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Roads (Scotland) Act 1984

1984 CHAPTER 54

PART IV

IMPROVEMENTS AND MAINTENANCE

Levels

24 Alteration of levels of public roads.

Subject to any order under section 9 or 12 of this Act, the roads authority may raise or lower or otherwise alter, as they think fit, the level of a public road.

Modifications etc. (not altering text)

- C1 S. 24 power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(c)

Safety

25 Provision of footways.

A roads authority shall provide, wherever it appears to them necessary or desirable for the safety or convenience of pedestrians so to do, proper and sufficient footways for public roads.

Modifications etc. (not altering text)

- C2 S. 25 power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(d)

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26 Pedestrian subways and footbridges.

The roads authority may, for the purpose of making the crossing of a public road less dangerous for pedestrians or of protecting traffic along the road from danger, construct, light, and maintain subways under, or footbridges over, the road for the use of pedestrians.

27 Dual carriageways, roundabouts and refuges.

The roads authority may construct and maintain works in the carriageway of a public road—

- (a) along any length of the road for separating a part which is to be used by traffic moving in one direction from a part which is to be used (whether at all times or at particular times only) by traffic moving in the other;
- (b) at junctions of the road for regulating the movement of traffic; or
- (c) for providing places of refuge for the protection of pedestrians crossing the road.

28 Fences etc. to safeguard persons using public roads.

The roads authority may, for the purpose of safeguarding persons using a public road, provide and maintain such raised paving, pillars, walls, rails, fences or barriers as they think necessary at any of the following places—

- (a) between any of the following and any other of the following—
 - (i) a footway;
 - (ii) a footpath;
 - (iii) a cycle track;
 - (iv) a carriageway,
- (b) along a cycle track so as to segregate classes of users thereof,
- (c) where a footpath gives direct access to the road on the footpath at or near the point of access, or
- (d) along the sides of bridges, embankments or other dangerous parts of the road.

Modifications etc. (not altering text)

C3 S. 28: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, arts. 2, Sch. para. 5(e)

29 Further provision as to fences.

- (1) Subject to subsection (2) below, the roads authority may erect and maintain—
 - (a) fences or posts for the purpose of preventing access to a road or proposed road; and
 - (b) fences, posts, stones or other markers for the purpose of delimiting the road or proposed road.
- (2) The powers conferred by subsection (1) above shall not be exercised so as to—
 - (a) interfere with a fence or gate required for the purposes of agriculture;
 - (b) obstruct a public right of way;

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- (c) obstruct a means of access for the construction, formation or laying out of which planning permission has been granted under [^{F1}the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997] (general planning control) or under any enactment replaced by the said Part III; or
- (d) obstruct any means of access which was constructed, formed or laid out before 1st July 1948, unless it was so constructed, formed or laid out in contravention of restrictions in force under section 1 or 2 of the Restriction of Ribbon Development Act 1935.

Textual Amendments

F1 Words in s. 29(2)(c) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), Sch. 2 para. 38(3)

Modifications etc. (not altering text)

C4 S. 29: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(f)

Natural dangers

30 Works for protecting roads against hazards of nature.

Without prejudice to section 28 of this Act, but subject to section 31 thereof, the roads authority may, for the purpose of protecting a public road or proposed public road against snow, flood, landslide or other hazards of nature, provide and maintain such barriers or other works as they consider necessary.

Modifications etc. (not altering text)

C5 S. 30: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(g)

31 Drainage of roads.

- (1) The roads authority may, for the purpose of draining a public road or proposed public road or of otherwise preventing surface water from flowing onto it—
 - (a) construct or lay, in it or in land adjoining or lying near to it, such drains as they consider necessary;
 - (b) erect and maintain barriers in it or in such land as aforesaid to divert surface water into or through any existing drain;
 - (c) scour, cleanse and keep open all drains in it or in such land as aforesaid;
 - (d) drain surface water from it into any inland waters (whether natural or artificial) or tidal waters.
- (2) Without prejudice to subsection (1)(c) above, where any drain referred to therein was constructed or laid by the roads authority, they shall scour, cleanse and keep it open.
- (3) Before carrying out any works under this section, the roads authority shall serve on the owner and the occupier of the land affected notice of the intention to do so, describing the proposed works, and informing them that they may object to the proposed works by notice to the authority within 28 days of service of the notice.

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- (4) Where an owner or occupier of the land affected objects in accordance with subsection (3) above to the proposed works and the objection is not withdrawn, then—
- (a) if the roads authority is the Secretary of State, he shall not carry out the proposed works without having considered the objection; and
 - (b) if the roads authority is a local roads authority, they shall not carry out the proposed works without the consent of the Secretary of State who may grant such consent either unconditionally or subject to such terms and conditions as he thinks fit and whose decision shall be final.
- (5) If a person, without the consent of the roads authority, alters, obstructs or interferes with any drain or barrier which has been constructed, laid or erected by the authority in exercise of their functions under subsection (1) above or which is under their control, then—
- (a) the authority may carry out any work of repair or reinstatement necessitated by his action and may recover from him the expenses reasonably incurred by them in so doing, and
 - (b) without prejudice to their right to exercise that power, he commits an offence.
- (6) In the foregoing provisions of this section, except where the context otherwise requires, “drain” includes a ditch, gutter, watercourse, bridge, culvert, tunnel, pipe or holding pond and any pumping machinery associated with any of those things.

32 Contributions to drainage works and flood prevention operations.

Where it appears to the roads authority that the execution of any drainage works under the ^{M1}Land Drainage (Scotland) Act 1958 or [^{F2} flood protection work under section 56 of the Flood Risk Management (Scotland) Act 2009 (asp 6)] is desirable for the protection or enjoyment of a public road or proposed public road they may make such contributions as they think fit towards any expenses incurred in the execution and maintenance of those works.

Textual Amendments

- F2** Words in s. 32 substituted (24.12.2010) by [Flood Risk Management \(Scotland\) Act 2009 \(asp 6\)](#), s. 97(1), [sch. 3 para. 4](#) (with s. 91); S.S.I. 2010/401, art. 3(h)

Marginal Citations

- M1** 1958 c. 24.

33 Snow gates.

- (1) Gates (hereafter in this section referred to as “snow gates”) may be provided and maintained by the roads authority for the purpose of temporarily closing a road to vehicular traffic on any occasion when snow is rendering or has rendered that road unsafe for such traffic; and where in the opinion of a constable such an occasion has arisen as respects a road he (or, where the constable is a chief constable, a person acting on his behalf) may, until the road is once again safe for vehicular traffic, close and secure any snow gate on the road against all such traffic except that engaged in the provision or restoration of essential services.
- (2) In subsection (1) above—

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“constable” and “chief constable” shall be construed in accordance with [F3 section 99 of the Police and Fire Reform (Scotland) Act 2012 (asp 8)] ;

“engaged in the provision or restoration of essential services” means in the opinion of a constable so engaged; and

“safe” means in such opinion safe.

Textual Amendments

- F3 Words in s. 33(2) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 7\(2\)](#); S.S.I. 2013/51, [art. 2](#) (with transitional provisions and savings in S.S.I. 2013/121)

34 Clearance of snow and ice.

A roads authority shall take such steps as they consider reasonable to prevent snow and ice endangering the safe passage of pedestrians and vehicles over public roads.

Modifications etc. (not altering text)

- C6 [S. 34](#): power to contract out functions of Secretary of State (16.3.1996) [S.I. 1996/878](#), [art. 2](#), [Sch. para. 5\(h\)](#)

Lighting

35 Provision of lighting by roads authorities.

- (1) A local roads authority shall provide and maintain lighting for roads, or proposed roads, which are, or will be, maintainable by them and which in their opinion ought to be lit.
- (2) In subsection (1) above, the reference to roads, or proposed roads, which will be maintainable by the local roads authority does not include a reference to—
 - (a) an existing road which is a prospective public road within the meaning of the [F4Part IV of the New Roads and Street Works Act 1991];
 - (b) a new road in course of construction, or to be constructed, other than by or on behalf of the authority; or
 - (c) a road which would be maintainable by them only if application were made to them under section 16(1) of this Act.
- (3) The Secretary of State may provide and maintain lighting for roads, or proposed roads, which are, or will be, maintainable by him.
- (4) A local roads authority may, within their area, provide and maintain lighting for any road, or proposed road, which in their opinion ought to be lit and as regards which no duty is imposed on them by subsection (1) above.
- (5) Without prejudice to the generality of this section and after giving 28 days notice to the owner or occupier of any land affected, a roads authority may, in acting under subsection (1), (3) or (4) above, fix to rails, walls or buildings fronting or abutting the road or proposed road, such lamps and related structures as they consider requisite.

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- (6) No compensation shall be payable by a roads authority by reason only of—
- (a) the maintenance of lighting under subsection (1), (3) or (4) above; and
 - (b) such fixing as is mentioned in subsection (5) above.
- (7) A person upon whom a notice has been served under subsection (5) above may within 28 days of such service refer the matter by summary application to the sheriff; and the decision of the sheriff on the matter shall be final.

Textual Amendments

F4 Words in s. 35(2)(a) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para. 81](#); [S.I. 1992/2990](#), art. 2(2), [Sch. 2](#)

Modifications etc. (not altering text)

C7 [S. 35](#) power to contract out functions of the Secretary of State (16.3.1996) by [S.I. 1996/878](#), arts. 2, [Sch. para. 5\(i\)](#)

Road humps

36 Construction of road humps by roads authority.

- A roads authority may construct road humps in a road maintainable by them if—
- (a) the road is subject to a statutory speed limit for motor vehicles of 30 miles per hour or less; or
 - (b) [^{F5}(whether or not the road is subject to such a limit)]the road humps are authorised.

Textual Amendments

F5 Words in s. 36(b) inserted (1. 7. 1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), s. 48, [Sch. 4 para. 38\(1\)](#); [S.I. 1992/1286](#), art. 2, [Sch.](#), with [S.I. 1992/1410](#)

37 Consultation and local inquiries as regards road humps.

- (1) Where a roads authority propose to construct a road hump under section 36 of this Act, they shall consult with—
- (a) the chief [^{F6} constable of the Police Service of Scotland] ; and
 - (b) such other persons or bodies as may be prescribed by regulations made by the Secretary of State.
- (2) The roads authority shall also—
- (a) publish in one or more newspapers circulating in the area in which the road concerned is situated; and
 - (b) place at appropriate points on that road, notice of the proposal stating the nature, dimensions and location of the proposed road hump and the address to which and the period within which any objections to the proposal may be sent.

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- (3) The period stated in the notice under subsection (2) above shall be not less than 28 days beginning with the date on which notice is first published in accordance with paragraph (a) of that subsection.
- (4) The roads authority shall consider any objections sent to them in accordance with a notice under subsection (2) above and may, if they think fit, cause a local inquiry to be held.
- (5) Subsections (2) to (8) of section 210 of the ^{M2}Local Government (Scotland) Act 1973 (provisions as to inquiries) shall apply to an inquiry under subsection (4) above as they apply to a local inquiry under that section, but with such modifications as may be prescribed by regulations made by the Secretary of State.
- (6) Before making regulations under this section the Secretary of State shall consult such representative organisations as he thinks fit.

Textual Amendments

- F6** Words in s. 37(1)(a) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 7\(3\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

Marginal Citations

- M2** 1973 c. 65.

38 Regulations concerning construction and maintenance of road humps.

- (1) The Secretary of State may by regulations make such provision in relation to the construction and maintenance of road humps as appears to him to be necessary or expedient in the interests of safety and the free movement of traffic, and may in particular—
 - (a) provide that road humps shall be constructed only on roads of such descriptions and in such circumstances as may be prescribed by the regulations;
 - (b) impose requirements as to—
 - (i) the nature, dimensions, location and spacing of road humps;
 - (ii) the placing of signs of such type or character as may be so prescribed;
 - (iii) the carrying out and maintenance of other ancillary or consequential works.
- (2) Before making any regulations under this section the Secretary of State shall consult such representative organisations as he thinks fit.
- (3) Regulations under this section shall not apply where a road hump is authorised but conditions attached by the Secretary of State to the authorisation may, in particular, relate to any of the matters with respect to which regulations may be made under this section.

39 Status of road humps.

- (1) Where a road hump conforms to regulations under section 38 of this Act and the further condition mentioned in subsection (2) below as being applicable is satisfied, the road

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hump shall not be treated as constituting an obstruction to the road but as part of the road, so that in particular—

- (a) the obligation of any person to maintain the road, and
- (b) the obligation of any person having power to break open the road to make good any damage or otherwise reinstate the road,

extend to maintaining or, as the case may be, to making good any damage to, or otherwise reinstating, the road hump.

- (2) The further condition applicable is that either—
 - (a) the road concerned is for the time being subject to a statutory speed limit for motor vehicles of 30 miles per hour or less; or
 - (b) the road hump is authorised.
- (3) In relation to an authorised road hump the reference in subsection (1) above to conformity with regulations shall be construed as a reference to conformity with the conditions attached to the authorisation.
- (4) In so far as it does not apply apart from this subsection [^{F7}section 117 of the New Roads and Street Works Act 1991 (restricting road works following substantial works for roads purposes)] applies in relation to the construction, maintenance and removal of a road hump as if the works were executed for road purposes and were mentioned in [^{F7}subsection (3) of that section] and as if the person executing them were the promoting authority within the meaning of that [^{F7}section].

Textual Amendments

- F7** Words in s. 39(4) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para.82](#); S.I. 1992/2990, art. 2(2), [Sch. 2](#)

^{F8}*[Other traffic calming works*

Textual Amendments

- F8** Heading before ss. 39A-39C inserted (16.5.1992) by [Traffic Calming Act 1992 \(c. 30\)](#), ss. 2(1), 3, [Sch. 2](#)

^{F9}**39A Powers to carry out traffic calming works.**

- (1) A roads authority may, in a road maintainable by them, construct traffic calming works which—
 - (a) are of a description prescribed by regulations under section 39B of this Act, or
 - (b) are authorised,
 and may remove such works (whenever constructed).
- (2) A roads authority shall not exercise the powers conferred by subsection (1) above except in accordance with any requirements imposed by the regulations or authorisation concerned.
- (3) Requirements imposed by an authorisation given under this section may relate to any matter with respect to which regulations may be made under section 39B of this Act.

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- (4) Nothing in this section shall prejudice any power of a roads authority to construct or remove traffic calming works which are neither of a description prescribed by regulations under section 39B of this Act nor authorised.

Textual Amendments

F9 S. 39A inserted (16. 5. 1992) by [Traffic Calming Act 1992 \(c. 30\)](#), ss. 2(1), 3, [Sch. 2](#)

Modifications etc. (not altering text)

C8 [S. 39A](#): transfer of functions (23.3.2005) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#), art. 1, [Sch.](#) (with art. 6)

^{F10}**39B Prescribing of works.**

- (1) The Secretary of State may make regulations—
- (a) prescribing any description of traffic calming works for the purposes of section 39A of this Act, and
 - (b) making such provision (if any) as appears to him necessary or expedient in relation to the construction, maintenance and removal of works of a prescribed description.
- (2) Regulations under this section may in particular—
- (a) provide that works of a prescribed description shall be constructed only in roads of such descriptions and in such circumstances as may be prescribed by the regulations;
 - (b) impose requirements as to—
 - (i) the dimensions and location of works;
 - (ii) the placing of signs;
 - (iii) the carrying out and maintenance of ancillary or consequential works;
 - (c) impose requirements as to consultation and publicity in respect of proposed works.

Textual Amendments

F10 S. 39B inserted (16. 5. 1992) by [Traffic Calming Act 1992 \(c. 30\)](#), ss. 2(1), 3, [Sch. 2](#)

Modifications etc. (not altering text)

C9 [S. 39B](#): transfer of functions (23.3.2005) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#), art. 1, [Sch.](#) (with art. 6)

^{F11}**39BA Prescribing of works for anti-terrorism purposes**

- ^{F12}(1)
- ^{F12}(2)

- (3) Regulations under section 39B of this Act may, if they are made [^{F13}for the purpose of, or in connection with, avoiding or reducing, or reducing the likelihood of, danger connected with terrorism within the meaning of section 1 of the Terrorism Act 2000] provide that, in such circumstances as the regulations may specify, works may be

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constructed or removed only with the consent of a police officer of such class as the regulations may specify.]

Textual Amendments

- F11** S. 39BA inserted (19.1.2005) by [Civil Contingencies Act 2004 \(c. 36\)](#), s. 34(1), **Sch. 2 para. 17(1)**; [S.I. 2004/3281](#), art. 2(3)(4)(a)
- F12** S. 39BA(1)(2) repealed (23.3.2005) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#), arts. 1, **4(2)(a)** (with art. 6)
- F13** Words in s. 39BA(3) substituted (23.3.2005) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#), arts. 1, **4(2)(b)** (with art. 6)

Modifications etc. (not altering text)

- C10** S. 39BA: transfer of functions (23.3.2005) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#), art. 1, **Sch.** (with art. 6)

^{F14}39C Status of works authorised by section 39A.

Works (whenever constructed) of a description prescribed by regulations under section 39B, or authorised under section 39A, of this Act, which conform to any requirements imposed by the regulations or authorisation shall not be treated as constituting an obstruction to the road but as part of the road, so that in particular—

- (a) the obligation of any person to maintain the road, and
- (b) the obligation of any person having power to break open the road to make good any damage or otherwise reinstate the road,

extend to maintaining or, as the case may be, making good any damage to or otherwise reinstating the works.]

Textual Amendments

- F14** S. 39C inserted (16. 5. 1992) by [Traffic Calming Act 1992 \(c. 30\)](#), ss. 2(1), 3, **Sch. 2**

[^{F15}Interpretation: Road humps and other traffic calming works]

Textual Amendments

- F15** Heading after s. 39C inserted (16.5.1992) by [Traffic Calming Act 1992 \(c. 30\)](#), ss. 2(1), 3, **Sch. 2**

40 Interpretation of sections 36 to [^{F16}39C].

In sections 36 to [^{F16}39C] of this Act—

“authorised” means specially authorised by the Secretary of State;

“motor vehicle” has the same meaning as in the ^{M3}Road Traffic regulation Act 1984;

“road hump” means an artificial hump which is in, or on the surface of, a road and which is designed to control the speed of vehicles; and references to a road hump include references to any other works (including signs or lighting) required in connection with such a hump; ^{F17} . . .

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“statutory”, in relation to a speed limit, means having effect by virtue of an enactment [F18 other than section 84(1)(b) or (c) of the Road Traffic Regulation Act 1984 (temporary and variable speed limits)] [F19]; and

[F20 “traffic calming works”, in relation to a road, means works affecting the movement of vehicular or other traffic for the purpose of—

- (a) promoting safety (including avoiding or reducing, or reducing the likelihood of, danger connected with terrorism within the meaning of section 1 of the Terrorism Act 2000 (c. 11)), or
- (b) preserving or improving the environment through which the road runs.]]

Textual Amendments

- F16** Words in s. 40 substituted (16.5.1992) by virtue of [Traffic Calming Act 1992 \(c. 30\), ss. 2\(a\), 3](#)
- F17** Words in s. 40 ceased to have effect (16.5.1992) by virtue of [Traffic Calming Act 1992 \(c. 30\), ss. 2\(b\), 3](#)
- F18** S. 40: words in definition of "statutory" added (1.7.1992) by [Road Traffic Act 1991 \(c. 40, 107:1\), s. 48, Sch. 4 para. 38\(2\); S.I. 1992/1286, art. 2, Sch.](#) (with S.I. 1992/1410)
- F19** Words in s. 40 added (16.5.1992) by [Traffic Calming Act 1992 \(c. 30\), ss. 2\(c\), 3](#)
- F20** Words in s. 40 substituted (19.1.2005) by [Civil Contingencies Act 2004 \(c. 36\), s. 34\(1\), Sch. 2 para. 17\(2\); S.I. 2004/3281, art. 2\(3\)\(4\)\(a\)](#)

Modifications etc. (not altering text)

- C11** S. 40 definition of "road hump" applied (14.7.1992) by [New Roads and Street Works Act 1991 \(c. 22, SIF 58, 108\), s. 145\(3\)\(d\)](#), (with saving s. 167(4)(5)); S.I. 1992/1671, art. 2, Sch.

Marginal Citations

- M3** 1984 c. 27.

Cattle-grids

41 Provision of cattle-grids and by-passes.

- (1) Where, whether on the representations of owners or occupiers of agricultural land or otherwise, and after such consultation with any such owners and occupiers as the roads authority consider requisite, it appears to the authority expedient so to do for controlling the passage of animals along a road, the authority may, subject to this section and sections 42 to 47 of this Act, provide and maintain a cattle-grid in the road, or partly in the road and partly in adjoining land; and such provision and maintenance may take place whether the road is in existence and open to public traffic or is a proposed road in course of construction.
- (2) Where the roads authority provide a cattle-grid under this Act they shall also provide, either by means of a gate or other works on the road (or proposed road) or by means of a by-pass, or partly by one of those means and partly by the other, facilities for the passage under proper control of animals and all other traffic unable to pass over the cattle-grid, being traffic entitled by law to go along the road (or, where the road is a proposed road, which will on completion of that road be so entitled); and the authority shall maintain the facilities so provided.
- (3) Subject to subsection (4) below, subsection (1) and (2) above do not confer power—

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- (a) to place any part of a cattle-grid on land not forming part of the road and not belonging to the authority; or
 - (b) to provide a by-pass over land not belonging to the authority,
- except in so far as is authorised by any such agreement as is provided for by section 46 of this Act.
- (4) Where, after complying with Schedule 4 to this Act, the authority determine, as respects any common or waste land adjoining the road or adjacent thereto, that it is expedient so to do, they may place any part of a cattle-grid, or provide a by-pass, on any of that land notwithstanding that the land does not form part of the road and does not belong to the authority.
- (5) Without prejudice to subsection (3) above, the authority shall not provide a by-pass along any part of a road other than the road for which the cattle-grid is being provided unless, after complying with Schedule 4 to this Act, they determine that it is expedient to provide that by-pass.
- (6) In this Act—
- “cattle-grid” means a device designed to prevent the passage of animals, or animals of any particular description, but to allow the passage of all or some other traffic, and includes any fence or other works necessary for securing the efficient operation of the said device; and
 - “by-pass”, in relation to a cattle-grid provided for any road, means a way, over land not comprised within the limits of the road, for the traffic for which the by-pass is provided, with a public right of passage there-over for that traffic, or (if any part of the by-pass is provided along an existing road) for that traffic and for any other traffic entitled to use the road before the by-pass was provided.
- (7) The roads authority may provide and maintain on a by-pass any gate or other works necessary for the proper control of traffic and the efficient operation of the cattle-grid for which the by-pass is provided.
- (8) The roads authority may alter or improve any cattle-grid, by-pass, gate or other works provided under this section, but not so as to prevent traffic of any description which before the alteration or improvement could lawfully have gone along the road (either by passing over the cattle-grid or by going through any gate or along any by-pass provided under subsection (2) above) from so going along the road.
- (9) Without prejudice to subsection (1) and (2) of this section, in subsections (3) to (7) of this section and in Schedule 4 to this Act references to a road shall be construed as including references to a proposed road.

42 Removal of cattle-grids and discontinuance of by-passes.

- (1) Where it appears to the roads authority, after such consultation with owners and occupiers of agricultural land as the authority consider requisite, that a cattle-grid provided under this Act is no longer required, the authority may remove the cattle-grid and any gate or other works on the road which have been provided for use in connection with the cattle-grid, and shall make good the site thereof.
- (2) Where a by-pass has been provided for use in connection with a cattle-grid and the authority remove the cattle-grid, they may direct that the by-pass shall be discontinued

Status: Point in time view as at 01/04/2013.

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and may, where they give such a direction, remove all or any of the gates or other works provided for the purposes of the by-pass.

- (3) If a direction under subsection (2) above so provides, then subject to subsection (4) below, as from such date as may be specified in the direction the public right of passage over the by-pass shall be extinguished.
- (4) Where the whole or any part of a by-pass has been provided along an existing road then—
 - (a) notwithstanding subsection (3) above, a direction under subsection (2) above shall not extinguish any right of passage which existed before the by-pass was provided; and
 - (b) if the cattle-grid for which the by-pass was provided is removed, as soon as may be thereafter the authority shall (whether or not they direct that the by-pass shall be discontinued, but without prejudice to their powers under subsection (2) above to remove gates or other works if they so direct) remove so much of the gates or other works provided for the purpose of the by-pass as obstructs the exercise of the right of passage which existed before the by-pass was provided.

43 Maintenance of cattle-grids and by-passes.

For the purposes of maintenance and management (including any liability in respect of loss, injury or damage arising therefrom) any cattle-grid, by-pass, gate or other works provided under sections 41 to 47 of this Act shall be deemed to be vested in the roads authority.

44 Exercise of powers in respect of cattle-grids etc. by agreement between neighbouring authorities.

- (1) Where a public road is intersected, joined or continued by a road for which some authority other than the roads authority for the first-mentioned road are the roads authority, the following provisions of this section shall have effect.
- (2) The two authorities may enter into an agreement as to the exercise, by one, of the other's powers under sections 41 and 42 of this Act; and any such agreement may provide for the defraying by the one of the whole or any part of the expenses incurred by the other in consequence of the agreement.
- (3) An authority shall not unreasonably refuse to enter into an agreement under this section; and if any question arises as to the terms (including terms as to payments) to be included in such an agreement, or whether an authority has unreasonably refused to enter into such an agreement, the question shall be determined by arbitration.
- (4) Any question which is required by this section to be determined by arbitration shall be determined by a single arbiter appointed, in default of agreement, by the Court of Session, or by the sheriff, on the application of either party to the question.

45 Supersession of gates by cattle-grids.

- (1) Where—
 - (a) a person has the right to instal a gate in a road, and

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- (b) the roads authority providing or proposing to provide a cattle-grid in the road under section 41 of this Act determine, after complying with the provisions of Schedule 4 to this Act, that the purpose for which that right is exercisable will be adequately achieved by the provision of the cattle-grid,
- the right shall not be exercisable, so long as the cattle-grid is provided, except with the approval of the authority, and they may require that any gate installed in the exercise of the right before the provision of the cattle-grid shall be removed or may themselves remove any such gate.
- (2) The authority shall on demand repay any expenses reasonably incurred in removing a gate in compliance with a requirement under subsection (1) above.
- (3) Where in pursuance of subsection (1) above a gate has been removed (whether by, or in compliance with a requirement of, the authority) and they subsequently remove the cattle-grid then, if within 12 months after the removal of the cattle-grid any person reinstals a gate in the exercise of a right the exercise of which was suspended while the cattle-grid was provided, the authority shall on demand repay the expenses reasonably incurred in reinstalling the gate.
- (4) No objection shall be made or proceedings brought in respect of the purported exercise by the roads authority of their powers under subsection (1) above as respects any gate on the ground that no right to instal the gate existed; but the purported exercise by the authority of their powers under that subsection shall not affect the question whether any such right existed, or prejudice the powers of the authority or any other person under any enactment or rule of law to protect public rights of way or to prevent or remove obstructions.

46 Agreements for use of land for cattle-grids or by-passes.

- (1) The roads authority may, for the purpose of providing, altering or improving a cattle-grid or by-pass under the powers conferred by this Act, enter into an agreement with persons having an interest in any land for the use of the land for that purpose; and there shall be exercisable by the authority and the public such rights over the land as may be specified in the agreement.
- (2) An agreement under subsection (1) above—
- (a) may contain provisions for payment to persons who are parties to it in consideration of the use of the land or otherwise in respect of their entering into the agreement; and
 - (b) shall not operate so as to prejudice the rights of any person not a party thereto or confer upon any other person any right against him.
- (3) Section 5(3) and (4) of, and paragraph 4 of Schedule 2 to, the ^{M4}Forestry Act 1967 (enforcement of forestry dedication agreements and classes of person who may enter into such agreements) shall apply in relation to agreements under this section as they apply in relation to forestry dedication agreements, but with the substitution for the reference in the said section 5(3) to the Forestry Commissioners of a reference to the roads authority.

Marginal Citations

M4 1967 c. 10.

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47 Contributions towards expenditure of roads authorities in connection with cattle-grids.

- (1) A roads authority may enter into an agreement with any person at whose instance a cattle-grid has been or is to be provided by them under this Act, or with any other person willing to make a contribution towards expenses of the authority under this Act in connection with a cattle-grid, for the making by that person of such a contribution (whether by a single payment or by periodical payments) of such amount as may be specified in the agreement and either towards such description of such expenditure as may be so specified.
- (2) An agreement under this section may contain such incidental and consequential provisions as appear to the parties thereto expedient for the purposes of the agreement; and in particular such an agreement providing for a contribution towards the cost of installing a cattle-grid may provide for repayment of the contributions, to such extent as may be specified in the agreement, in the event of the cattle-grid being removed.
- (3) In determining whether or not to provide a cattle-grid the roads authority shall be entitled to have regard to the extent to which persons who in the opinion of the authority will derive special benefit from the provision of the cattle-grid are willing to enter into agreements under this section.

Miscellaneous improvements

48 Contributions towards expenditure on constructing or improving roads.

The roads authority may enter into an agreement with any person willing to contribute to the construction or improvement of a road and may have regard to the extent of the contributions (if any) obtainable by virtue of such agreements in determining whether to undertake the construction or effect the improvement.

49 Provision of bus shelters, etc. by local roads authorities.

- (1) In the ^{M5}Local Government, (Omnibus Shelters and Queue Barriers) (Scotland) Act 1958, for the words “local authority” wherever they occur other than the places mentioned in subsection (2) below there shall be substituted the words “local roads authority”.
- (2) The expected places referred to in subsection (1) above are—
 - (a) the first place where the words “local authority” occur in section 1(2) of the said Act of 1958;
 - (b) section 3(2) of that Act;
 - (c) the first place where those words occur in section 4(1) of that Act; and
 - (d) section 7(1) of that Act.

Marginal Citations

M5 1958 c. 50.

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[^{F21}Equipment for detection of traffic offences]

Textual Amendments

- F21** S. 49A and preceding cross-heading inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\), s. 40\(2\)](#); [S.I. 1992/1286, art. 2, Sch](#)

[^{F22}49A Power to install equipment for detection of traffic offences.

A roads authority may install and maintain on or near a road structures and equipment for the detection of traffic offences.]

Textual Amendments

- F22** S. 49A and preceding cross-heading inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\), s. 40\(2\)](#); [S.I. 1992/1286, art. 2, Sch](#)

50 Planting of trees, shrubs and grass or other plants by roads authority.

- (1) The roads authority may plant trees, shrubs, grass or other plants within, or partly within, the boundaries of a public road or of a proposed public road which is in course of construction; and may erect and maintain guards of fences, and otherwise do anything expedient, for maintenance and protection of trees, shrubs, grass and other plants there planted (whether or not by them).
- (2) No such tree, shrub, grass other plant, guard or fence shall be planted (or as the case may be erected) or allowed to remain in such a situation as to hinder the reasonable use of the road (or proposed road) by persons entitled to the use thereof, or so as to be a nuisance or injurious to the owner or occupier of any land fronting or abutting the road (or proposed road).
- (3) Paragraph 23 of the [^{F23}the electronic communications code] (which provides a procedure for certain cases where works involve the alteration of [^{F24}electronic communications apparatus]) shall, subject to subsection (4) below, apply, for the purposes of any works which may be done in exercise of the powers conferred by this section, to the roads authority.
- (4) Where the roads authority is the Secretary of State, sub-paragraph (8) of paragraph 23 of the [^{F23}the electronic communications code] (offence) shall be omitted for the purposes of the application of that paragraph to him by subsection (3) above.

Textual Amendments

- F23** Words in s. 50 substituted (17.9.2003) by [The Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\), art. 1\(1\), Sch. 1 para. 10\(1\)\(a\)\(2\)\(a\)](#)
- F24** Words in s. 50 substituted (17.9.2003) by [The Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\), art. 1\(1\), Sch. 1 para. 10\(1\)\(a\)\(2\)\(b\)](#)

Modifications etc. (not altering text)

- C12** S. 50: power to contract out functions of Secretary of State (16.3.1996) by [S.I. 1996/878, art. 2, Sch. para. 5\(j\)](#)

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51 Planting of trees, shrubs and grass or other plants by person other than roads authority.

- (1) The roads authority may in writing authorise an owner or occupier of land adjoining a public road, or any other person, to plant or maintain trees, shrubs, grass or other plants within, or partly within, the boundaries of that road subject to such conditions as the authority may specify in the authorisation.
- (2) The conditions referred, to in subsection (1) above may include a requirement that the authorised person give any written undertaking which, in the opinion of the authority, is necessary—
 - (a) to ensure the safety and convenience of road users; or
 - (b) to protect the apparatus of statutory undertakers.
- (3) The roads authority may at any time withdraw an authorisation under subsection (1) above by giving 28 days notice to the authorised person; and such notice may require that person within the 28 days—
 - (a) to remove all or any of the trees, shrubs, grass or other plants to which the authorisation related; and
 - (b) to reinstate the road.

Modifications etc. (not altering text)

C13 S. 51 power to contract out functions to the Secretary of State (16.3.1996) by [S.I. 1998/878, art. 2, Sch. para. 5\(k\)](#)

52 Power to execute works to mitigate adverse effect of constructing or improving etc. road.

- (1) A roads authority may carry out on—
 - (a) land acquired by them under section 106 of this Act;
 - (b) other land belonging to them;
 - (c) a road for which they are the roads authority;
 - (d) a road which they have been authorised to improve or, as the case may be construct, by an order under section 9 or 12 of this Act,works for mitigating any adverse effect which the construction, improvement, existence or use of any road has or will have on the surroundings of the last mentioned road.
- (2) Without prejudice to the generality of subsection (1) above, the works that may be carried out under that subsection include the planting of trees, shrubs or plants of any other description and the laying out of any area as grassland.
- (3) A roads authority may develop or redevelop land acquired by them under section 106 of this Act, or any other land belonging to them, for the purpose of improving the surroundings of a road or proposed road.

53 Agreements as to use of land near roads.

- (1) For the purpose of mitigating any adverse effect which the construction, improvement, existence or use of a road (or proposed road) has or will have on its surroundings, a roads authority may enter into an agreement with any person having an interest in land

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adjoining or in the vicinity of the road (or proposed road) for restricting or regulating the use of the land either permanently or during such period as may be specified in the agreement; and any such agreement may, in particular, make provision for the planting and maintenance of trees, shrubs or plants of any other description on the land and for restricting the lopping or removal of trees, shrubs or other plants on the land.

- (2) An agreement under this section may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the roads authority to be necessary or expedient.
- (3) Subject to subsection (4) below, the provisions of an agreement made under this section with a person interested in land shall be binding on persons deriving title from that person in respect of the land.
- (4) No provision shall be enforceable by virtue of subsection (3) above against a third party who shall have in good faith and for value acquired right (whether [F25]title has been completed] or not) to land prior to the agreement being registered in the Land Register of Scotland or, as the case may be, recorded in the Register of Sasines, or against any person deriving title from such third party.
- (5) This section is without prejudice to [F26]section 75 of the Town and Country Planning (Scotland) Act 1997] (agreements regulating development or use of land).

Textual Amendments

- F25** Words in s. 53(4) substituted (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), [sch. 12 para. 45](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F26** Words in s. 53(5) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), [Sch. 2 para. 38\(4\)](#)

54 Power to instal refuse or storage bins in roads.

The roads authority may provide and maintain in or under a road, or a proposed road in course of construction, bins or other receptacles, of such dimensions and in such positions as the authority may determine, for the collection and temporary deposit of road refuse and waste paper, or the storage of sand, grit or other materials.

55 Provision of picnic sites for trunk roads etc.

- (1) The Secretary of State may provide on land adjoining, or in the vicinity of, a trunk road, or a proposed public road which is to be a trunk road, a picnic site with space for parking vehicles and with means of access from and egress to the road or proposed road; and subject to subsection (3) below he may manage and maintain the site (including such buildings, works or facilities as are mentioned in subsection (2) below.)
- (2) The Secretary of State may erect and equip buildings, and execute works, on the picnic site so as to provide such facilities as he considers appropriate for that site; and without prejudice to the generality of this subsection those facilities may include—
 - (a) water closets, urinals, and washing facilities for use in connection with either; and
 - (b) facilities for the provision and consumption of meals and refreshments.

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- (3) The Secretary of State shall not provide meals or refreshments on the picnic site but may make arrangements for some person other than a ^{F27}local authority] so to provide and may for the purpose of those arrangements lease the site, or a part thereof, to that other person.

Textual Amendments

F27 S. 55(3) substituted (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13, para. 135(3); S.I. 1996/323, art. 4(1)(c)

^{F28}55A Environmental assessment of certain road improvement projects

- (1) If the Scottish Ministers as roads authority have under consideration—
- (a) the making of an order such as is mentioned in paragraph 1 of Schedule 1 to this Act relating to the improvement of a road; or
 - (b) the improvement of a road without such an order,
- they shall, before details of the project are published, determine whether or not it falls within Annex I or Annex II.

- (2) If the Scottish Ministers determine that the project—
- (a) falls within Annex I, or
 - (b) is a relevant project falling within Annex II and that, having regard to the selection criteria contained in Annex III, it should be made subject to an environmental impact assessment in accordance with the Directive,
- they shall no later than the date when details of the project are published, ^{F29}prepare an environmental statement and publish notice of it in accordance with subsections (5) and (5A) and paragraph 7(1C) or 13(1C) as the case may be of Schedule 1 to this Act].

- (3) The Scottish Ministers shall publish any determination made by them in accordance with subsection (2) above.

^{F30}(4)

- (5) The Scottish Ministers shall publish ^{F31}notice of the] environmental statement so as to ensure that members of the public who are likely to be concerned are given a reasonable opportunity to express an opinion before they decide whether to proceed with the project, and they shall not make any such decision without taking into consideration any opinion so expressed to them within a period of ^{F32}6] weeks running from the date of publication ^{F33}of notice] of the environmental statement.

[The notice must state—

- ^{F34}(5A) (a) that the Scottish Ministers, as the relevant roads authority, are considering implementing the project;
- (b) the proposed location and nature of the project;
 - (c) that the project is subject to the environmental impact assessment procedure prescribed by this section and, where relevant, that section 20B applies;
 - (d) that a copy of the environmental statement may be inspected at an address in the area in which the project is proposed to be situated during the period specified under paragraph (i);
 - (e) the times at which the copy of the environmental statement can be so inspected;

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- (f) an address from which copies of the environmental statement may be obtained and from which further information about the project may be requested during the period specified under paragraph (i);
 - (g) if a charge is to be made for a copy of the environmental statement, the amount of the charge;
 - (h) where the Scottish Ministers use a website for the purpose of giving information to the public about projects of a category into which the project in question falls, the address of the website where a copy of the environmental statement will be available for inspection by the public during the period specified under paragraph (i);
 - (i) that any person wishing to make any representations about the project and the environmental statement may do so in writing to the Scottish Ministers at a specified address within a specified period, being a period of not less than 42 days commencing with the date of publication of the notice; and
 - (j) that the Scottish Ministers will take into consideration any representations so made before deciding whether or not to proceed with the project with or without modifications.
- (5B) The Scottish Ministers shall ensure that during the period referred to in subsection (5A)
- (i)–
 - (a) copies of the environmental statement are available for inspection by any person free of charge at all reasonable hours at the address specified under subsection (5A)(d);
 - (b) copies of the environmental statement are available to be obtained from the address specified under subsection (5A)(f); and
 - (c) where the Scottish Ministers use a website for the purpose of giving information to the public about projects of a category into which the project in question falls, a copy of the environmental statement is available for inspection on that website.
- (5C) A reasonable charge reflecting the costs of printing, copying and distribution may be made by the Scottish Ministers for the supply of a copy of the environmental statement–
- (a) to a person other than a consultation body; or
 - (b) to a consultation body to which one copy has already been supplied free of charge.
- (5D) Where the Scottish Ministers obtain further information relating to the environmental statement and such further information is reasonably required to give proper consideration to the likely environmental effects of the proposed project, except insofar as such further information is required for the purposes of an inquiry held under section 139, subsections (5), (5A), (5B), and (5C) shall apply to such further information as they apply to an environmental statement (subject to any necessary modifications).]
- (6) The Scottish Ministers shall ensure that the consultation bodies are given an opportunity to express an opinion on the ^{F35}... project and the environmental statement before they decide whether to proceed with the project.
- (7) In this section, the expressions “the Directive”, “Annex”, “relevant project” and “sensitive area” shall have the meanings assigned to those expressions in section 20A(9) of this Act with the proviso that in the definition of “relevant project”

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the reference to the construction of a new road shall be a reference to the improvement of a road and cognate expressions shall be construed accordingly.]

Textual Amendments

- F28** Ss. 55A and 55B substituted for s. 55A (1.8.1999) by S.S.I. 1999/1, **reg. 50**
- F29** Words in s. 55A(2) substituted (1.2.2007) by [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **6(3)(a)**
- F30** S. 55A(4) omitted (1.2.2007) by virtue of [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **6(3)(b)**
- F31** Words in s. 55A(5) substituted (1.2.2007) by [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **6(3)(c)(i)**
- F32** Word in s. 55A(5) substituted (1.2.2007) by [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **6(3)(c)(ii)**
- F33** Words in s. 55A(5) inserted (1.2.2007) by [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **6(3)(c)(iii)**
- F34** S. 55A(5A)-(5D) inserted (1.2.2007) by [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **6(3)(d)**
- F35** Words in s. 55A(6) omitted (1.2.2007) by virtue of [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **6(3)(e)**

[^{F36} **55B Application of section 20B**

The provisions of section 20B of this Act shall apply to a project in terms of section 55A of this Act as they apply to a project in terms of section 20A of this Act.]

Textual Amendments

- F36** Ss. 55A and 55B substituted for s. 55A (1.8.1999) by S.S.I. 1999/1, **regs. 1, 50**

Status:

Point in time view as at 01/04/2013.

Changes to legislation:

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