Highways Act 1980

1980 CHAPTER 66

PART IX

LAWFUL AND UNLAWFUL INTERFERENCE WITH HIGHWAYS AND STREETS

Precautions to be taken in doing certain works in or near streets or highways

168 Building operations affecting public safety

(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 section 25 of the Public Health Act 1961 (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 £500.

(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.

169 Control of scaffolding on highways

(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 minks 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 man 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, any public authority exercising functions by virtue of any provision of sections 14 and 15 of the Water Act 1973 (which relate to sewerage) and any person entitled to the benefit of a licence in respect of the highway in question under section 181 below.

(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 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 £400.

(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 the London Transport Executive 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.

170 Control of mixing of mortar etc. on highways

(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 £200.

(2) Nothing in subsection (1) above applies to any mixing or deposit—

(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 a person entitled to the benefit of a licence in respect of the highway under section 181 below 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, the Greater London Council, 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 and any public authority exercising functions by virtue of any provision of sections 14 and 15 of the Water Act 1973 (which relate to sewerage).

171 Control of deposit of building materials and making of excavations in streets

(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.

(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.

172 Hoardings to be set up during building etc.

(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 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 £100; 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.

173 Hoardings to be securely erected

(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 £25 ; 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.

174 Precautions to be taken by persons executing works in streets

(1) Without prejudice to section 8 of the Public Utilities Street Works Act 1950 (requirements as to safety, obstruction and other matters to be observed during and in connection with the execution of certain works in streets and in controlled land within the meaning of that Act), where in the exercise of a power conferred by or under any enactment or otherwise any person is executing works in any street 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 Interpretation 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,—

(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 £100.

(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.

175 Liability of certain persons in respect of materials left on highway

If—

(a) any officer or servant of the highway authority for a highway, or

(b) any officer or servant of a 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 £25.