SCHEDULE 1

Article 3

FUNCTIONS CONFERRED BY OR UNDER THE 1980 ACT OR REGULATIONS MADE UNDER THAT ACT

1. Subject to paragraph 9 and except as provided in sub-paragraphs (d), (x), (jj) and (mm), functions conferred on the Secretary of State or a local highway authority, as the highway authority(**1**) 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) and (1A)(**2**) (duty to maintain highways maintainable at public expense);

(b) section 62(**3**) (general power of improvement);

(c) section 64(**4**) (dual carriageways and roundabouts);

(d) section 65 (cycle tracks), but not including the functions of a local highway authority;

(e) section 66(**5**) (footways and guard-rails etc for publicly maintainable highways);

(f) section 68 (refuges);

(g) section 69(1)(**6**) (subways);

(h) section 70 (footbridges over highways);

(i) section 71 (margins for horses and livestock);

(j) section 75(1) and (2) (variation of 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(1), (2), and (3)(**7**) (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 90G(**8**) (powers to carry out traffic calming works);

(s) section 90GA(2) and (3)(**9**) (special procedure for certain traffic calming works in London);

(**1**) The Secretary of State is the highway authority for certain highways by virtue of the Highways Act 1980 (c.66), sections 1(1) and 329 and the Transfer of Functions (Transport) Order 1981 (S.I. 1981/238), article 2. A local highway authority is the highway authority for certain highways by virtue of sections 1(2) to (5) and 329 of that Act.

(**2**) Section 41(1A) was inserted by the Railways and Transport Safety Act 2003 (c.20), section 111.

(**3**) Section 62(3)(ff) was inserted by the Transport Act 1981 (c.56), section 32(1) and Schedule 10, Part I, paragraph 1, and section 62(3)(fg) was inserted by the Traffic Calming Act 1992 (c.30), section 1(1). Sub-section (5) was repealed by the Local Government Act 1985 (c.51), section 102 and Schedule 17.

(**4**) Section 64(4) was repealed by the Local Government Act 1985 (c.51), section 102 and Schedule 17, and section 64(5) was repealed by the New Roads and Street Works Act 1991 (c.22), section 168(2) and Schedule 9.

(**5**) Section 66(3) was amended by the Countryside and Rights of Way Act 2000 (c.37), section 70(1), and section 66(6) was amended by the Local Government Act 1985 (c.51), section 8 and Schedule 4, Part I, paragraph 17.

(**6**) Section 69(2)(b) was repealed by the Local Government Act 1985 (c.51), section 102 and Schedule 17, and section 69(3) was amended by the Local Government (Wales) Act 1994 (c.19), section 22(1) and Schedule 7, Part I, paragraph 7.

(**7**) Section 80 is to be read with section 72(12) of the Wildlife and Countryside Act 1981 (c.69). Subsection (3)(c) was amended by the Planning (Consequential Provisions) Act 1990 (c.11), section 4 and Schedule 2, paragraph 45(4), and subsection (4) was amended by the Local Government Act 1985 (c.51), sections 8 and 102 and Schedule 4, Part I, paragraph 19 and Schedule 17.

(**8**) Section 90G was inserted by the Traffic Calming Act 1992 (c.30), section 1(2) and Schedule 1. Subsections (1) and (2) were amended by the Greater London Authority Act 1999 (c.29), section 269(1), (2) and (3). Section 90G is to be read with section 90GA.

(**9**) Section 90GA was inserted by the Greater London Authority Act 1999 (c.29), section 269(1) and (4). Section 90GA(1)(b) was amended, and section 90GA(4) inserted, by the Greater London Authority (Miscellaneous Amendments) Order 2000 (S.I. 2000/1435), article 2 and the Schedule, Part I, paragraphs 1 and 7(1) to (4).

(t) section 92 (reconstruction of bridge maintainable at public expense);

(u) section 96 (powers of highway and local authorities to plant trees, lay out grass verges etc);

(v) section 97 (lighting of highways);

(w) section 99 (metalling of highways);

(x) section 100(1) to (5)(**10**), (6)(**11**) and (6B)(**12**) (drainage of highways), except insofar as they relate to the power to enter premises under section 168 of the Water Industry Act 1991(**13**) (entry for works purposes);

(y) section 101 (power to fill in roadside ditches etc);

(z) section 102 (provision of works for protecting highways against hazards of nature);

(aa) section 103 (provision of posts to indicate depth of flood water);

(bb) section 104 (mitigating nuisance of dust);

(cc) section 105 (power to improve road-ferries);

(dd) section 114(**14**) (provision of public conveniences by county council for users of roads for which the Council is the highway authority);

(ee) section 115H(1)(**15**) (duties to consult or obtain consent of other authorities);

(ff) section 133 (damage to footways of streets by excavations);

(gg) section 139(1) and (2) (control of builders' skips);

(hh) section 140(2) (removal of builders' skips);

(ii) section 141(2) (restriction on planting of trees etc in or near carriageway);

(jj) section 150(1), (2) and (4) (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;

(kk) section 167(2), (5) and (6) (powers relating to retaining walls near streets);

(ll) section 169(1), (2), (3) and (4)(**16**) (control of scaffolding on highways);

(mm) 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 the property of any person; and

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(**10**) Section 100(5), which, for the purpose of the drainage of a highway, confers on a highway authority certain powers of a sewerage authority under the Water Industry Act 1991 (c.56), was amended by the Water Act 1989 (c.15), section 190(1) and Schedule 25, paragraph 62(4)(a) and by the Water Consolidation (Consequential Provisions) Act 1991 (c.60), section 2(1) and Schedule 1, paragraph 36(1).

(**11**) Section 100(6) was amended by the Water Act 1989 (c.15), section 190(1) and Schedule 25, paragraph 62(4)(b); by the Water Consolidation (Consequential Provisions) Act 1991 (c.60), section 2(1) and Schedule 1, paragraph 36(1) and by the Local Government Act 1985 (c.51), section 8 and Schedule 4, Part I, paragraph 21.

(**12**) Section 100(6B) was inserted by the Local Government (Wales) Act 1994 (c.19), section 22(1) and Schedule 7, Part I, paragraph 9.

(**13**) 1991 c.56.

(**14**) Section 114(1) and (3) were amended by the Local Government Act 1985 (c.51), section 8 and Schedule 4, Part I, paragraph 22; section 114(2A) and (2B) were inserted by the Local Government (Wales) Act 1994 (c.19), section 22(1) and Schedule 7, Part I, paragraph 10, and section 114(4) was amended by the Building Act 1984 (c.55), section 133(2) and Schedule 7.

(**15**) Section 115H was inserted by the Local Government (Miscellaneous Provisions) Act 1982 (c.30), section 20 and Schedule 5, Part I, paragraph 1. Subsection (1) was amended by the Local Government Act 1985 (c.51) ("the 1985 Act"), section 8 and Schedule 4, Part I, paragraph 23 and by the Planning (Consequential Provisions) Act 1990 (c.11), section 4 and Schedule 2, paragraph 45(7). Subsection (2) was repealed by the 1985 Act, section 102 and Schedule 17. Subsection (3) was amended by the 1985 Act, section 8 and Schedule 4, Part I, paragraph 23. Subsection (4) was amended by the Transport for London (Consequential Provisions) Order 2003 (S.I. 2003/1615), article 2 and Schedule 1, Part 1, paragraph 7(1) and (3).

(**16**) Section 169(4) was amended by the Postal Services Act 2000 (Consequential Modifications No.1) Order 2001 (S.I. 2001/1149), article 3(1) and Schedule 1, paragraph 49(1) and (3), the Telecommunications Act 1984 (c.12), section 109(6) and Schedule 7, Part I and by the Water Act 1989 (c.15), section 190(3) and Schedule 27, Part I. It was also amended by the New Roads and Street Works Act 1991 (c.22), section 168(1) and Schedule 8, Part I, paragraph 4, the Telecommunications Act 1984 (c.12), section 109(1) and Schedule 4, paragraph 76(8), the Communications Act 2003 (c.21), section 406(1) and Schedule 17, paragraph 56(1)(b) and (2)(a) and by the Road Traffic (Driver Licensing and Information Systems) Act 1989 (c.22), section 13(1) and Schedule 4, paragraph 3(1) and (7).

(nn) section 178(1) (restriction on placing rails, beams etc over highways).

2. Subject to paragraph 9, functions conferred on the Secretary of State by or under any of the following provisions of the 1980 Act—

(a) section 63 (relief of main carriageway of trunk road from local traffic); and

(b) section 112(3) and (5)(**17**) (provision of picnic sites and public conveniences for users of trunk roads), except insofar as the functions in subsection (5) relate to the provision of public sanitary conveniences.

3. Subject to paragraph 9, functions conferred on the Secretary of State or a local highway authority, by or under section 288(**18**) of the 1980 Act (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.

4. Subject to paragraph 9, functions conferred on the Secretary of State or a local highway authority, as a competent authority, by virtue of their being the highway authority for a highway, by or under any of the following provisions of the 1980 Act—

(a) section 143(1)(**19**) (power to remove structures from highways);

(b) section 154(1) and (2)(**20**) (cutting or felling etc trees etc that overhang or are a danger to roads or footpaths); and

(c) section 185(**21**) (power to install refuse or storage bins in streets).

5. Functions conferred on a local authority by section 144(4)(b)(**22**) of the 1980 Act (power to erect flagpoles etc on highways).

6. Functions conferred on a local authority by section 167(5) of the 1980 Act (powers relating to retaining walls near streets), insofar as that authority is a local highway authority.

7. Functions conferred on a London borough council by or under section 301A(2) and (3)(**23**) of the 1980 Act (London borough council exercising powers so as to affect another authority's roads), insofar as those provisions apply to the exercise of any other function listed in this Schedule.

8. Functions conferred on the Secretary of State or a local highway authority, as the highway authority for a highway, by or under any of the following provisions of the Walkways Regulations 1973(**24**)—

(a) regulation 3(1) (modification of statutory provisions);

(b) regulation 4(1) (rights of statutory undertakers etc);

(c) regulation 5(3) (periodic and temporary closure of walkways); and

(d) regulation 6 (stopping up of walkway by building owner).

(**17**) Section 112(3) and (5) were amended by the Road Safety Act 2006 (c.49), sections 55(b) and (d) and 59 and Schedule 7.

(**18**) In relation to section 288, the Public Utilities Street Works Act 1950 (c.39) was repealed by the New Roads and Street Works Act 1991 (c.22), section 168(2) and Schedule 9. Provisions relating to relations between an authority carrying out road alterations and undertakers whose apparatus is affected are now contained in sections 83 to 85 of that Act.

(**19**) Section 143(1)(a) was amended by the Local Government Act 1985 (c.51), section 8 and Schedule 4, Part I, paragraph 25.

(**20**) Section 154(1) was amended by the Countryside and Rights of Way Act 2000 (c.37), section 65 and by the Local Government Act 1985 (c.51), section 8 and Schedule 4, Part I, paragraph 27.

(**21**) Section 185(1) was amended by the Local Government (Wales) Act 1994 (c.19), section 22(1) and Schedule 7, Part I, paragraph 16. Subsection (3)(b) was amended by the Water Act 1989 (c.15), section 190(1) and Schedule 25, paragraph 62(7) and by the Postal Services Act 2000 (Consequential Modifications No.1) Order 2001 (S.I. 2001/1149) ("the 2000 Order"), article 3(1) and Schedule 1, paragraph 49(1) and (7)(a). Subsection (3A) was inserted by the 2000 Order, article 3(1) and Schedule 1, paragraph 49(1) and (7)(b).

(**22**) The definition of "local authority" in section 144(6) was amended by the Local Government Act 1985 (c.51), section 102 and Schedule 17.

(**23**) Section 301A was inserted by the Greater London Authority Act 1999 (c.29), section 266. Subsection (3)(a) was amended by the Traffic Management Act 2004 (c.18), section 62(1) and (3).

(**24**) S.I. 1973/686, as amended by S.I. 1974/735 and 2001/1149. These Regulations have effect as if made under section 35 of the Highways Act 1980 (c.66).

9.—(1) Paragraphs 1 to 4 shall not include—

(a) any function conferred by or under section 294 of the 1980 Act (entry, etc, of premises by highway authority or council for certain purposes);

(b) any function of the Secretary of State 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 is not the owner or occupier; or

(c) any function of a local highway authority to the extent that the function confers a power or right of entry into or on any premises or land of which the local highway authority is not the owner or occupier.

(2) Where section 338 of the 1980 Act (saving for works, etc, of dock, harbour and canal undertakers) or 339 of that Act(**25**) (saving for works etc of drainage authorities etc) applies to the exercise of any functions listed in paragraphs 1 to 4, those functions shall be construed as including any additional requirements imposed by those sections.

(**25**) Section 339(1) and (4) were amended by the Environment Act 1995 (Consequential Amendments) Regulations 1996 (S.I. 1996/593), regulation 2 and Schedule 1 and by the Water Consolidation (Consequential Provisions) Act 1991 (c.60), section 2 and Schedule 1, paragraph 36(2). Subsection (1) was also amended by the Water Act 1989 (c.15), section 190(1) and Schedule 25, paragraph 62(13).