



# Highways Act 1980

## 1980 CHAPTER 66

### PART IX

#### LAWFUL AND UNLAWFUL INTERFERENCE WITH HIGHWAYS AND STREETS

##### *Protection of public rights*

#### **130 Protection of public rights.**

- (1) It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it.
- (2) Any council may assert and protect the rights of the public to the use and enjoyment of any highway in their area for which they are not the highway authority, including any roadside waste which forms part of it.
- (3) Without prejudice to subsections (1) and (2) above, it is the duty of a council who are a highway authority to prevent, as far as possible, the stopping up or obstruction of—
  - (a) the highways for which they are the highway authority, and
  - (b) any highway for which they are not the highway authority, if, in their opinion, the stopping up or obstruction of that highway would be prejudicial to the interests of their area.
- (4) Without prejudice to the foregoing provisions of this section, it is the duty of a local highway authority to prevent any unlawful encroachment on any roadside waste comprised in a highway for which they are the highway authority.
- (5) Without prejudice to their powers under section 222 of the <sup>M1</sup>Local Government Act 1972, a council may, in the performance of their functions under the foregoing provisions of this section, institute legal proceedings in their own name, defend any legal proceedings and generally take such steps as they deem expedient.

*Status: Point in time view as at 03/12/2020. This version of this part contains provisions that are prospective.*

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- (6) If the council of a parish or community or, in the case of a parish or community which does not have a separate parish or community council, the parish meeting or a community meeting, represent to a local highway authority—
- (a) that a highway as to which the local highway authority have the duty imposed by subsection (3) above has been unlawfully stopped up or obstructed, or
  - (b) that an unlawful encroachment has taken place on a roadside waste comprised in a highway for which they are the highway authority,
- it is the duty of the local highway authority, unless satisfied that the representations are incorrect, to take proper proceedings accordingly and they may do so in their own name.
- (7) Proceedings or steps taken by a council in relation to an alleged right of way are not to be treated as unauthorised by reason only that the alleged right is found not to exist.

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

- C1** [S. 130](#): functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853](#), reg. 2(1), [Sch. 1](#)

**Marginal Citations**

- M1** [1972 c. 70](#).

**[<sup>F1</sup>130A Notices to enforce duty regarding public paths.**

- (1) Any person who alleges, as respects any highway for which a local highway authority other than an inner London authority are the highway authority—
- (a) that the highway falls within subsection (2) below, and
  - (b) that it is obstructed by an obstruction to which this section applies,
- may serve on the highway authority notice requesting them to secure the removal of the obstruction from the highway.
- (2) A highway is within this subsection if it is—
- (a) a footpath, bridleway, or restricted byway, or
  - (b) a way shown in a definitive map and statement as a restricted byway or a byway open to all traffic.
- (3) Subject to subsection (4) below, this section applies to an obstruction of the highway if the obstruction is without lawful authority and either—
- (a) the powers conferred by section 143, 149 or 154 below are exercisable in respect of it, or
  - (b) it is of a description prescribed by regulations made by the Secretary of State and the authority have power (otherwise than under any of those sections) to secure its removal.
- (4) This section does not apply to an obstruction if—
- (a) it is or forms part of—
    - (i) a building (whether temporary or permanent) or works for the construction of a building, or

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- (ii) any other structure (including a tent, caravan, vehicle or other temporary or movable structure) which is designed, adapted or used for human habitation,
  - (b) an order may be made in respect of it under section 56 above, or
  - (c) the presence of any person constitutes the obstruction.
- (5) A person serving a notice under subsection (1) above must include in the notice the name and address, if known to him, of any person who it appears to him may be for the time being responsible for the obstruction.
- (6) A highway authority on whom a notice under subsection (1) above is served shall, within one month from the date of service of the notice, serve—
  - (a) on every person whose name and address is, pursuant to subsection (5) above, included in the notice and, so far as reasonably practicable, on every other person who it appears to them may be for the time being responsible for the obstruction, a notice informing that person that a notice under subsection (1) above has been served in relation to the obstruction and stating what, if any, action the authority propose to take, and
  - (b) on the person who served the notice under subsection (1) above, a notice containing the name and address of each person on whom notice is served under paragraph (a) above and stating what, if any, action the authority propose to take in relation to the obstruction.
- (7) For the purposes of this section the persons for the time being responsible for an obstruction include the owner and any other person who for the time being—
  - (a) has possession or control of it, or
  - (b) may be required to remove it.
- (8) A notice under subsection (1) or (6) above shall be in such form and contain such information as may be prescribed by regulations made by the Secretary of State.
- (9) In this section “inner London authority” means Transport for London, the council of an inner London borough or the Common Council of the City of London.
- (10) Subsection (2) above has effect until the commencement of section 47 of the Countryside and Rights of Way Act 2000 with the substitution for the references to a restricted byway and to a way shown in a definitive map and statement as a restricted byway of a reference to a way shown in a definitive map and statement as a road used as a public path.]

#### Textual Amendments

**F1** S. 130A inserted (13.2.2004 for E. and 1.4.2004 for W.) by 2000 c. 37, s. 63(1); S.I. 2004/292, art. 2(a); S.I. 2004/315, art. 2(a)

#### [<sup>F2</sup>130B Orders following notice under section 130A.

- (1) Where a notice under section 130A(1) above has been served on a highway authority in relation to any obstruction, the person who served it, if not satisfied that the obstruction has been removed, may apply to a magistrates’ court in accordance with section 130C below for an order under this section.

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- (2) An order under this section is an order requiring the highway authority to take, within such reasonable period as may be fixed by the order, such steps as may be specified in the order for securing the removal of the obstruction.
- (3) An order under this section shall not take effect—
  - (a) until the end of the period of twenty-one days from the day on which the order is made; or
  - (b) if an appeal is brought in respect of the order within that period (whether by way of appeal to the Crown Court or by way of case stated for the opinion of the High Court), until the final determination or withdrawal of the appeal.
- (4) Subject to subsection (5) below, the court may make an order under this section if it is satisfied—
  - (a) that the obstruction is one to which section 130A above applies or, in a case falling within subsection (4)(a)(ii) of that section, is one to which that section would apply but for the obstruction having become used for human habitation since service of the notice relating to it under subsection (1) of that section,
  - (b) that the way obstructed is a highway within subsection (2) of that section, and
  - (c) that the obstruction significantly interferes with the exercise of public rights of way over that way.
- (5) No order shall be made under this section if the highway authority satisfy the court—
  - (a) that the fact that the way obstructed is a highway within section 130A(2) above is seriously disputed,
  - (b) on any other grounds, that they have no duty under section 130(3) above to secure the removal of the obstruction, or
  - (c) that, under arrangements which have been made by the authority, its removal will be secured within a reasonable time, having regard to the number and seriousness of obstructions in respect of which they have such a duty.
- (6) A highway authority against whom an order is made under this section shall, as soon as practicable after the making of the order, cause notice of the order and of the right to appeal against it to be displayed in such manner and at such places on the highway concerned as may be prescribed by regulations made by the Secretary of State, and the notice shall be in such form and contain such information as may be so prescribed.
- (7) An order under this section may be varied on the application of the highway authority to whom it relates.]

#### Textual Amendments

**F2** S. 130B inserted (13.2.2004 for E. and 1.4.2004 for W.) by 2000 c. 37, s. 63(1); S.I. 2004/292, art. 2(a); S.I. 2004/315, art. 2(a)

#### [<sup>F3</sup>130C Section 130B: procedure.

- (1) A person proposing to make an application under section 130B above shall before making the application serve notice of his intention to do so on the highway authority concerned.
- (2) A notice under subsection (1) above shall be in such form and contain such information as may be prescribed by regulations made by the Secretary of State.

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- (3) The notice may not be served before the end of two months beginning with the date of service on the highway authority of the notice under section 130A(1) above (“the request notice”).
- (4) An application in respect of which notice has been served under subsection (1) above may be made at any time—
  - (a) after the end of five days beginning with the date of service of that notice, and
  - (b) before the end of six months beginning with the date of service on the highway authority of the request notice.
- (5) On making the application the applicant must give notice to the court of the names and addresses of which notice was given to the applicant under section 130A(6)(b) above.
- (6) On the hearing of the application any person who is, within the meaning of section 130A above, a person for the time being responsible for the obstruction to which the application relates has a right to be heard as respects the matters mentioned in section 130B(4) above.
- (7) Notice of the hearing, of the right to be heard under subsection (6) above and of the right to appeal against a decision on the application shall be given by the court to each person whose name and address is notified to the court under subsection (5) above.]

#### Textual Amendments

**F3** S. 130C inserted (13.2.2004 for E. and 1.4.2004 for W.) by 2000 c. 37, s. 63(1); S.I. 2004/292, art. 2(a); S.I. 2004/315, art. 2(a)

#### [<sup>F4</sup>130D Section 130B: costs.

Where an application under section 130B above is dismissed by virtue of paragraph (a), (b) or (c) of subsection (5) of that section, the court, in determining whether and if so how to exercise its power under section 64(1) of the <sup>M2</sup>Magistrates’ Courts Act 1980 (costs), shall have particular regard to any failure by the highway authority to give the applicant appropriate notice of, and information about, the grounds relied on by the authority under that paragraph.]

#### Textual Amendments

**F4** S. 130D inserted (13.2.2004 for E. and 1.4.2004 for W.) by 2000 c. 37, s. 63(1); S.I. 2004/292, art. 2(a); S.I. 2004/315, art. 2(a)

#### Marginal Citations

**M2** 1980 c. 43.

*Damage to highways, streets etc.*

### 131 Penalty for damaging highway etc.

- (1) If a person, without lawful authority or excuse—

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- (a) makes a ditch or excavation in a highway which consists of or comprises a carriageway, or
- (b) removes any soil or turf from any part of a highway, except for the purpose of improving the highway and with the consent of the highway authority for the highway, or
- (c) deposits anything whatsoever on a highway so as to damage the highway, or
- (d) lights any fire, or discharges any firearm or firework, within 50 feet from the centre of a highway which consists of or comprises a carriageway, and in consequence thereof the highway is damaged,

he is guilty of an offence.

- (2) If a person without lawful authority or excuse pulls down or obliterates a traffic sign placed on or over a highway, or a milestone or direction post (not being a traffic sign) so placed, he is guilty of an offence; but it is a defence in any proceedings under this subsection to show that the traffic sign, milestone or post was not lawfully so placed.
- (3) A person guilty of an offence under this section is liable to a fine not exceeding [<sup>F5</sup>level 3 on the standard scale].

#### Textual Amendments

**F5** Words in s. 131(3) substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 35, 37, 38, 46** (with [s. 47](#))

#### [<sup>F6</sup>131A Disturbance of surface of certain highways.

- (1) A person who, without lawful authority or excuse, so disturbs the surface of—
  - (a) a footpath,
  - (b) a bridleway, or
  - (c) any other highway which consists of or comprises a carriageway other than a made-up carriageway,

as to render it inconvenient for the exercise of the public right of way is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

- (2) Proceedings for an offence under this section shall be brought only by the highway authority or the council of the non-metropolitan district, parish or community in which the offence is committed; and, without prejudice to section 130 (protection of public rights) above, it is the duty of the highway authority to ensure that where desirable in the public interest such proceedings are brought.]

#### Textual Amendments

**F6** [S. 131A](#) inserted by [Rights of Way Act 1990 \(c. 24, SIF 59\)](#), **s. 1(2)**

#### 132 Unauthorised marks on highways.

- (1) A person who, without either the consent of the highway authority for the highway in question or an authorisation given by or under an enactment or a reasonable excuse, paints or otherwise inscribes or affixes any picture, letter, sign or other mark upon the

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surface of a highway or upon any tree, structure or works on or in a highway is guilty of an offence and liable to a fine not exceeding [<sup>F7</sup>level 4 on the standard scale].

- (2) The highway authority for a highway may, without prejudice to their powers apart from this subsection and whether or not proceedings in respect of the matter have been taken in pursuance of subsection (1) above, remove any picture, letter, sign or other mark which has, without either the consent of the authority or an authorisation given by or under an enactment, been painted or otherwise inscribed or affixed upon the surface of the highway or upon any tree, structure or works on or in the highway.

**Textual Amendments**

- F7** Words in s. 132(1) substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 35, 37, 38, 46** (with s. 47)

**133 Damage to footways of streets by excavations.**

If the footway of a street that is a highway maintainable at the public expense is damaged by or in consequence of any excavation or other work on land adjoining the street, the highway authority for the highway may make good the damage and recover the expenses reasonably incurred by them in so doing from the owner of the land in question or the person causing or responsible for the damage.

**[<sup>F8</sup>134 Ploughing etc. of footpath or bridleway.**

- (1) Where in the case of any footpath or bridleway (other than a field-edge path) which passes over a field or enclosure consisting of agricultural land, or land which is being brought into use for agriculture—
  - (a) the occupier of the field or enclosure desires in accordance with the rules of good husbandry to plough, or otherwise disturb the surface of, all or part of the land comprised in the field or enclosure, and
  - (b) it is not reasonably convenient in ploughing, or otherwise disturbing the surface of, the land to avoid disturbing the surface of the path or way so as to render it inconvenient for the exercise of the public right of way,the public right of way shall be subject to the condition that the occupier has the right so to plough or otherwise disturb the surface of the path or way.
- (2) Subsection (1) above does not apply in relation to any excavation or any engineering operation.
- (3) Where the occupier has disturbed the surface of a footpath or bridleway under the right conferred by subsection (1) above he shall within the relevant period, or within an extension of that period granted under subsection (8) below,—
  - (a) so make good the surface of the path or way to not less than its minimum width as to make it reasonably convenient for the exercise of the right of way; and
  - (b) so indicate the line of the path or way on the ground to not less than its minimum width that it is apparent to members of the public wishing to use it.
- (4) If the occupier fails to comply with the duty imposed by subsection (3) above he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

<sup>F9</sup>(5) .....

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- (6) Without prejudice to section 130 (protection of public rights) above, it is the duty of the highway authority to enforce the provisions of this section.
- (7) For the purposes of this section “the relevant period”,—
- (a) where the disturbance of the surface of the path or way is the first disturbance for the purposes of the sowing of a particular agricultural crop, means fourteen days beginning with the day on which the surface of the path or way was first disturbed for those purposes; or
  - (b) in any other case, means twenty-four hours beginning with the time when it was disturbed.
- (8) On an application made to the highway authority before the disturbance or during the relevant period, the authority may grant an extension of that period for an additional period not exceeding twenty-eight days.
- (9) In this section “minimum width”, in relation to a highway, has the same meaning as in Schedule 12A to this Act.]

#### Textual Amendments

**F8** S. 134 substituted by Rights of Way Act 1990 (c. 24, SIF 59), ss. 1(3), 6(3)

**F9** S. 134(5) repealed (1.4.2001 for E. and 1.5.2001 for W.) by 2000 c. 37, ss. 70(2), 102, Sch. 16 Pt. II; S.I. 2001/114, art. 2(2)(d)(i)(I); S.I. 2001/1410, art. 2(e)(i)(o) (subject to transitional provisions in art. 3)

#### [<sup>F11</sup>135 Authorisation of other works disturbing footpath [<sup>F10</sup>, bridleway or restricted byway].

- (1) Where the occupier of any agricultural land, or land which is being brought into use for agriculture, desires to carry out in relation to that land an excavation or engineering operation, and the excavation or operation—
- (a) is reasonably necessary for the purposes of agriculture, but
  - (b) will so disturb the surface of a footpath [<sup>F12</sup>, bridleway or restricted byway] which passes over that land as to render it inconvenient for the exercise of the public right of way,
- he may apply to the highway authority for an order that the public right of way shall be subject to the condition that he has the right to disturb the surface by that excavation or operation during such period, not exceeding three months, as is specified in the order (“the authorisation period”).
- (2) The highway authority shall make an order under subsection (1) above if they are satisfied either—
- (a) that it is practicable temporarily to divert the path or way in a manner reasonably convenient to users; or
  - (b) that it is practicable to take adequate steps to ensure that the path or way remains sufficiently convenient, having regard to the need for the excavation or operation, for temporary use while it is being carried out.
- (3) An order made by a highway authority under subsection (1) above—
- (a) may provide for the temporary diversion of the path or way during the authorisation period, but shall not divert it on to land not occupied by the



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applicant unless written consent to the making of the order has been given to the occupier of that land, and by any other person whose consent is needed to obtain access to it;

- (b) may include such conditions as the authority reasonably think fit for the provision, either by the applicant or by the authority at the expense of the applicant, of facilities for the convenient use of any such diversion, including signposts and other notices, stiles, bridges, and gates;
- (c) shall not affect the line of a footpath [<sup>F12</sup>, bridleway or restricted byway] on land not occupied by the applicant;

and the authority shall cause notices of any such diversion, together with a plan showing the effect of the diversion and the line of the alternative route provided, to be prominently displayed throughout the authorisation period at each end of the diversion.

- (4) An order made by a highway authority under subsection (1) above may include such conditions as the authority reasonably think fit—
  - (a) for the protection and convenience during the authorisation period of users of the path or way;
  - (b) for making good the surface of the path or way to not more than its minimum width before the expiration of the authorisation period;
  - (c) for the recovery from the applicant of expenses incurred by the authority in connection with the order.
- (5) An order under this section shall not authorise any interference with the apparatus or works of any statutory undertakers.
- (6) If the applicant fails to comply with a condition imposed under subsection (3)(b) or (4)(a) or (b) above he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.
- (7) Proceedings for an offence under this section in relation to a footpath [<sup>F12</sup>, bridleway or restricted byway] shall be brought only by the highway authority or (with the consent of the highway authority) the council of the non-metropolitan district, parish or community in which the offence is committed.
- (8) Without prejudice to section 130 (protection of public rights) above, it is the duty of the highway authority to enforce the provisions of this section.
- (9) In this section “minimum width”, in relation to a highway, has the same meaning as in Schedule 12A to this Act.]

#### Textual Amendments

- F10** Words in s. 135 sidenote substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)
- F11** S. 135 substituted by [Rights of Way Act 1990 \(c. 24, SIF 59\)](#), **ss. 1(4), 6(3)**
- F12** Words in s. 135(1)(b)(3)(c)(7) substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)

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

- C2** S. 135 applied (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2, **Sch. Pt. I**; [S.I. 2006/1172](#), art. 2; [S.I. 2006/1279](#), art. 2

PROSPECTIVE

**[<sup>F13</sup>135A Temporary diversion for dangerous works.**

- (1) Where works of a prescribed description are likely to cause danger to users of a footpath or bridleway which passes over any land, the occupier of the land may, subject to the provisions of this section, temporarily divert—
  - (a) so much of the footpath or bridleway as passes over that land, and
  - (b) so far as is requisite for effecting that diversion, so much of the footpath or bridleway as passes over other land occupied by him.
- (2) A person may not under this section divert any part of a footpath or bridleway if—
  - (a) the period or periods for which that part has been diverted under this section, and
  - (b) the period or periods for which any other part of the same footpath or bridleway passing over land occupied by him has been diverted under this section,
 amount in aggregate to more than fourteen days in any one calendar year.
- (3) Where a person diverts a footpath or bridleway under this section—
  - (a) he shall do so in a manner which is reasonably convenient for the exercise of the public right of way, and
  - (b) where the diversion is by means of a temporary footpath or bridleway, he shall so indicate the line of the temporary footpath or bridleway on the ground to not less than the minimum width that it is apparent to members of the public wishing to use it.
- (4) This section does not authorise a person—
  - (a) to divert a footpath or bridleway on to land not occupied by him without the consent of the occupier of that land and of any other person whose consent is needed to obtain access to it,
  - (b) to divert a footpath onto a highway other than a footpath or bridleway, or
  - (c) to divert a bridleway onto a highway other than a bridleway.
- (5) The person by whom a footpath or bridleway is diverted under this section shall—
  - (a) at least fourteen days before the commencement of the diversion, give notice of the diversion in accordance with subsection (6) below,
  - (b) at least seven days before the commencement of the diversion, publish notice of the diversion in a local newspaper circulating in the area in which the footpath or bridleway is situated, and
  - (c) display such notices as may be prescribed at such places, in such manner and at such times before or during the diversion as may be prescribed.
- (6) Notice under subsection (5)(a) above shall be given—
  - (a) to the highway authority for the footpath or bridleway,

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- (b) if the footpath or bridleway is on or contiguous with access land in England, to <sup>F14</sup>Natural England], and
  - (c) if the footpath or bridleway is on or contiguous with access land in Wales, to <sup>F15</sup>the Natural Resources Body for Wales].
- (7) A notice under subsection (5)(a), (b) or (c) above shall be in such form and contain such information as may be prescribed.
- (8) If a person—
- (a) in a notice which purports to comply with the requirements of subsection (5) (a) or (b) above, makes a statement which he knows to be false in a material particular,
  - (b) by a notice displayed on or near a footpath or bridleway, falsely purports to be authorised under this section to divert the footpath or bridleway, or
  - (c) in diverting a footpath or bridleway under this section, fails to comply with subsection (3) above,
- he shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.
- (9) In this section—
- “ access land ” has the same meaning as in Part I of the Countryside and Rights of Way Act 2000;
  - “ minimum width ” in relation to a temporary footpath or bridleway, means the minimum width, within the meaning of Schedule 12A to this Act, of the footpath or bridleway diverted;
  - “ prescribed ” means prescribed by regulations made by the Secretary of State. ]

#### Textual Amendments

**F13** S. 135A inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 16**

**F14** Words in s. 135A(6)(b) substituted (1.10.2006) by [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#), s. 105(1), **Sch. 11 para. 67**; S.I. 2006/2541, **art. 2**

**F15** Words in s. 135A(6)(c) substituted by 2000 c. 37 Sch. 6 para 16 (as amended) (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 411(3)** (with Sch. 7)

PROSPECTIVE

#### <sup>F16</sup>135B Temporary diversion for dangerous works: supplementary.

- (1) The person by whom a footpath or bridleway is diverted under section 135A above shall, before the diversion ceases to be authorised by that section, make good any damage to the footpath or bridleway resulting from the works mentioned in subsection (1) of that section, and remove from the footpath or bridleway any obstruction resulting from those works.
- (2) Any person who fails to comply with the duty imposed on him by subsection (1) above is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

*Status: Point in time view as at 03/12/2020. This version of this part contains provisions that are prospective.*

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- (3) The highway authority may make good any damage, or remove any obstruction, in respect of which any person has failed to comply with that duty and recover from that person the amount of any expenses reasonably incurred by them in or in connection with doing so.
- (4) Paragraph 3(1) of Schedule 12A to this Act does not apply in relation to any disturbance of the surface of a footpath or bridleway which subsection (1) above requires any person to make good; but paragraphs 7 and 8 of that Schedule apply for the purposes of subsection (3) above as if—
  - (a) references to the authority were references to the highway authority,
  - (b) references to the work were references to work carried out under subsection (3) above in relation to a footpath or bridleway, and
  - (c) references to the relevant land were references to the land over which the footpath or bridleway passes.
- (5) The diversion of a footpath or bridleway under section 135A above does not—
  - (a) affect the liability of any person for anything done in relation to the path or way otherwise than for the purposes of or in consequence of the works mentioned in subsection (1) of that section, or
  - (b) authorise any interference with the apparatus or works of any statutory undertakers.
- (6) Without prejudice to section 130 (protection of public rights of way) above, it is the duty of the highway authority to enforce the provisions of section 135A and this section.]

#### Textual Amendments

**F16** S. 135B inserted (*prosp.*) by 2000 c. 37, ss. 57, 103(3), **Sch. 6 Pt. I para. 16**

### 136 Damage to highway consequent on exclusion of sun and wind.

- (1) If a highway which consists of or comprises a carriageway is being damaged in consequence of the exclusion from it of the sun and wind by a hedge or tree (other than a tree planted for ornament or for shelter to a building, courtyard or hop ground), a magistrates' court may by order require the owner or occupier of the land on which the hedge or tree is growing, so to cut, prune or plash the hedge or prune or lop the tree as to remove the cause of damage.
- (2) The power of a magistrates' court to make an order under subsection (1) above is exercisable on a complaint made by the highway authority for the highway, or, in the case of a highway maintainable by reason of tenure, enclosure or prescription, by the person liable to maintain the highway.
- (3) If a person against whom an order under subsection (1) above is made fails to comply with it within 10 days from such date as may be specified in the order, he is guilty of an offence and liable to a fine not exceeding [<sup>F17</sup>level 1 on the standard scale], and the highway authority or other person on whose complaint the order was made may carry out the work required by the order and may recover the expenses reasonably incurred by them or him in so doing from the person in default.

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- (4) No person shall be required by an order made under this section, nor is any person permitted by subsection (3) above, to cut or prune a hedge at any time [<sup>F18</sup>except] between the last day of September and the first day of April.

**Textual Amendments**

**F17** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 46

**F18** Word inserted by [Wildlife and Countryside Act 1981 \(c. 69, SIF 4:5\)](#), s. 72(13)

*Obstruction of highways and streets*

**137 Penalty for wilful obstruction.**

- (1) If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to a fine not exceeding [<sup>F19</sup>level 3 on the standard scale].

<sup>F20</sup>(2) .....

**Textual Amendments**

**F19** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), ss. 38, 46

**F20** S. 137(2) repealed by [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\)](#), s. 119, [Sch. 7 Pt. I](#)

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

**C3** S. 137 modified (16.8.2006) by [The Dover Harbour Revision Order 2006 \(S.I. 2006/2167\)](#), art. 27

**[<sup>F21</sup>137Z] Power to order offender to remove obstruction.**

- (1) Where a person is convicted of an offence under section 137 above in respect of the obstruction of a highway and it appears to the court that—
- (a) the obstruction is continuing, and
  - (b) it is in that person's power to remove the cause of the obstruction,
- the court may, in addition to or instead of imposing any punishment, order him to take, within such reasonable period as may be fixed by the order, such steps as may be specified in the order for removing the cause of the obstruction.
- (2) The time fixed by an order under subsection (1) above may be extended or further extended by order of the court on an application made before the end of the time as originally fixed or as extended under this subsection, as the case may be.
- (3) If a person fails without reasonable excuse to comply with an order under subsection (1) above, he is guilty of an offence and liable to a fine not exceeding level 5 on the standard scale; and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding [<sup>F22</sup>one-twentieth of the greater of £5,000 or level 4 on the standard scale] for each day on which the offence is so continued.
- (4) Where, after a person is convicted of an offence under subsection (3) above, the highway authority for the highway concerned exercise any power to remove the cause

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of the obstruction, they may recover from that person the amount of any expenses reasonably incurred by them in, or in connection with, doing so.

- (5) A person against whom an order is made under subsection (1) above is not liable under section 137 above in respect of the obstruction concerned—
- (a) during the period fixed under that subsection or any extension under subsection (2) above, or
  - (b) during any period fixed under section 311(1) below by a court before whom he is convicted of an offence under subsection (3) above in respect of the order.]

#### Textual Amendments

**F21** S. 137ZA inserted (30.1.2001) by 2000 c. 37, ss. 64(1)(2), 103(2)

**F22** Words in s. 137ZA(3) substituted (12.3.2015) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (S.I. 2015/664), reg. 1(1), Sch. 3 para. 1 (with reg. 5(1))

#### [<sup>F23</sup>137A Interference by crops.

- (1) Where a crop other than grass has been sown or planted on any agricultural land the occupier of the land shall from time to time take such steps as may be necessary—
  - (a) to ensure that the line on the ground of any relevant highway on the land is so indicated to not less than its minimum width as to be apparent to members of the public wishing to use the highway; and
  - (b) to prevent the crop from so encroaching on any relevant highway, whether passing over that or adjoining land, as to render it inconvenient for the exercise of the public right of way.
- (2) For the purposes of subsection (1) above, a crop shall be treated as encroaching on a highway if, and only if, any part of the crop grows on, or otherwise extends onto or over, the highway in such a way as to reduce the apparent width of the highway to less than its minimum width.
- (3) For the purposes of the application of subsection (1) above in the case of a particular crop, the crop shall be treated as grass if, and only if—
  - (a) it is of a variety or mixture commonly used for pasture, silage or haymaking, whether or not it is intended for such a use in that case; and
  - (b) it is not a cereal crop.
- (4) If the occupier fails to comply with the duty imposed by subsection (1) above he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.
- (5) Without prejudice to section 130 (protection of public rights) above, it is the duty of the highway authority to enforce the provisions of this section.
- (6) In this section—
 

“minimum width”, in relation to a highway, has the same meaning as in Schedule 12A to this Act; and

“relevant highways” means—

  - (a) a footpath,
  - (b) a bridleway, or

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- (c) any other highway which consists of or comprises a carriageway other than a made-up carriageway.]

**Textual Amendments**

**F23** S. 137A inserted by Rights of Way Act 1990 (c. 24, SIF 59), s. 1(5)

**138 Penalty for erecting building, etc., in highway.**

If a person, without lawful authority or excuse, erects a building or fence, or plants a hedge, in a highway which consists of or comprises a carriageway he is guilty of an offence and liable to a fine not exceeding [<sup>F24</sup>level 3 on the standard scale].

**Textual Amendments**

**F24** Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46

**139 Control of builders' skips.**

- (1) A builders' skip shall not be deposited on a highway without the permission of the highway authority for the highway.
- (2) A permission under this section shall be a permission for a person to whom it is granted to deposit, or cause to be deposited, a skip on the highway specified in the permission, and a highway authority may grant such permission either unconditionally or subject to such conditions as may be specified in the permission including, in particular, conditions relating to—
  - (a) the siting of the skip;
  - (b) its dimensions;
  - (c) the manner in which it is to be coated with paint and other material for the purpose of making it immediately visible to oncoming traffic;
  - (d) the care and disposal of its contents;
  - (e) the manner in which it is to be lighted or guarded;
  - (f) its removal at the end of the period of permission.
- (3) [<sup>F25</sup>If a builder's skip is deposited on a highway without a permission granted under this section, the owner of the skip is, subject to subsection (6) below, guilty of an offence and liable to a fine not exceeding [<sup>F26</sup>level 3 on the standard scale].]
- (4) [<sup>F25</sup>Where a builder's skip has been deposited on a highway in accordance with a permission granted under this section, the owner of the skip shall secure—
  - (a) that the skip is properly lighted during the hours of darkness [<sup>F27</sup>and, where regulations made by the Secretary of State under this section require it to be marked in accordance with the regulations (whether with reflecting or fluorescent material or otherwise), that it is so marked];
  - (b) that the skip is clearly and indelibly marked with the owner's name and with his telephone number or address;
  - (c) that the skip is removed as soon as practicable after it has been filled;
  - (d) that each of the conditions subject to which that permission was granted is complied with;

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- and, if he fails to do so, he is, subject to subsection (6) below, guilty of an offence and liable to a fine not exceeding [<sup>F28</sup>level 3 on the standard scale].]
- (5) [<sup>F25</sup>Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.]
- (6) [<sup>F25</sup>In any proceedings for an offence under this section it is a defence, subject to subsection (7) below, for the person charged to prove that the commission of the offence was due to the act or default of another person and that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.]
- (7) [<sup>F25</sup>A person charged with an offence under this section is not, without leave of the court, entitled to rely on the defence provided by subsection (6) above unless, within a period ending 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.]
- (8) Where any person is charged with an offence under any other enactment for failing to secure that a builder's skip which has been deposited on a highway in accordance with a permission granted under this section was properly lighted during the hours of darkness, it is a defence for the person charged to prove that the commission of the offence was due to the act or default of another person and that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.
- (9) Where a person is charged with obstructing, or interrupting any user of, a highway by depositing a builder's skip on it, it is a defence for the person charged to prove that the skip was deposited on it in accordance with a permission granted under this section and either—
- (a) that each of the requirements of subsection (4) above had been complied with; or
  - (b) that the commission of any offence under that subsection was due to the act or default of another person and that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.
- (10) Nothing in this section is to be taken as authorising the creation of a nuisance or of a danger to users of a highway or as imposing on a highway authority by whom a permission has been granted under this section any liability for any injury, damage or loss resulting from the presence on a highway of the skip to which the permission relates.
- (11) In this section [<sup>F29</sup>, section 140 and section 140A] below—
- “builder's skip” means a container designed to be carried on a road vehicle and to be placed on a highway or other land for the storage of builders' materials, or for the removal and disposal of builders' rubble, waste, household and other rubbish or earth; and
- “owner”, in relation to a builder's skip which is the subject of a hiring agreement, being an agreement for a hiring of not less than one month, or a hire purchase agreement, means the person in possession of the skip under that agreement.



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### Textual Amendments

- F25** S. 139(3)-(7) ceases to have effect in part (18.12.2013 ss. 1(3), 3) by virtue of [London Local Authorities and Transport for London Act 2013 \(c. v\), s. 9\(9\)](#)
- F26** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), ss. 38, 46](#)
- F27** Words inserted by [Transport Act 1982 \(c. 49, SIF 107:1\), s. 65](#)
- F28** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), ss. 38, 46](#)
- F29** Words in s. 139(11) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\), s. 168\(1\), Sch. 8, Part I, para 1; S.I. 1992/2984, art. 2\(2\), Sch. 2.](#)

### Modifications etc. (not altering text)

- C4** S. 139: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853, reg. 2\(1\), Sch. 1](#)
- C5** S. 139(2)(e) modified (18.12.2013 ss. 1(3), 3) by [London Local Authorities and Transport for London Act 2013 \(c. v\), s. 10](#)

## 140 Removal of builders' skips.

- (1) The following provisions of this section have effect in relation to a builder's skip deposited on a highway notwithstanding that it was deposited on it in accordance with a permission granted under section 139 above.
- (2) The highway authority for the highway or a constable in uniform may require the owner of the skip to remove or reposition it or cause it to be removed or repositioned.
- (3) [<sup>F30</sup>A person required to remove or reposition, or cause to be removed or repositioned, a skip under a requirement made by virtue of subsection (2) above shall comply with the requirement as soon as practicable, and if he fails to do so he is guilty of an offence and liable to a fine not exceeding [<sup>F31</sup>level 3 on the standard scale].]
- (4) The highway authority for the highway or a constable in uniform may themselves remove or reposition the skip or cause it to be removed or repositioned.
- (5) Where a skip is removed under subsection (4) above, the highway authority or, as the case may be, the chief officer of police shall, where practicable, notify the owner of its removal, but if the owner cannot be traced, or if after a reasonable period of time after being so notified he has not recovered the skip, the highway authority or chief officer of police may dispose of the skip and its contents.
- (6) Any expenses reasonably incurred by a highway authority or chief officer of police in the removal or repositioning of a skip under subsection (4) above or the disposal of a skip under subsection (5) above may be recovered from the owner of the skip in any court of competent jurisdiction or summarily as a civil debt.
- (7) Any proceeds of the disposal of a skip under subsection (5) above shall be used in the first place to meet the expenses reasonably incurred in the removal and disposal of the skip and thereafter any surplus shall be given to the person entitled to it if he can be traced and if not may be retained by the highway authority or the chief officer of police, as the case may be; and any surplus so retained by a chief officer of police shall be paid into the police fund.
- (8) References in this section to expenses incurred in the removal of a skip include references to expenses incurred in storing the skip until it is recovered by the owner or, as the case may be, disposed of.

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- (9) The owner of a skip is not guilty of an offence under section 139(4) above of failing to secure that a condition relating to the siting of the skip was complied with if the failure resulted from the repositioning of the skip under subsection (3) or (4) above.

#### Textual Amendments

**F30** S. 140(3) ceases to have effect in part (18.12.2013 ss. 1(3), 3) by virtue of [London Local Authorities and Transport for London Act 2013 \(c. v\), s. 9\(9\)](#)

**F31** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), ss. 38, 46](#)

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

**C6** S. 140(9) modified (18.12.2013 ss. 1(3), 3) by [London Local Authorities and Transport for London Act 2013 \(c. v\), s. 9\(10\)](#)

### <sup>F32</sup>140A Builder's skips: charge for occupation of highway.

- (1) The Minister may make provision by regulations requiring the owner of a builder's skip deposited on a highway maintainable at the public expense to pay a charge to the highway authority where—

- (a) the period for which the skip remains in the highway exceeds such period as may be prescribed, and
- (b) the skip is not removed within a reasonable period.

- (2) For this purpose “a reasonable period” means such period as is agreed by the authority and the owner of the skip to be reasonable or, in default of such agreement, is determined by arbitration to be reasonable in the circumstances.

In default of agreement, the authority's view as to what is a reasonable period shall be acted upon pending the decision of the arbitrator.

- (3) The regulations may provide that if a person applying to the highway authority for permission under section 139 above submits together with his application an estimate of the likely duration of the occupation of the highway, the period stated in the estimate shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.

- (4) The regulations may also provide that if it appears to the owner of the skip that by reason of matters not previously foreseen or reasonably foreseeable the duration of the occupation of the highway—

- (a) is likely to exceed the prescribed period,
- (b) is likely to exceed the period stated in his previous estimate, or
- (c) is likely to exceed the period previously agreed or determined to be a reasonable period,

he may submit an estimate or revised estimate accordingly, and that if he does so any previous estimate, agreement or determination shall cease to have effect and the period stated in the new estimate shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.

- (5) The amount of the charge shall be determined in such manner as may be prescribed by reference to the period for which the highway is occupied by the skip and the extent of the occupation.

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Different rates of charge may be prescribed according to the place and time of the occupation and such other factors as appear to the Minister to be relevant.

- (6) The regulations may make provision as to the time and manner of making payment of any charge.
- (7) The regulations shall provide that a highway authority may reduce the amount, or waive payment, of a charge in any particular case, in such classes of case as they may decide or as may be prescribed, or generally.
- (8) In this section “prescribed” means prescribed by the Minister by regulations.]

#### Textual Amendments

**F32** S. 140A inserted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 Part I para.2](#); S.I. 1992/2984, art. 2(2), [Sch. 2](#).

PROSPECTIVE

#### [<sup>F33</sup>140B Builders' skips: charge determined by reference to duration of occupation of highway

- (1) The Secretary of State may make provision by regulations requiring the owner of a builder's skip deposited on a highway maintainable at the public expense to pay to the highway authority a charge determined, in the prescribed manner, by reference to the period for which the highway is occupied by the skip.
- (2) The regulations shall not require charges to be paid to a local highway authority unless the Secretary of State has, by order, approved the authority for the purposes of the regulations.
- (3) The regulations may require disputes of any prescribed description to be referred to an arbitrator appointed in accordance with the regulations.
- (4) Subsections (4) and (8) to (20) of section 140A apply in relation to regulations under subsection (1) of this section as they apply in relation to regulations under subsection (1) of that section.]

#### Textual Amendments

**F33** S. 140B inserted (prosp.) by [Traffic Management Act 2004 \(c. 18\)](#), [ss. 67, 99](#) (with s. 38)

PROSPECTIVE

#### [<sup>F34</sup>140C Regulations under sections 140A and 140B

Nothing shall be taken to prevent the imposition of charges by both regulations under section 140A and regulations under section 140B in respect of the same builder's skip at the same time.]

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#### Textual Amendments

**F34** S. 140C inserted (prosp.) by [Traffic Management Act 2004 \(c. 18\)](#), **ss. 70(2)**, 99 (with s. 38)

### 141 Restriction on planting of trees etc. in or near carriageway.

- (1) Subject to sections 64 and 96 above and section 142 below, no tree or shrub shall be planted in a made-up carriageway, or within 15 feet from the centre of a made-up carriageway.
- (2) If a tree or shrub is planted in contravention of this section the highway authority for the highway or, in the case of a highway maintainable by reason of tenure, enclosure or prescription, the person liable to maintain the highway, may by notice given either to the owner or to the occupier of the land in which the tree or shrub is planted require him to remove it within 21 days from the date of service of the notice.
- (3) If a person fails to comply with a notice under subsection (2) above he is guilty of an offence and liable to a fine not exceeding [<sup>F35</sup>level 1 on the standard scale] and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding 50p for each day on which the offence is so continued.

#### Textual Amendments

**F35** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **s. 46**

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

- C7** S. 141 excluded (18.12.1996) by [1996 c. 61, s. 38, Sch. 10 para. 5\(2\)](#).
- C8** S. 141 excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), s. 40, **Sch. 14 para. 7(2)**
- C9** S. 141 excluded (24.9.2014) by [The Thames Water Utilities Limited \(Thames Tideway Tunnel\) Order 2014 \(S.I. 2014/2384\)](#), art. 1, **Sch. 19**, Pt. 1 para. 2(1)
- C10** S. 141 excluded (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), **Sch. 24 para. 1(2)** (with Sch. 24 para. 1(5))
- C11** S. 141 excluded (30.10.2019) by [The Northampton Gateway Rail Freight Interchange Order 2019 \(S.I. 2019/1358\)](#), art. 1, **Sch. 14 para. 2(1)** (with art. 45(7), Sch. 13 Pt. 1 para. 19)
- C12** S. 141 excluded (25.5.2020) by [The West Midlands Rail Freight Interchange Order 2020 \(S.I. 2020/511\)](#), art. 1, **Sch. 14 para. 2(1)**

### 142 Licence to plant trees, shrubs, etc., in a highway.

- (1) The highway authority for a highway may by a licence granted under this section permit the occupier or the owner of any premises adjoining the highway to plant and maintain, or to retain and maintain, trees, shrubs, plants or grass in such part of the highway as may be specified in the licence.
- (2) The highway authority may, as they think fit—
  - (a) grant a licence under this section to the person who at the time of the grant is the occupier of such premises and insert in the licence provisions prohibiting assignment of the licence and providing for its duration; or
  - (b) grant such a licence to the owner of such premises and his successors in title and insert in the licence provisions providing for the licence to be annexed to those premises and providing for its duration;

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and references in this section to the licensee are references to the person who is for the time being entitled by virtue of such a licence to do anything permitted by it to be done.

- (3) No fine, rent or other sum of money is payable in respect of such a licence except—
- (a) a reasonable sum in respect of legal or other expenses incurred in connection with the grant of the licence; and
  - (b) an annual charge of a reasonable amount for administering the licence;
- and any such sum is recoverable from the licensee.
- (4) It shall be a condition of every licence granted by virtue of subsection (2)(b) above that within one month after any change in the ownership of the premises in question takes place the licensee is to inform the highway authority of it.
- (5) A highway authority may attach to any such licence such conditions as they consider necessary to ensure the safety and convenience of passengers in the highway and to prevent traffic therein being delayed, to prevent any nuisance or annoyance being caused to the owners or occupiers of other premises adjoining the highway and to protect the apparatus of statutory undertakers,<sup>F36</sup> . . . [<sup>F37</sup> and the operators of [<sup>F38</sup>electronic communications code networks][<sup>F39</sup> or driver information systems].
- (6) A highway authority may by notice served on the licensee withdraw a licence granted by them under this section—
- (a) on the expiration of such period as may be specified in the notice, being a period of not less than 7 days beginning with the date of service of the notice on the licensee, if any condition of the licence is contravened by the licensee;
  - (b) on the expiration of such period as may be so specified, being a period of not less than 3 months beginning with the said date, if the authority consider the withdrawal of the licence is necessary for the purpose of the exercise of their functions as a highway authority.
- (7) Where a licence under this section expires or is withdrawn or surrendered, the highway authority by whom it was granted—
- (a) may remove all or any of the trees, shrubs, plants or grass to which the licence relates and reinstate the highway and may recover the expenses reasonably incurred by them in so doing from the last licensee; or
  - (b) if satisfied that the last licensee can, within such reasonable time as they may specify, remove such trees, shrubs, plants or grass or such of them as they may specify and reinstate the highway, may authorise him to do so at his own expense.

In this subsection “the last licensee” means the person who immediately before the expiration, withdrawal or surrender of the licence in question was the licensee or, if that person has died, his personal representatives.

- (8) The licensee and the person who immediately before the expiration, withdrawal or surrender of a licence under this section was the licensee or, if that person has died, his personal representatives shall indemnify the highway authority against any claim in respect of injury, damage or loss arising out of—
- (a) the planting or presence in a highway of trees, shrubs, plants or grass to which the licence relates, or
  - (b) the execution by any person of any works authorised by the licence or by the highway authority under subsection (7) above, or

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- (c) the execution by or on behalf of the highway authority of any works under subsection (7) above;

but this subsection is not to be taken as requiring any person to indemnify the highway authority against any claim in respect of injury, damage or loss which is attributable to the negligence of that authority.

- (9) If any person plants a tree or shrub in a highway otherwise than in pursuance of a licence granted under this section, the tree or shrub is to be deemed, for the purposes of section 141 above, to have been planted in contravention of that section.
- (10) Where the land on which a highway is situated is owned by the highway authority for the highway, nothing in subsection (3) above is to be taken as affecting the rights of that authority as the owner of that land to grant to any person, for such consideration as they think fit, the right to plant any thing in that land.

#### Textual Amendments

- F36** Words repealed by [Water Act 1989](#) (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I**
- F37** Words substituted by [Telecommunications Act 1984](#) (c. 12, SIF 96), s. 109, Sch. 4 para. 76(4), **Sch. 5 para. 45**
- F38** Words in s. 142(5) substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by [Communications Act 2003](#) (c. 21), ss. 406(1)(6), 408, 411, **Sch. 17 para. 55** (with Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)
- F39** Words inserted by [Road Traffic \(Driver Licensing and Information Systems\) Act 1989](#) (c. 22, SIF 107:1), s. 13(1), **Sch. 4 para. 3(4)**

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

- C13** [S. 142](#): functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853](#), reg. 2(1), **Sch. 1**

### 143 Power to remove structures from highways.

- (1) Where a structure has been erected or set up on a highway otherwise than under a provision of this Act or some other enactment, a competent authority may by notice require the person having control or possession of the structure to remove it within such time as may be specified in the notice.

For the purposes of this section the following are competent authorities—

- (a) in the case of a highway which is for the time being maintained by a [<sup>F40</sup>non-metropolitan] district council by virtue of section 42 or 50 above, that council and also the highway authority, and
- (b) in the case of any other highway, the highway authority.
- (2) If a structure in respect of which a notice is served under this section is not removed within the time specified in the notice, the competent authority serving the notice may, subject to subsection (3) below, remove the structure and recover the expenses reasonably incurred by them in so doing from the person having control or possession of the structure.
- (3) The authority shall not exercise their power under subsection (2) above until the expiration of one month from the date of service of the notice.

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- (4) In this section “structure” includes any machine, pump, post or other object of such a nature as to be capable of causing obstruction, and a structure may be treated for the purposes of this section as having been erected or set up notwithstanding that it is on wheels.

#### Textual Amendments

**F40** Word inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 25](#)

### 144 Power to erect flagpoles etc. on highways.

- (1) Subject to subsection (2) below, a local authority may—
- (a) erect flagpoles, pylons and other structures on any highway in their area for the purpose of displaying decorations;
  - (b) make slots in such a highway for the purpose of erecting the structures; and
  - (c) remove any structure erected or slot made by the authority in pursuance of paragraph (a) or (b) above;

and any structures or slots which may be erected or made by virtue of this subsection are hereafter in this section referred to as “relevant works”.

- (2) A local authority are not entitled to exercise the powers conferred on them by subsection (1) above in respect of a highway for which they are not the highway authority except with the consent in writing of the highway authority for the highway, and are not entitled to exercise those powers in respect of so much of a highway as—
- (a) is carried by a bridge which a body other than the local authority and the highway authority has a duty to maintain; or
  - (b) forms part of the approaches to such a bridge and is supported or protected by works or materials which a body other than the local authority and the highway authority has a duty to maintain.

except with the consent in writing of that body.

In this subsection “bridge” includes a structure which carries a highway superimposed over a cutting.

- (3) A highway authority or other body may give their consent in pursuance of subsection (2) above on such terms as they think fit (including in particular, without prejudice to the generality of the preceding provisions of this subsection, terms providing for the highway authority or body to remove any of the relevant works and reinstate the highway and to recover the reasonable cost of doing so from the local authority to whom the consent was given).
- (4) It is the duty of an authority by whom relevant works are erected or made by virtue of the preceding provisions of this section—
- (a) to ensure that the works are erected or made so as to obstruct the highway in question as little as is reasonably possible, so as not to obscure or conflict with traffic signs connected with the highway and so as to interfere as little as is reasonably possible with the enjoyment of premises adjacent to the highway and with, and with access to, any apparatus in or on the highway which belongs to or is used or maintained by statutory undertakers; and

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- (b) to ensure that while the works are retained they are properly maintained and, so far as it is necessary to light them to avoid danger to users of the highway, are properly lit; and
  - (c) if the authority are not the highway authority for the highway, to indemnify the highway authority against any payments falling to be made by the highway authority in consequence of the works.
- (5) A person who without lawful authority interferes with or removes any relevant works is guilty of an offence and liable to a fine not exceeding [<sup>F41</sup>level 3 on the standard scale].

- (6) In this section—

“local authority” means any of the following, namely, the council of a county, district or London borough, <sup>F42</sup> . . . the Common Council, the Council of the Isles of Scilly and a parish or community council; and

“statutory undertakers” means any of the following, namely, any body which is a statutory undertaker within the meaning provided by section 329(1) below, [<sup>F43</sup>any universal service provider in connection with the provision of a universal postal service], <sup>F44</sup> . . . <sup>F45</sup> . . . [<sup>F46</sup>any licensee under a street works licence][<sup>F47</sup>and the operator of [<sup>F48</sup>an electronic communications code network]][<sup>F49</sup>or a driver information [<sup>F50</sup>network]].

#### Textual Amendments

- F41** Words in s. 144(5) substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 35, 37, 38, 46** (with s. 47)
- F42** Words repealed by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 102, **Sch. 17**
- F43** [S. 144\(6\)](#): words in the definition of "statutory undertakers" substituted (26.3.2001) by [S.I. 2001/1149](#), art. 3(1), **Sch. 1 para. 49(2)**
- F44** Words repealed by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 41\(1\), 57\(6\), 58](#), **Sch. 27 Pt. 1**
- F45** Word repealed by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, **Sch. 7**
- F46** [S. 144\(6\)](#): words in definition of "statutory undertakers" substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), **Sch. 8 Part 1 para. 3**; [S.I. 1992/2984](#), art. 2(2), **Sch. 2**.
- F47** Words inserted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, [Sch. 4 para. 76\(5\)](#), **Sch. 5 para. 45**
- F48** Words in [s. 144\(6\)](#) in definition of "statutory undertakers" substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), ss. 406(1)(6), 408, 411, **Sch. 17 para. 56(1)(a)(2)(a)** (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), **2(1)**, 3(1), [Sch. 1](#) (with art. 3(2) (as amended (8.12.2003) by [S.I. 2003/3142](#), art. 1(3))); [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)
- F49** [S. 144\(6\)](#): words in definition of "statutory undertakers" inserted by [Road Traffic \(Driver Licensing and Information Systems\) Act 1989 \(c. 22, SIF 107:1\)](#), s. 13(1), **Sch. 4 para. 3(5)**
- F50** Word in [s. 144\(6\)](#) in definition of "statutory undertakers" substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), ss. 406(1)(6), 408, 411, **Sch. 17 para. 56(1)(a)(2)(e)** (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), **2(1)**, 3(1), [Sch. 1](#) (with art. 3(2) (as amended (8.12.2003) by [S.I. 2003/3142](#), art. 1(3))); [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

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

- C14** By [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, [Sch. 4 para. 3\(1\)](#), **Sch. 5 para. 45** it is provided that references to British Telecommunications in [s. 144\(6\)](#) cease to have effect



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#### **145 Powers as to gates across highways.**

- (1) Where there is a gate of less than the minimum width across so much of a highway as consists of a carriageway, or across a highway that is a bridleway, the highway authority for the highway may by notice to the owner of the gate require him to enlarge the gate to that width or remove it.

In this subsection “the minimum width” means, in relation to a gate across so much of a highway as consists of a carriageway, 10 feet and, in relation to a gate across a bridleway, 5 feet, measured in either case between the posts of the gate.

- (2) If a person on whom a notice under subsection (1) above is served fails to comply, within 21 days from the date of service of the notice on him, with a requirement of the notice, he is guilty of an offence and liable to a fine not exceeding 50p for each day during which the failure continues.

#### **146 Duty to maintain stiles etc. on footpaths <sup>[F51]</sup>, bridleways and restricted byways].**

- (1) Any stile, gate or other similar structure across a footpath <sup>[F52]</sup>, bridleway or restricted byway] shall be maintained by the owner of the land in a safe condition, and to the standard of repair required to prevent unreasonable interference with the rights of the persons using the footpath <sup>[F52]</sup>, bridleway or restricted byway].
- (2) If it appears to the appropriate authority that the duty imposed by subsection (1) above is not being complied with, they may, after giving to the owner and occupier not less than 14 days’ notice of their intention, take all necessary steps for repairing and making good the stile, gate or other works.

For the purposes of this section the appropriate authority is—

- (a) in the case of a footpath <sup>[F52]</sup>, bridleway or restricted byway] which is for the time being maintained by a <sup>[F53]</sup>non-metropolitan] district council by virtue of section 42 or 50 above, that council, and
  - (b) in the case of any other footpath <sup>[F52]</sup>, bridleway or restricted byway], the highway authority.
- (3) The appropriate authority may recover from the owner of the land the amount of any expenses reasonably incurred by the authority in and in connection with the exercise of their powers under subsection (2) above, or such part of those expenses as the authority think fit.
  - (4) The appropriate authority shall contribute not less than a quarter of any expenses shown to their satisfaction to have been reasonably incurred in compliance with subsection (1) above, and may make further contributions of such amount in each case as, having regard to all the circumstances, they consider reasonable.
  - (5) Subsection (1) above does not apply to any structure—
    - (a) if any conditions for the maintenance of the structure are for the time being in force under section 147 below,
    - <sup>[F54]</sup>(aa) if any conditions for the maintenance of the structure imposed by virtue of subsection (4) of section 147ZA below are for the time being in force under that section,] or
    - (b) if and so long as, under an agreement in writing with any other person, there is a liability to maintain the structure on the part of the appropriate authority or,

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where the appropriate authority are a [<sup>F53</sup>non-metropolitan] district council, on the part of either the appropriate authority or the highway authority.

#### Textual Amendments

- F51** Words in s. 146 sidenote substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2, **Sch. Pt. I**; S.I. 2006/1172, art. 2(a)-(d) (with art. 3); S.I. 2006/1279, art. 2(a)-(d) (with art. 3)
- F52** Words in s. 146(1)(2)(a)(b) substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2, **Sch. Pt. I**; S.I. 2006/1172, art. 2(a)-(d) (with art. 3); S.I. 2006/1279, art. 2(a)-(d) (with art. 3)
- F53** Word inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, **Sch. 4 para. 25**
- F54** S. 146(5)(aa) inserted (1.4.2007 for W. and 1.10.2007 for E.) by [2000 c. 37, ss. 69\(4\), 103\(3\)](#); S.I. 2006/3257, **art. 3**; S.I. 2007/2595, **art. 2**

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

- C15** S. 146 applied (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2, **Sch. Pt. I**; S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

### 147 Power to authorise erection of stiles etc. on footpath or bridleway.

- (1) The following provisions of this section apply where the owner, lessee or occupier of agricultural land, or of land which is being brought into use for agriculture, represents to a competent authority, as respects a footpath or bridleway that crosses the land, that for securing that the use, or any particular use, of the land for agriculture shall be efficiently carried on, it is expedient that stiles, gates or other works for preventing the ingress or egress of animals should be erected on the path or way.

For the purposes of this section the following are competent authorities—

- (a) in the case of a footpath or bridleway which is for the time being maintained by a [<sup>F55</sup>non-metropolitan] district council by virtue of section 42 or 50 above, that council and also the highway authority, and
- (b) in the case of any other footpath or bridleway, the highway authority.
- (2) Where such a representation is made the authority to whom it is made may, subject to such conditions as they may impose for maintenance and for enabling the right of way to be exercised without undue inconvenience to the public, authorise the erection of the stiles, gates or other works.
- [<sup>F56</sup>(2A) In exercising their powers under subsection (2) above a competent authority shall have regard to the needs of persons with mobility problems.
- (2B) The Secretary of State may issue guidance to competent authorities as to matters to be taken into account for the purposes of subsection (2) above; and in exercising their powers under subsection (2) above competent authorities shall have regard to any such guidance issued to them.]
- (3) Where an authorisation in respect of a footpath or bridleway is granted under this section the public right of way is to be deemed to be subject to a condition that

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the stiles, gates or works may be erected and maintained in accordance with the authorisation and so long as the conditions attached to it are complied with.

- (4) For the purposes of section 143 above, any stile, gate or works erected in pursuance of an authorisation under this section is to be deemed to be erected under this section only if the provisions of the authorisation and any conditions attached to it are complied with.
- (5) In this section references to agricultural land and to land being brought into use for agriculture include references to land used or, as the case may be, land being brought into use, for forestry [<sup>F57</sup> or for the breeding or keeping of horses.]
- (6) Nothing in this section prejudices any limitation or condition having effect apart from this section.

#### Textual Amendments

**F55** Word inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 25](#)

**F56** [S. 147\(2A\)\(2B\)](#) inserted (6.12.2006 for W. for certain purposes, 1.4.2007 for W. in so far as not already in force, 1.10.2007 for E.) by [2000 c. 37, ss. 69\(1\), 103\(3\)](#); [S.I. 2006/3257, arts. 2\(b\), 3](#); [S.I. 2007/2595, art. 2](#)

**F57** Words in [s. 147\(5\)](#) inserted (27.9.2005 for E. and 11.5.2006 for W.) by [2000 c. 37, s. 69\(2\)](#); [S.I. 2005/2459, art. 2\(1\)\(d\)](#); [S.I. 2006/1279, art. 2\(m\)](#)

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

**C16** [S. 147](#): functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853, reg. 2\(1\)](#), [Sch. 1](#)

### [<sup>F58</sup>147ZA] **Agreements relating to improvements for benefit of persons with mobility problems.**

- (1) With respect to any relevant structure, a competent authority may enter into an agreement with the owner, lessee or occupier of the land on which the structure is situated which provides—
  - (a) for the carrying out by the owner, lessee or occupier of any qualifying works and the payment by the competent authority of the whole or any part of the costs incurred by him in carrying out those works, or
  - (b) for the carrying out by the competent authority of any qualifying works at their own expense or subject to the payment by the owner, lessee or occupier of the whole or any part of the costs incurred in carrying out those works.
- (2) In this section—
  - (a) “competent authority” has the same meaning as in section 147 above,
  - (b) “relevant structure” means a stile, gate or other structure which—
    - (i) is authorised by a condition or limitation subject to which the public right of way over the footpath or bridleway was created, or
    - (ii) is authorised under section 147 above,but does not include a structure to which an agreement falling within section 146(5)(b) above relates, and
  - (c) “qualifying works”, in relation to a relevant structure, means works for replacing or improving the structure which will result in a structure that is safer or more convenient for persons with mobility problems.

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- (3) An agreement under this section may include such conditions as the competent authority think fit.
- (4) Those conditions may in particular include conditions expressed to have enduring effect—
  - (a) for the maintenance of the structure as replaced or improved, and
  - (b) for enabling the public right of way to be exercised without undue inconvenience to the public.
- (5) Where an agreement under this section has been entered into in relation to any structure—
  - (a) the public right of way is to be deemed to be subject to a condition that the structure as replaced or improved may be erected and maintained in accordance with the agreement so long as any conditions included by virtue of subsection (4) above are complied with,
  - (b) in a case falling within subsection (2)(b)(i) above, as from the effective date the previous condition or limitation relating to the relevant structure shall cease to have effect, and
  - (c) in a case falling within subsection (2)(b)(ii) above, as from the effective date the previous authorisation under section 147 above shall cease to have effect in relation to the relevant structure.
- (6) In subsection (5) above “the effective date” means—
  - (a) the first anniversary of the day on which the agreement was entered into, or
  - (b) such earlier date as may be specified for the purposes of this subsection in the agreement.
- (7) For the purposes of section 143 above, any stile, gate or other structure replaced or improved in pursuance of an agreement under this section is to be deemed to be erected under this section only if any conditions included by virtue of subsection (4) above are complied with.
- (8) A competent authority may not enter into an agreement under this section except with the consent of every owner, lessee or occupier of the land on which the relevant structure is situated who is not a party to the agreement.
- (9) The Secretary of State may issue guidance to competent authorities as to matters to be taken into account for the purposes of this section; and in exercising their powers under this section competent authorities shall have regard to any such guidance issued to them.]

#### Textual Amendments

**F58** S. 147ZA inserted (6.12.2006 for W. for certain purposes, 1.4.2007 for W. in so far as not already in force, 1.10.2007 for E.) by 2000 c. 37, s. 69(3); S.I. 2006/3257, arts. 2(b), 3; S.I. 2007/2595, art. 2

#### [<sup>F59</sup>147A Road-side sales.

- (1) Subject to subsection (4) below, no person shall, for the purpose of selling anything, or offering or exposing anything for sale, use any stall or similar structure or any container or vehicle, kept or placed on—
  - (a) the verge of a trunk road or a principal road;

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- (b) a lay-by on any such road; or
  - (c) unenclosed land within 15 metres of any part of any such road,
- where its presence or its use for that purpose causes or is likely to cause danger on the road or interrupts or is likely to interrupt any user of the road.
- (2) Any person who contravenes this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding [<sup>F60</sup>level 3 on the standard scale].
  - (3) It shall be a defence for a person charged with an offence under this section to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.
  - (4) This section does not apply—
    - (a) to the sale or offer or exposure for sale of things from or on a vehicle which is used only for the purposes of itinerant trading with the occupiers of premises, or is used only for that purpose and for purposes other than trading;
    - (b) to the sale or offer or exposure for sale of newspapers;
    - (c) to anything done at a market in respect of which tolls, stallages or rents are payable; or
    - (d) to the sale or offer or exposure for sale of anything by way of street trading which has been authorised under Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 or under any local enactment which makes provision similar to that made by that Schedule, either by the person so authorised or by a person acting as assistant to the person so authorised.]

#### Textual Amendments

**F59** S. 147A inserted by [Local Government \(Miscellaneous Provisions\) Act 1982 \(c. 30, SIF 81:1\)](#), s. 23

**F60** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 46

### 148 Penalty for depositing things or pitching booths etc. on highway.

If, without lawful authority or excuse—

- (a) a person deposits on a made-up carriageway any dung, compost or other material for dressing land, or any rubbish, or
- (b) a person deposits on any highway that consists of or comprises a made-up carriageway any dung, compost or other material for dressing land, or any rubbish, within 15 feet from the centre of that carriageway, or
- (c) a person deposits any thing whatsoever on a highway to the interruption of any user of the highway, or
- (d) a hawker or other itinerant trader pitches a booth, stall or stand, or encamps, on a highway.

he is guilty of an offence and liable to a fine not exceeding [<sup>F61</sup>level 3 on the standard scale].

#### Textual Amendments

**F61** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), ss. 38, 46

*Status: Point in time view as at 03/12/2020. This version of this part contains provisions that are prospective.*

*Changes to legislation: Highways Act 1980, Part IX is up to date with all changes known to be in force on or before 16 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)*

## 149 Removal of things so deposited on highways as to be a nuisance etc.

- (1) If any thing is so deposited on a highway as to constitute a nuisance, the highway authority for the highway may by notice require the person who deposited it there to remove it forthwith and if he fails to comply with the notice the authority may make a complaint to a magistrates' court for a removal and disposal order under this section.
- (2) If the highway authority for any highway have reasonable grounds for considering—
  - (a) that any thing unlawfully deposited on the highway constitutes a danger (including a danger caused by obstructing the view) to users of the highway, and
  - (b) that the thing in question ought to be removed without the delay involved in giving notice or obtaining a removal and disposal order from a magistrates' court under this section,
 the authority may remove the thing forthwith.
- (3) The highway authority by whom a thing is removed in pursuance of subsection (2) above may either—
  - (a) recover from the person by whom it was deposited on the highway, or from any person claiming to be entitled to it, any expenses reasonably incurred by the authority in removing it, or
  - (b) make a complaint to a magistrates' court for a disposal order under this section.
- (4) A magistrates' court may, on a complaint made under this section, make an order authorising the complainant authority—
  - (a) either to remove the thing in question and dispose of it or, as the case may be, to dispose of the thing in question, and
  - (b) after payment out of any proceeds arising from the disposal of the expenses incurred in the removal and disposal, to apply the balance, if any, of the proceeds to the maintenance of highways maintainable at the public expense by them.
- (5) If the thing in question is not of sufficient value to defray the expenses of removing it, the complainant authority may recover from the person who deposited it on the highway the expenses, or the balance of the expenses, reasonably incurred by them in removing it.
- (6) A magistrates' court composed of a single justice may hear a complaint under this section.

### Modifications etc. (not altering text)

**C17** S. 149: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), Sch. 1

**C18** S. 149 applied (temp.) (22.7.2020) by Business and Planning Act 2020 (c. 16), ss. 7(6), 25(1) (with ss. 7(4), 10)

## 150 Duty to remove snow soil etc. from highway.

- (1) If an obstruction arises in a highway from accumulation of snow or from the falling down of banks on the side of the highway, or from any other cause, the highway authority shall remove the obstruction.

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- (2) If a highway authority fail to remove an obstruction which it is their duty under this section to remove, a magistrates' court may, on a complaint made by any person, by order require the authority to remove the obstruction within such period (not being less than 24 hours) from the making of the order as the court thinks reasonable, having regard to all the circumstances of the case.
- (3) In considering whether to make an order under this section and, if so, what period to allow for the removal of the obstruction, the court shall in particular have regard to—
  - (a) the character of the highway to which the complaint relates, and the nature and amount of the traffic by which it is ordinarily used,
  - (b) the nature and extent of the obstruction, and
  - (c) the resources of manpower, vehicles and equipment for the time being available to the highway authority for work on highways and the extent to which those resources are being, or need to be, employed elsewhere by that authority on such work.
- (4) Where they are under a duty to remove an obstruction under subsection (1) above, a highway authority may—
  - (a) take any reasonable steps (including the placing of lights, signs and fences on the highway) for warning users of the highway of the obstruction;
  - (b) sell any thing removed in carrying out the duty, unless the thing is claimed by its owner before the expiration of 7 days from the date of its removal;
  - (c) recover from the owner of the thing which caused or contributed to the obstruction, or where the thing has been sold under paragraph (b) above, from its previous owner, the expenses reasonably incurred as respects the obstruction in carrying out the duty and in exercising any powers conferred by this subsection, but so that no such expenses are recoverable from a person who proves that he took reasonable care to secure that the thing in question did not cause or contribute to the obstruction.
- (5) Where a highway authority sell any thing in exercise of their powers under subsection (4) above, then—
  - (a) if any expenses are recoverable under that subsection by the authority from the previous owner of the thing, they may set off the expenses against the proceeds of sale (without prejudice to the recovery of any balance of the expenses from the previous owner) and shall pay over any balance of the proceeds to the previous owner; and
  - (b) if no expenses are so recoverable, they shall pay over the whole of the proceeds of sale to the previous owner.
- (6) The foregoing provisions of this section apply to a person liable to maintain a highway by reason of tenure, enclosure or prescription as they apply to the highway authority for that highway, and references in those provisions to a highway authority are to be construed accordingly.

#### **151 Prevention of soil etc. being washed on to street.**

- (1) A competent authority may, by notice to the owner or occupier of any land adjoining a street which is a highway maintainable at the public expense, require him, within 28 days from the date of service of the notice, to execute such works as will prevent soil or refuse from that land from falling, or being washed or carried, on to the street

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or into any sewer or gully in it in such quantities as to obstruct the street or choke the sewer or gully.

For the purposes of this section the following are competent authorities—

- (a) in relation to a street outside Greater London, the highway authority for the street and also <sup>F62</sup>, if the street is situated in a non-metropolitan district, the council of that district; and]
- (b) in relation to a street within Greater London, the council of the London borough in which the street is situated or, if it is situated in the City of London, the Common Council <sup>F63</sup> . . .

<sup>F64</sup>(1A) In relation to a street in Wales, the competent authorities for the purposes of this section are the highway authority for the street and, if different, the Welsh council in whose area the street is situated.]

- (2) A person aggrieved by a requirement under this section may appeal to a magistrates' court.
- (3) Subject to any order made on appeal, if a person on whom a notice is served under this section fails to comply with it within the period specified in subsection (1) above, he is guilty of an offence and liable to a fine not exceeding <sup>F65</sup>level 3 on the standard scale]; and if the offence is continued after conviction, he is guilty of a further offence and liable to a fine not exceeding £1 for each day on which the offence is so continued.

#### Textual Amendments

- F62** Words substituted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, **Sch. 4 para. 26**
- F63** Words repealed by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 102, **Sch. 17**
- F64** [S. 151\(1A\)](#) inserted (1.4.1996) by [1994 c. 19, s. 22\(1\)](#), **Sch. 7 Pt. I para. 13** (with s. 54(7), [Sch. 17 paras. 22\(1\), 23\(2\)](#)); [S.I. 1996/396](#), art. 3, **Sch. 1**
- F65** Words in s. 151(3) substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 35, 37, 38, 46** (with s. 47)

## 152 Powers as to removal of projections from buildings.

- (1) A competent authority may by notice to the occupier of any building require him to remove or alter any porch, shed, projecting window, step, cellar, cellar door, cellar window, sign, signpost, sign iron, showboard, window shutter, wall, gate, fence or other obstruction or projection which has been erected or placed against or in front of the building and is an obstruction to safe or convenient passage along a street.
- (2) A notice under subsection (1) above may, at the option of the authority, be served on the owner of the building instead of on the occupier or may be served on both the owner and the occupier.
- (3) A person aggrieved by a requirement under subsection (1) above may appeal to a magistrates' court.
- (4) Subject to any order made on appeal, if a person on whom a notice under subsection (1) above is served fails to comply, within 14 days from the date of service of the notice on him, with a requirement of the notice, he is guilty of an offence and liable to a fine not exceeding <sup>F66</sup>level 1 on the standard scale].



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- (5) Where an authority serve a notice under subsection (1) above on any person and he is guilty of an offence by reason of his failure to comply with a requirement of the notice within the time specified in subsection (4) above then, whether or not proceedings are taken against him in respect of the offence, the authority may remove the obstruction or projection to which the notice relates and may recover the expenses reasonably incurred by them in so doing from the owner or occupier of the building if, in either case, he is a person on whom the notice was served.
- (6) In a case where a requirement under subsection (1) above is made in connection with an obstruction or projection not erected or placed by the occupier of the relevant building Schedule 13 to this Act applies in relation to any sum paid by the occupier in complying with a requirement under that subsection or, where the requirement is not complied with, in reimbursing the relevant authority for expenses reasonably incurred by them under subsection (5) above.
- (7) Subsection (1) above does not apply in respect of any such obstruction or projection as is there mentioned if it was erected or placed before the date when section 69 of the <sup>M3</sup>Towns Improvement Clauses Act 1847 first applied in the area in which the building in question is situated.
- (8) If any such obstruction or projection was erected or placed before that date against or in front of a building in a street, a competent authority may, on the expiration of 30 days from the date of service on either the owner or the occupier of the building of a notice of their intention, remove or alter the obstruction or projection as they think fit, and, if the obstruction or projection was lawfully erected or placed, the authority shall pay reasonable compensation to every person who suffers damage by reason of its removal or alteration.
- (9) For the purposes of this section—
  - (a) the competent authorities are the local authority in whose area the street is situated and also, where the street is a highway, the highway authority for it;
  - (b) a projection which is erected or placed against or in front of a building, and which by reason of its being insecurely fixed or of defective construction or otherwise is a source of danger to persons lawfully using a street, is to be deemed to be an obstruction to safe or convenient passage along the street.

#### Textual Amendments

**F66** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 46

#### Marginal Citations

**M3** [1847 c. 34](#).

### 153 Doors etc. in streets not to open outwards.

- (1) A door, gate or bar which is put up on any premises and opens on a street shall be so put up as not to open outwards unless, in the case of a door, gate or bar put up on a public building, the local authority for the area in which the building is situated and also, if the street is a highway, the highway authority consent to its being otherwise put up.
- (2) Where a door, gate or bar is put up on any premises in contravention of subsection (1) above the local authority for the area in which the premises are situated or alternatively,

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if the street concerned is a highway, the highway authority may, by notice to the occupier, require him to alter, so as not to open outwards, the door, gate or bar.

- (3) A notice under subsection (2) above may, at the option of the highway authority or local authority, be served on the owner of the premises instead of on the occupier or may be served on both the owner and the occupier of the premises.
- (4) A person aggrieved by the refusal of a consent under subsection (1) above or by a requirement under subsection (2) above may appeal to a magistrates' court.
- (5) Subject to any order made on appeal, if a person on whom a notice under subsection (2) above is served fails to comply, within 8 days from the date of service of the notice on him, with a requirement of the notice, he is guilty of an offence and liable to a fine not exceeding [<sup>F67</sup>level 1 on the standard scale].
- (6) Where a highway authority or local authority serve a notice under subsection (2) above on any person and he is guilty of an offence by reason of his failure to comply with a requirement of the notice within the time specified in subsection (5) above, then, whether or not proceedings are taken against him in respect of the offence, the authority may do the work required by the notice and recover the expenses reasonably incurred by them in so doing from the owner or occupier of the premises if, in either case, he is a person on whom the notice was served.
- (7) Where a requirement under subsection (2) above is made in connection with a door, gate or bar not put up by the occupier of the premises Schedule 13 to this Act applies in relation to any sum paid by the occupier in complying with a requirement under subsection (2) above or, where the requirement is not complied with, in reimbursing the authority for expenses reasonably incurred by them under subsection (6) above.

#### Textual Amendments

**F67** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 46

### 154 Cutting or felling etc. trees etc. that overhang or are a danger to roads or footpaths.

- (1) Where a hedge, tree or shrub overhangs a highway or any other road or footpath to which the public has access so as to endanger or obstruct the passage of vehicles or pedestrians, or obstructs or interferes with the view of drivers of vehicles or the light from a public lamp, [<sup>F68</sup>or overhangs a highway so as to endanger or obstruct the passage of horse-riders,] a competent authority may, by notice either to the owner of the hedge, tree or shrub or to the occupier of the land on which it is growing, require him within 14 days from the date of service of the notice so to lop or cut it as to remove the cause of the danger, obstruction or interference.

For the purposes of this section the following are competent authorities—

- (a) in relation to a highway for which the Minister [<sup>F69</sup>or a strategic highways company] is the highway authority and which is in a district or London borough, the [<sup>F70</sup>highway authority] and also the council of the district or, as the case may be, borough;
- (b) in relation to a highway for which a local highway authority are the highway authority, that authority and also [<sup>F71</sup>, if the highway is situated in a non-metropolitan district, the council of that district;]

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- (c) in relation to a road or footpath that is not a highway, the local authority in whose area the road or footpath is situated;  
and “hedge, tree or shrub” includes vegetation of any description.

[<sup>F72</sup>(1A) In subsection (1)(a) above, any reference to a district includes a reference to a Welsh county or county borough.]

(2) Where it appears to a competent authority for any highway, or for any other road or footpath to which the public has access—

- (a) that any hedge, tree or shrub is dead, diseased, damaged or insecurely rooted, and  
(b) that by reason of its condition it, or part of it, is likely to cause danger by falling on the highway, road or footpath,

the authority may, by notice either to the owner of the hedge, tree or shrub or to the occupier of the land on which it is situated, require him within 14 days from the date of service of the notice so to cut or fell it as to remove the likelihood of danger.

(3) A person aggrieved by a requirement under subsection (1) or (2) above may appeal to a magistrates’ court.

(4) Subject to any order made on appeal, if a person on whom a notice is served under subsection (1) or (2) above fails to comply with it within the period specified in those subsections, the authority who served the notice may carry out the work required by the notice and recover the expenses reasonably incurred by them in so doing from the person in default.

#### Textual Amendments

- F68** Words in s. 154(1) inserted (30.1.2001) by [2000 c. 37, ss. 65, 103\(2\)](#)  
**F69** Words in s. 154(1)(a) inserted (5.3.2015) by [Infrastructure Act 2015 \(c. 7\), s. 57\(1\), Sch. 1 para. 41\(a\)](#); [S.I. 2015/481, reg. 2\(a\)](#)  
**F70** Words in s. 154(1)(a) substituted (5.3.2015) by [Infrastructure Act 2015 \(c. 7\), s. 57\(1\), Sch. 1 para. 41\(b\)](#); [S.I. 2015/481, reg. 2\(a\)](#)  
**F71** Words substituted by [Local Government Act 1985 \(c. 51, SIF 81:1\), s. 8, Sch. 4 para. 27](#)  
**F72** S. 154(1A) inserted (1.4.1996) by [1994 c. 19, s. 22\(1\), Sch. 7 Pt. I para. 14](#) (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); [S.I. 1996/396, art. 3, Sch. 1](#).

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

- C19** S. 154(1) applied (with modifications) (21.9.2008) by [London Local Authorities and Transport for London Act 2008 \(c. iii\), ss. 1\(2\), 10](#)

## 155 Penalties in connection with straying animals.

(1) If any horses, cattle, sheep, goats or swine are at any time found straying or lying on or at the side of a highway their keeper is guilty of an offence; but this subsection does not apply in relation to a part of a highway passing over any common, waste or unenclosed ground.

In this section “keeper”, in relation to any animals, means a person in whose possession they are.

(2) A person guilty of an offence under this section is liable to a fine not exceeding [<sup>F73</sup>level 3 on the standard scale].

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- (3) A person guilty of an offence under this section is also liable to pay the reasonable expenses of removing any animal so found straying or lying to the premises of their keeper, or to the common pound, or to such other place as may have been provided for the purpose, and any person who incurs such expenses is entitled to recover them summarily as a civil debt.

For the purposes of this subsection “expenses”, in a case where an animal has been removed to the common pound, includes the usual fees and charges of the authorised keeper of the pound.

- (4) If a person, without lawful authority or excuse, releases any animal seized for the purpose of being impounded under this section from the pound or other place where it is impounded, or on the way to or from any such place, or damages any such place, he is guilty of an offence and liable to a fine not exceeding [<sup>F74</sup>level 2 on the standard scale].
- (5) Nothing in this section prejudices or affects any right of pasture on the side of a highway.

**Textual Amendments**

**F73** Words in s. 155(2) substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 35, 37, 38, 46** (with s. 47)

**F74** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 37, 46**

<sup>F75</sup> **156** .....

**Textual Amendments**

**F75** [S. 156](#) repealed (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#) s. 168(2), Sch. 9 (with s. 25(2)); [S.I. 1992/2984, art. 2\(2\)](#), **Sch. 2**.

**157**— ..... <sup>F76</sup>  
**159.**

**Textual Amendments**

**F76** [Ss. 157–159](#) repealed by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 102, **Sch. 17**

<sup>F77</sup> **160** .....

**Textual Amendments**

**F77** [S. 160](#) repealed (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#) s. 168(2), Sch. 9 (with s. 25(2)); [S.I. 1992/2984, art. 2\(2\)](#), **Sch.2**.

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[<sup>F78</sup>**160A Further powers of highway authorities and district council in relation to highways.**

Schedule 12A to this Act shall have effect.]

**Textual Amendments**

**F78** S. 160A inserted by Rights of Way Act 1990 (c. 24, SIF 59), s. 1(6)

*Danger or annoyance to users of highways and streets*

**161 Penalties for causing certain kinds of danger or annoyance.**

(1) If a person, without lawful authority or excuse, deposits any thing whatsoever on a highway in consequence of which a user of the highway is injured or endangered, that person is guilty of an offence and liable to a fine not exceeding [<sup>F79</sup>level 3 on the standard scale].

[<sup>F80</sup>(2) If a person without lawful authority or excuse—

- (a) lights any fire on or over a highway which consists of or comprises a carriageway; or
- (b) discharges any firearm or firework within 50 feet of the centre of such a highway,

and in consequence a user of the highway is injured, interrupted or endangered, that person is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.]

(3) If a person plays at football or any other game on a highway to the annoyance of a user of the highway he is guilty of an offence and liable to a fine not exceeding [<sup>F81</sup>level 1 on the standard scale].

(4) If a person, without lawful authority or excuse, allows any filth, dirt, lime or other offensive matter or thing to run or flow on to a highway from any adjoining premises, he is guilty of an offence and liable to a fine not exceeding [<sup>F82</sup>level 1 on the standard scale].

**Textual Amendments**

**F79** Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46

**F80** S. 161(2) substituted by Highways (Amendment) Act 1986 (c. 13, SIF 59), s. 1(2)

**F81** Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46

**F82** Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46

[<sup>F83</sup>**161ADanger or annoyance caused by fires lit otherwise than on highways.**

(1) If a person—

- (a) lights a fire on any land not forming part of a highway which consists of or comprises a carriageway; or
- (b) directs or permits a fire to be lit on any such land,

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and in consequence a user of any highway which consists of or comprises a carriageway is injured, interrupted or endangered by, or by smoke from, that fire or any other fire caused by that fire, that person is guilty of an offence and liable to a fine not exceeding level 5 on the standard scale.

- (2) In any proceedings for an offence under this section it shall be a defence for the accused to prove—
- (a) that at the time the fire was lit he was satisfied on reasonable grounds that it was unlikely that users of any highway consisting of or comprising a carriageway would be injured, interrupted or endangered by, or by smoke from, that fire or any other fire caused by that fire; and
  - (b) either—
    - (i) that both before and after the fire was lit he did all he reasonably could to prevent users of any such highway from being so injured, interrupted or endangered, or
    - (ii) that he had a reasonable excuse for not doing so.]

**Textual Amendments**

**F83** S. 161A inserted by [Highways \(Amendment\) Act 1986 \(c. 13, SIF 59\)](#), s. 1(3)

**162 Penalty for placing rope, etc. across highway.**

A person who for any purpose places any rope, wire or other apparatus across a highway in such a manner as to be likely to cause danger to persons using the highway is, unless he proves that he had taken all necessary means to give adequate warning of the danger, guilty of an offence and liable to a fine not exceeding [<sup>F84</sup>level 3 on the standard scale].

**Textual Amendments**

**F84** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), ss. 38, 46

**163 Prevention of water falling on or flowing on to highway.**

- (1) A competent authority may, by notice to the occupier of premises adjoining a highway, require him within 28 days from the date of service of the notice to construct or erect and thereafter to maintain such channels, gutters or downpipes as may be necessary to prevent—
- (a) water from the roof or any other part of the premises falling upon persons using the highway, or
  - (b) so far as is reasonably practicable, surface water from the premises flowing on to, or over, the footway of the highway.

For the purposes of this section the competent authorities, in relation to any highway, are the highway authority and also (where they are not the highway authority) the local authority for the area in which the highway is situated.

- (2) A notice under subsection (1) above may, at the option of the authority, be served on the owner of the premises in question instead of on the occupier or may be served on both the owner and the occupier of the premises.

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- (3) A person aggrieved by a requirement under this section may appeal to a magistrates' court.
- (4) Subject to any order made on appeal, if a person on whom a notice is served under this section fails to comply with the requirement of the notice within the period specified in subsection (1) above he is guilty of an offence and liable to a fine not exceeding [<sup>F85</sup>level 1 on the standard scale]; and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding £2 for each day on which the offence is so continued.

#### Textual Amendments

**F85** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), ss. 38, 46

### 164 Power to require removal of barbed wire.

- (1) Where on land adjoining a highway there is a fence made with barbed wire, or having barbed wire in or on it, and the wire is a nuisance to the highway, a competent authority may by notice served on the occupier of the land require him to abate the nuisance within such time, not being less than one month nor more than 6 months from the date of service of the notice, as may be specified in it.

For the purposes of this section—

- (a) the competent authorities, in relation to any highway, are the highway authority and also (where they are not the highway authority) the local authority for the area in which the highway is situated;
  - (b) “barbed wire” means wire with spikes or jagged projections, and barbed wire is to be deemed to be a nuisance to a highway if it is likely to be injurious to persons or animals lawfully using the highway.
- (2) If at the expiration of the time specified in the notice the occupier has failed to comply with the notice, a magistrates' court, if satisfied on complaint made by the authority that the wire is a nuisance to the highway, may order the occupier to abate the nuisance and, if he fails to comply with the order within a reasonable time, the authority may do whatever may be necessary in execution of the order and recover from him the expenses reasonably incurred by them in so doing.
  - (3) If the local authority who are a competent authority in relation to the highway concerned are the occupiers of the land in question proceedings under this section may be taken against them by any ratepayer within the area of that local authority and the foregoing provisions apply accordingly in relation to him and to the authority as they apply in relation to an authority and to an occupier of land.

### 165 Dangerous land adjoining street.

- (1) If, in or on any land adjoining a street, there is an unfenced or inadequately fenced source of danger to persons using the street, the local authority in whose area the street is situated may, by notice to the owner or occupier of that land, require him within such time as may be specified in the notice to execute such works of repair, protection, removal or enclosure as will obviate the danger.

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*Status: Point in time view as at 03/12/2020. This version of this part contains provisions that are prospective.*

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- (2) A person aggrieved by a requirement under subsection (1) above may appeal to a magistrates' court.
- (3) Subject to any order made on appeal, if a person on whom a notice is served under this section fails to comply with the notice within the time specified in it, the authority by whom the notice was served may execute such works as are necessary to comply with the notice and may recover the expenses reasonably incurred by them in so doing from that person.
- (4) Where the power conferred by subsection (1) above is exercisable in relation to land adjoining a street and has not been exercised by the local authority empowered to exercise it, then, if that authority are not the highway authority for the street, the highway authority for the street may request the local authority to exercise the power.
- (5) If the local authority refuse to comply with a request made under subsection (4) above or fail within a reasonable time after the request is made to them to do so, the highway authority may exercise the power (and where they do so subsections (2) and (3) above apply accordingly).

## 166 Forecourt abutting on streets.

- (1) If it appears to a competent authority that the forecourt of premises abutting on a street, or any steps or projection or goods (whether for sale or not) placed in such a forecourt, is or are a source of danger, obstruction or inconvenience to the public, the authority may by notice require the owner or occupier of the forecourt to fence the forecourt from the street or, at his election, to take such other steps as may be specified in the notice to obviate the danger, obstruction or inconvenience to the public.

For the purposes of this section the following are competent authorities—

- (a) in the case of a street outside Greater London which is a highway, a local authority and also the highway authority;
  - (b) in the case of any other street, a local authority.
- (2) If it appears to a competent authority that a stall or other erection on a forecourt of premises abutting on a street is by reason of its character injurious to the amenities of the street, the authority may by notice require the owner or occupier of the forecourt to make such alterations in the stall or other erection as may be necessary to prevent its being injurious to the amenities of the street or, at his election, to remove it.

This subsection does not apply to any erection which has been in position in the forecourt of any premises at all times since 10th November 1960.

- (3) A competent authority does not have power under subsection (1) or (2) above to give a notice applying to any advertisement as defined in [F86section 336(1) of the Town and Country Planning Act 1990], or under subsection (2) above to give a notice applying to anything erected in conformity with planning permission granted on an application under Part III of that Act.
- (4) The provisions of Part XII of the M4Public Health Act 1936 with respect to appeals against, and the enforcement of, notices requiring the execution of works apply in relation to any notice under this section as if this section were contained in that Act (and as if the references to the local authority included references to the highway authority); and section 290(6) of that Act shall authorise the authority at their election



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to take either of the courses which were open to the person on whom the notice was served in order to comply with it.

- (5) In this section, “local authority” means any of the following, namely, the council of a district or London borough, the Common Council, the sub-treasurer of the Inner Temple, the under-treasurer of the Middle Temple, [<sup>F87</sup>a Welsh council] and the Council of the Isles of Scilly.

#### Textual Amendments

**F86** Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s.4, **Sch. 2 para. 45(10)**

**F87** Words in s. 166(5) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para.15** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**.

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

**C20** S. 166 modified (22.7.2008) by Transport for London Act 2008 (c. i), ss. 1(1), **37** (subject to s. 37(2)-(4) and with s. 48)

#### Marginal Citations

**M4** 1936 c. 49.

### 167 Powers relating to retaining walls near streets.

- (1) This section applies to any length of a retaining wall, being a length—
- any cross-section of which is wholly or partly within 4 yards of a street; and
  - which is at any point of a greater height than 4 feet 6 inches above the level of the ground at the boundary of the street nearest that point;
- but does not apply to any length of a retaining wall erected on land belonging to any transport undertakers so long as that land is used by them primarily for the purpose of their undertaking or to any length of a retaining wall for the maintenance of which a highway authority are responsible.
- (2) No length of retaining wall, being a length which when erected will be a length of retaining wall to which this section applies, shall be erected otherwise than in accordance with plans, sections and specifications approved by the local authority in whose area the street is situated; and before giving such approval that authority, if they are not the highway authority for the street, shall consult the highway authority.
- (3) Any person aggrieved by the refusal of a local authority to approve any plans, sections and specifications submitted to them under this section may appeal to a magistrates’ court.
- (4) If a person erects a length of retaining wall in contravention of this section, he is guilty of an offence and liable to a fine not exceeding [<sup>F88</sup>level 3 on the standard scale].
- (5) If a length of retaining wall to which this section applies is in such condition (whether for want of repair or some other reason) as to be liable to endanger persons using the street, the local authority in whose area the street is situated may, by notice served on the owner or occupier of the land on which that length of wall is, require him to execute such works as will obviate the danger.

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- (6) Where the power conferred by subsection (5) above is exercisable in relation to a length of wall and has not been exercised by the local authority empowered to exercise it, then, if that authority are not the highway authority for the street in question, the highway authority may request the local authority to exercise the power; and if the local authority refuse to comply with the request or fail within a reasonable time after the request is made to them to do so, the highway authority may exercise the power.
- (7) Subsections (2) to (7) of section 290 of the <sup>M5</sup>Public Health Act 1936 (appeals against and the enforcement of, certain notices under that Act) apply to any notice served under subsection (5) above as they apply to such notices as are mentioned in subsection (1) of that section, but subject to the following modifications:—
- (a) references to the local authority are to be construed as including references to the highway authority;
  - (b) for paragraph (f) of subsection (3) there is substituted the following paragraph—
    - “(f) that some other person ought to contribute towards the expense of executing any works required by the notice”
- (8) Sections 300 to 302 of the Public Health Act 1936 (supplementary provisions relating to appeals under the said section 290) apply, with the necessary modifications, to appeals brought by virtue of subsection (7) above.
- (9) In this section “retaining wall” means a wall, not forming part of a permanent building, which serves, or is intended to serve, as a support for earth or other material on one side only.

#### Textual Amendments

**F88** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46**

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

**C21** S. 167 excluded (18.12.1996) by [1996 c. 61, s. 38, Sch. 10](#) Pt. para. 5(3).

**C22** S. 167 excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\), s. 40, Sch. 14 para. 7\(3\)](#)

**C23** S. 167 excluded (24.9.2014) by [The Thames Water Utilities Limited \(Thames Tideway Tunnel\) Order 2014 \(S.I. 2014/2384\), art. 1, Sch. 19](#), Pt. 1 para. 2(2)

**C24** S. 167 excluded (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\), s. 70\(1\), Sch. 24 para. 1\(3\)](#) (with [Sch. 24 para. 1\(5\)](#))

**C25** S. 167 excluded (30.10.2019) by [The Northampton Gateway Rail Freight Interchange Order 2019 \(S.I. 2019/1358\), art. 1, Sch. 14 para. 2\(2\)](#) (with [art. 45\(7\), Sch. 13 Pt. 1 para. 19](#))

**C26** S. 167 excluded (25.5.2020) by [The West Midlands Rail Freight Interchange Order 2020 \(S.I. 2020/511\), art. 1, Sch. 14 para. 2\(2\)](#)

#### Marginal Citations

**M5** [1936 c. 49](#).

*Precautions to be taken in doing certain works in or near streets or highways*

### 168 Building operations affecting public safety.

- (1) If in the course of the carrying out of any building operation in or near a street there occurs an accident which—

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- (a) gives rise to the risk of serious bodily injury to a person in the street, whether or not the death or disablement of any person is caused thereby; or
- (b) would have given rise to such risk but for the fact that a local authority or highway authority had in the exercise of their powers under [F89section 78 of the Building Act 1984] (emergency measures to deal with dangerous buildings) or any other enactment taken steps to ensure that if an accident occurred it would not give rise to such risk,

then, subject to the provisions of this section, the owner of the land or building on which the building operation is being carried out is, without prejudice to any liability to which he or any other person may be subject apart from this section, guilty of an offence and liable to a fine not exceeding [F90level 5 on the standard scale].

- (2) Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.
- (3) In any proceedings for an offence under this section it is a defence, subject to subsection (4) below, for the person charged to prove—
  - (a) that he took all reasonable precautions to secure that the building operation was so carried out as to avoid causing danger to persons in a street; or
  - (b) that the commission of the offence was due to the act or default of another person and that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.
- (4) A person charged with an offence under this section is not, without leave of the court, entitled to rely on the defence provided by subsection (3)(b) above unless, within a period ending 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.
- (5) In this section “building operation” means the construction, structural alteration, repair or maintenance of a building (including re-pointing, external re-decoration and external cleaning), the demolition of a building, the preparation for, and laying the foundations of, an intended building and the erection or dismantling of cranes or scaffolding.

#### Textual Amendments

**F89** Words substituted by [Building Act 1984 \(c. 55, SIF 15\)](#), s. 133(1), [Sch. 6 para. 20](#)

**F90** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#)

### 169 Control of scaffolding on highways.

- (1) Subject to subsection (6) below no person shall, in connection with any building or demolition work or the alteration, repair, maintenance or cleaning of any building, erect or retain on or over a highway any scaffolding or other structure which obstructs the highway (hereafter in this section referred to as a “relevant structure”) unless he is authorised to do so by a licence in writing issued for the purposes of this section by the highway authority (hereafter in this section referred to as “a licence”) and complies

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with the terms of the licence; and a licence may contain such terms as the authority issuing it thinks fit.

- (2) If a person applies to a highway authority for a licence in respect of any relevant structure and furnishes the authority with such particulars in connection with the structure as the authority reasonably demand, it is the duty of the authority to issue a licence to him in respect of the structure unless the authority consider—
  - (a) that the structure would cause unreasonable obstruction of a highway; or
  - (b) that a relevant structure erected otherwise than as proposed by the applicant would cause less obstruction of a highway than the structure proposed by him and could conveniently be used for the work in question.
- (3) If on an application for a licence in connection with a highway the highway authority refuse to issue a licence or issue a licence containing terms to which the applicant objects, the applicant may appeal to a magistrates' court against the refusal or terms; and on such an appeal the court may—
  - (a) in the case of an appeal against a refusal, direct the highway authority to issue a licence in pursuance of the application;
  - (b) in the case of an appeal against the terms of the licence, alter the terms.
- (4) Subject to subsection (6) below, it is the duty of a person to whom a licence is issued by a highway authority in respect of a relevant structure—
  - (a) to ensure that the structure is adequately lit at all times between half an hour after sunset and half an hour before sunrise;
  - (b) to comply with any directions given to him in writing by the authority with respect to the erection and maintenance of traffic signs in connection with the structure; and
  - (c) to do such things in connection with the structure as any statutory undertakers reasonably request him to do for the purpose of protecting or giving access to any apparatus belonging to or used or maintained by the undertakers.

In this subsection and in section 171(2) below “statutory undertakers” means any of the following, namely, any body who are statutory undertakers within the meaning provided by section 329(1) below, [<sup>F91</sup>any universal service provider in connection with the provision of a universal postal service], [<sup>F92</sup> . . . [<sup>F93</sup> . . . [<sup>F94</sup>any licensee under a street works licence]]<sup>F95</sup>and the operator of [<sup>F96</sup>an electronic communications code network]]<sup>F97</sup>or a driver information [<sup>F98</sup>network]].

- (5) A person who contravenes the provisions of subsection (1) above otherwise than by failing to comply with the terms of a licence or who fails without reasonable excuse to comply with the terms of a licence or to perform a duty imposed on him by subsection (4) above, is guilty of an offence and liable to a fine not exceeding [<sup>F99</sup>level 5 on the standard scale].
- (6) Nothing in the preceding provisions of this section applies to a relevant structure erected before 14th February 1977 or erected or retained by the British Railways Board, [<sup>F100</sup>Canal & River Trust] or [<sup>F101</sup>Transport for London or any of its subsidiaries (within the meaning of the Greater London Authority Act 1999)] in the exercise of powers conferred on the body in question by any enactment; and nothing in paragraph (a) or (b) of subsection (4) above applies to a relevant structure if no part of it is less than 18 inches in a horizontal direction from a carriageway of the relevant highway and no part of it over a footway of the relevant highway is less than 8 feet in a vertical direction above the footway.

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- (7) No civil or criminal proceedings lie in respect of any obstruction of a highway which is caused by a relevant structure if the structure is on or over the highway in accordance with a licence and the person to whom the licence is issued performs the duties imposed on him in respect of the structure by subsection (4) above; and a highway authority by whom a licence is issued do not incur any liability by reason of the issue of the licence.

#### Textual Amendments

- F91** Words in s. 169(4) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 49(3)**
- F92** Words repealed by [Water Act 1989](#) (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I**
- F93** Word repealed by [Telecommunications Act 1984](#) (c. 12, SIF 96), s. 109, **Sch. 7 Pt. I**
- F94** Words in s. 169(4) substituted (1.1.1993) by [New Roads and Street Works Act 1991](#) (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Part I para. 4**(with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch. 2**.
- F95** Words inserted by [Telecommunications Act 1984](#) (c. 12, SIF 96), s. 109, Sch. 4 para. 76(8), **Sch. 5 para. 45**
- F96** Words in s. 169(4) in definition of "statutory undertakers" substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by [Communications Act 2003](#) (c. 21), ss. 406(1)(6), 408, 411, **Sch. 17 para. 56(1)(b)(2)(a)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)
- F97** Words inserted by [Road Traffic \(Driver Licensing and Information Systems\) Act 1989](#) (c. 22, SIF 107:1), s. 13(1), **Sch. 4 para. 3(7)**
- F98** Word in s. 169(4) in definition of "statutory undertakers" substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by [Communications Act 2003](#) (c. 21), ss. 406(1)(6), 408, 411, **Sch. 17 para. 56(1)(b)(2)(e)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)
- F99** Words substituted by virtue of [Criminal Justice Act 1982](#) (c. 48, SIF 39:1), **ss. 38, 46**
- F100** Words in s. 169(6) substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012](#) (S.I. 2012/1659), art. 1(2), **Sch. 3 para. 6(3)** (with arts. 4–6)
- F101** Words in s. 169(6) substituted (15.7.2003) by [The Transport for London \(Consequential Provisions\) Order 2003](#) (S.I. 2003/1615), art. 2, **Sch. 1 Pt. 1 para. 7(5)**

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

- C27** S. 169: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**
- C28** S. 169(1) excluded (18.12.1996) by 1996 c. 61, s. 38, **Sch. 10 para. 5(1)(b)**.
- C29** S. 169(1) excluded (22.7.2008) by [Crossrail Act 2008](#) (c. 18), s. 40, **Sch. 14 para. 7(1)(b)**
- C30** S. 169(1) excluded (24.9.2014) by [The Thames Water Utilities Limited \(Thames Tideway Tunnel\) Order 2014](#) (S.I. 2014/2384), art. 1, **Sch. 19**, Pt. 1 para. 2(3)
- C31** S. 169(1) excluded (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017](#) (c. 7), s. 70(1), **Sch. 24 para. 1(1)** (with Sch. 24 para. 1(5))
- C32** S. 169(4): by [Telecommunications Act 1984](#) (c. 12, SIF 96), s. 109, Sch. 4 para. 3(1), **Sch. 5 para. 45** it is provided that references to British Telecommunications in s. 169(4) cease to have effect

## 170 Control of mixing of mortar etc. on highways.

- (1) Subject to subsection (2) below, a person who mixes or deposits on a highway any mortar or cement or any other substance which is likely to stick to the surface of the highway or which, if it enters drains or sewers connected with the highway, is likely to

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solidify in the drains or sewers is guilty of an offence and liable to a fine not exceeding [F102]level 4 on the standard scale].

- (2) Nothing in subsection (1) above applies to any mixing or deposit—
- (a) in a receptacle or on a plate which prevents the substance in question from coming into contact with the highway and from entering any drains and sewers connected with the highway;
  - (b) by the highway authority or a local authority in connection with the maintenance or alteration of the highway or a bridge over which or a tunnel through which the highway passes;
  - (c) by a body having a duty under an enactment to maintain—
    - (i) a bridge over which or a tunnel through which the highway passes, or
    - (ii) works or materials supporting or protecting the highway where it forms part of the approaches to such a bridge or tunnel,
 if the mixing or deposit is in connection with the maintenance or alteration of the bridge, tunnel, works or materials;
  - (d) by statutory undertakers in connection with apparatus in or the placing of apparatus in the highway;
  - (e) by [F103]any licensee under a street works licence] if the mixing or deposit cannot reasonably be done elsewhere than on the highway.

- (3) In subsection (2) above—

“local authority” means any of the following, namely, the council of a county, district or London borough, <sup>F104</sup> . . . the Common Council and the Council of the Isles of Scilly; and

“statutory undertakers” means any of the following, namely, any body who are statutory undertakers within the meaning provided by section 329(1) below, [F105]any universal service provider in connection with the provision of a universal postal service]. . . <sup>F106</sup> . . . [F107]and the operator of [F108]an electronic communications code network]] [F109]or a driver information [F110]network]].

#### Textual Amendments

- F102** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46**
- F103** Words in s. 170(2)(e) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), **Sch. 8 Part I para. 5** (with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch. 2**
- F104** Words repealed by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 102, **Sch. 17**
- F105** S. 170(3): words in the definition of "statutory undertakers" substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 49(4)**
- F106** Words repealed by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 10(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I**
- F107** Words inserted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 76(9), **Sch. 5 para. 45**
- F108** Words in s. 170(3) in definition of "statutory undertakers" substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), ss. 406(1)(6), 408, 411, **Sch. 17 para. 56(1)(c)(2)(a)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)
- F109** Words inserted by [Road Traffic \(Driver Licensing and Information Systems\) Act 1989 \(c. 22, SIF 107:1\)](#), s. 13(1), **Sch. 4 para. 3(8)**
- F110** Word in s. 170(3) in definition of "statutory undertakers" substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), ss. 406(1)(6), 408, 411, **Sch.**

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**17 para. 56(1)(c)(2)(e)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)

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

**C33** S. 170(3): by **Telecommunications Act 1984 (c. 12, SIF 96)**, s. 109, Sch. 4 para. 3(1), **Sch. 5 para. 45** it is provided that references to British Telecommunications in s. 170(3) cease to have effect

**171 Control of deposit of building materials and making of excavations in streets.**

- (1) A person may, with the consent of the highway authority for a street that is a highway maintainable at the public expense, temporarily deposit building materials, rubbish or other things in the street or make a temporary excavation in it.
- (2) A highway authority may give their consent under subsection (1) above subject to such conditions as they think fit including in particular, without prejudice to the generality of the foregoing, conditions for preventing damage or ensuring access to apparatus of statutory undertakers.

In this subsection “statutory undertakers” has the meaning provided by section 169(4) above.

- (3) A person aggrieved by the refusal of consent under subsection (1) above, and a person to whom such a consent is given subject to conditions, may appeal to a magistrates’ court against the refusal or, as the case may be, the conditions.
- (4) It is the duty of a person who makes such a deposit or excavation as is mentioned in subsection (1) above to comply with any directions given to him in writing by the highway authority with respect to the erection and maintenance of traffic signs in connection with the deposit or excavation.
- (5) Where a person places any building materials, rubbish or other thing in, or makes an excavation in, a street he shall—
  - (a) cause the obstruction or excavation to be properly fenced and during the hours of darkness to be properly lighted, and
  - (b) if required so to do by the highway authority for the street or, in the case of a street that is not a highway, by the local authority in whose area the street is situated, remove the obstruction or, as the case may be, fill in the excavation; and in any case he shall not allow the obstruction or excavation to remain in the street longer than is necessary.
- (6) A person who—
  - (a) without reasonable excuse contravenes any condition subject to which a consent is given to him under subsection (1) above, or
  - (b) without reasonable excuse fails to perform the duty imposed on him by subsection (4) above, or
  - (c) fails to perform a duty imposed on him by subsection (5) above,is guilty of an offence and liable to a fine not exceeding £10 in respect of each day on which the contravention or failure occurs.

The liability of any person to a fine under this subsection by virtue of paragraph (b) or (c) above is without prejudice to any other liability to which he may be subject apart from this subsection.

*Status: Point in time view as at 03/12/2020. This version of this part contains provisions that are prospective.*

*Changes to legislation: Highways Act 1980, Part IX is up to date with all changes known to be in force on or before 16 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)*

- (7) Where an offence under this section by virtue of subsection (6)(c) above is committed in a street, the highway authority for the street or, in the case of a street that is not a highway, the local authority in whose area the street is situated, may remove the obstruction or, as the case may be, fill in the excavation and recover the expenses reasonably incurred by them in so doing from the person convicted of the offence.

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

**C34** S. 171: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853](#), [reg. 2\(1\)](#), [Sch. 1](#)

**[<sup>F111</sup>171A] Works under s. 169 or s. 171: charge for occupation of the highway.**

- (1) The Minister may make provision by regulations requiring a person carrying out any of the following works in a highway maintainable at the public expense—
- (a) erecting or retaining a relevant structure within the meaning of section 169(1) above, or
  - (b) depositing building materials, rubbish or other things, or making a temporary excavation, as mentioned in section 171(1) above,

to pay a charge to the highway authority if the duration of the works exceeds such period as may be prescribed and the works are not completed within a reasonable period.

- (2) For this purpose “a reasonable period” means such period as is agreed by the authority and the person executing the works to be reasonable or, in default of such agreement, is determined by arbitration to be reasonable in the circumstances.

In default of agreement, the authority’s view as to what is a reasonable period shall be acted upon pending the decision of the arbitrator.

- (3) The regulations may provide that if a person applying to the highway authority for a licence under section 169 or consent under section 171 submits together with his application an estimate of the likely duration of the works, the period stated in the estimate shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.

- (4) The regulations may also provide that if it appears to the person carrying out the works that by reason of matters not previously foreseen or reasonably foreseeable the duration of the works—

- (a) is likely to exceed the prescribed period,
- (b) is likely to exceed the period stated in his previous estimate, or
- (c) is likely to exceed the period previously agreed or determined to be a reasonable period,

he may submit an estimate or revised estimate accordingly, and that if he does so any previous estimate, agreement or determination shall cease to have effect and the period stated in the new estimate shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.



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- (5) The amount of the charge shall be determined in such manner as may be prescribed by reference to the time taken to complete the works and the extent to which the surface of the highway is affected by the works.

Different rates of charge may be prescribed according to the description of works, the place and time at which they are executed and such other factors as appear to the Minister to be relevant.

- (6) The regulations may make provision as to the time and manner of making payment of any charge.
- (7) The regulations shall provide that a highway authority may reduce the amount, or waive payment, of a charge in any particular case, in such classes of case as they may decide or as may be prescribed, or generally.
- (8) In this section “prescribed” means prescribed by the Minister by regulations. ]

#### Textual Amendments

**F111** S. 171A inserted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8, Part I, para.6](#) (with s. 25(5)); S.I. 1992/2984, art. 2(2), [Sch. 2](#)

PROSPECTIVE

#### [<sup>F112</sup>171BScaffolding, building materials and excavations: charge determined by reference to duration of occupation of highway

- (1) The Secretary of State may make provision by regulations requiring a person who—
- erects a relevant structure on or over a highway maintainable at the public expense,
  - deposits building materials, rubbish or other things in such a highway, or
  - makes a temporary excavation in such a highway,
- to pay a charge to the highway authority.
- (2) The reference in subsection (1)(a) to the erection of a relevant structure is a reference to the erection, in connection with any building or demolition work or the alteration, repair, maintenance or cleaning of any building, of any scaffolding or other structure that obstructs the highway.
- (3) The charge shall be determined in the prescribed manner, by reference to the period (in this section, the “relevant period”) for which—
- a relevant structure is on or over the highway,
  - things are deposited in the highway, or (as the case may be)
  - there is an excavation in the highway.
- (4) The regulations shall not require charges to be paid to a local highway authority unless the Secretary of State has, by order, approved the authority for the purposes of the regulations.
- (5) The regulations may require disputes of any prescribed description to be referred to an arbitrator appointed in accordance with the regulations.

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- (6) Subsections (6) and (10) to (22) of section 171A apply in relation to regulations under subsection (1) of this section as they apply in relation to regulations under subsection (1) of that section.]

#### Textual Amendments

**F112** S. 171B inserted (prosp.) by [Traffic Management Act 2004 \(c. 18\)](#), **ss. 69, 99** (with s. 38)

PROSPECTIVE

#### [<sup>F113</sup>171C] Regulations under sections 171A and 171B

Nothing shall be taken to prevent the imposition of charges by both regulations under section 171A and regulations under section 171B in respect of the same structure, things or excavation at the same time.]

#### Textual Amendments

**F113** S. 171C inserted (prosp.) by [Traffic Management Act 2004 \(c. 18\)](#), **ss. 70(3), 99** (with s. 38)

### 172 Hoardings to be set up during building etc.

- (1) Subject to subsection (2) below, a person proposing to erect or take down a building in a street or court, or to alter or repair the outside of a building in a street or court, shall, before beginning the work, erect a close boarded hoarding or fence to the satisfaction of the appropriate authority so as to separate the building from the street or court.

For the purposes of this section the appropriate authority, in relation to any street or court, is the council of the county [<sup>F114</sup>, metropolitan district] or London borough in which it is situated or, if it is situated in the City, the Common Council.

- (2) The obligation to erect a hoarding or fence imposed by subsection (1) above may be dispensed with if the appropriate authority so consent.
- (3) Where a person has erected a hoarding or fence in compliance with subsection (1) above, he shall—
- (a) if the appropriate authority so require, make a convenient covered platform and handrail to serve as a footway for pedestrians outside the hoarding or fence;
  - (b) maintain the hoarding or fence and any such platform and handrail in good condition to the satisfaction of the authority during such time as the authority may require;
  - (c) if the authority so require, sufficiently light the hoarding or fence and any such platform and handrail during the hours of darkness; and
  - (d) remove the hoarding or fence and any such platform and handrail when required by the authority.
- (4) A person aggrieved by the refusal of a consent under subsection (2) above or by a requirement under subsection (3) above may appeal to a magistrates' court.

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- (5) Subject to any order made on appeal, if a person contravenes this section he is guilty of an offence and liable to a fine not exceeding [<sup>F115</sup>level 3 on the standard scale]; and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding £2 for each day on which the offence is so continued.

#### Textual Amendments

**F114** Words inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#) s. 8, Sch. 4 para. 7

**F115** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46**

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

**C35** S. 172 applied (27.7.1993) by [1993 c. xv, s. 38\(13\)](#)

S. 172 applied (21.7.1994) by [1994 c. xv, s. 39\(12\)](#).

**C36** S. 172: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853, reg. 2\(1\)](#), **Sch. 1**

**C37** S. 172 excluded (24.9.2014) by [The Thames Water Utilities Limited \(Thames Tideway Tunnel\) Order 2014 \(S.I. 2014/2384\)](#), art. 1, **Sch. 19 Pt. 1 para. 2(3)**

### 173 Hoardings to be securely erected.

- (1) No person shall use for any purpose a hoarding or similar structure that is in, or adjoins, any street unless it is securely fixed to the satisfaction of the council who, in relation to that street, are the appropriate authority for the purposes of section 172 above.
- (2) If a person contravenes this section he is guilty of an offence and liable to a fine not exceeding [<sup>F116</sup>level 1 on the standard scale]; and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding £1 for each day on which the offence is so continued.

#### Textual Amendments

**F116** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **s. 46**

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

**C38** S. 173 applied (27.7.1993) by [1993 c. xv, s. 38\(13\)](#)

S. 173 applied (21.7.1994) by [1994 c. xv, s. 39\(12\)](#).

**C39** S. 173 excluded (24.9.2014) by [The Thames Water Utilities Limited \(Thames Tideway Tunnel\) Order 2014 \(S.I. 2014/2384\)](#), art. 1, **Sch. 19 Pt. 1 para. 2(3)**

### 174 Precautions to be taken by persons executing works in streets.

- (1) [<sup>F117</sup>Where a person is executing works of any description in a street (other than street works within the meaning of Part III of the New Roads and Street Works Act 1991), he]—
- (a) shall erect such barriers and traffic signs for preventing danger to traffic, for regulating traffic, and for warning traffic of danger, as may be necessary and remove them as soon as they cease to be needed for any of those purposes;
- (b) shall cause the works to be properly guarded and lighted during the hours of darkness; and

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- (c) where the nature of the works so requires, shall cause any building adjoining the street to be shored up or otherwise protected.
- [<sup>F118</sup>(1A) The Secretary of State may give guidance to <sup>F119</sup> ... highway authorities as to the discharge by them of their obligations under subsection (1)(a) and (b) where they are executing works for road purposes.
- (1B) A <sup>F119</sup> ... highway authority must in executing any works for road purposes have regard to any guidance given under subsection (1A).
- (1C) In subsections (1A) and (1B) “ works for road purposes ” has the same meaning as in Part 3 of the New Roads and Street Works Act 1991. ]
- (2) Subject to subsection (3) below, if any person fails to satisfy an obligation to which he is subject by virtue of subsection (1) above he is guilty of an offence and, without prejudice to any other liability to which he may be subject apart from this subsection, is liable to a fine not exceeding £10 in respect of each day of such failure.
- (3) Where a person is subject to the same obligation by virtue of subsection (1) above and by virtue of some other enactment, then, without prejudice to section 18 of the <sup>M6</sup>Interpretation Act 1978 (offences under two or more laws), if a failure by him to satisfy that obligation is an offence under an enactment other than subsection (2) above, subsection (2) above does not apply in relation to a failure by him to satisfy that obligation.
- (4) If a person, without lawful authority or excuse,—
- (a) takes down, alters or removes any barrier, traffic sign, support or light erected or placed in pursuance of subsection (1) above or any fence, barrier, traffic sign or light erected or placed on or near a street in pursuance of any other enactment for the purpose of warning users of the street of any obstruction, whether caused by the execution of works in or near the street or otherwise, or of protecting them from danger arising out of such an obstruction, or
- (b) extinguishes any light so placed,
- he is guilty of an offence and liable to a fine not exceeding [<sup>F120</sup>level 3 on the standard scale].
- (5) For the purposes of section 312 below in its application to an offence under this section statutory undertakers and [<sup>F121</sup>any universal service provider concerned in connection with the provision of a universal postal service] are each to be deemed to be a person aggrieved.

#### Textual Amendments

**F117** Words in s. 174(1) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 Part I para. 7](#) (with s. 25(2)); S.I. 1992/2984, art. 2(2), [Sch. 2](#)

**F118** S. 174(1A)-(1C) inserted (26.11.2007 for W., 1.10.2013 for E.) by [Traffic Management Act 2004 \(c. 18\)](#), [ss. 71, 99\(1\)](#); S.I. 2007/3174, art. 2, [Sch.](#); S.I. 2013/2408, art. 2

**F119** Word in s. 174(1A)(1B) omitted (5.3.2015) by virtue of [Infrastructure Act 2015 \(c. 7\)](#), s. 57(1), [Sch. 1 para. 42](#); S.I. 2015/481, [reg. 2\(a\)](#)

**F120** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#)

**F121** Words in s. 174(5) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), [Sch. 1 para. 49\(5\)](#)

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#### Marginal Citations

M6 1978 c. 30.

### 175 Liability of certain persons in respect of materials left on highway.

If—

- (a) any officer or servant of the highway authority for a highway, or
- (b) any officer or servant of a [<sup>F122</sup>non-metropolitan] district council maintaining a highway by virtue of section 42 or 50 above, or
- (c) a person liable to maintain a highway by reason of tenure, enclosure or prescription,

causes any heap of materials or any other object to be laid on the highway, he is, if he allows it to remain there at night to the danger of traffic without taking all reasonable precautions for the prevention of accidents, guilty of an offence and liable to a fine not exceeding [<sup>F123</sup>level 1 on the standard scale].

#### Textual Amendments

F122 Word inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 25](#)

F123 Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 46

### [<sup>F124</sup>175A] Duty to have regard to needs of disabled and blind in executing works, etc.

- (1) In executing works in a street which may impede the mobility of disabled persons or blind persons highway authorities, local authorities and any other person exercising a statutory power to execute works on a highway shall have regard to the needs of such persons.
- (2) Any such authority or person as is mentioned in subsection (1) above shall have regard to the needs of disabled persons and blind persons when placing lamp-posts, bollards, traffic-signs, apparatus or other permanent obstructions in a street.
- (3) Highway authorities shall have regard to the needs of disabled persons when considering the desirability of providing ramps at appropriate places between carriageways and footways.
- (4) In executing in a street any such works as are mentioned in subsection (1) above, any such authority or person as is mentioned in that subsection shall have regard to the need of blind persons to have any openings, whether temporary or permanent, in the street, properly protected.
- (5) Section 28 of the Chronically Sick and Disabled Persons Act 1970 (power to define certain expressions for the purposes of provisions of that Act) shall have effect as if any reference in it to a provision of that Act included a reference to this section.]

#### Textual Amendments

F124 S. 175A inserted by [Disabled Persons Act 1981 \(c. 43, SIF 81:3\)](#), s. 1(1)

*Status: Point in time view as at 03/12/2020. This version of this part contains provisions that are prospective.*

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### *Miscellaneous*

#### [<sup>F125</sup> **175B** Consent of highway authority required for trunk road access

- (1) Access to or from a trunk road in England must not be constructed, formed or laid out without the consent of the highway authority for the trunk road.
- (2) Subsection (1) does not apply where—
  - (a) section 24(2) applies, or
  - (b) development consent is required under the Planning Act 2008.]

#### **Textual Amendments**

**F125** S. 175B inserted (5.3.2015) by [Infrastructure Act 2015 \(c. 7\)](#), s. 57(1), [Sch. 1 para. 43](#); S.I. 2015/481, reg. 2(a)

#### **176 Restriction on construction of bridges over highways.**

- (1) The highway authority for a highway may grant to the owner or occupier of any premises adjoining the highway a licence to construct a bridge over the highway on such terms and conditions, and to use it for such period and on such terms and conditions, as the authority think fit.
- (2) No fine, rent or other sum of money, except a reasonable sum in respect of legal or other expenses, is payable in respect of a licence under this section.
- (3) A licence under this section shall not authorise any interference with the convenience of persons using the highway, or affect the rights of owners of premises adjoining the highway, or the rights of tramway, railway, dock, harbour or electricity undertakers.
- (4) It shall be a condition of every licence under this section that the person to whom it is granted is, at his own expense, to remove the bridge or alter it in such manner as the authority may require, if at any time they consider the removal or alteration necessary or desirable in connection with the carrying out of improvements to the highway.

The decision of the authority that the removal or alteration is necessary or desirable in that connection shall be final, and the condition shall be enforceable by the authority against the owner for the time being of the premises.

- (5) Subject to subsection (6) below, a person aggrieved by the refusal of an authority to grant a licence under this section or by the period for which the licence is granted or by a term or condition of the licence (other than the condition mentioned in subsection (4) above) may appeal to the Crown Court.
- (6) No appeal lies under subsection (5) above against any term or condition of a licence granted by the Minister under this section if he declares the term or condition to be necessary for the purpose of securing the safety of persons using the highway or of preventing interference with traffic on it.
- (7) If a person, except in the exercise of statutory powers—
  - (a) constructs a bridge over a highway without a licence under this section, or
  - (b) constructs or uses a bridge otherwise than in accordance with the terms and conditions of such a licence, or

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- (c) fails to remove or alter a bridge when required to do so in accordance with any condition of the licence or within one month from the date of the expiration of the licence,

he is guilty of an offence and is liable to a fine not exceeding [<sup>F126</sup>level 2 on the standard scale], and if the offence is continued after conviction he is guilty of a further offence and is liable to a fine not exceeding £5 for each day on which the offence is so continued.

- (8) In this section “bridge” means a structure the sole purpose of which is to provide a way over a highway.

#### Textual Amendments

**F126** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **s. 46**

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

**C40** S. 176 extended by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1)(3), Sch. 16 para. 2(5)(c)(9), Sch. 17 paras. 33, **35(1)**

### 177 Restriction on construction of buildings over highways.

- (1) No person shall—

- (a) except in the exercise of statutory powers, construct a building over any part of a highway maintainable at the public expense (whether it is intended to span the highway or not), or alter a building so constructed, without a licence granted under this section by the highway authority for that highway or otherwise than in accordance with the terms and conditions of a licence so granted;
- (b) use a building so constructed or altered in pursuance of a licence so granted otherwise than in accordance with the terms and conditions thereof:

and any person who contravenes any provision of this subsection is guilty of an offence and liable to a fine not exceeding [<sup>F127</sup>level 5 on the standard scale]; and if the offence is continued after conviction, he is guilty of a further offence and liable to a fine not exceeding £50 for each day on which the offence is so continued.

- (2) Subject to subsections (3) and (4) below, a licence under this section may contain such terms and conditions, including terms and conditions with respect to the construction (including the headway over the highway), maintenance, lighting and use of the building, as the highway authority think fit; and, any such term or condition is binding on the successor in title to every owner, and every lessee and occupier, of the building.
- (3) No fine, rent or other sum of money is payable in respect of a licence granted under this section except—
- (a) a reasonable sum in respect of legal or other expenses incurred in connection with the grant of the licence; and
- (b) an annual charge of a reasonable amount for administering the licence;
- and any sum payable by virtue of paragraph (a) above is recoverable from the applicant for the licence and any sum payable by virtue of paragraph (b) above is recoverable from the owner of the building.

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- (4) No such licence shall authorise any interference with the convenience of persons using the highway, or affect the rights of the owners of premises adjoining the highway, or the rights of [<sup>F128</sup>statutory undertakers or the operator of [<sup>F129</sup>an electronic communications code network]] [<sup>F130</sup>or a driver information [<sup>F131</sup>network]].
- (5) Where a licence under this section makes provision for the execution of any works or the provision of any facilities which in the opinion of the highway authority require to be executed or provided by them in connection with the building or its construction or alteration, the authority may execute those works or, as the case may be, provide those facilities and may recover the expenses reasonably incurred by them in so doing from the licensee or from the owner of the building.
- (6) A person aggrieved by the refusal of a highway authority to grant a licence under this section or by a term or condition of the licence may appeal to the Crown Court, except that no such appeal lies—
  - (a) if the land on which the highway in question is situated is owned by the highway authority, or
  - (b) against any term or condition which the highway authority declare to be necessary for the purpose of securing the safety of persons using the highway or of preventing interference with traffic thereon.
- (7) Where a person has constructed or altered a building for the construction, or, as the case may be, alteration, of which a licence is required by this section without such a licence or otherwise than in accordance with the terms and conditions of the licence, the highway authority may by notice served on the licensee or the owner of the building require him to demolish the building within such time as may be specified in the notice or, as the case may be, to make such alterations therein and within such time as may be so specified.
- (8) Where there has been a failure to comply with any terms or conditions of a licence under this section with respect to the maintenance or use of a building, the highway authority may by notice served on the licensee or the owner of the building require him to execute such works or take such steps as are necessary to secure compliance with those terms or conditions within such time as may be specified in the notice.
- (9) If a person on whom a notice is served under subsection (7) or (8) above fails to comply with the notice within the time specified in it, the highway authority may demolish the building or, as the case may be, execute such works or take such steps as are necessary to comply with the notice and may recover the expenses reasonably incurred by them in so doing from that person.
- (10) Where by virtue of subsection (9) above a highway authority demolish a building, they may dispose of the materials resulting from the demolition.
- (11) In relation to any prohibition or restriction on the use of a building imposed by the Minister by virtue of any term or condition contained in a licence granted by him under this section, section 1(1)(c) of the <sup>M7</sup>Local Land Charges Act 1975 has effect as if the references to the date of the commencement of that Act were references to 1st November 1971.
- <sup>F132</sup>(12) [<sup>F133</sup>Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)] (which provides a procedure for certain cases where works involve the alteration of [<sup>F134</sup>electronic communications apparatus]) shall apply, for



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the purposes of works authorised or required by a licence under this section to be executed, to the licensee.]

- (13) This section does not apply to a building which constitutes a bridge within the meaning of section 176 above, but subject to that in this section “building” includes any structure and any part of a building.
- (14) Where the land on which a highway is situated is owned by the highway authority, nothing in subsection (3) above is to be taken as affecting the rights of that authority as the owner of that land to sell or lease the air-space above the surface of that land or grant any rights in relation to it.

#### Textual Amendments

- F127** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46**
- F128** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, **Sch. 4 para. 76(10)(a)**, Sch. 5 para. 45
- F129** Words in s. 177(4) substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), ss. 406(1)(6), 408, 411, **Sch. 17 para. 56(1)(d)(2)(a)** (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)
- F130** Words inserted by [Road Traffic \(Driver Licensing and Information Systems\) Act 1989 \(c. 22, SIF 107:1\)](#), s. 13(1), **Sch. 4 para. 3(9)**
- F131** Word in s. 177(4) substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), ss. 406(1)(6), 408, 411, **Sch. 17 para. 56(1)(d)(2)(e)** (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)
- F132** S. 177(12) substituted by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, **Sch. 4 para. 76(10)(b)**, Sch. 5 para. 45
- F133** Words in s. 177(12) substituted (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), **Sch. 3 para. 11**; S.I. 2017/1286, reg. 2(d)
- F134** Words in s. 177(12) substituted (25.7.2003 for specified purposes, 29.12.2003 for specified) by [Communications Act 2003 \(c. 21\)](#), ss. 406(1)(6), 408, 411, **Sch. 17 para. 56(1)(d)(2)(c)** (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)

#### Marginal Citations

- M7** 1975 c. 76.

### 178 Restriction on placing rails, beams etc. over highways.

- (1) No person shall fix or place any overhead beam, rail, pipe, cable, wire or other similar apparatus over, along or across a highway without the consent of the highway authority for the highway, and the highway authority may attach to their consent such reasonable terms and conditions as they think fit.
- (2) Subject to subsection (3) below, a person aggrieved by the refusal of a consent under subsection (1) above, or by any terms or conditions attached to such a consent, may appeal to a magistrates’ court.
- (3) No appeal lies under subsection (2) above against any term or condition attached by the Minister to a consent given by him under this section if he declares the term or

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condition to be necessary for the purpose of securing the safety of persons using the highway to which the consent relates or of preventing interference with traffic on it.

- (4) If a person contravenes subsection (1) above, or the terms or conditions of any consent given under that subsection, he is guilty of an offence and liable to a fine not exceeding [<sup>F135</sup>level 1 on the standard scale]; and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding £1 for each day on which the offence is so continued.
- (5) This section does not apply to any works or apparatus belonging to any statutory undertakers, and for this purpose the Civil Aviation Authority [<sup>F136</sup>, a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (to the extent that the person is carrying out activities authorised by the licence),] and [<sup>F137</sup>[<sup>F138</sup>a universal service provider in connection with the provision of a universal postal service] and the operator of [<sup>F139</sup>an electronic communications code network][<sup>F140</sup>or a driver information [<sup>F141</sup>network]] are to be deemed to be statutory undertakers].

#### Textual Amendments

- F135** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **s. 46**
- F136** Words in s. 178(5) inserted (21.12.2001) by [S.I. 2001/4050, art. 2, Sch. Pt. II para. 4\(a\)](#)
- F137** Words inserted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 76(11), **Sch. 5 para. 45**
- F138** Words in s. 178(5) substituted (26.3.2001) by [S.I. 2001/1149, art. 3\(1\), Sch. 1 para. 49\(6\)](#)
- F139** Words in s. 178(5) substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), ss. 406(1)(6), 408, 411, **Sch. 17 para. 56(1)(e)(2)(a)** (with Sch. 18); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), 3\(1\), Sch. 1 \(with art. 3\(2\) \(as amended \(8.12.2003\) by S.I. 2003/3142, art. 1\(3\)\)\)](#); [S.I. 2003/3142, art. 3\(2\) \(with art. 11\)](#)
- F140** Words inserted by [Road Traffic \(Driver Licensing and Information Systems\) Act 1989 \(c. 22, SIF 107:1\)](#), s. 13(1), **Sch. 4 para. 3(10)**
- F141** Word in s. 178(5) substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), ss. 406(1)(6), 408, 411, **Sch. 17 para. 56(1)(e)(2)(e)** (with Sch. 18); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), 3\(1\), Sch. 1 \(with art. 3\(2\) \(as amended \(8.12.2003\) by S.I. 2003/3142, art. 1\(3\)\)\)](#); [S.I. 2003/3142, art. 3\(2\) \(with art. 11\)](#)

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

- C41** S. 178: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853, reg. 2\(1\), Sch. 1](#)
- C42** S. 178 modified (1.3.2016) by [The Developments of National Significance \(Wales\) Regulations 2016 \(S.I. 2016/56\)](#), reg. 1(2), **Sch. 3 para. 1 (with regs. 1(3), 43)**
- C43** S. 178(5): by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 3(1), **Sch. 5 para. 45** it is provided that references to British Telecommunications in s. 178(5) cease to have effect

## 179 Control of construction of cellars etc. under street.

- (1) [<sup>F142</sup>No person shall construct works to which this section applies under any part of a street without the consent of the appropriate authority, and the authority may by notice served on a person who has constructed such works in contravention of this section require him to remove them, or to alter or deal with them in such a manner as may be specified in the notice.]

For the purposes of this section the appropriate authority is—

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- (i) in relation to a street outside Greater London which is a highway, the highway authority for the street; and
  - (ii) in relation to any other street, the local authority in whose area the street is situated.
- (2) A person aggrieved by the refusal of a consent, or by a requirement of a notice, under subsection (1) above may appeal to a magistrates' court.
- (3) A person who constructs [<sup>F143</sup>works to which this section applies] in contravention of this section is guilty of an offence and is liable to a fine not exceeding [<sup>F144</sup>level 1 on the standard scale]; and, subject to any order made on appeal, if he fails to comply with a requirement of a notice served on him under subsection (1) above he is guilty of a further offence and is liable to a fine not exceeding £2 for each day during which the failure continues.
- (4) The appropriate authority may also cause [<sup>F145</sup>works to which this section applies] constructed in contravention of this section to be removed, altered or otherwise dealt with as they think fit, and may recover the expenses reasonably incurred by them in so doing from the offender.
- [<sup>F146</sup>(5) As soon as may be after an authority consent to the construction of works to which this section applies under a street they shall give notice of their consent to any public utility undertakers having any apparatus under the street.
- (6) Subject to subsection (7) below, the works to which this section applies are—
  - (a) any part of a building; and
  - (b) without prejudice to the generality of paragraph (a) above, a vault, arch or cellar, whether forming part of a building or not.
- (7) This section does not apply to [<sup>F147</sup>street works within the meaning of Part III of the New Roads and Street Works Act 1991].]

#### Textual Amendments

**F142** Paragraph substituted by [Local Government \(Miscellaneous Provisions\) Act 1982 \(c. 30, SIF 81:1\)](#), [s. 22\(1\)](#)

**F143** Words substituted by [Local Government \(Miscellaneous Provisions\) Act 1982 \(c. 30, SIF 81:1\)](#), [s. 22\(2\)](#)

**F144** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [s. 46](#)

**F145** Words substituted by [Local Government \(Miscellaneous Provisions\) Act 1982 \(c. 30, SIF 81:1\)](#), [s. 22\(2\)](#)

**F146** S. 179(5)–(7) substituted for subsection (5) by [Local Government \(Miscellaneous Provisions\) Act 1982 \(c. 30, SIF 81:1\)](#), [s. 22\(3\)](#)

**F147** Words in s. 179(7) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), [s. 168\(1\)](#), [Sch. 8](#), Part I, [para. 7](#) (with [s. 25\(2\)](#)); S.I. 1992/2984, [art. 2\(2\)](#), [Sch. 2](#)

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

**C44** S. 179: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853](#), [reg. 2\(1\)](#), [Sch. 1](#)

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## **180 Control of openings into cellars etc. under streets, and pavement lights and ventilators.**

- (1) No person shall make an opening in the footway of a street as an entrance to a cellar or vault thereunder without the consent of the appropriate authority, and where an authority give consent under this subsection they shall require the person to whom the consent is given to provide a door or covering constructed in such manner and of such materials as they direct.

For the purposes of this section the appropriate authority is the same as for the purposes of section 179 above.

- (2) No person shall carry out any works in a street to provide means for the admission of air or light to premises situated under, or abutting on, the street without the consent of the local authority, and the local authority in giving any consent under this subsection may impose any requirement as to the construction of the works.
- (3) A person aggrieved by the refusal of a consent, or by a requirement, under subsection (1) above may appeal to a magistrates' court and a person who applies for consent under subsection (2) above may appeal to such a court against a refusal of consent, or a requirement, under subsection (2).

- (4) Subject to any order made on appeal—

- (a) a person who—
- (i) makes an opening in the footway of a street in contravention of subsection (1) above, or
  - (ii) fails to comply with a requirement made to him under that subsection, is guilty of an offence and, without prejudice to any other liability to which he may be subject, liable to a fine not exceeding [<sup>F148</sup>level 1 on the standard scale];
- (b) a person who—
- (i) carries out any works in contravention of subsection (2) above, or
  - (ii) fails to comply with a requirement made to him under that subsection, is guilty of an offence and, without prejudice to any other liability to which he may be subject, liable to a fine not exceeding [<sup>F149</sup>level 1 on the standard scale].

- (5) As soon as may be after an authority give consent under either subsection (1) or subsection (2) above they shall give notice thereof to any public utility undertakers having any apparatus under the street.

- (6) The following, namely—

- (a) every vault, arch and cellar under a street,
- (b) every opening in the surface of any street into any such vault, arch or cellar,
- (c) every door or covering to any such opening,
- (d) every cellar-head, grating, light and coal hole in the surface of a street, and
- (e) all landings, flags or stones of the street by which any of the above are supported,

shall be kept in good condition and repair by the owner or occupier of the vault, arch or cellar, or of the premises to which it belongs.

- (7) If default is made in complying with subsection (6) above, the appropriate authority may, after the expiration of 24 hours from the service of a notice of their intention

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to do so on any person in default, cause any thing as respects which there has been such a default to be repaired or put into good condition, and may recover the expenses reasonably incurred by them in so doing from the owner or occupier thereof or of the premises to which it belongs.

**Textual Amendments**

**F148** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 46

**F149** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), ss. 38, 46

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

**C45** S. 180: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853, reg. 2\(1\)](#), [Sch. 1](#)

<sup>F150</sup>**181** .....

**Textual Amendments**

**F150** S. 181 repealed (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(2), Sch. 9 (with s. 25(2)); [S.I. 1992/2984, art. 2\(2\)](#), [Sch.2](#).

<sup>F151</sup>**182** .

**Textual Amendments**

**F151** S. 182 repealed (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#) s. 168(2), Sch. 9 (with s. 25(2)); [S.I. 1992/2984, art. 2\(2\)](#), [Sch.2](#).

<sup>F152</sup>**183** .....

**Textual Amendments**

**F152** S. 183 repealed (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 169(2), Sch. 9 (with s. 25(2)); [S.I. 1992/2984, art. 2\(2\)](#), [Sch.2](#).

**184 Vehicle crossings over footways and verges.**

- (1) Where the occupier of any premises adjoining or having access to a highway maintainable at the public expense habitually takes or permits to be taken a mechanically propelled vehicle across a kerbed footway or a verge in the highway to or from those premises, the highway authority for the highway may, subject to subsection (2) below, serve a notice on the owner and the occupier of the premises—
  - (a) stating that they propose to execute such works for the construction of a vehicle crossing over the footway or verge as may be specified in the notice; or

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- (b) imposing such reasonable conditions on the use of the footway or verge as a crossing as may be so specified.
- (2) A highway authority is not entitled by virtue of subsection (1) above to construct a vehicle crossing on, or on any part of, the site of a made-up vehicle crossing which has been constructed either under this section or under section 40 of the <sup>M18</sup>Highways Act 1971 (which this section replaces) or before the commencement of the said section 40, or to impose conditions on the use of such a crossing.
  - (3) Where any land is being, or is to be, developed in accordance with a planning permission granted, or deemed to have been granted, under [<sup>F153</sup>the Town and Country Planning Act 1990], and it appears to the highway authority for a highway maintainable at the public expense that the development makes it necessary—
    - (a) to construct a crossing over a kerbed footway or a verge in the highway so as to provide an access for mechanically propelled vehicles to or from the carriageway of the highway from or to premises adjoining or having access to the highway; or
    - (b) to improve or otherwise alter a made-up vehicle crossing that provides such an access as is mentioned in paragraph (a) above (whenever constructed),
 that authority may serve on the owner and the occupier of the premises a notice stating that they propose to execute such works for the construction or, as the case may be, alteration of the crossing as may be specified in the notice.
  - (4) Unless the development giving rise to a notice under subsection (3) above consists solely of the provision of a new means of access to or from a highway from or to premises, there may be specified in a notice under that subsection works for the construction as part of the vehicle crossing proposed to be constructed or altered, as the case may be, of acceleration and deceleration lanes.
  - (5) In determining whether to exercise their powers under subsection (1) or (3) above, a highway authority shall have regard to the need to prevent damage to a footway or verge, and in determining the works to be specified in a notice under subsection (1)(a) or (3) an authority shall have regard to that and the following other matters, namely—
    - (a) the need to ensure, so far as practicable, safe access to and egress from premises; and
    - (b) the need to facilitate, so far as practicable, the passage of vehicular traffic in highways.
  - (6) Schedule 14 to this Act has effect with respect to the making of objections to a notice under subsection (1) or (3) above and to the date on which such a notice becomes effective.
  - (7) Where a notice under subsection (1)(a) or (3) above has become effective, the highway authority by whom the notice was served may execute such works as are specified in the notice, subject to such modifications (if any) as may have been made by the Minister, and may recover the expenses reasonably incurred by them in so doing from the owner or occupier of the premises in question.
  - (8) A notice under subsection (1) or (3) above shall inform the person on whom it is served of his right to object to the notice and (except in the case of a notice under subsection (1)(b)) shall state the effect of subsection (7) above.
  - (9) Where a person who is carrying out, or proposes to carry out, such a development as is referred to in subsection (3) above offers to execute the works specified in a

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notice under that subsection, the highway authority by whom the notice was served may authorise him to execute those works in accordance with plans approved by them.

F154 . . .

(10) If a person authorised under subsection (9) above to execute any works fails to execute them to the satisfaction of the highway authority before the development is completed, the authority may execute the works or alter the works executed by that person and recover the expenses reasonably incurred by them in so doing from him.

(11) Any person may request the highway authority for a highway maintainable at the public expense to execute such works as are specified in the request for constructing a vehicle crossing over a footway or verge in the highway, and the authority may approve the request with or without modification, or may propose alternative works or reject the request; and in determining how to exercise their powers under this subsection an authority shall have regard to the matters mentioned in subsection (5) above.

(12) An authority to whom a request under subsection (11) above is made shall notify the person making the request of their decision and if they approve, with or without modification, the works proposed in the request or propose alternative works, they shall supply him with a quotation of the cost of the works as approved or proposed by them, and he may, on depositing with them the amount quoted, require them to execute those works.

(13) As soon as practicable after such a deposit has been made with an authority the authority shall execute the works as approved or proposed by them.

F155(14) . . . . .

(15) The expenses recoverable under subsection (7) or (10) above and the cost of the works for the purposes of subsection (12) above include [F156the cost of any measures needing to be taken in relation to undertaker’s apparatus, in accordance with section 84 of the New Roads and Street Works Act 1991,] in consequence of the construction of the crossing.

(16) Nothing in this section imposes on any person other than a highway authority any obligation to maintain a vehicle crossing.

(17) If a person knowingly uses a footway or verge as a crossing in contravention of any condition imposed under subsection (1)(b) above, or knowingly permits it to be so used, he is guilty of an offence and liable to a fine not exceeding [F157level 3 on the standard scale].

#### Textual Amendments

**F153** Words substituted by [Planning \(Consequential Provisions\) Act 1990](#) (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 45(11)**

**F154** Words in s. 184(9) repealed (1.1.1993) by [New Roads and Street Works Act 1991](#) (c. 22, SIF 59, 108), s. 168(1)(2), **Sch. 8 Pt. I para. 9(a), Sch. 9** (with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch. 2**

**F155** S. 184(14) repealed (1.1.1993) by [New Roads and Street Works Act 1991](#) (c. 22, SIF 59, 108), s. 168(1)(2), **Sch. 8 Pt. I para. 9(b), Sch. 9** (with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch. 2**

**F156** Words in s. 184(15) substituted (1.1.1993) by [New Roads and Street Works Act 1991](#) (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. I para. 9** (with s. 25(2)); S.I. 1992/2984, art. 2(2), **Sch. 2**

**F157** Words in s. 184(17) substituted by [Criminal Justice Act 1982](#) (c. 48, SIF 39:1), **ss. 35, 37, 38, 46** (with s. 47)

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### Marginal Citations

**M8** 1971 c. 41.

## 185 Power to install refuse or storage bins in streets.

- (1) Subject to the provisions of this section, a competent authority may provide and maintain in or under a street orderly bins or other receptacles, of such dimensions and in such positions as the authority may determine, for the collection and temporary deposit of street refuse and waste paper, or the storage of sand, grit or other materials.

For the purposes of this section the following are competent authorities—

- (a) in relation to a street that is a highway, the highway authority for the highway and [<sup>F158</sup>if different] the local authority in whose area it is situated acting with the consent of the highway authority;
- (b) in relation to any other street, the local authority in whose area the street is situated.
- (2) An authority does not have power by virtue of this section to place a bin or other receptacle on a bridge over a railway, or under a bridge carrying a railway over a street, or within 10 feet of the abutments of a bridge carrying a railway over a street, except with the consent of the railway undertakers concerned.
- (3) An authority shall not exercise the power conferred by this section so as to obstruct or render less convenient the access to or exit from—
- (a) a station or goods yard belonging to railway undertakers; or
- (b) premises belonging to canal, inland navigation, dock, harbour, tramway, electricity, gas [<sup>F159</sup>water or sewerage undertakers], [<sup>F160</sup>or to a universal service provider in connection with the provision of a universal postal service,] or to persons authorised by an enactment to carry on any other public undertaking, and used by those undertakers or persons for the purposes of their undertaking.

[<sup>F161</sup>(3A) For the purposes of subsection (3) above, the undertaking of a universal service provider shall be taken to be his undertaking so far as it relates to the provision of a universal postal service.]

- (4) Nothing in this section is to be taken as empowering an authority to hinder the reasonable use of a street by the public or any person entitled to use it or as empowering an authority to create a nuisance to the owner or occupier of premises adjacent to a street.

### Textual Amendments

**F158** Words in s. 185(1)(a) substituted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 16** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**.

**F159** Words substituted by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 62(7), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

**F160** Words in s. 185(3)(b) inserted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 49(7)(a)**

**F161** S. 185(3A) inserted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 49(7)(b)**



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

**C46** S. 185 extended by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s.112(1)(3), Sch. 16 para. 2(5)(c)(9), Sch. 17 paras. 33, **35(1)**

**Status:**

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**Changes to legislation:**

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