



# Highways Act 1980

## 1980 CHAPTER 66

### PART XI

#### MAKING UP OF PRIVATE STREETS

##### *General*

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

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

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

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

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

- (1) When any street works have been executed in a private street, the street works authority may, by notice displayed in a prominent position in the street, declare the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense, and on the expiration of one month from the day on which the notice was

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first so displayed the street shall, subject to subsections (2) to (4) below, become such a highway.

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

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

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

- (1) Where a majority in number of the owners of land having a frontage on a built-up private street, or as many of those owners as have between them more than half the aggregate length of all the frontages on both sides of the street, by notice request the street works authority to exercise their powers under the private street works code so as—
  - (a) to secure the carrying out of such street works in that street as the street works authority require under that code before declaring the street to be a highway

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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.

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

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

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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 [<sup>F1</sup>is 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.

**Annotations:**

**Amendments (Textual)**

**F1** Words inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 36](#)

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

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

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

- (1) The provisions of this section apply in relation to land defined by a development plan

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- (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.

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- (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;
  - (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<sup>[F2]</sup> a strategic highways company or ] 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 <sup>M1</sup>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 <sup>[F3]</sup>the Town and Country Planning Act 1990<sup>[F4]</sup> and Parts 2 and 6 of the Planning and Compulsory Purchase Act 2004], being the Act that first made provision for development plans).
- (9) In this section—

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“byelaw width”, in relation to a road, means the width required by any<sup>F5</sup> . . . , 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;

[<sup>F6</sup> “ development plan ” must be construed in accordance with section 38 of the Planning and Compulsory Purchase Act 2004;

“ local authority ” has the same meaning as in the Town and Country Planning Act 1990. ]

#### Annotations:

##### Amendments (Textual)

- F2** Words in s. 232(7) inserted (5.3.2015) by [Infrastructure Act 2015 \(c. 7\)](#), s. 57(1), **Sch. 1 para. 44**; S.I. 2015/481, reg. 2(a)
- F3** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, **Sch. 2 para. 45(12)(a)**
- F4** Words in s. 232(8) inserted (28.9.2004 for E. and 15.10.2005 for W.) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 118(2), **Sch. 7 para. 11(2)** (with s. 111); S.I. 2004/2202, **art. 2(i)** (subject to art. 4); S.I. 2005/2847, **art. 2(f)** (subject to art. 3)
- F5** 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**
- F6** In s. 232(9) definitions of "development plan" and "local authority" substituted (28.9.2004 for E. and 15.10.2005 for W.) for definition of "development plan" by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 118(2), **Sch. 7 para. 11(3)** (with s. 111); S.I. 2004/2202, **art. 2(i)** (subject to art. 4); S.I. 2005/2847, **art. 2(f)** (subject to art. 3)

##### Marginal Citations

- M1** 1947 c. 51.

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

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

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

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

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

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

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

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

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

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

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

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

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 90B(1A) inserted by 2015 c. 20 Sch. 10 para. 15(3)
- s. 90C(2)(2A) substituted for s. 90C(2) by 2015 c. 20 Sch. 10 para. 16(3)
- s. 90FA inserted by 2015 c. 20 Sch. 10 para. 20
- s. 118ZA(5)(a) words inserted by 2015 c. 20 s. 25(3)
- s. 120(3ZA) inserted by 2000 c. 37 Sch. 6 para. 13(6)
- s. 121E(1A)(1B) inserted by 2015 c. 20 s. 23(5)
- s. 146(6) inserted by 2015 c. 20 s. 24(6)(d)
- s. 147(1A) inserted by 2015 c. 20 s. 24(3)
- s. 147(5A) inserted by 2015 c. 20 s. 24(5)
- s. 322(5)(ab) inserted by 2004 c. 18 s. 64(2)
- s. 325(2B) inserted by 2015 c. 20 Sch. 10 para. 21
- Sch. 6 para. 1(3ZA) inserted by 2015 c. 20 Sch. 7 para. 8(2)(b)
- Sch. 6 para. 2(2ZA)-(2ZE) inserted by 2015 c. 20 Sch. 7 para. 8(3)
- Sch. 6 para. 2(4) inserted by 2015 c. 20 Sch. 7 para. 8(4)
- Sch. 6 para. 2(5)(6) inserted by 2015 c. 20 Sch. 7 para. 8(5)
- Sch. 6 para. 2ZZA inserted by 2015 c. 20 Sch. 7 para. 8(6)
- Sch. 6 para. 4A(2) inserted by 2015 c. 20 Sch. 7 para. 8(7)(c)
- Sch. 6 para. 5(ba) inserted by 2015 c. 20 Sch. 7 para. 8(8)
- Sch. 6 para. 4A(1) words renumbered as Sch. 6 para. 4A(1) by 2015 c. 20 Sch. 7 para. 8(7)(a)
- Sch. 6 para. 4A(1) words substituted by 2015 c. 20 Sch. 7 para. 8(7)(b)