

Changes to legislation: Water (Scotland) Act 1980, Cross Heading: Provisions as to breaking open streets, etc. is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 3

PROVISIONS AS TO BREAKING OPEN STREETS AND LAYING COMMUNICATION AND SUPPLY PIPES

Modifications etc. (not altering text)

- C1** Sch. 3: power to apply conferred (1.10.1991) by [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1, 130\)](#), s. 20(10), [Sch. 7 para. 5\(1\)\(b\)](#)

PART I

Modifications etc. (not altering text)

- C1** Sch. 3 Pt. 1 (paras. 1–3) applied with modifications by [Local Government \(Scotland\) Act 1973 \(c. 65, SIF 81:2\)](#), s. 170A(5) (as inserted by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 102, [Sch. 13](#))

Provisions as to breaking open streets, etc.

Power to break open streets.

- 1 Subject to the provisions of this Part of this Schedule, [^{F1}Scottish Water]^{F2} may, ^{F2} for the purpose of laying, constructing, inspecting, repairing, altering, renewing or removing mains, service pipes, plant or other works, ^{F2}, break open [^{F3}a road], and any cellar or vault below any [^{F4}road], and any sewer, drain or tunnel in or under any such [^{F5}road], and may remove and use the soil or other materials in or under any such [^{F5}road]:

Provided that [^{F6}it] shall in the exercise of the powers conferred by this paragraph cause as little inconvenience and do as little damage as may be, and for any damage done shall pay compensation to be determined, in case of dispute, by arbitration.

Textual Amendments

- F1** Words in Sch. 3 para. 1 substituted (1.4.2002 subject to art. 3 of the commencing S.S.I.) by [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#), s. 71(1), [Sch. 6 para. 66\(2\)\(a\)](#) (with s. 67); S.S.I. 2002/118, [art. 2\(3\)](#)
- F2** Words in Sch. 3 para. 1 repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 119(56)(a), [Sch. 14](#); S.I. 1996/323, art. 4(1)(c)(d), [Sch. 2](#)
- F3** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(14\)\(a\)\(i\)](#)
- F4** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(14\)\(a\)\(ii\)](#)
- F5** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(14\)\(a\)\(iii\)](#)

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- F6** Word in Sch. 3 para. 1 in proviso substituted (1.4.2002 subject to art. 3 of the commencing S.S.I.) by Water Industry (Scotland) Act 2002 (asp 3), s. 71(1), **Sch. 6 para. 66(2)(b)** (with s. 67); S.S.I. 2002/118, **art. 2(3)**

Protection for railway companies, navigation authorities, tramway undertakers, etc.

- 2 (1) Except in cases of emergency arising from defects in existing pipes, plant or works, [^{F7}a private road] under the control or management of, or maintainable by, a railway company or navigation authority shall not be broken open without their consent, but that consent shall not be unreasonably withheld, and any question whether or not consent is unreasonably withheld shall be referred to and determined by the Secretary of State.
- (2) Where [^{F8}Scottish Water proposes] to break open [^{F9}any length of road] which forms a level-crossing belonging to persons not being a railway company or navigation authority and which is not under the control or management of a railway company or navigation authority, [^{F10}it] shall give to those persons the like notice as is referred to in [^{F11}section 114 of the New Roads and Street Works Act 1991] and, if and in so far as the proposed work is likely to affect the structure of any bridge or other works belonging to those persons, shall carry out the work to the reasonable satisfaction of the engineer or other authorised officer acting on behalf of those persons in accordance with plans approved by him.
- Any dispute arising under this sub-paragraph between [^{F12}Scottish Water]^{F13} and those persons shall be determined by arbitration.
- (3) For the protection of persons entitled to the benefit of section 32 of the ^{M1}Tramways Act 1870 (which relates to the rights of authorities and companies, etc., to open roads) that section shall be construed as applying to operations authorised by the special Act, and in the said section as so applied any reference to a tramway shall be construed as including a reference to a trolley vehicle system.
- (4) Nothing contained in this paragraph for the protection of owners of level-crossings shall affect the decision of any question which may arise as to the legality of the construction of, or the right to continue, any level-crossing.

Textual Amendments

- F7** Words substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 81(14)(b)(i)**
- F8** Words in Sch. 3 para. 2(2) substituted (1.4.2002) by Water Industry (Scotland) Act 2002 (asp 3), s. 71(1), **Sch. 6 para. 66(3)(a)** (with s. 67); S.S.I. 2002/118, **art. 2(3)**
- F9** Words substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 81(14)(b)(ii)**
- F10** Word in Sch. 3 para. 2(2) substituted (1.4.2002) by Water Industry (Scotland) Act 2002 (asp 3), s. 71(1), **Sch. 6 para. 66(3)(b)** (with s. 67); S.S.I. 2002/118, **art. 2(3)**
- F11** Words in Sch. 3 para. 2 substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8, Pt. IV, para. 108(7)(a)**; S.I. 1992/2990, art. 2(2), **Sch. 2**
- F12** Words in Sch. 3 para. 2(2) substituted (1.4.2002) by Water Industry (Scotland) Act 2002 (asp 3), s. 71(1), **Sch. 6 para. 66(3)(c)** (with s. 67); S.S.I. 2002/118, **art. 2(3)**
- F13** Words in Sch. 3 para. 2(2) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 119(56)(b), **Sch. 14**; S.I. 1996/323, art. 4(1)(c)(d), **Sch. 2**

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Marginal Citations

M1 1870 c. 78.

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F14

Textual Amendments

F14 Sch. 3 para. 3 repealed by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1)(3), **Sch. 9 para. 81(14)(c)**, Sch. 11

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

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

- s. 24(1A) inserted by [2003 asp 3 sch. 4 para. 3\(3\)](#)
- s. 110A certain functions transferred by [S.I. 1999/1750 art. 3Sch. 2](#) (This amendment not applied to legislation.gov.uk. The insertion of s. 110A by 1995 c. 25, Sch. 21 para. 5 has not yet been brought into force)
- s. 110A inserted by [1995 c. 25 Sch. 21 para. 5](#)
- s. 110A(7) words substituted by [1997 c. 11 Sch. 2 para. 30\(2\)\(a\)](#) (This amendment not applied to legislation.gov.uk. The insertion of s. 110A by 1995 c. 25, Sch. 21 para. 5 has not yet been brought into force)
- s. 110A(8) words substituted by [1997 c. 11 Sch. 2 para. 30\(2\)\(b\)](#) (This amendment not applied to legislation.gov.uk. The insertion of s. 110A by 1995 c. 25, Sch. 21 para. 5 has not yet been brought into force)
- Sch. 3 para. 4(3)(4) inserted by [2003 asp 3 sch. 4 para. 4\(2\)](#)
- Sch. 3 para. 6(1A) inserted by [2003 asp 3 sch. 4 para. 4\(3\)](#)
- Sch. 4 s. 34(3) inserted by [2003 asp 3 sch. 4 para. 5](#)