulting from the exercise of the said powers.

336 Saving for Coast Protection Act 1949. E+W

Nothing in this Act authorises the excavation or removal of any materials the excavation or removal of which is prohibited by section 18 of the [M94]Coast Protection Act 1949 (which makes it unlawful except as therein mentioned to excavate or remove certain materials on, under or forming part of any portion of the seashore to which the provisions of that section are applied), or the carrying out of any operation in contravention of section 34 of that Act (which restricts the carrying out of certain operations detrimental to navigation).

Marginal Citations
M94 1949 c. 74.

337 Saving for obligation to obtain planning permission. E+W

Nothing in this Act authorises the carrying out of any development of land for which permission is required by virtue of **[**[F578]section 57 of the Town and Country Planning Act 1990**]** and which is not authorised by permission granted or deemed to be granted under or for the purposes of Part III of that Act.

Textual Amendments
F578 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), **s. 4 Sch. 2 para. 45(18)**

338 Saving for works, etc., of dock, harbour and canal undertakers. E+W

(1) Subject to the provisions of this section, nothing in any of the provisions of this Act to which this section applies authorises a highway authority or council, without the consent of the dock, harbour or canal undertakers concerned—

(a) to execute any works in, across, or under any dock, harbour, basin, wharf, quay or lock; or

(b) to execute any works which will interfere with the improvement of, or the access to, any river, canal, dock, harbour, basin, lock, reservoir or towing path, or with any works appurtenant thereto or any land necessary for the enjoyment or improvement thereof.

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(2) A consent required for the purposes of subsection (1) above shall not be unreasonably withheld, and if any question arises whether the withholding of a consent is unreasonable either party may require it to be referred to an arbitrator to be appointed, in default of agreement, by the President of the Institution of Civil Engineers.

(3) On an arbitration under this section, the arbitrator shall determine—

(a) whether any works which the highway authority or council propose to execute are such works as under subsection (1) above they are not entitled to execute without the consent of the undertakers concerned; and

(b) if they are such works, whether the injury, if any, to the undertakers will be of such a nature as to admit of being fully compensated by money; and

(c) if the works are of such a nature, the conditions subject to which the authority or council may execute the works, including the amount of the compensation, if any, to be paid by them to the undertakers.

If the arbitrator determines that the proposed works are such works as the highway authority or council are not entitled to execute without the consent of the undertakers and that the works would cause injury to the undertakers of such a nature as not to admit of being fully compensated by money, the authority or council shall not proceed to execute the works; but in any other case they may execute the works subject to compliance with such conditions, including the payment of such compensation, as the arbitrator determines.

(4) For the purposes of this section, dock, harbour and canal undertakers are to be deemed to be concerned with any river, canal, dock, harbour, basin, lock, reservoir, towing path, wharf, quay or land if it belongs to them and forms part of their undertaking, or if they have statutory rights of navigating on or using it, or of demanding tolls or dues in respect of navigation thereon or the use thereof.

(5) This section applies to section 230(7) and section 294 above and to the provisions specified in Schedule 22 of this Act, but subsections (2) and (3) above do not apply as respect a consent required in relation to section 230(7).

(6) In this section "canal" includes inland navigation.

339 Saving for works etc. of drainage authorities etc. E+W

(1) Subject to the provisions of this section, nothing in any of the provisions of this Act to which this section applies authorises a highway authority or any other person to use or interfere with any watercourse (including the banks thereof), or any drainage or other works, vested in or under the control of **[**F579the National Rivers Authority**]** or other drainage body within the meaning of the **[**F580Land Drainage Act 1991**]**without the consent of **[**F581the National Rivers Authority or that**]** body.

(2) A consent required for the purposes of subsection (1) above shall not be unreasonably withheld, and if any question arises whether the withholding of a consent is unreasonable either party may require it to be referred to an arbitrator to be appointed, in default of agreement, by the President of the Institution of Civil Engineers.

(3) This section applies to sections 45, 100, 101, 110, 294 and 299 above and to the provisions specified in Schedule 22 to this Act.

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(4) In its application to sections 100, 110, and 299 above this section applies in relation to a navigation authority as it applies in relation to **[**F580the National Rivers Authority**]** or other drainage body within the meaning of the **[**F582Land Drainage Act 1991**]**.

Textual Amendments

F579 Words substituted 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. 62(13)(a)(i), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

F580 Words substituted 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. 62(13)(b), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

F581 Words substituted 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. 62(13)(a)(ii), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

F582 Words in s. 339(1)(4) substituted (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2, 4(2), **Sch. 1 para. 36(2)**

340 Preservation of amendments. E+W

(1) Notwithstanding the repeal by this Act of the M95Highways Act 1959—

(a) subsection (10) of section 3 of the M96Parish Councils Act 1957 (which was inserted by section 310 of the Highways Act 1959 and defines "road" for the purposes of the said section 3) continues to have effect, but subject to the amendments made to that subsection, in consequence of this Act, by Schedule 24 to this Act;

(b) the enactments mentioned in Schedule 22 to the said Act of 1959 continue to have effect with the amendments there made but subject, in the case of such of those enactments as are mentioned in Schedule 24 to this Act, to the amendments made, in consequence of this Act, by the said Schedule 24.

(2) Notwithstanding the repeal by this Act of the M97Highways Act 1971 (referred to below as "the 1971 Act")—

F583(a) . . . . . .

(b) section 3(6) of the M98New Forest Act 1964 (which provides for the fencing of a source of danger in the New Forest) continues to have effect with the amendment made by section 34(2) of the 1971 Act;

F584(c) . . . . . .

F585(d) . . . . . .

F586(e) . . . . . .

Textual Amendments

F583 S. 340(2)(*a*) repealed by Road Traffic Regulation Act 1984 (c. 27, SIF 107), s. 146, **Sch. 14**

F584 S. 340(2)(*c*) repealed by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 6 Pt. I**

F585 S. 340(2)(*d*) repealed by Wildlife and Countryside Act 1981 (c. 69, SIF 4:5), s. 73, **Sch. 17 Pt. II**

F586 S. 340(2)(e) repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(2), **Sch.9**; S.I. 1992/2984, art. 2(2), **Sch.2**

Marginal Citations

M95 1959 c. 25.

M96 1957 c. 42.

M97 1971 c. 41.

Status: *Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.*
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M98 1964 c. 83.

341 Amendment of section 303 of Public Health Act 1875. E+W

In section 303 of the [M99]Public Health Act 1875 (power of Secretary of State to repeal and alter local Acts by means of provisional orders), the reference to any local Act which relates to the same subject matters as that Act is to be construed as including a reference to any local Act which relates to the same subject matters as the following provisions of this Act, namely, sections 288, 294, 312, 338, 339 and the provisions specified in Schedule 22 to this Act.

Marginal Citations
M99 1875 c. 55.

[X1]342 Amendment of section 41 of the Countryside Act 1968. E+W

In section 41 of the Countryside Act 1968 [M100]—

(a) in subsection (1), at the end of paragraph (c) insert "or" and after that paragraph insert—

"(d) a trunk road picnic area as respects which functions of the Minister stand delegated to the local authority under section 113(1) of the Highways Act 1980, or are functions of the local authority by virtue of an agreement under section 113(3) of that Act,";

(b) after subsection (1) insert—

"(1A) The power of a local authority under subsection (1)(d) above is exercisable only in so far as any conditions attached to the relevant delegation or, as the case may be, included in the relevant agreement do not otherwise provide.".

Editorial Information
X1 The text of s. 342 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.

Marginal Citations
M100 1968 c.41.

343 [X2]Transitional provisions, amendments and repeals. E+W

(1) Schedule 23 to this Act, which contains transitional provisions, has effect.

[X3](2) The enactments specified in Schedule 24 to this Act are, in consequence of this Act, amended as there provided.

[X3](3) The enactments specified in Schedule 25 to this Act are repealed to the extent specified in the third column of that Schedule.

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Editorial Information

X2 Unreliable marginal note

X3 The text of s. 343(2)(3) 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.

344 Application to Isles of Scilly. E+W

(1) Subject to the provisions of this section, the provisions of this Act specified in subsection (2) below do not extend to the Isles of Scilly.

(2) The provisions referred to in subsection (1) above are—

(a) sections 25 to 29, 118 to 121, 134, 135, 146, 147, 275 and 293; and

(b) sections 219 to 225 and 229.

(3) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide that all or any of the provisions of this Act specified in subsection (2)(a) above are, subject to such modifications as may be specified in the order, to apply in the Isles of Scilly as if those Isles were a separate county.

(4) The Secretary of State may, on the application of the Council of the Isles of Scilly, by order provide that the provisions of this Act specified in subsection (2)(b) above are to apply in those Isles and, on the making of an order under this subsection, any reference in the said provisions to the street works authority is to be construed as a reference to the Council of those Isles.

(5) On the making of an order under subsection (4) above the Council of the Isles of Scilly shall take such steps for notifying the public of its having been made as the Secretary of State may direct.

(6) Section 232 above, in its application in the Isles of Scilly, has effect subject to the modification that any reference therein to the street works authority or the prospective street works authority is to be construed as a reference to the Council of those Isles, and any regulations made under that section are in their application to those Isles to be construed accordingly.

(7) Sections 9, 97, 98, 270 and 301 of this Act, in their application in relation to the Isles of Scilly, have effect subject to such modifications as the Secretary of State may by order direct.

345 Short title, commencement and extent. U.K.

(1) This Act may be cited as the Highways Act 1980.

(2) This Act shall come into force on 1st January 1981.

(3) This Act (except paragraph 18(c) of Schedule 24) extends to England and Wales only.

Status:
Point in time view as at 01/04/1996. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation:
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