



Public Health Act 1936

1936 CHAPTER 49

PART XII

GENERAL.

Breaking open of streets.

279 General provisions as to breaking open streets.

- (1) For the purposes of any section of this Act which confers powers on local authorities to construct, lay or maintain sewers, drains or pipes, the provisions of sections twenty-eight and thirty to thirty-four of the Waterworks Clauses Act, 1847, shall be incorporated with this Act, subject, however, to such adaptations as may be necessary to make those provisions applicable to the construction and maintenance of sewers and drains as well as to the laying and maintenance of water mains and pipes, and subject also to the following modifications, namely that—
- (a) any reference in the said provisions to the persons under whose control or management a street or bridge is, shall, in the case of a highway or bridge repairable by the inhabitants at large or by the inhabitants of the county, be construed as a reference to the authority who are the highway authority or, as the case may be, the bridge authority in respect thereof;
 - (b) the reference in section thirty of the said Act of 1847 to three clear days shall be construed as a reference to seven clear days;
 - (c) the expenses referred to in section thirty-four of the said Act may be recovered summarily as a civil debt; and
 - (d) except in cases of emergency arising from defects in existing sewers, drains or pipes, a street or bridge which is under the control or management of, or repairable by, a railway company or dock undertakers shall not be opened or broken up without their consent, but that consent shall not be unreasonably withheld, and any question whether or not consent is unreasonably withheld shall be referred to the Minister, whose decision shall be final.

Status: This is the original version (as it was originally enacted).

- (2) The provisions so incorporated with adaptations and modifications as aforesaid shall apply in relation to any person not being a local authority who is empowered by this Act to construct, lay or maintain a sewer, drain or pipe as if, so far as his powers extend, he were the undertakers:

Provided that, where such a person gives notice to a railway company or dock undertakers that he desires to open or break up a street or bridge which is under their control or management or repairable by them, they may within fourteen days give notice to him that they intend themselves to execute the necessary work and, if before the expiration of fourteen days, or after such a notice has been given to him, he proceeds himself to open or break up the street or bridge, he shall be liable to a fine not exceeding fifty pounds.

- (3) Where a railway company or dock undertakers have given such a notice as is mentioned in the last preceding subsection, it shall not be obligatory on them to execute the work until the cost thereof, as estimated by their engineer or surveyor, has been paid to them or security for payment has been given to their satisfaction, but, if any payment so made to them exceeds the expenses reasonably incurred by them in the execution of the work, the excess shall be repaid by them and, if and so far as those expenses are not covered by the payment, if any, made to them, they may recover the expenses or the balance thereof from the person for whom the work was done.

280 Protection for certain works of railway companies and dock undertakers.

- (1) A local authority or other person who under the powers conferred by this Act propose to open or break up any length of street which forms a level crossing, or crosses over or under a railway or other works of a railway company or dock undertakers, and which is not under the control or management of the railway company or dock undertakers, shall give to the company or undertakers the like notice as they are required by section thirty of the Waterworks Clauses Act, 1847, to give to the persons under whose control or management the street is and, if and in so far as the proposed work is likely to affect the structure of any bridge or other works belonging to the railway company or dock undertakers, shall carry out the work to the reasonable satisfaction of the engineer of the company or undertakers in accordance with plans approved by him.
- (2) If any dispute arises under this section between the persons proposing to execute work and a railway company or dock undertakers, either party may require that it shall be referred to an arbitrator to be appointed, in default of agreement, by the President of the Institution of Civil Engineers.

281 Protection for tramway undertakings.

For the protection of undertakers entitled to the benefit of section thirty-two of the Tramways Act, 1870 (which relates to the rights of authorities and companies, &c. to open roads), that section shall be construed as applying to operations authorised by this Act, and in the said section as so applied any reference to a tramway shall be construed as including a reference to a trolley vehicle system.

282 Application of 38 and 39 Vict. c. 55, s. 153.

Section one hundred and fifty-three of the Public Health Act, 1875 (which relates to the power to require gas and water pipes to be moved), shall apply for the purposes of this Act as it applies for the purposes of that Act.