



# Public Utilities Street Works Act 1950 (repealed 1.1.1993)

1950 CHAPTER 39 14 Geo 6

## PART I

### THE STREET WORKS CODE

#### Modifications etc. (not altering text)

C1 Pt. I (ss. 1-20) excluded (16.3.1992) by Avon Weir Act 1992 (c. v), s. 6(3).

#### *Preliminary*

### **1 Purposes of the street works code, and works the execution of which is to be regulated thereby.**

- (1) Sections three to fourteen of this Act and the First, Second and Third Schedules thereto (in this Act referred to as “the street works code”) shall have effect in relation to powers to which

this section applies, that is to say, any statutory power to execute undertakers’ works in a [<sup>F1</sup>street][<sup>F1</sup>road] except a power conferred for purposes of a railway undertaking or a tramway undertaking, with a view to—

- (a) providing a uniform set of provisions for the protection of authorities, bodies and persons concerned in the mode of exercise of such powers as having the control or management of [<sup>F2</sup>streets][<sup>F2</sup>roads], or of sewers, drains or tunnels, transport undertakings or bridges; and
- (b) enabling powers to which this section applies, so far as they are powers exercisable in a [<sup>F3</sup>street which is a maintainable highway or is prospectively a maintainable highway][<sup>F3</sup>public road or prospective public road], to be exercised, in accordance with the said code, in controlled land as defined in the First Schedule to this Act.

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- (2) In this Act the expression “undertakers’ works” means works (including works executed or to be executed on behalf of the Crown) for any purposes other than road purposes, being works of any of the following kinds, that is to say—
- (a) Placing apparatus.  
Inspecting, maintaining, adjusting, repairing, altering or renewing apparatus.  
Changing the position of apparatus or removing it.
  - (b) Breaking up or opening a [<sup>F4</sup>street][<sup>F4</sup>road] or controlled land for the purposes of works mentioned in paragraph (a) of this subsection, and tunnelling or boring under a [<sup>F4</sup>street][<sup>F4</sup>road] or controlled land for those purposes, breaking up or opening a sewer, drain or tunnel for those purposes, and other works requisite for or incidental to those purposes.
- [<sup>F5X1</sup>(3) In this Act the expression “street” means (without prejudice to the provisions of subsection (1) of section thirty-eight of this Act) any length of a highway (other than a waterway), road, lane, footway, alley or passage, any square or court, and any length of land laid out as a way whether it is for the time being formed as a way or not, irrespective of whether the highway, road or other thing in question is a thoroughfare or not.
- (4) In this Act—
- (a) the expression “maintainable highway” means a highway [<sup>F6</sup>which for the purposes of the <sup>M1</sup>Highways Act 1980 is a highway maintainable at the public expense]; and
  - (b) references to a street that is prospectively a maintainable highway are to a street which, whether being a highway or not, is declared likely to become a maintainable highway in a declaration made by the [<sup>F7</sup>appropriate local authority][<sup>F7</sup>local highway authority] under the Second Schedule to this Act and registered in the register of local land charges thereunder.]
- [<sup>F5X1</sup>(3) In this Act the expression “road” means (without prejudice to section 38(1) of this Act) any way (other than a substitute road made under section 74(1) of the <sup>M2</sup>Roads (Scotland) Act 1984 or a waterway) whether or not there is over it a public right of passage and whether or not it is for the time being formed as a way; and the expression includes a square or court, and any part of a road.
- (4) In this Act—
- (a) the expression “public road” has the same meaning as in the Roads (Scotland) Act 1984; and
  - (b) references to a prospective public road are to a road which is declared likely to become a public road in a declaration made by the local roads authority under the Second Schedule to this Act and registered in the register kept by them under paragraph 2 of that Schedule.]
- (5) In this Act the expression “code-regulated works” means undertakers’ works executed or proposed to be executed—
- (a) in exercise of a power to which this section applies, being a power in relation to which the street works code has effect having regard to the provisions of section fifteen of this Act as to the time for the taking effect of that code in relation to different powers, and

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- (b) either in a [<sup>F8</sup>street][<sup>F8</sup>road] in exercise of that power, or in controlled land in exercise of that power together with an authorisation given under the First Schedule to this Act,

but excluding works which were works in hand within the meaning of subsection (4) of the said section fifteen immediately before the time from which the street works code took effect in relation to that power.

#### Editorial Information

- X1 S. 1(3)(4) commencing “In this Act the expression “road”” substituted for s. 1(3)(4) commencing (S.) “In this Act the expression “street”” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(2)(c)**

#### Textual Amendments

- F1 Word “road” substituted (S.) for word “street” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(2)(a)(i)**
- F2 Word “roads” substituted (S.) for word “streets” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(2)(a)(ii)**
- F3 Words “public road or prospective public road” substituted (S.) for “street which is a maintainable highway or is prospectively a maintainable highway” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(2)(a)(iii)**
- F4 Word “road” substituted (S.) for word “street” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(2)(b)**
- F5 S. 1(3)(4) commencing “In this Act the expression “road”” substituted (S.) for s. 1(3)(4) commencing “In this Act the expression “street”” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(2)(c)**
- F6 Words substituted by virtue of Highways Act 1980 (c. 66, SIF 59), **Sch. 23 para. 22**
- F7 Words “local highway authority” substituted (E.W.) for words “appropriate local authority” by Local Government Act 1972 (c. 70, SIF 81:1), **Sch. 21 para. 98(1)**
- F8 Word “road” substituted (S.) for word “street” by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 39(2)(d)**

#### Modifications etc. (not altering text)

- C2 S. 1 excluded by Highways Act 1980 (c. 66, SIF 59), **s. 181(6)**

#### Marginal Citations

- M1 1980 c. 66(59).  
M2 1984 c. 54(108).

## 2 Parties to proceedings under the street works code.

- (1) References in the street works code to an authority or managers concerned are, so far as regards works executed or proposed to be executed in a [<sup>F9</sup>street][<sup>F9</sup>road], to the following, that is to say—
- [<sup>F10X2</sup>(a) the street authority if the street in question is a maintainable highway or is prospectively a maintainable highway, or the street managers if it is not;
- (b) if the works include the breaking up or opening of a public sewer in the street, the sewer authority;]
- [<sup>F10X2</sup>(a) the roads authority if the road is, or is prospectively, a public road, or the road managers if it is not;

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- (b) if the works include the breaking up or opening in the road, of a sewer vested in a local authority, that authority;]
  - (c) if the [<sup>F11</sup>street][<sup>F11</sup>road] is carried by or goes under a bridge vested in a transport authority, or crosses or is crossed by any other property held or used for the purposes of a transport undertaking, the transport authority; and
  - (d) if the [<sup>F12</sup>street][<sup>F12</sup>road, not being a public road,] is carried by or goes under a bridge not vested as aforesaid, the bridge authority or managers.
- (2) References in the street works code to an authority or managers concerned are, so far as regards works executed or proposed to be executed in controlled land, to the following, that is to say—
- [<sup>F13X3</sup>(a) the street authority for the street on which that land abuts; and
  - (b) if the works include the breaking up or opening of a public sewer in that land, the sewer authority.]
  - [<sup>F13X3</sup>(a) the roads authority for the road on which that land abuts; and
  - (b) if the works include the breaking up or opening in that land, of a sewer vested in a local authority, that authority.]
- (3) The said references do not include, either as regards works in a [<sup>F14</sup>street][<sup>F14</sup>road] or as regards works in controlled land, references to authorities, bodies or persons concerned as mentioned in paragraph (a) of subsection (1) of section one of this Act as having the control or management of sewers, drains or tunnels therein not being [<sup>F15</sup>public sewers][<sup>F15</sup>sewers vested in a local authority], but the provisions of section thirteen of this Act shall have effect for their protection.
- [<sup>F16X4</sup>(4) In this Act the expression “street authority” (used in relation to a street that is a maintainable highway or is prospectively a maintainable highway, and in relation to controlled land abutting on such a street) means—
- (a) where the street is a maintainable highway, the highway authority; or
  - (b) where the street is prospectively a maintainable highway, the [<sup>F17</sup>appropriate local authority][<sup>F17</sup>local highway authority].]
- [<sup>F16X4</sup>(4) In this Act the expression “roads authority” used in relation to—
- (a) a public road or prospective public road, has the same meaning as in the Roads (Scotland) Act 1984;
  - (b) controlled land, means the roads authority for the road on which that land abuts.]
- (5) In this Act the expression [<sup>F18</sup>“street managers” (used in relation to a street that is not a maintainable highway)][<sup>F18</sup>“road managers” (used in relation to a road that is not a public road)] means—
- (a) if there is an authority, body or person liable to the public to maintain or repair the [<sup>F19</sup>street][<sup>F19</sup>road], that authority, body or person; or
  - (b) if there is no authority, body or person so liable, any authority, body or person having the management or control of the [<sup>F19</sup>street][<sup>F19</sup>road].
- (6) Any reference in this Act to an authority or managers concerned includes a reference to an authority, body or person being such an authority or managers by virtue of functions exercised by them or him on behalf of the Crown.

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#### Editorial Information

- X2** S. 2(1)(a)(b) commencing “the street authority” substituted (S.) for s. 2(1) commencing “the roads authority” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(a\)\(ii\)](#)
- X3** S. 2(2)(a)(b) commencing “the roads authority” substituted (S.) for s. 2(2)(a)(b) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(b\)](#)
- X4** S. 2(4) commencing “In this Act the expression “roads authority”” substituted (S.) for s. 2(4) commencing “In this Act the expression “roads authority”” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(d\)](#)

#### Textual Amendments

- F9** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(a\)\(i\)](#)
- F10** S. 2(1)(a)(b) commencing “the street authority” substituted (S.) for s. 2(1)(a)(b) commencing “the roads authority” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(a\)\(ii\)](#)
- F11** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(a\)\(iii\)](#)
- F12** Words “road, not being a public road,” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(a\)\(iv\)](#)
- F13** S. 2(2)(a)(b) commencing “the roads authority” substituted (S.) for s. 2(2)(a)(b) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(b\)](#)
- F14** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(c\)\(i\)](#)
- F15** Words “sewers vested in a local authority” substituted (S.) for words “public sewers” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(c\)\(ii\)](#)
- F16** S. 2(4) commencing “In this Act the expression “roads authority”” substituted (S.) for s. 2(4) commencing “In this Act the expression “roads authority”” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(d\)](#)
- F17** Words “local highway authority” substituted (E.W.) for words “appropriate local authority” by [Local Government Act 1972 \(c. 70, SIF 81:1\)](#), [Sch. 21 para. 98\(2\)](#)
- F18** Words “road managers” (used in relation to a road that is not a public road) substituted (S.) for words “street managers” (used in relation to a street that is not a maintainable highway) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(e\)\(a\)](#)
- F19** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(3\)\(e\)\(b\)](#)

### *The street works code*

## **3 Settlement of a plan and section to be a condition of execution of major works.**

- (1) Subject to the provisions of subsections (3) and (4) of this section, undertakers shall not execute any works to which this section applies until a plan and section thereof have been settled as mentioned in the next or the next but one succeeding section by agreement between the undertakers and each of the authorities or managers concerned or by arbitration, and for that purpose undertakers proposing to execute any such works in a [<sup>F20</sup>street][<sup>F20</sup>road] shall submit a plan and section thereof to each of the authorities or managers concerned.
- (2) This section applies to all code-regulated works except—
- (a) inspecting, maintaining, adjusting or repairing apparatus;

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- (b) placing, altering renewing, changing the position of or removing a service pipe or service line or [F21overhead telecommunication apparatus] in or from a place not in a trunk road or a classified road, or in or from a place in such a road in so far as the works are to be executed elsewhere than in the carriageway of the road and so as not substantially to affect the traffic on the carriageway thereof;
  - (c) placing, elsewhere than in a [F22maintainable highway][F22public road], apparatus which is required only in connection with the doing of any building or other work on land adjacent to the [F22street][F22road] and is intended to be removed on the completion of the building or other work;
  - (d) any breaking up or opening (other than breaking up or opening a [F23public sewer][F23sewer vested in a local authority]), tunnelling or boring in so far as it is to be executed for the purposes of works falling within any of the preceding paragraphs, and any other works so far as requisite for or incidental to works so falling.
- (3) In the case of works to which this section applies being emergency works—
- (a) the undertakers may execute them without submitting a plan and section thereof under subsection (1) of this section or before a plan and section thereof have been settled; but
  - (b) as soon as is reasonably practicable after so executing any such works they shall furnish a plan and section thereof to each of the authorities or managers concerned.
- (4) Subsection (1) of this section, and paragraph (b) of the last preceding subsection, shall not have effect as to [F24street][F24road] managers concerned in respect of a [F24street][F24road] which they have no liability to the public to maintain or repair if the undertakers have given them a notice stating the general nature of the works proposed, or of the emergency works executed, as the case may be, and that it is a notice given for the purposes of this subsection, and the [F24street][F24road] managers have not, within fifteen days from the date on which the notice was given to them, given notice to the undertakers requiring submission or furnishing of a plan and section to them.
- (5) If undertakers execute any works to which this section applies in contravention of subsection (1) thereof, or fail to furnish a plan and section in accordance with an obligation to which they are subject by virtue of paragraph (b) of subsection (3) thereof, they shall in respect of that contravention or failure be liable on summary conviction to a fine not exceeding [F25level 3 on the standard scale].
- (6) If any authority or managers concerned object to any works in the case of which subsection (1) of this section or paragraph (b) of subsection (3) thereof has effect as concerns them and which were executed before a plan and section thereof had been settled, whether the works were executed in contravention of the said subsection (1) or were emergency works, they may, after giving to the undertakers notice of the objection and an opportunity to enter into an agreement with the authority or managers for meeting it, refer the matter to arbitration, and the [F26arbitrator][F26arbiter] may direct the alteration of the works to conform to a plan and section settled by him, or the removal of any apparatus placed in the execution thereof, and the undertakers shall be under obligation to comply with any such direction:

Provided that, in settling the terms of any such direction, the [F26arbitrator][F26arbiter] shall satisfy himself that compliance therewith will not involve any undue interruption or restriction of the supply or service for the purposes of which the works were executed.

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If undertakers fail to execute works in accordance with an obligation to which they are subject by virtue of a direction under this subsection, they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding ten pounds in respect of each day of such failure.

- (7) An authority or managers to whom a plan and section of works are required by this section to be submitted or furnished may accept, as or in lieu of a plan and section thereof, any description thereof, whether in diagram form or not, which appears to them to be sufficient, and references in this Act to a plan and section shall include references to any such description so submitted or furnished to the form of which the authority or managers have not objected within the time limited by the next succeeding section for objection in form to a plan and section submitted.

#### Textual Amendments

- F20** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(4\)\(a\)](#)
- F21** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 29(2), [Sch. 5 para. 45](#)
- F22** Words “public road” and “road” substituted (S.) respectively for words “maintainable highway” and “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(4\)\(b\)\(i\)](#)
- F23** Words “sewer vested in a local authority” substituted (S.) for words “public sewer” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(4\)\(b\)\(ii\)](#)
- F24** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(4\)\(c\)](#)
- F25** Words substituted (E.W.) (S.) by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#) and (S.) by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 289F, 289G](#)
- F26** Word “arbiter” substituted (S.) for word “arbitrators” by virtue of [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(4\)\(d\)](#) (which is in terms expressed to relate to s. 3(5) )

#### Modifications etc. (not altering text)

- C3** [S. 3\(5\)](#) is expressed to be amended (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(4\)\(d\)](#) (but see footnote in s. 3(6) relating to [Roads \(Scotland\) Act 1984](#)).

## 4 Procedure as to plans and sections, etc.: general provisions.

- (1) An authority or managers concerned to whom a plan and section of code-regulated works proposed to be executed in a [<sup>F27</sup>street][<sup>F27</sup>road] are submitted under subsection (1) of the last preceding section shall give notice to the undertakers either—
- approving the plan and section without modification,
  - objecting to them in form as being on too small a scale or giving insufficient particulars,
  - approving them subject to modifications specified in the notice, or
  - disapproving them.
- (2) Such an authority or managers shall give the notice required of them by the preceding subsection without avoidable delay, and at the latest before the expiration of the following period from the date on which the plan and section were submitted to them, that is to say—
- in the case of a plan and section not being such as are mentioned in the succeeding paragraph, twenty-nine days; or

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- (b) in the case of a plan and section of works relating only to a service pipe or service line or [F28overhead telecommunication apparatus]; eight days, and, as between the undertakers and such an authority or managers who have not duly given the notice at the expiration of that period, the plan and section as submitted shall be deemed to have been settled by agreement.
- (3) Where such an authority or managers give a notice approving the plan and section subject to modifications, or disapproving the plan and section, the authority or managers shall state their grounds for requiring the modifications, or for their disapproval, as the case may be.
- (4) If such an authority or managers duly give a notice objecting to the plan and section in form, or approving them subject to modifications to which the undertakers do not agree, or disapproving them, then, unless the notice is withdrawn in the case of each such authority or managers who have duly given such a notice (in which case the plan and section as submitted shall be deemed to have been settled by agreement between them and the undertakers)—
- (a) the undertakers may refer the matter to arbitration; and
  - (b) the [F29arbitrator][F29arbiter] shall settle a plan and section of works of the kind proposed, as works to be executed in the [F29street][F29road]:
- Provided that—
- (i) paragraph (b) of this subsection shall not apply if the case falls within the next succeeding section and the only modifications or disapproval are on the part of the [F30street][F30roads] authority and on the ground that some or all of the works ought to be executed in controlled land, and
  - (ii) paragraph (b) of this subsection shall have effect subject to the provisions of subsection (7) of this section in such a case as is therein mentioned.
- (5) On a reference under this or the next succeeding section the [F31arbitrator][F31arbiter] shall have power to require the undertakers to submit to him a plan and section in such form, to require any such authority or managers to submit to him such observations on a plan and section submitted to him, and to require either the undertakers or any such authority or managers to furnish him with such information and to take such other steps as appear to him to be requisite, and shall have power to treat compliance with any such requirement made to the undertakers as a condition of his proceeding with the settlement of a plan and section and compliance with any such requirement made to any such authority or managers as a condition of his settling a plan and section otherwise than as proposed by the undertakers.
- (6) A sewer authority concerned, or a bridge authority or managers concerned, shall not be entitled to give notice approving a plan and section submitted to them under subsection (1) of the last preceding section subject to modifications, or disapproving the plan and section, on grounds other than such as relate to injurious effect of the proposed works on their sewer, or on the structure or stability of their bridge, as the case may be:
- Provided that this subsection shall not apply to a sewer authority, or to a bridge authority or managers, who are also concerned as the [F32street authority][F32roads authority] or [F32street managers][F32road managers] or as a transport authority.
- (7) Where there is a reference to an [F33arbitrator][F33arbiter] under subsection (4) of this section in relation to the placing, altering or changing the position of apparatus in a [F33street][F33road] which is carried by or goes under a bridge, if he is satisfied that the



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execution thereof would be likely to affect injuriously the structure or stability of the bridge, and that it is not practicable to meet objection on that ground to the plan and the section submitted, he shall so declare, and shall not settle any plan and section of those works on that reference, but without prejudice to the right of the undertakers to submit another plan and section thereof for the purposes of subsection (1) of the last preceding section.

- (8) For the purposes of the application of this and the next succeeding section, in relation to a plan and section of undertakers' works to be executed in exercise of any power to execute such works conferred by section twelve of the <sup>M3</sup>Requisitioned Land and War Works Act 1948 (which relates to government oil pipe-lines and works accessory thereto), or by the joint effect of that section and of section twenty-eight of the <sup>M4</sup>Requisitioned Land and War Works Act 1945—
- (a) any objection to a plan and section in form shall be disregarded if a Minister within the meaning of the said Act of 1945 certifies that in his opinion it would be against the national interest to submit a plan and section on a larger scale or giving further particulars; and
  - (b) any modification of a plan and section shall be disregarded in so far as the modification would involve a lateral diversion of a line to which the said section twelve applies (other than a diversion to which the Minister on whose behalf the works are to be executed consents) or any such change of the site of accessory works to which that section applies as would necessitate such a diversion, any disapproval of a plan and section shall be disregarded in so far as the ground therefor is or involves that there ought to be such a diversion or change, and an [<sup>F34</sup>arbitrator][<sup>F34</sup>arbiter] settling a plan and section shall not thereby provide for any such diversion or change.

#### Textual Amendments

- F27** Word “street” substituted (S.) for word “road” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(5)(a)**
- F28** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 29(2), **Sch. 5 para. 45**
- F29** Words “arbiter” and “road” substituted (S.) respectively for words “arbitrator” and “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(5)(b)(i)**
- F30** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(5)(b)(ii)**
- F31** Word “arbiter” substituted (S.) for word “arbitrator” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(5)(c)**
- F32** Words “roads authority” and “road managers” substituted (S.) respectively for words “street authority” and “street managers” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(5)(d)**
- F33** Words “arbiter” and “road” substituted (S.) respectively for words “arbitrator” and “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(5)(e)**
- F34** Word “arbiter” substituted (S.) for word “arbitrator” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(5)(f)**

#### Modifications etc. (not altering text)

- C4** [S. 4](#) modified by [Pipe-lines Act 1962 \(c. 58, SIF 102\)](#), s. 16
- C5** [S. 4\(8\)](#) extended by [Land Powers \(Defence\) Act 1958 \(c. 30, SIF 28:3\)](#), **s. 16(5)(a)**

#### Marginal Citations

- M3** [1948 c. 17\(28:3\)](#).

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**M4** 1945 c. 43(28:3).

## **5 Procedure as to plans and sections, etc.: provisions as to works in controlled land.**

- (1) Where a plan and section submitted under subsection (1) of section three of this Act are of works proposed to be executed in a [<sup>F35</sup>street which is a maintainable highway or is prospectively a maintainable highway, the street][<sup>F35</sup>road which is a public road or prospective public road, the roads] authority (but not any other authority or managers concerned) may disapprove the plan and section on the ground that the works ought to be executed in controlled land abutting on the [<sup>F36</sup>street][<sup>F36</sup>road], or they may approve the plan and section subject to modifications excluding some of the works on the ground that they ought to be executed in such land:

Provided that the [<sup>F36</sup>street][<sup>F36</sup>roads] authority shall not so disapprove or require modifications unless they are satisfied that they will be in a position, by exercising powers in that behalf vested in them by virtue of the First Schedule to this Act or otherwise, to confer on the undertakers the right to execute the works in question in the controlled land and all the like rights in relation to apparatus the placing whereof is to be comprised in the works as the undertakers would have if it were placed in the [<sup>F36</sup>street][<sup>F36</sup>road], and to render those rights exercisable from not later than the expiration of the period of twenty-two days mentioned in subsection (4) of this section.

- (2) On a reference to an [<sup>F37</sup>arbitrator][<sup>F37</sup>arbitrator] under subsection (4) of the last preceding section relating to such works as aforesaid as to which the [<sup>F37</sup>street][<sup>F37</sup>roads] authority have disapproved the plan and section, or have approved them subject to modifications, on the ground that those works ought to be executed in controlled land (whether or not the reference relates to those works only or the disapproval or requiring of modifications was on that ground only), the [<sup>F37</sup>arbitrator][<sup>F37</sup>arbitrator] shall determine whether or not all those works or any of them ought to be executed in the controlled land.
- (3) Where either—
- (a) an [<sup>F38</sup>arbitrator][<sup>F38</sup>arbitrator] determines under the last preceding subsection that any works ought to be executed in controlled land, or
  - (b) undertakers agree to the execution of any works in controlled land after notification to them of disapproval or modifications of a plan and section of the works as proposed to be executed in the [<sup>F39</sup>street][<sup>F39</sup>road] on the ground that they ought to be executed in controlled land,

those works shall, subject to the provisions of the next succeeding subsection, be excluded from the power of the undertakers to execute works in the [<sup>F39</sup>street][<sup>F39</sup>road], and a plan and section of those works as to be executed in the controlled land shall be settled in the proceedings before the [<sup>F38</sup>arbitrator][<sup>F38</sup>arbitrator] who so determines, or, in a case in which the undertakers agree to the execution of the works in the controlled land, shall be settled as may be agreed between the undertakers and the [<sup>F39</sup>street][<sup>F39</sup>roads] authority and any sewer authority concerned, or, in default of agreement, by an [<sup>F38</sup>arbitrator][<sup>F38</sup>arbitrator] acting on a reference of the matter to arbitration by the undertakers.

- (4) In the circumstances mentioned in the last preceding subsection, if at the expiration of twenty-two days from the date on which the plan and section of the works as to be executed in the controlled land are settled any of the rights mentioned in subsection (1)

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of this section has, as respects any of the works to which the determination or agreement extends, not been rendered exercisable by the undertakers,—

- (a) the exclusion from the power of the undertakers to execute works in the [<sup>F40</sup>street][<sup>F40</sup>road] provided for by the last preceding subsection shall thereupon cease as to all those works, and they may be executed in the [<sup>F40</sup>street][<sup>F40</sup>road] in accordance with the plan and section thereof settled under subsection (4) of the last preceding section, or, if the plan and section thereof originally submitted fell within paragraph (i) of the proviso to that subsection, in accordance with that plan and section (with any modifications thereof agreed by the undertakers);
  - (b) the [<sup>F41</sup>street][<sup>F41</sup>roads] authority shall pay to the undertakers the amount of any cost reasonably incurred by the undertakers of executing any of those works in the controlled land, at any time after the authority had purported to authorise the execution thereof in that land and before the failure to render the right or rights in question exercisable was ascertained, in so far as it is rendered abortive by the failure, and of any cost reasonably incurred by them of or in connection with removal of apparatus rendered necessary thereby; and
  - (c) any such removal or works in connection therewith may, notwithstanding anything in section three of this Act, be executed without submission or settlement of a plan and section thereof.
- (5) Where undertakers desire to execute in controlled land otherwise than in the circumstances mentioned in subsection (3) of this section works as to which the settlement of a plan and section is requisite by virtue of section three of this Act, the mode of settlement thereof shall be as mentioned in that subsection as to a case in which undertakers agree to the execution of works in controlled land.

#### Textual Amendments

- F35** Words “road which is a public road or prospective public road, the roads” substituted (S.) for words “street which is a maintainable highway or is prospectively a maintainable highway, the street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(6\)\(a\)\(i\)](#)
- F36** Words “road” and “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(6\)\(ii\)](#)
- F37** Words “arbiter” and “roads” substituted (S.) respectively for words “arbitrator” and “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(6\)\(b\)](#)
- F38** Word “arbiter” substituted (S.) for word “arbitrator” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(6\)\(c\)\(i\)](#)
- F39** Words “road” and “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(6\)\(c\)\(ii\)](#)
- F40** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(6\)\(d\)\(i\)](#)
- F41** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(6\)\(d\)\(ii\)](#)

#### Modifications etc. (not altering text)

- C6** [S. 5](#) restricted by [Pipe-lines Act 1962 \(c. 58, SIF 102\)](#), s. 16(1)

## 6 Works not to be begun until after notice to authorities and managers concerned.

- (1) Subject to the provisions of subsections (4) and (5) of this section (as to certain surface works and as to emergency works), undertakers proposing to begin in a

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[<sup>F42</sup>street][<sup>F42</sup>road] the execution of any code-regulated works shall give to each of the authorities or managers concerned, and, if the [<sup>F42</sup>street][<sup>F42</sup>road] is [<sup>F43</sup>prospectively a maintainable highway][<sup>F43</sup>a prospective public road], to the [<sup>F42</sup>street][<sup>F42</sup>road] managers thereof also, a notice stating the undertakers intention to execute the works and the date on which and the place at which they intend to begin the execution thereof, and the undertakers shall not begin the execution of the works, except with the consent of each of the authorities, bodies and persons to whom the notice is required to be given, until there have elapsed from the date on which the notice was given to them, or to the last of them to be given it if more than one—

- (a) in the case of any works not being such as are mentioned in the succeeding paragraph, seven days, or
- (b) in the case of works relating only to a service pipe or service line or [<sup>F44</sup>overhead telecommunication apparatus], three days.

A notice for the purposes of this subsection shall identify the works in question—

- (i) in the case of a notice to an authority or managers concerned to whom a plan and section of the works have been submitted, by reference thereto; or
  - (ii) in any other case, by a statement of the general nature of the works.
- (2) A notice for the purposes of the preceding subsection shall not be given in the case of works as to which the settlement of a plan and section is requisite by virtue of section three of this Act until after the plan and section have been settled under section four of this Act.
- (3) If, after a notice for the purposes of subsection (1) of this section has been given to any authority, body or person, the execution of the works has not been substantially begun at the expiration of two months from the date on which it was given to them or him, or at the expiration of any extension of that period which they or he may allow, that notice to them or him shall be treated as invalid for those purposes and compliance with subsection (1) of this section shall be requisite as if that notice had not been given to them or him.
- (4) Subsection (1) of this section shall not apply to works which fall within paragraph (a), (b) or (c) of subsection (2) of section three of this Act and which do not involve either breaking up or opening the [<sup>F45</sup>street][<sup>F45</sup>road] or any public sewer therein or tunnelling or boring under the [<sup>F45</sup>street][<sup>F45</sup>road]:

Provided that, as respects any such works which are to be executed at a crossing of a railway on the level, subsection (1) of this section shall apply so far as regards notice to the authority concerned who have the management of the railway undertaking.

- (5) In the case of works to which subsection (1) of this section applies being emergency works—
- (a) the undertakers may begin the execution thereof before the time when by virtue of the preceding provisions of this section they could lawfully begin them; but
  - (b) as soon as is reasonably practicable after so beginning any such works they shall give to each of the authorities, bodies or persons to whom a notice under subsection (1) of this section is required to be given a notice stating the reason for their having done so.

A notice for the purposes of this subsection shall identify the works in question—

- (i) if notice for the purposes of subsection (1) of this section had been given before they were begun, by reference to that notice; or
- (ii) if not, as mentioned in that subsection.

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- (6) If undertakers begin the execution of any works in contravention of subsection (1) of this section, or fail to give a notice in accordance with an obligation to which they are subject by virtue of paragraph (b) of subsection (5) thereof, they shall in respect of that contravention or failure be liable on summary conviction to a fine not exceeding [<sup>F46</sup>level 3 on the standard scale].

#### Textual Amendments

- F42** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(7\)\(a\)\(i\)](#)
- F43** Words “a prospective public road” substituted (S.) for words “prospectively a maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(7\)\(a\)\(ii\)](#)
- F44** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, [Sch. 4 para. 29\(2\)](#), [Sch. 5 para. 45](#)
- F45** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(7\)\(b\)](#)
- F46** Words substituted (E.W.) (S.) by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#) and (S.) by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 289F, 289G](#)

## 7 Requirements as to mode of executing major works, and as to reinstatement.

- (1) Undertakers executing works to which section three of this Act applies—
- shall (except in the case of works of which no plan and section have been settled before the execution thereof) execute the works in accordance with the plan and section settled under section four or section five of this Act, as the case may be, or, if each of the authorities or managers concerned who were parties to the settlement thereof agree to any modification thereof, with the plan and section as so modified;
  - shall execute to the reasonable satisfaction of each of the authorities or managers concerned items of the works which are of an incidental nature (as distinguished from the placing of apparatus or other principal operation in question); and
  - shall afford to any transport authority concerned reasonable facilities for supervising the execution of the works.
- (2) Undertakers executing any code-regulated works which involve breaking up or opening the [<sup>F47</sup>street][<sup>F47</sup>road] or controlled land, or tunnelling or boring under it, shall carry on and complete the works with all such dispatch as is reasonably practicable, and shall be under obligation to reinstate and make good the [<sup>F47</sup>street][<sup>F47</sup>road] or controlled land after the completion of the works, and—
- to begin the reinstatement and making good as soon after completion of any part of the works as is reasonably practicable without hindering the execution of other parts of those works or of other works to be undertaken immediately or shortly thereafter;
  - to afford reasonable facilities to each of the authorities or managers concerned for supervising the execution of the reinstatement and making good, to execute it in accordance with any reasonable requirements of any such authority or managers made at such a time as to render compliance therewith reasonably practicable, and to execute it to the reasonable satisfaction of each such authority or managers; and

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- (c) in the case of works which involve breaking up or opening the [<sup>F47</sup>street][<sup>F47</sup>road] or controlled land (as distinguished from tunnelling or boring under it only), to reinstate it and make it good up to what was the surface level before the execution of the works, subject to the provisions of the Third Schedule to this Act in a case in which the [<sup>F48</sup>street][<sup>F48</sup>roads] authority or [<sup>F47</sup>street][<sup>F47</sup>road] managers elect thereunder to do the reinstatement and making good at upper levels:

Provided that this subsection shall not apply to reinstatement and making good of any sewer, drain or tunnel broken up or opened (as to which provision is made by sections twelve and thirteen of this Act).

If undertakers fail to carry out reinstatement and making good in accordance with an obligation to which they are subject by virtue of this subsection, they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding ten pounds in respect of each day of such failure.

- (3) Undertakers executing any code-regulated works shall pay—
- (a) to each of the authorities or managers concerned an amount equal to any cost reasonably incurred by them of supervision by them for which the undertakers are required by this section to afford facilities; and
  - (b) to any transport authority concerned an amount equal to any cost reasonably incurred by them of signalling or other measures for controlling traffic on their undertaking, or for securing the safety of persons employed in connection with the works, in so far as it is attributable to the execution of the works or the carrying out of reinstatement and making good thereafter.
- (4) If any authority or managers concerned claim that undertakers have executed works, or reinstatement and making good, otherwise than in accordance with the provisions of this section as to execution thereof in accordance with a plan and section or as to execution thereof in accordance with reasonable requirements of such an authority or managers or to their reasonable satisfaction, the authority or managers may give notice to the undertakers stating that they so claim and requiring the undertakers to remedy the defect, and, if the undertakers agree, or it is determined by arbitration, that any works are needed for that purpose and that the claim was notified as early as was reasonably practicable, the undertakers shall be under obligation to execute them.
- If undertakers fail to execute works in accordance with an obligation to which they are subject by virtue of an award on an arbitration under this subsection, they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding ten pounds in respect of each day of such failure.
- (5) If undertakers fail to give an authority or managers concerned facilities for supervision which they are required under this section to give, the authority or managers may execute such works as may be needed for enabling them to inspect the works or reinstatement and making good executed by the undertakers, and the undertakers shall pay to the authority or managers an amount equal to the cost reasonably incurred by them of executing works so needed.
- (6) Where a [<sup>F49</sup>street][<sup>F49</sup>road] or controlled land has been broken up or opened, or tunnelling or boring has been done thereunder, by way of code-regulated works, and the reinstatement and making good of the [<sup>F49</sup>street][<sup>F49</sup>road] or land in which the works were executed, or of part of it, has been completed, and within six months from the completion thereof the area reinstated and made good either subsides or deteriorates otherwise than by subsidence or in addition thereto, then—

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- (a) in the case of any such subsidence, the amount of any cost of executing works needed for remedying the subsidence reasonably incurred by the [<sup>F50</sup>street][<sup>F50</sup>roads] authority (if the [<sup>F49</sup>street][<sup>F49</sup>road] is, or is prospectively, a [<sup>F51</sup>maintainable highway][<sup>F51</sup>public road]) or by the [<sup>F49</sup>street][<sup>F49</sup>road] managers (if the [<sup>F49</sup>street][<sup>F49</sup>road] is not as aforesaid) shall be paid to the authority or managers by the undertakers, unless the reinstatement and making good at upper levels or some of it was done pursuant to an election under the Third Schedule to this Act and the subsidence is shown to have been attributable to defective workmanship or use of defective materials in the doing of the reinstatement and making good so far as it was done otherwise than by the undertakers, and
- (b) in the case of any such deterioration, the amount of any cost of executing works needed for remedying the deterioration reasonably incurred as aforesaid shall be paid as aforesaid if the deterioration is shown to have been attributable to defective workmanship or use of defective materials in the doing of the reinstatement and making good so far as it was done by the undertakers:

Provided that an authority or managers shall not be entitled to a payment under this subsection in respect of the cost of any works unless before executing the works they had given to the undertakers notice of the works which they claimed to be needed and had allowed reasonable time for examination by the undertakers of the area in question.

#### Textual Amendments

- F47** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(8\)\(a\)](#)
- F48** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(8\)\(a\)](#)
- F49** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(8\)\(b\)\(i\)](#)
- F50** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(8\)\(b\)\(i\)](#)
- F51** Words “public road” substituted (S.) for words “maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(8\)\(b\)\(ii\)](#)

## 8 Requirements as to safety, obstruction, etc., to be observed in execution of works.

- (1) Undertakers who are executing or have executed any code-regulated works shall secure at their expense that the following requirements are observed during and in connection with the execution of the works and of reinstatement and making good thereafter under the provisions of this Act in that behalf, that is to say—
  - (a) that, so long as the [<sup>F52</sup>street][<sup>F52</sup>road] or controlled land is open or broken up (except in a place to which the public have no right of access and are not permitted to have access), it is adequately fenced and guarded, and lighted in such manner as to give proper warning to the public during the hours of darkness for the purposes of [<sup>F53</sup>the Road Transport Lighting Act, 1927];
  - (b) that traffic signs (within the meaning of section forty-eight of the <sup>M5</sup>Road Traffic Act 1930) are placed and, where so directed, operated . . . <sup>F54</sup>, in

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accordance with any directions in that behalf which may be given by the authority having power under that section to cause such signs to be placed, so however that any such directions shall be subject to any . . . <sup>F54</sup> directions given by the Minister under . . . <sup>F54</sup> the said section forty-eight, and may be cancelled or modified by the Minister if he is satisfied that they are not reasonably required for the guidance or direction of persons using the street;

- (c) that no greater width or length of any [<sup>F52</sup>street][<sup>F52</sup>road] or controlled land than is reasonably necessary is open or broken up at any one time;
  - (d) that there is no greater obstruction of traffic on any [<sup>F52</sup>street][<sup>F52</sup>road] or interference with the normal use of controlled land than is reasonably necessary; and
  - (e) that any spoil or other material not required for the execution of the works or of the reinstatement and making good is carried away as soon as is reasonably practicable.
- (2) Without prejudice to the generality of the requirement as to lighting imposed by paragraph (a) of the preceding subsection, it shall include a requirement to comply with any regulations made by the Minister in that behalf.

The power to make regulations for the purposes of this subsection shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (3) If undertakers fail to satisfy an obligation to which they are subject by virtue of subsection (1) of this section they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding ten pounds in respect of each day of such failure.
- (4) If undertakers fail to satisfy an obligation to which they are subject by virtue of subsection (1) of this section as regards any requirement mentioned in paragraph (a), (b) or (e) thereof, the [<sup>F55</sup>street][<sup>F55</sup>roads] authority or managers may do anything needed for securing observance of that requirement and the undertakers shall pay to the authority or managers an amount equal to any cost reasonably incurred by them of so doing.
- (5) Subsection (1) of this section shall have effect subject to the provisions of paragraph (b) of subsection (5) of section ten of this Act, and of paragraph 6 of the Third Schedule thereto, as to cases in which works or reinstatement and making good are executed by a transport authority or a [<sup>F56</sup>street][<sup>F56</sup>roads] authority or [<sup>F57</sup>street][<sup>F57</sup>road] managers.

#### Textual Amendments

- F52** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(9\)\(a\)](#)
- F53** The words “section 68 of the Road Traffic Act 1972” were substituted by virtue of the [Road Traffic Act 1972 \(c. 20, SIF 107:1\)](#), [Sch. 10 para. 3](#) and [Road Traffic Act 1974 \(c. 50, SIF 107:1\)](#), [s. 9\(4\)\(b\)](#); those enactments have been repealed by [Road Traffic \(Consequential Provisions\) Act 1988 \(c. 54, SIF 107:1\)](#), s. 3, [Sch. 1 Pt. I](#); the original words were “the Road Transport Lighting Act, 1927” and the [Interpretation Act 1978 \(c. 30\)](#), [s. 17\(2\)\(a\)](#) applies to their construction accordingly.
- F54** Words repealed by [Road Traffic Act 1956 \(c. 67\)](#), [Sch. 9](#)
- F55** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(9\)\(b\)](#)



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**F56** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(9\)\(c\)](#)

**F57** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(9\)\(c\)](#)

#### Marginal Citations

**M5** [1930 c. 43\(108\)](#).

## 9 Protection for street managers of a street which is prospectively a maintainable highway.

Where code-regulated works are executed in a [<sup>F58</sup>street][<sup>F58</sup>road] which is [<sup>F59</sup>prospectively a maintainable highway][<sup>F59</sup>a prospective public road], the [<sup>F60</sup>street][<sup>F60</sup>roads] authority shall be under obligation to the [<sup>F58</sup>street][<sup>F58</sup>road] managers—

- (a) generally, in relation to the execution of the works and reinstatement and making good thereafter, to secure the performance by the undertakers of duties imposed on them by virtue of the two last preceding sections and the Third Schedule to this Act, and to exercise the powers vested in the authority by virtue thereof, in such manner as may be reasonably requisite for the protection of the [<sup>F58</sup>street][<sup>F58</sup>road] managers; and
- (b) in particular, to comply with any reasonable request as to securing the performance of those duties, or as to the exercise of those powers, which may be made by the [<sup>F58</sup>street][<sup>F58</sup>road] managers to the authority.

#### Textual Amendments

**F58** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(10\)\(a\)](#)

**F59** Words “a prospective public road” substituted (S.) for words “prospectively a maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(10\)\(b\)](#)

**F60** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(10\)\(a\)](#)

## 10 Protection for transport authorities (right to execute works and to be paid cost thereof).

- (1) Where works to which section three of this Act applies, other than emergency works, are to be executed in a [<sup>F61</sup>street][<sup>F61</sup>road] which is carried by or goes under a bridge vested in a transport authority, or in a [<sup>F61</sup>street][<sup>F61</sup>road] which crosses or is crossed by any other property which is held or used for the purposes of a transport undertaking, and the works involve breaking up or opening the [<sup>F61</sup>street][<sup>F61</sup>road] or tunnelling or boring under it, the transport authority may by notice given to the undertakers within the time mentioned in this subsection elect themselves to execute all or any of the following in so far as they are to be executed in that [<sup>F61</sup>street][<sup>F61</sup>road], that is to say—
  - (a) the breaking up, opening, tunnelling or boring;
  - (b) any other items of the works which are of an incidental nature (as distinguished from the placing of apparatus or other principal operation in question); and

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- (c) reinstatement and making good (but excluding any such reinstatement and making good as the [F62street][F62roads] authority or [F61street][F61road] managers are entitled to elect to do, without the consent of the undertakers, under the Third Schedule to this Act, unless the transport authority are themselves the [F62street][F62roads] authority or the [F61street][F61road] managers entitled so to elect, or the [F62street][F62roads] authority of the [F61street][F61road] managers entitled so to elect consent to the election of the transport authority under this subsection);

and, where notice of such an election is duly given, the undertakers shall not execute any of the works or reinstatement and making good specified therein, but the transport authority shall execute such works or reinstatement and making good, and the undertakers shall pay to the authority an amount equal to the cost reasonably incurred by the authority of the execution thereof.

Provided that the matters to which this subsection is to apply by virtue of such a notice may be varied by agreement between the transport authority and the undertakers.

A notice of such an election must be given not later than—

- (i) in a case in which the plan and section of the works are settled without recourse to arbitration, the expiration of twenty-nine days (or, if the works relate only to a service pipe or service line or [F63overhead telecommunication apparatus], eight days) from the date on which the plan and section were submitted to the transport authority, or
  - (ii) in a case in which the plan and section are settled by arbitration, the expiration of fifteen days from the date of the award.
- (2) If it appears to a transport authority to whom a plan and section of works to which section three of this Act applies in such a [F64street][F64road] as is mentioned in subsection (1) of this section are submitted under subsection (1) of the said section three, or are furnished under subsection (3) thereof, that the undertakers' works render any other works necessary either—
- (a) for preserving the stability of a bridge vested in the authority for the purposes of such a weight as it is then capable of carrying, or
  - (b) otherwise for securing that the state or circumstances of property held or used for the purposes of their undertaking shall not become other than is requisite having regard to the purposes for which it is intended or used,

whether consisting only of works to be executed on the occasion of the execution of the undertakers' works or comprising both works to be executed then and subsequent works of maintenance, and—

- (i) the authority give to the undertakers, within twenty-nine days from the date on which the plan and section were submitted or furnished to the authority, a notice specifying works which they claim to be so rendered necessary, or, if the plan and section fall to be settled by arbitration, claim in the proceedings for the settlement thereof that any works are so rendered necessary, and
- (ii) the undertakers agree, or it is determined by arbitration, that any works are so rendered necessary,

the undertakers shall pay to the authority an amount equal to the cost reasonably incurred by the authority of executing those works or any of them.

Where it has been agreed or determined that works are rendered necessary as aforesaid by works of the undertakers not yet executed, the undertakers shall not execute any of their works so as to interfere with the execution of the works so agreed or determined,

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and the transport authority shall execute the works so agreed or determined (so far as they are to be executed on the occasion of the execution of the undertakers' works) as soon as is reasonably practicable after the agreement or determination has been made.

- (3) If undertakers execute any works or reinstatement and making good in contravention of either of the two preceding subsections, the transport authority may, in so far as the nature of what has been done permits and is such as to render such action necessary, undo what has been done and do again any of it that consists of such things as are mentioned in paragraphs (a) to (c) of subsection (1) of this section, and the undertakers shall pay to the authority an amount equal to the cost reasonably incurred by them of so doing.
- (4) If a transport authority fail to execute works or reinstatement and making good in accordance with an obligation to which they are subject by virtue of subsection (1) or (2) of this section, they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding ten pounds in respect of each day of such failure.
- (5) Where a transport authority execute works or reinstatement and making good pursuant to an election under subsection (1) of this section, or under subsection (3) of this section, they shall be subject to all obligations and liabilities imposed by sections seven and eight of this Act, sections twelve and thirteen thereof, and section twenty-six thereof to which the undertakers would have been subject if the works or reinstatement and making good had been executed by them, and any cost reasonably incurred by the authority of doing things necessary for the discharge of any of those obligations and liabilities shall be treated for the purposes of subsection (1) or (3) of this section as part of the cost of the works or reinstatement and making good in question except in the case of a liability arising by reason of a default on the part of the authority:

Provided that—

- (a) subsection (2) of section seven (as to the obligation of undertakers to reinstate and make good) shall not apply to the authority unless they have elected to reinstate and make good, and in that case paragraph (c) of that subsection shall not apply unless the election extends to reinstatement and making good at upper levels;
- (b) paragraph (a) of subsection (1) of section eight (as to fencing, guarding and lighting) and paragraph (b) of that subsection (as to traffic signs) shall apply to the authority only where they do the initial breaking up or opening of a [F65street][F65road], and in that case shall cease to apply to them as soon as the undertakers begin any of the works which they are to do, and paragraphs (c) to (e) of that subsection (as to obstruction and like matters) shall apply to the authority, to the exclusion of the undertakers' obligation thereunder, during and in connection with what the authority do but to no further extent; and
- (c) the authority shall not be subject to the liability imposed by subsection (6) of section twenty-six to pay compensation in respect of damage caused by the execution of works lawfully, and the undertakers shall be subject to that liability notwithstanding that the works are executed by the authority.

#### Textual Amendments

- F61** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(11\)\(a\)](#)
- F62** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(11\)\(a\)](#)

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- F63** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 29(2), [Sch. 5 para. 45](#)
- F64** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(11\)\(b\)](#)
- F65** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(11\)\(c\)](#)

## 11 Protection for transport authorities (special precautions in execution of certain works).

- (1) Undertakers executing any code-regulated works in a [<sup>F66</sup>street][<sup>F66</sup>road] which crosses or is crossed by, or is in the vicinity of, a railway, dock, harbour, pier, canal or inland navigation, shall comply with any reasonable requirements made to them by the authority having the management thereof for providing against the displaying of lights so as to involve risk of their being mistaken for any signal light or other light used for controlling, directing or securing the safety of traffic thereon or being a hindrance to the ready interpretation of any such signal or other light.
- (2) Undertakers executing any code-regulated works at a crossing of a railway on the level shall comply with any reasonable requirements as to the arrangements for executing the works, in respect of hours of work or in any other respect, which are made to them by the authority having the management of the railway undertaking for securing the safety of persons employed in connection with the works or for securing that interference with traffic on the railway caused by the execution thereof is reduced so far as is practicable; and, in the case of any such works of which seven or three days’ notice to the authority is required under section six of this Act but submission to them of a plan and section is not required, the undertakers shall defer beginning them for such further period as the authority may reasonably request as needed for formulating their requirements or making their traffic arrangements.
- (3) If undertakers fail to satisfy an obligation to which they are subject by virtue of either of the preceding subsections, they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F67</sup>level 3 on the standard scale].

### Textual Amendments

- F66** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(12\)](#)
- F67** Words substituted (E.W.) (S.) by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#) and (S.) by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 289F, 289G](#)

## 12 Protection for sewer authorities.

- (1) If it appears to a sewer authority concerned to whom a plan and section of works in a [<sup>F68</sup>street][<sup>F68</sup>road] are submitted under subsection (1) of section three of this Act, or are furnished under subsection (3) thereof, or who are parties to the settlement of a plan and section of works in controlled land, that the undertakers’ works render any other works necessary for making proper provision for drainage for which [<sup>F69</sup>a public sewer of the authority][<sup>F69</sup>the sewer vested in the authority] is then used, and—
  - (a) in the case of works in a [<sup>F68</sup>street][<sup>F68</sup>road] the authority give to the undertakers, within twenty-nine days from the date on which the plan and section were submitted or furnished to them, a notice specifying works

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which they claim to be so rendered necessary, or, in the case of works in a [<sup>F68</sup>street][<sup>F68</sup>road] the plan and section whereof fall to be settled by arbitration or of works in controlled land, claim in the proceedings for the settlement of the plan and section that any works are so rendered necessary, and

- (b) the undertakers agree, or it is determined by arbitration, that any works are so rendered necessary,

the undertakers shall execute those works at such time and in such manner in relation to their works as may be needed for securing the purposes of the works so rendered necessary, and in respect of any failure so to do they shall be liable on summary conviction to a fine not exceeding [<sup>F70</sup>level 3 on the standard scale]:

Provided that this subsection shall be subject to the provisions of subsection (4) of this section (as to election by the sewer authority to execute works themselves).

- (2) Undertakers executing any code-regulated works which include breaking up or opening a [<sup>F71</sup>public sewer][<sup>F71</sup>sewer vested in a local authority], or any works rendered necessary as mentioned in the preceding subsection, shall afford to the [<sup>F72</sup>sewer] authority reasonable facilities for supervising the execution of the breaking up or opening, or of the works so rendered necessary, as the case may be.
- (3) Undertakers executing any code-regulated works which include breaking up or opening a [<sup>F73</sup>public sewer][<sup>F73</sup>sewer vested in a local authority] shall be under obligation to reinstate it and make it good:

Provided that this subsection shall be subject to the provisions of subsection (4) of this section (as to election by the sewer authority to execute works themselves).

If undertakers fail to carry out reinstatement and making good in accordance with an obligation to which they are subject by virtue of this subsection, the sewer authority may themselves carry it out.

- (4) Where code-regulated works include the breaking up or opening of a [<sup>F74</sup>public sewer, the sewer][<sup>F74</sup>sewer vested in a local authority, the] authority may, by notice given to the undertakers as mentioned in this subsection, elect themselves to execute all or any of the following, that is to say—
- (a) the breaking up or opening of the sewer,
- (b) reinstatement and making good thereof, and
- (c) works rendered necessary as mentioned in subsection (1) of this section,

and, where notice of such an election is duly given, the undertakers shall not execute any of the works or reinstatement and making good specified therein, but the sewer authority shall execute them or it:

Provided that the matters to which this subsection is to apply by virtue of such a notice may be varied by agreement between the sewer authority and the undertakers.

A notice of such an election shall be deemed to have been duly given as to works of a kind mentioned in paragraph (a), (b) or (c) of this subsection if the sewer authority had given notice to the undertakers of their desire that the provisions of this subsection should have effect in the case of all works of that kind to be executed in relation to any [<sup>F75</sup>public sewer of theirs][<sup>F75</sup>sewer vested in the authority], but in any other case a notice of such an election must be given—

- (i) as regards breaking up or opening, or reinstatement and making good, in a case in which the plan and section of the undertakers' works are settled without

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- recourse to arbitration, not later than twenty-nine days from the date on which the plan and section were submitted to the authority;
- (ii) as regards breaking up or opening, or reinstatement and taking good, in a case in which the plan and section are settled by arbitration, not later than the expiration of fifteen days from the date of the award;
- (iii) as regards works rendered necessary as mentioned in subsection (1) of this section, at the time of the sewer authority's claiming them to be so rendered necessary by the notice or in the proceedings mentioned in that subsection.
- (5) The undertakers shall pay to the sewer authority an amount equal to the cost reasonably incurred by the authority of supervision by them for which the undertakers are required by subsection (2) of this section to afford facilities, or of carrying out reinstatement and making good under subsection (3) thereof, or of executing any works or carrying out any reinstatement and making good pursuant to an election under subsection (4) thereof.

#### Textual Amendments

- F68** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(13\)\(a\)\(i\)](#)
- F69** Words “the sewer vested in the authority” substituted (S.) for words “a public sewer of the authority” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(13\)\(d\)\(ii\)](#)
- F70** Words substituted (E.W.) (S.) by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#) and (S.) by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 289F, 289G](#)
- F71** Words “sewer vested in a local authority” substituted (S.) for words “public sewer” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(13\)\(b\)\(i\)](#)
- F72** Word “sewer” repealed (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(13\)\(b\)\(ii\)](#), [s. 156](#), [Schs. 10, 11](#)
- F73** Words “sewer vested in a local authority” substituted (S.) for words “public sewer” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(13\)\(c\)](#)
- F74** Words “sewer vested in a local authority, the” substituted (S.) for words “public sewer, the sewer” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(13\)\(d\)\(i\)](#)
- F75** Words “sewer vested in the authority” substituted (S.) for words “public sewer of theirs” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(13\)\(d\)\(ii\)](#)

### 13 Protection for managers of sewers, drains or tunnels not being public sewers.

- (1) Undertakers executing any code-regulated works which include breaking up or opening a sewer, drain or tunnel not being a [<sup>F76</sup>public sewer][<sup>F76</sup>sewer vested in a local authority] shall be under obligation to reinstate it and make it good.

If undertakers fail to carry out reinstatement and making good in accordance with an obligation to which they are subject by virtue of this subsection, the authority, body or person having the control or management of the sewer, drain or tunnel may themselves carry it out, and the undertakers shall pay to them or him an amount equal to the cost reasonably incurred by them or him of carrying it out.

- (2) The provisions of section twenty-six of this Act as to obligations of undertakers executing works in a [<sup>F77</sup>street][<sup>F77</sup>road] or in controlled land in relation to apparatus of other undertakers (therein referred to as owning undertakers) shall have effect in relation to sewers, drains and tunnels not being [<sup>F77</sup>public sewers][<sup>F77</sup>sewers vested in local authorities] and to authorities, bodies and persons having the management

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or control thereof, as those provisions have effect in relation to apparatus of owning undertakers and to those undertakers.

#### Textual Amendments

- F76** Words “sewer vested in a local authority” substituted (S.) for words “public sewer” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(14\)\(a\)](#)
- F77** Words “roads” and “sewers vested in local authorities” substituted (S.) respectively for words “street” and “public sewers” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(14\)\(b\)](#)

### 14 Provision as to default in removing apparatus placed temporarily.

Where there is placed in a [<sup>F78</sup>street other than a maintainable highway][<sup>F78</sup>road other than a public road] apparatus required only in connection with the doing of building or other work on land adjacent to the [<sup>F79</sup>street][<sup>F79</sup>road] and the placing thereof is a code-regulated work, if the apparatus is not removed on completion of the building or other work in question, the [<sup>F80</sup>street][<sup>F80</sup>roads] authority or [<sup>F79</sup>street][<sup>F79</sup>road] managers may give the undertakers notice requiring them to remove it, and if it is not removed within eight days from the giving of such a notice, the authority or managers may remove it and the undertakers shall pay to the authority or managers an amount equal to the cost reasonably incurred by them of its removal and disposal and of reinstating and making good the [<sup>F79</sup>street][<sup>F79</sup>road] after its removal.

#### Textual Amendments

- F78** Words “road other than a public road” substituted (S.) for words “street other than a maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(15\)\(a\)](#)
- F79** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(15\)\(b\)](#)
- F80** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(15\)\(b\)](#)

*Transition to the street works code and exclusion of other regulative provisions*

### 15 Time for taking effect of the street works code, and exclusion of other statutory provisions.

- (1) The provisions of this section shall have effect—
- (a) for fixing the time from which the street works code is to have effect in relation to any power to which section one of this Act applies; and
  - (b) for rendering enactments other than the street works code not applicable in relation to any such power so far as concerns the relations between the undertakers and authorities, bodies and persons concerned as mentioned in paragraph (a) of subsection (1) of section one of this Act in respect of matters as to which provision is made by the street works code or matters of a like nature.

In this section references to the relations aforesaid, being confined to matters as to which provision is made by the street works code or matters of a like nature, shall not be construed as including any reference to rights or obligations as to the obtaining of consents for the execution of works or for any other purpose.

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- (2) The street works code shall have effect in relation to a power to which section one of this Act applies from the following time, that is to say—
- (a) in the case of a power created before the passing of this Act or within six months therefrom, other than one whose exercise is regulated (so far as concerns the relations aforesaid) immediately before the expiration of the said six months wholly or in part by special legislation, from the expiration of the said six months, subject to the provisions of subsection (4) of this section as to works then in hand;
  - (b) in the case of a power so created whose exercise is regulated as aforesaid, from such time, not being earlier than the expiration of six months from the passing of this Act, as the Minister may by order appoint, subject to the provisions of subsection (4) of this section as to works then in hand;
  - (c) in the case of a power created after the expiration of the said six months, from the time of its creation.

The power to make orders for the purposes of paragraph (b) of this subsection shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament, and different times may be appointed thereunder in relation to different powers or classes of powers.

- (3) Subject to the provisions of subsection (4) of this section as to works in hand, no enactment passed or made before the passing of this Act, and, unless the contrary intention appears therein, no enactment passed thereafter, whether being a public general enactment or a special enactment, shall extend to the regulation of the exercise of a power to which section one of this Act applies (so far as concerns the relations aforesaid) after the time from which the street works code is to have effect in relation to the power, and accordingly—
- (a) the provisions specified in the Fifth Schedule to this Act as being consequential on the street works code (being provisions for the express modification of public general enactments therein specified in accordance with the preceding general provisions of this subsection) shall have effect from the expiration of six months from the passing of this Act, so however that the said provisions of that Schedule shall not apply for the purposes of the operation of any of those enactments as incorporated or applied in or by a special enactment in relation to such power as is mentioned in paragraph (b) of subsection (2) of this section; and
  - (b) paragraph 1 of the Sixth Schedule to this Act shall have effect as to making provision for the express modification, in accordance with the preceding general provisions of this subsection, of special enactments and of public general enactments for the purposes of their operation as incorporated or applied as aforesaid.
- (4) The preceding provisions of this section shall not affect the regulation of the exercise of any such power as is mentioned in paragraph (a) or (b) of subsection (2) of this section as to works which were in hand immediately before the expiration of six months from the passing of this Act, or before the appointed time, as the case may be, but as to such works the exercise of the power shall be regulated as concerns the relations aforesaid by the enactments by which it would have been regulated as concerns those relations apart from this Part of this Act and by those enactments as then in force, and works shall be treated for the purposes of this section as having been in hand then if a plan and section of the works had then been submitted, or any other action requisite thereunder had then been taken in relation to the works, under



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provisions of those enactments which regulated the exercise of the power as concerns the relations aforesaid, but not otherwise.

- (5) Paragraph 2 of the Sixth Schedule to this Act shall have effect as to certain protective provisions affected by the operation of subsections (2) and (3) of this section.
- (6) Any Act passed before the passing of this Act which authorises the making of provision by order, scheme, regulations or otherwise for regulating the exercise of a power to which section one of this Act applies shall on the passing of this Act cease to have effect in so far as it authorises such provision to be made as concerns the relations aforesaid for any period after the time from which the street works code is to have effect in relation to the power, and Acts passed after the passing of this Act shall be construed as not authorising any such provision to be so made unless the contrary intention appears therein.

**Modifications etc. (not altering text)**

C7 26.10.1951 appointed under s. 15(2)(b) by S.I. 1951/1555 (1951 II, p. 318), art. 1

**16 Agreements inconsistent with the street works code to be invalid.**

An agreement, whether made before or after the passing of this Act, which makes provision for regulating in any respect the exercise of a power to which section one of this Act applies as regards the relations between the undertakers and any authority, body or person concerned as mentioned in paragraph (a) of subsection (1) of section one of this Act shall be of no effect in relation to code-regulated works in so far as its effect apart from this section would be inconsistent with any of the provisions of the street works code:

Provided that this section shall not affect the operation of—

- (a) any agreement in so far as it relates to reinstatement or making good, or
- (b) any agreement for the waiver or variation of a right conferred on any authority, body or person by any of the said provisions, if the agreement is made after the right has accrued and is not inconsistent with the future operation of any of the said provisions.

*Provisions relating to code-regulated works: consents, liability of undertakers for damage, etc., and minor amendments*

**17 Exclusion or restriction of requirements of consent as to certain code-regulated works.**

- (1) Undertakers may, without obtaining any consent to which this subsection applies, execute in a [<sup>F81</sup>maintainable highway][<sup>F81</sup>public road] any code-regulated works which they would be entitled to execute therein with that consent, other than—
  - (a) works above the surface level of the [<sup>F82</sup>highway][<sup>F82</sup>road]; and
  - (b) in the case of undertakers in relation to whom limits of supply are prescribed, works outside their limits of supply.

This subsection applies to any consent of any of the following authorities, bodies and persons which apart from this subsection they or he would have

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been entitled in the following capacity to require the undertakers to obtain, that is to say any consent—

- (i) of the [<sup>F83</sup>highway][<sup>F83</sup>roads] authority as such or
- (ii) of any transport authority, or any bridge authority or managers, who are an authority or managers concerned within the meaning of the street works code, in the capacity which renders them an authority or managers so concerned,

except a consent under [<sup>F84</sup>section 20 or section 22 of the <sup>M6</sup>Highways Act 1980][<sup>F85</sup>section 133 or 135 of the <sup>M7</sup>Roads (Scotland) Act 1984], and except that, as regards a consent as to which an order under paragraph 3 of the Sixth Schedule to this Act has effect, this subsection shall have effect subject to the provisions of the order.

- (2) All enactments passed or made before the passing of this Act which require the obtaining of consents which the preceding subsection renders not requisite, whether being public general enactments or special enactments, shall cease to have effect in so far as they so require, and no enactment passed after the passing of this Act shall be construed as requiring the obtaining of any such consent unless the contrary intention appears therein, and accordingly—
  - (a) the provisions specified in the Fifth Schedule to this Act as being consequential on this section (being provisions for the express modification of public general enactments therein specified in accordance with the preceding general provisions of this subsection) shall have effect as regards code-regulated works, so however that the said provisions of that Schedule shall not apply for the purposes of the operation of any of those enactments as incorporated or applied in or by a special enactment with any modification; and
  - (b) paragraph 1 of the Sixth Schedule to this Act shall have effect as to making provision for the express modification, in accordance with the preceding general provisions of this subsection, of special enactments and of public general enactments for the purposes of their operation as incorporated or applied as aforesaid.
- (3) Subject to any order under paragraph 4 of the Sixth Schedule to this Act, a provision made by way of condition imposed on the giving of a consent for the execution of code-regulated works shall be of no effect in so far as it would have been so by virtue of the last preceding section or of section twenty-five of this Act if it had been made by an agreement.
- (4) The fact that a [<sup>F86</sup>street][<sup>F86</sup>roads] authority have given, as to works proposed to be executed in a [<sup>F87</sup>street][<sup>F87</sup>road], a consent requisite on the basis of their being executed in the [<sup>F87</sup>street][<sup>F87</sup>road] shall not prejudice the right conferred on the authority by subsection (1) of section five of this Act (as to disapproving or modifying a plan and section on the ground that works ought to be executed in controlled land).
- (5) A consent obtained for the purposes of [<sup>F88</sup>section 37 of the Electricity Act 1989], to the placing of an electric line of which a plan and section have been the subject of a declaration by an [<sup>F89</sup>arbitrator][<sup>F89</sup>arbitrator] under subsection (7) of section four of this Act shall be deemed to extend to the placing of any such line of which another plan and section are submitted in exercise of the right in that behalf reserved to the undertakers by that subsection.

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*Changes to legislation: There are currently no known outstanding effects for the Public Utilities Street Works Act 1950 (repealed 1.1.1993), Part I. (See end of Document for details)*

### Textual Amendments

- F81** Words “public road” substituted (S.) for words “maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(16\)\(a\)\(i\)](#)
- F82** Word “road” substituted (S.) for word “highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(16\)\(a\)\(ii\)](#)
- F83** Word “roads” substituted (S.) for word “highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(16\)\(a\)\(iii\)](#)
- F84** Words substituted (E.W.) by virtue of [Interpretation Act 1978 \(c. 30, SIF 115:1\)](#), [s. 17\(2\)\(a\)](#)
- F85** Words “section 133 or 135 of the Roads (Scotland) Act 1984” substituted (S.) for words “section four or section six of the Special Roads Act 1949” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(16\)\(a\)\(iv\)](#)
- F86** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(16\)\(b\)](#)
- F87** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(16\)\(b\)](#)
- F88** Words substituted by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), [s. 112\(1\)\(3\)](#), [Sch. 16 para. 7](#), [Sch. 17 paras. 33](#), [35\(1\)](#)
- F89** Word “arbiter” substituted (S.) for word “arbitrator” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(16\)\(c\)](#)

### Marginal Citations

- M6** [1980 c. 66\(59\)](#).
- M7** [1984 c. 54\(108\)](#).

## 18 Liabilities of undertakers to street and bridge authorities or managers.

- (1) If by the execution lawfully of code-regulated works in a [<sup>F90</sup>street][<sup>F90</sup>road] damage is caused to property of the [<sup>F91</sup>street][<sup>F91</sup>roads] authority or [<sup>F90</sup>street][<sup>F90</sup>road] managers in the [<sup>F90</sup>street][<sup>F90</sup>road], or, in the case of such works in a [<sup>F90</sup>street][<sup>F90</sup>road] which is carried by or goes under a bridge, to the bridge, the undertakers shall pay compensation to the [<sup>F91</sup>street][<sup>F91</sup>roads] authority or managers, or to the bridge authority or managers, equal to the expense reasonably incurred by them of making good the damage to that property or to the bridge, as the case may be:

Provided that undertakers shall not be liable by virtue of this subsection in respect of any damage if it would not have been sustained but for misconduct or negligence on the part of the authority or managers or their contractors or any person in the employ of the authority or managers or their contractors.

- (2) If any nuisance is caused—
- by the execution of code-regulated works, or
  - by explosion, ignition or discharge of, or any other event occurring to, gas, electricity, water or any other thing required for the purposes of a supply or service afforded by any undertakers which at the time of or immediately before the event in question was in apparatus of those undertakers the placing or maintenance of which was or is a code-regulated work, or which had been in such apparatus before the time of that event and had escaped therefrom in circumstances which contributed to its occurrence.

nothing in the enactment which confers the relevant power to which section one of this Act applies or in any enactment which regulates the exercise of that power, and,

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if the works or the apparatus, as the case may be, are in controlled land, nothing in the relevant authorisation given under the First Schedule to this Act, shall exonerate the undertakers from any action or other proceeding at the suit either—

- (i) of the [<sup>F92</sup>street][<sup>F92</sup>roads] authority or [<sup>F93</sup>street][<sup>F93</sup>road] managers, or
  - (ii) if the works or the apparatus, as the case may be, are in a [<sup>F93</sup>street][<sup>F93</sup>road] which is carried by or goes under a bridge, of the bridge authority or managers.
- (3) The preceding provisions of this section shall not confer any rights on a transport authority (as to whom the provisions of the next succeeding section shall have effect to the exclusion of the preceding provisions of this section).
- (4) Subject to the provisions of section thirty-two of this Act the preceding provisions of this section shall not exonerate undertakers from any liability to which they are subject apart from the preceding provisions of this section, whether to a [<sup>F94</sup>street authority or street][<sup>F94</sup>roads authority or road] managers, to a bridge authority or managers or to any other person.

#### Textual Amendments

- F90** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(17\)\(a\)](#)
- F91** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(17\)\(a\)](#)
- F92** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(17\)\(b\)](#)
- F93** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(17\)\(b\)](#)
- F94** Words “roads authority or road” substituted (S.) for words “street authority or street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(7\)\(c\)](#)

## 19 Liabilities of undertakers to transport authorities.

- (1) If either—
- (a) by the execution of code-regulated works in a [<sup>F95</sup>street][<sup>F95</sup>road] which is carried by or goes under a bridge vested in a transport authority or which crosses or is crossed by other property held or used for the purposes of a transport undertaking, or
  - (b) by any such event as is mentioned in paragraph (b) of subsection (2) of the last preceding section occurring as therein mentioned in a case in which the apparatus in question is in such a [<sup>F95</sup>street][<sup>F95</sup>road] as aforesaid,
- damage is caused to the bridge or other property, or flooding or other obstruction thereof is caused, the undertakers shall indemnify the transport authority against expense reasonably incurred by them of making good the damage or removing the obstruction, and against any loss sustained by them in respect of interference with traffic resulting directly from the damage or obstruction:

Provided that undertakers shall not be liable by virtue of this subsection in respect of any damage or obstruction if it would not have been sustained or have occurred but for misconduct or negligence on the part of the authority or their contractors or any person in the employ of the authority or their contractors.

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- (2) Undertakers having power to maintain apparatus the maintenance of which is a code-regulated work, and which is in such a [<sup>F96</sup>street][<sup>F96</sup>road] as aforesaid, shall secure that the apparatus is maintained to the reasonable satisfaction of the transport authority and shall afford reasonable facilities to the authority for ascertaining that it is so maintained.

If the undertakers fail to give to the authority facilities which they are required by this subsection to give, the authority may execute such works as may be needed for enabling them to inspect the apparatus, including any necessary breaking up or opening of the [<sup>F96</sup>street][<sup>F96</sup>road], and, if the undertakers fail to secure that the apparatus is maintained in accordance with this subsection, the authority may execute any emergency works rendered necessary by the failure, including as aforesaid, and the undertakers shall pay to the authority an amount equal to the cost reasonably incurred by the authority of executing any such works; and—

- (a) subsection (5) of section ten of this Act (as to obligations and liabilities of a transport authority executing works) shall have effect in relation to any such works executed by the authority as it has effect in relation to works executed under subsection (3) of that section, but so as to include (notwithstanding anything in proviso (a) to the said subsection (5) the obligations and liabilities as to reinstating and making good imposed by subsection (2) of section seven of this Act;
- (b) as soon as is reasonably practicable after beginning any such works the authority shall give to each of the authorities or managers concerned within the meaning of the [<sup>F96</sup>street][<sup>F96</sup>road] works code, and, if the works are in a [<sup>F96</sup>street][<sup>F96</sup>road] which is [<sup>F97</sup>prospectively a maintainable highway][<sup>F97</sup>a prospective public road], to the [<sup>F96</sup>street][<sup>F96</sup>road] managers also, a notice stating the general nature of the works which they have executed and propose to execute.
- (3) Subject to the provisions of section thirty-two of this Act, the preceding provisions of this section shall not exonerate undertakers from any liability to which they are subject apart from the preceding provisions of this section, whether to a transport authority or to any other authority, body or person.

[<sup>F98X5</sup>(4) Where undertakers are required by a transport authority to give an indemnity by virtue of subsection (1) of this section against damage [<sup>F99</sup>suffered by the authority as a result of a tort], in respect of which another person would if sued by the authority be liable as a tortfeasor, but in respect of which the undertakers are not so liable, the undertakers shall have the like right to recover contribution from that other person under [<sup>F100</sup>section 1 of the <sup>M8</sup>Civil Liability (Contribution) Act 1978] as if the undertakers had been so liable.]

[<sup>F98X5</sup>(4) Where undertakers are required by a transport authority to give an indemnity by virtue of subsection (1) of this section against loss or damage, within the meaning of the <sup>M9</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1940, in respect of which another person would if sued by the authority be liable in respect of a wrongful act or negligent act or omission, but in respect of which the undertakers are not so liable, the undertakers shall have the like right to recover contribution from that other person under section 3 of that Act as if the undertakers had been so liable.]

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### Editorial Information

- X5** S. 19(4) commencing “Where undertakers are required by a transport authority to give an indemnity by virtue of subsection (1) of this section against loss” substituted (S.) for s. 19(4) commencing “Where undertakers are required by a transport authority to give an indemnity by virtue of subsection (1) of this section against damage” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(18)(c)**

### Textual Amendments

- F95** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(18)(a)**
- F96** By [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(18)(b)(i)** that in s. 19, as applying to Scotland, in subsection (2) for the word “street” wherever it occurs there is substituted the word “road”
- F97** Words “a prospective public road” substituted (S.) for words “prospectively a maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(18)(b)(ii)**
- F98** S. 19(4) commencing “Where undertakers are required by a transport authority to give an indemnity by virtue of subsection (1) of this section against loss” substituted (S.) for s. 19(4) commencing “Where undertakers are required by a transport authority to give an indemnity by virtue of subsection (1) of this section against damage” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(18)(c)**
- F99** Words substituted for words “within the meaning of the Law Reform (Married Women and Tortfeasors) Act 1935” by [Civil Liability \(Contribution\) Act 1978 \(c. 47, SIF 122:3\)](#), **Sch. 1 para. 2(a)**
- F100** Words substituted for words “section six of that Act” by [Civil Liability \(Contributions\) Act 1978 \(c. 47, SIF 122:3\)](#), **Sch. 1 para. 2(b)**

### Marginal Citations

- M8** 1978 c. 47(122:3).
- M9** 1940 c. 42(122:3).

## 20 Amendments consequential on enactment of the street works code.

- (1) ..... <sup>F101</sup>
- (3) ..... <sup>F102</sup> in like manner any special legislation imposing any like requirement which is in any case incapable of being complied with shall not have effect in that case as concerns undertakers’ works in a [<sup>F103</sup>street][<sup>F103</sup>road].
- (4) The provisions specified in the Fifth Schedule to this Act as being consequential on this section (being provisions for certain minor amendments of public general enactments consequential on the enactment of the street works code) shall have effect.

### Textual Amendments

- F101** S. 20(1)(2) repealed by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, **Sch. 7 Pt. I**
- F102** Words repealed by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(3)(4), **Sch. 17 para. 35(1)**, **Sch. 18**
- F103** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 39(19)**

### Modifications etc. (not altering text)

- C8** The text of s. 20(4) 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.

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**Changes to legislation:**

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