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STATUTORY INSTRUMENTS

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**1995 No. 1986**

**CONTRACTING OUT**

**The Contracting Out (Highway Functions) Order 1995**

*Made* - - - - - *24th July 1995*

*Coming into force* - - - - - *25th July 1995*

Whereas a draft of this Order has been laid before Parliament and approved by a resolution of each House of Parliament under section 77(2) of the Deregulation and Contracting Out Act 1994<sup>(1)</sup>,

Now, therefore, the Secretary of State for Transport, in exercise of the powers conferred by sections 69(2) and 77(1)(b) of that Act and of all other powers enabling him in that behalf, hereby makes the following Order:—

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Contracting Out (Highway Functions) Order 1995 and shall come into force on the day after the day on which it is made.

(2) In this Order, unless the context otherwise requires:

“the 1980 Act” means the Highways Act 1980<sup>(3)</sup>;

“the 1991 Act” means the New Roads and Street Works Act 1991<sup>(4)</sup>;

“highway” has the same meaning as it has in section 328 of the 1980 Act;

“highway authority” has the same meaning as it has in section 1 of the 1980 Act;

“highway connected land” means land which does not form part of a highway but which has been acquired by the Secretary of State for Transport in connection with a highway under section 239(1) or (4) or section 246 of the 1980 Act or otherwise; and

“Secretary of State” means the Secretary of State for Transport.

(3) In Schedule 1 to this Order, any expression used in the 1980 Act has the same meaning as it has in that Act unless the context otherwise requires.

(4) In Schedule 2 to this Order, any expression used in the 1991 Act has the same meaning as it has in that Act unless the context otherwise requires.

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(1) 1994 c. 40.  
(2) Section 79(1) contains a definition of “Minister”.  
(3) 1980 c. 66.  
(4) 1991 c. 22.

**Contracting out of functions of the Secretary of State for Transport**

2. Any function of the Secretary of State for Transport which is listed in Schedule 1, 2 or 3 to this Order may be exercised by, or by employees of, such person (if any) as may be authorised in that behalf by the Secretary of State for Transport.

**Consequential provision**

3. Section 6(8) of the 1980 Act shall be amended by substituting for the words “with the provisions of this section” the words

“with

- (a) the provisions of this section; or
- (b) the provisions of any order made under section 69 of the Deregulation and Contracting Out Act 1994”.

Signed by authority of the Secretary of State for Transport

24th July 1995

*John Watts*  
Minister of State,  
Department of Transport

SCHEDULE 1

Article 2

FUNCTIONS CONFERRED BY THE HIGHWAYS ACT 1980 OR ANY  
REGULATIONS MADE UNDER ANY PROVISION OF THAT ACT

1. Subject to paragraph 5 below, functions conferred on the Secretary of State as highway authority<sup>(5)</sup> for a highway in relation to that highway or to highway connected land, by or under any of the following provisions of the 1980 Act:

- (a) section 41(1) (highway authority's duty to maintain highway maintainable at public expense);
- (b) section 62 (general power of improvement);
- (c) section 64<sup>(6)</sup> (dual carriageways and roundabouts);
- (d) section 65 (cycle tracks);
- (e) section 66 (provision of footways and guard-rails etc. for publicly maintainable highways) other than subsections (6) and (7) thereof;
- (f) section 68 (refuges);
- (g) section 69(1) (highway authority's powers to construct, light, etc subways);
- (h) section 70 (footbridges over highways);
- (i) section 71 (margins for horses and livestock);
- (j) section 75(1) and (2) (highway authority's power to vary widths of carriageways and footways);
- (k) section 76 (levelling of highways);
- (l) section 77 (alteration of levels);
- (m) section 78 (cutting off of corners);
- (n) section 80<sup>(7)</sup> (power to fence highways);
- (o) section 81 (provision of highway boundary posts);
- (p) section 84 (maintenance of cattle-grids and by-passes);
- (q) section 90 (protection of bridges and railways);
- (r) section 92 (reconstruction of bridge maintainable at public expense);
- (s) section 96 (powers of highway authority to plant trees, lay out grass verges etc);
- (t) section 97 (lighting of highways);
- (u) section 99 (metalling of highways);
- (v) section 100(1) to (5)<sup>(8)</sup> (highway authority's powers and duties relating to drainage of highways) except insofar as they relate to the power to enter premises under section 168 of the Water Industry Act 1991<sup>(9)</sup> (entry for works purposes);
- (w) section 101 (power to fill in roadside ditches etc);

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(5) The Secretary of State for Transport is highway authority for certain highways by virtue of sections 1(1) and 329 of the 1980 Act and S.I.1981/238.

(6) Section 64(4) was repealed by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51); section 64(5) was repealed by section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).

(7) Section 80 is to be read with section 72(12) of the Wildlife and Countryside Act 1981 (c. 69); section 80(4) was partially repealed by sections 8 and 102 of, and Schedules 4 and 17 to, the Local Government Act 1985 (c. 51); section 80(3) was amended by section 4 of, and Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).

(8) Section 100(5), which confers certain powers of a sewerage authority under the Water Industry Act 1991 for the purposes of drainage on a highway authority, was amended by section 190 of, and Schedule 25 to, the Water Act 1989 (c. 15) and by section 2 of, and Schedule 1 to, the Water Consolidation (Consequential Provisions) Act 1991 (c. 60).

(9) 1991 c. 56.

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

- (x) section 102 (provision of works for protecting highways against hazards of nature);
  - (y) section 103 (provision of posts to indicate depth of flood water);
  - (z) section 104 (mitigating nuisance of dust);
  - (aa) section 105 (power to improve road-ferries);
  - (bb) section 115H(1)(**10**) (prohibition on exercise of certain of a council's powers without consent of the highway authority);
  - (cc) section 133 (damage to footways of streets by excavation);
  - (dd) section 139(1) and (2) (prohibition on deposit of builders' skips without permission of the highway authority);
  - (ee) section 140(2) (highway authority's power to require owner of builder's skip to remove or reposition it);
  - (ff) section 141(2) (highway authority's power by notice to require removal of tree or shrub in or near carriageway);
  - (gg) section 150(1), (2) and (4) (highway authority's duty to remove snow, soil etc from highway) except insofar as they relate to an obstruction in a highway which is the property of any person;
  - (hh) section 167(2), (5), (6) (consultation with highway authority and highway authority's power to give notices in relation to retaining walls near streets);
  - (ii) section 169(1), (2), (3) and (4)(**11**) (power of highway authority to license, and directions in relation to, scaffolding or other structures obstructing the highway);
  - (jj) section 171 (control of deposit of building materials and making of excavations in streets) except insofar as the functions conferred by or under section 171(7) relate to the removal of property of any person; and
  - (kk) section 178(1) (prohibition on placing rails, beams etc over highways without consent of the highway authority).
- 2.** Subject to paragraph 5 below, functions conferred on the Secretary of State by or under any of the following provisions of the 1980 Act:
- (a) section 63 of the 1980 Act (relief of main carriageway of trunk road from local traffic);
  - (b) section 112(3) and (5) (management of trunk road picnic areas and public sanitary conveniences) except insofar as the functions in subsection (5) relate to the provision of public sanitary conveniences; and
  - (c) section 288 (power to require gas and water pipes to be moved) insofar as that provision applies to the exercise of any other function listed in this Schedule.
- 3.** Subject to paragraph 5 below, functions conferred on the Secretary of State as competent authority, by virtue of his being highway authority for a highway, by or under any of the following provisions of the 1980 Act:
- (a) section 143(1)(**12**) (competent authority's power to give notice requiring removal of structures from highways);

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(10) Section 115H was inserted by section 20 of, and Schedule 5 to, the Local Government (Miscellaneous Provisions) Act 1982 (c. 30). Section 115H(1) was amended by section 8 of, and Schedule 4 to, the Local Government Act 1985 (c. 51) and by section 4 of, and Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11).

(11) Section 169(4) was amended by section 109 of, and Schedule 4 to, the Telecommunications Act 1984 (c. 12); by section 190 of, and Schedule 25 to, the Water Act 1989 (c. 15); by section 13(1) of, and Schedule 4 to, the Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22); and by section 168(1) of, and Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22).

(12) Section 143(1)(a) was amended by section 8 of, and Schedule 4 to, the Local Government Act 1985 (c. 51).

- (b) section 154(1) and (2)(**13**) (competent authority's to give notice requiring removal of overhanging hedge, tree or shrub); and
  - (c) section 185(**14**) (competent authority's power to install etc refuse or storage bins in streets).
- 4.** Functions conferred on the Secretary of State as highway authority for a highway by or under the following provisions of the Walkways Regulations 1973(**15**):
- (a) regulation 3(1) (prohibition on exercise of certain powers conferred on highway authority in relation to walkways without consent of building owner);
  - (b) regulation 4(1) (prohibition on placing etc of apparatus of statutory undertakers without consent of highway authority and building owner);
  - (c) regulation 5(3) (prohibition on temporary closure of walkway until expiry of a specified period from the date of notice to the highway authority and others); and
  - (d) regulation 6 (stopping up of walkway by building owner).
- 5.—(1)** Paragraphs 1 to 3 above shall not include:
- (a) any functions conferred by or under section 294 of the 1980 Act (entry of premises by highway authority or council for certain purposes); or
  - (b) any function to the extent that the function confers a power or right of entry into or on any premises or land of which the Secretary of State for Transport is not the owner or occupier.
- (2) Where section 338 or 339(**16**) of the 1980 Act (saving for walks, etc., of dock, harbour and canal undertakers and saving for works etc. of drainage authorities etc.) applies to the exercise of any functions listed in paragraphs 1 to 3 above, those functions shall be construed as including any additional requirements imposed by those sections.

## SCHEDULE 2

Article 2

### FUNCTIONS CONFERRED BY THE NEW ROADS AND STREET WORKS ACT 1991 OR REGULATIONS MADE UNDER ANY PROVISION OF THAT ACT

- 1.** Functions conferred on the Secretary of State as street authority for a street by or under any of the following provisions of the 1991 Act:
- (a) section 53 (the street works register);
  - (b) section 54(1) and (4) (advance notice of certain works to be given to the street authority and compliance with requirements imposed by the street authority);
  - (c) section 55(1) and (4) (notice to be given to the street authority of starting date of works and prohibition on starting works without notice except with the consent of the street authority);
  - (d) section 56(1) and (4) (street authority's power to give directions as to the timing of street works and duty to have regard to the code of practice in exercising power);
  - (e) section 58 (restriction on works following substantial roadworks);
  - (f) section 59 (general duty of street authority to co-ordinate works);

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(13) Section 154(1)(b) was amended by section 8 of, and Schedule 4 to, the Local Government Act 1985 (c. 51).

(14) Section 185(3)(b) was amended by section 190 of, and Schedule 25 to, the Water Act 1989 (c. 15).

(15) S.I. 1973/686, amended by S.I. 1974/735.

(16) Section 339(1) and (4) were amended by section 190 of, and Schedule 25 to, the Water Act 1989 (c. 15) and section 2 of, and Schedule 1 to, the Water Consolidation (Consequential Provisions) Act 1991 (c. 60).

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

- (g) section 60(1) (general duty of undertaker to co-operate with the street authority with respect to the execution of street works);
  - (h) section 61 (protected streets) except insofar as they relate to the power to designate a street as protected;
  - (i) section 65(5) (street authority's power to take steps where undertaker has failed to comply with certain obligations, and to recover costs incurred);
  - (j) section 66(3) and (4) (street authority's power to give notice to undertaker to mitigate and discontinue obstruction, to take necessary steps and to recover costs incurred);
  - (k) section 68(1) (undertaker to afford reasonable facilities to the street authority);
  - (l) section 70(3) and (4) (undertaker to inform street authority of completion of interim and permanent reinstatement);
  - (m) section 72 (powers of street authority in relation to reinstatement);
  - (n) section 75 (inspection fees);
  - (o) section 81 (duty to maintain apparatus);
  - (p) section 82(1) (payment of compensation to street authority); and
  - (q) section 94(1) and (2) (power of street authority to enter into an agreement with an undertaker for the execution of street works).
2. Functions conferred on the Secretary of State as traffic authority for a highway by or under section 65(2) of the 1991 Act (undertaker to comply with directions given by traffic authority).
3. Functions conferred on the Secretary of State as a relevant authority other than a street authority by or under the following provisions of the 1991 Act:
- (a) section 81 (duty to maintain apparatus); and
  - (b) section 82(1) (payment of compensation to any relevant authority).
4. Functions conferred on the Secretary of State as highway authority for a highway or as bridge authority for a bridge by or under the following provisions of the 1991 Act:
- (a) section 83 (works for road purposes likely to affect apparatus in the street);
  - (b) section 84(1), (3) and (4) (undertaker and bridge or highway authority to take steps where apparatus affected by major works and requirement to pay compensation in certain circumstances);
  - (c) section 85(1) and (3) of the 1991 Act (highway and bridge authority to bear allowable costs of necessary measures where undertaker's apparatus affected by major highway or bridge works and right to recover undertaker's costs from third parties); and
  - (d) section 88(4) and (5) (consultation with bridge authority prior to execution of certain works, provision of reasonable facilities for bridge authority to monitor works, and compliance with directions of bridge authority).
5. Functions conferred on the Secretary of State by or under section 90 of the 1991 Act (provisions as to reinstatement of sewers, drains or tunnels).
6. Functions conferred on the Secretary of State as street authority for a street by or under regulation 3 of the Street Works (Inspection Fees) Regulations 1992<sup>(17)</sup> (undertaker required to pay the street authority a fee for each chargeable inspection carried out by the street authority).
7. Functions conferred on the Secretary of State as street authority for a street by or under regulation 3 or 10 of the Street Works (Reinstatement) Regulations 1992<sup>(18)</sup> (street authority's

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<sup>(17)</sup> S.I. 1992/1688.

<sup>(18)</sup> S.I. 1992/1689, amended by S.I. 1992/3110.

power to give notice affecting the standard of reinstatement required and extension of the period for completion by agreement between the undertaker and the street authority).

**8.** Functions conferred on the Secretary of State as highway authority for a highway or as bridge authority for a bridge by or under any provision of the Street Works (Sharing of Costs of Works) Regulations 1992(**19**).

**9.** Functions conferred on the Secretary of State as street authority for a street under regulations 3 and 4 of the Street Works (Maintenance) Regulations 1992(**20**) (street authority's power to execute works to enable it to inspect undertaker's apparatus and to execute any emergency works needed).

**10.** Functions conferred on the Secretary of State as street authority for a street or as highway authority for a highway, or, as bridge authority for a bridge by or under any of the following provisions of the Street Works (Registers, Notices, Directives and Designations) Regulations 1992(**21**):

- (a) regulation 3(2) and (3) (information on street works to be shown on the register, and the person responsible for securing its registration);
- (b) regulation 5 (prescribed manner of service of notices);
- (c) regulation 7 (notice of starting date of works);
- (d) regulation 8 (procedure for giving directions);
- (e) regulation 11(3) (information to be made available by street authority in respect of designated protected streets);
- (f) regulation 12(3) (information to be made available by street authority in respect of designated streets with special engineering difficulties); and
- (g) regulation 13(3) (information to be made available by street authority in respect of designated traffic sensitive streets).

### SCHEDULE 3

Article 2

#### FUNCTIONS CONFERRED BY MISCELLANEOUS ENACTMENTS

**1.** Functions conferred on the Secretary of State as highway authority for a highway by or under section 153(**22**) of the Public Health Act 1875(**23**) (power to require gas and water pipes to be moved).

**2.** Functions conferred on the Secretary of State as highway authority for a highway by or under section 14(**24**) of the Public Health Act 1925(**25**) (consent of highway authority required for the provision of public drinking fountains, seats, etc. in streets).

**3.** Functions conferred on the Secretary of State by or under section 5(1) and (2) of the Local Government (Miscellaneous Provisions) Act 1953(**26**) (prohibition on the provision of omnibus shelters etc. except with the consent of the highway authority and other persons).

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(19) S.I. 1992/1690.

(20) S.I. 1992/1691.

(21) S.I. 1992/2985.

(22) Section 153 is to be read with section 180 of, and paragraph 29 of Schedule 14 to, the Local Government Act 1972 (c. 70).

(23) 1875 c. 55.

(24) Section 14 is to be read with section 180 of, and paragraph 28 of Schedule 14 to, the Local Government Act 1972 (c. 70).

(25) 1925 c. 71.

(26) 1953 c. 26.

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

4. Functions conferred on the Secretary of State by or under section 5(1) and (2) of the Parish Councils Act 1957<sup>(27)</sup> (prohibition on the provision of seats, shelves, lamps etc. in roads except with the consent of specified persons).
  5. Functions conferred on the Secretary of State as highway authority for a highway by or under the following provisions of the Public Health Act 1961<sup>(28)</sup>:
    - (a) section 45 (attachment of street lamps); and
    - (b) section 81<sup>(29)</sup> (summary recovery of damages for negligence).
  6. Functions conferred on the Secretary of State by or under section 5(6) of, and Schedule 1 to, the Litter Act 1983<sup>(30)</sup> (consent of the Secretary of State required for works in relation to litter bins).
  7. Functions conferred on the Secretary of State as highway authority for a highway by or under sections 72(1) of the Road Traffic Regulation Act 1984<sup>(31)</sup> (provision of traffic and signs on or near a road with the permission of the highway authority).
  8. Functions conferred on the Secretary of State as highway authority of a highway by or under sections 4 and 5(1) of the Cycle Tracks Act 1984<sup>(32)</sup> (provision of barriers in cycle tracks, etc. and highway authority's duty to pay compensation).
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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision to enable the Secretary of State for Transport to authorise another person, or that person's employees, to exercise certain of his functions in relation to maintenance, improvement and other dealings with highways in respect of which he is the highway authority.

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<sup>(27)</sup> 1957 c. 42; section 5(1) was amended by section 267 of, and Schedule 18 to, the Road Traffic Act 1960 (c. 16). The Minister of Transport and Civil Aviation referred to in section 5(1) is now the Secretary of State for Transport (S.I. 1980/238).

<sup>(28)</sup> 1961 c. 64; sections 45 and 81 of the 1961 Act have to be read with section 97(4) of the Highways Act 1980 (c. 66).

<sup>(29)</sup> Section 81 was partially repealed by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51).

<sup>(30)</sup> 1983 c. 35.

<sup>(31)</sup> 1984 c. 27.

<sup>(32)</sup> 1984 c. 38.