



Transport and Works Act 1992

1992 CHAPTER 42

PART I

ORDERS AUTHORISING WORKS ETC

Power to make orders

1 Orders as to railways, tramways etc

- (1) The Secretary of State may make an order relating to, or to matters ancillary to, the construction or operation of a transport system of any of the following kinds, so far as it is in England and Wales—
- (a) a railway;
 - (b) a tramway;
 - (c) a trolley vehicle system;
 - (d) a system using a mode of guided transport prescribed by order made under section 2 below.
- (2) The power to make orders under this section shall be exercisable by statutory instrument.

2 Extension of section 1 to other guided transport systems

- (1) The Secretary of State may by order prescribe modes of guided transport for the purposes of section 1(1)(d) above.
- (2) The power to make orders under this section shall be exercisable by statutory instrument; but no order shall be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

3 Orders as to inland waterways etc

- (1) The Secretary of State may make an order relating to, or to matters ancillary to—

Status: This is the original version (as it was originally enacted).

- (a) the construction or operation of an inland waterway in England and Wales;
- (b) the carrying out of works which—
 - (i) interfere with rights of navigation in waters within or adjacent to England and Wales, up to the seaward limits of the territorial sea, and
 - (ii) are of a description prescribed by order made under section 4 below.
- (2) The Secretary of State shall not make an order under this section if in his opinion the primary object of the order could be achieved by means of an order under the Harbours Act 1964.
- (3) The power to make orders under this section shall be exercisable by statutory instrument.

4 Description of works for purposes of section 3

- (1) The Secretary of State may by order prescribe descriptions of works for the purposes of section 3(1)(b) above.
- (2) The power to make orders under this section shall be exercisable by statutory instrument; but no order shall be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

5 Subject-matter of orders under sections 1 and 3

- (1) Without prejudice to the generality of sections 1 and 3 above, the matters as to which provision may be made by an order under either of those sections include those set out in Schedule 1 to this Act.
- (2) An order under section 1 or 3 above may make provision in relation to more than one scheme, system or mode of transport.
- (3) An order under section 1 or 3 above may—
 - (a) apply, modify or exclude any statutory provision which relates to any matter as to which an order could be made under section 1 or, as the case may be, 3, and
 - (b) make such amendments, repeals and revocations of statutory provisions of local application as appear to the Secretary of State to be necessary or expedient in consequence of any provision of the order or otherwise in connection with the order;

and for the purposes of this subsection “statutory provision” means provision of an Act of Parliament or of an instrument made under an Act of Parliament.
- (4) The provisions that may be made by an order under section 1 or 3 above include—
 - (a) any provision that appears to the Secretary of State to be necessary or expedient for giving full effect to—
 - (i) any other provision of the order,
 - (ii) any provision of an earlier order under the section concerned, or
 - (iii) any provision which is contained in an Act of Parliament passed before the time when this Part of this Act is first wholly in force, or in an instrument made under an Act of Parliament before that time, and which is of a kind which could be included in an order under section 1 or 3 above;

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

- (b) such supplemental and transitional provisions as appear to him to be necessary or expedient in connection with the order.
- (5) A provision of an order under section 1 or 3 above relating to offences shall not authorise the imposition on persons convicted of an offence of a term of imprisonment or of a fine exceeding level 3 on the standard scale.
- (6) An order under section 1 or 3 above shall not extinguish any public right of way over land unless the Secretary of State is satisfied—
 - (a) that an alternative right of way has been or will be provided, or
 - (b) that the provision of an alternative right of way is not required.
- (7) Where an order under sections 104(3), 105(3) or 112 of the Transport Act 1968 (classification and maintenance of the British Waterways Board's waterways, and maintenance and use of other waterways) is required so as to give effect to any proposal, no provision shall be included in an order under section 1 or 3 above which would—
 - (a) remove that requirement, or
 - (b) alter the requirements of sections 104, 105 or 112 of, or Schedule 13 to, that Act relating to orders under those sections.

Procedure for making orders

6 Applications for orders under sections 1 and 3

- (1) Subject to section 7 below, the Secretary of State shall not make an order under section 1 or 3 above except on an application made to him in accordance with rules made under this section.
- (2) The Secretary of State may make rules as to—
 - (a) the form of an application under this section;
 - (b) the documents and information that must be submitted with it;
 - (c) the giving and publication of notices of an application;
 - (d) any other steps that must be taken before an application is made or in connection with the making of an application.
- (3) Any provision made by rules as to the consultation that must be carried out before an application is made may include provision requiring compliance with general or special directions given by the Secretary of State.
- (4) Rules under this section may make different provision for different cases, and may include provision authorising the Secretary of State—
 - (a) to dispense with compliance with rules that would otherwise apply, or
 - (b) to require compliance with rules that would not otherwise apply,in any case where he considers it appropriate to do so.
- (5) Rules may provide for fees of such amounts as may be determined by or in accordance with the rules to be payable to the Secretary of State on the making of applications under this section.
- (6) The power to make rules under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

7 Orders under sections 1 and 3 made otherwise than on application

- (1) The Secretary of State may without any application being made to him make—
 - (a) an order under section 1 above which relates to, or to matters ancillary to, the construction for naval, military, air force or other defence purposes of a railway, tramway or other system within section 1(1), or the operation of a railway, tramway or other system constructed for those purposes;
 - (b) an order under section 1 or 3 above making any provision which appears to the Secretary of State to be necessary or expedient, in the interests of safety,—
 - (i) for the purpose of suspending or discontinuing any operations, or
 - (ii) in consequence of the abandonment or neglect of any works;
 - (c) an order under section 1 or 3 above repealing or revoking provisions which appear to the Secretary of State to be spent.
- (2) An order made by virtue of subsection (1)(b) above may include provision for the recovery by the Secretary of State of the costs of making the order and of carrying its provisions into effect.
- (3) Where the Secretary of State proposes to make an order by virtue of this section, he shall—
 - (a) prepare a draft of the order,
 - (b) publish a notice of the proposal, containing such particulars as may be prescribed, in the London Gazette and in a local newspaper circulating in the area (or each of the areas) in which any proposed works are to be carried out, and
 - (c) give such further notices of the proposal as may be prescribed.
- (4) The power to make provision by rules under section 6 above in relation to applications shall include power to make such corresponding provision as the Secretary of State considers appropriate in relation to proposals to make orders by virtue of this section; and in subsection (3) above “prescribed” means prescribed by rules under section 6.

8 Model clauses

- (1) The Secretary of State may by order prescribe model provisions for incorporation in any draft orders which, in accordance with rules made under section 6 above, may be required to be submitted with applications under that section.
- (2) Different provisions may be prescribed under this section for different cases.
- (3) The prescribing under this section of a model provision shall not of itself make it mandatory for a provision in the terms of the model to be incorporated in a draft order or in any order eventually made by the Secretary of State under section 1 or 3 above.
- (4) The power to make orders under this section shall be exercisable by statutory instrument.

9 Schemes of national significance

- (1) This section applies where an application made under section 6 above relates (wholly or in part) to proposals which in the opinion of the Secretary of State are of national significance.

- (2) Before the end of the period of 56 days beginning with the day on which he receives the application, the Secretary of State shall publish in the London Gazette a notice identifying the application and the proposals which in his opinion are of national significance.
- (3) On, or as soon as practicable after, the day on which the notice required by subsection (2) above is published, the Secretary of State shall—
 - (a) publish a like notice in a local newspaper circulating in the area (or each of the areas) in which any proposed works are to be carried out, and
 - (b) send a copy of the notice to the applicant and to every person within section 11(4) below who objected to the application in accordance with rules made under section 10 below.
- (4) The Secretary of State shall not make an order on the application unless each House of Parliament, on a motion moved by a Minister of the Crown which identifies the proposals referred to above, passes a resolution approving them at some time later than 56 days after the day of publication of the notice required by subsection (2) above.
- (5) An order made on the application shall not include any provision that is inconsistent with a proposal approved by a resolution in accordance with this section unless that provision gives effect to modifications of the proposal which have themselves been approved by a resolution of each House of Parliament passed on a motion moved by a Minister of the Crown.
- (6) This section shall apply in relation to an order which the Secretary of State makes or proposes to make by virtue of section 7 above as it applies in relation to an order for which an application is made to him, except that in such a case—
 - (a) subsections (2) and (3) above shall not apply, and
 - (b) subsection (4) above shall apply as if the reference to the notice required by subsection (2) above were a reference to the notice required by section 7(3) above to be published in the London Gazette;and any proposals which in the opinion of the Secretary of State are of national significance shall be identified as such in any notice required by or under section 7(3) above.

10 Objections

- (1) The Secretary of State may make rules as to—
 - (a) the making of objections to an application under section 6 above or to a proposal to make an order by virtue of section 7 above;
 - (b) the information to be comprised within or submitted with an objection;
 - (c) the submission by the person making the application of written representations or information in relation to objections;
 - (d) the submission of further written representations or information;
 - (e) such other matters relating to the consideration of objections as appear to the Secretary of State to be appropriate.
- (2) Subject to the following provisions of this section, the Secretary of State shall not make a determination under section 13(1) below to make an order without first taking into consideration the grounds of any objection in respect of which rules under this section have been complied with.

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

- (3) If an objection is withdrawn or appears to the Secretary of State—
- (a) to be frivolous or trivial, or
 - (b) to relate to matters which fall to be determined by a tribunal concerned with the assessment of compensation,
- he may make a determination under section 13(1) below without further consideration of the objection.
- (4) Subsection (2) above shall not apply where the Secretary of State causes an inquiry to be held under section 11(1) below or causes an objection to be dealt with in accordance with section 11(2) below, but the Secretary of State shall not make a determination under section 13(1) below without first taking into consideration the report of the person holding the inquiry, or as the case may be of the person appointed under section 11(2).
- (5) Rules under this section may make different provision for different cases, and may include provision authorising the Secretary of State—
- (a) to dispense with compliance with rules that would otherwise apply, or
 - (b) to require compliance with rules that would not otherwise apply,
- in any case where he considers it appropriate to do so.
- (6) The power to make rules under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

11 Inquiries and hearings

- (1) The Secretary of State may cause a public local inquiry to be held for the purposes of an application under section 6 above or a proposal by the Secretary of State to make an order by virtue of section 7 above.
- (2) The Secretary of State may give to a person who makes an objection in accordance with rules under section 10 above an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (3) Where an objection is made by a person within subsection (4) below who informs the Secretary of State in writing that he wishes the objection to be referred to an inquiry or dealt with in accordance with subsection (2) above, then, unless section 10(3) above applies, the Secretary of State shall either cause an inquiry to be held or, if he so determines, cause the objection to be dealt with in accordance with subsection (2).
- (4) The persons within this subsection are—
- (a) any local authority for an area in which any works authorised by the proposed order are to be carried out, and
 - (b) where the proposals include the compulsory acquisition of land, any person who, if Part II of the Acquisition of Land Act 1981 (notice to owners, lessees and occupiers) applied to the acquisition, would be entitled to a notice under section 12 of that Act;

and for the purposes of paragraph (a) above “local authority” means a county council, a district council, a London borough council, the Common Council of the City of London, the Council of the Isles of Scilly and a Passenger Transport Executive.

- (5) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (attendance and evidence at, and costs of, inquiries) shall apply to an inquiry held under subsection (1) above; but—
- (a) in its application by virtue of this subsection, section 250(4) shall have effect with the omission of the words “and any amount” onwards, and
 - (b) the power to make an order as to costs under section 250(5) as applied by this subsection shall be exercisable not only where the inquiry takes place but also where arrangements are made for it but it does not take place.
- (6) Subsections (4) and (5) of section 250 of the Local Government Act 1972 (costs) shall apply in relation to proceedings under subsection (2) above as they apply in relation to an inquiry under subsection (1) above.

12 Special parliamentary procedure

- (1) An order under section 1 or 3 above authorising a compulsory purchase shall be subject to special parliamentary procedure to the same extent as it would be, by virtue of section 18 or 19 of the Acquisition of Land Act 1981 (or by virtue of paragraph 5 or 6 of Schedule 3 to that Act) (National Trust land, commons etc), if the purchase were authorised by an order under section 2(1) of that Act.
- (2) In section 3 of the Statutory Orders (Special Procedure) Act 1945 (petitions against orders subject to special parliamentary procedure) after subsection (4) there shall be inserted—
- “(4A) The Chairmen shall not certify that a petition is proper to be received if the order to which it relates is made under section 1 or 3 of the Transport and Works Act 1992 and either—
- (a) the petition is a petition of general objection and the order relates to proposals which have been approved by each House of Parliament in accordance with section 9 of that Act, or
 - (b) the petition is a petition for amendment and any of the amendments asked for would in the opinion of the Chairmen be inconsistent with such proposals.”
- (3) In relation to an order under section 1 or 3 above which is subject to special parliamentary procedure—
- (a) section 13(5) below shall not apply,
 - (b) section 22 below shall not apply if the order is confirmed by Act of Parliament under section 6 of the Statutory Orders (Special Procedure) Act 1945, and
 - (c) in any other case, section 22(1) below shall have effect as if for the reference to the day on which the notice required by section 14(1)(b) is published there were substituted a reference to the day on which the order comes into operation under the Statutory Orders (Special Procedure) Act 1945.

13 Making or refusal of orders under section 1 or 3

- (1) Where an application has been made to the Secretary of State under section 6 above, or he proposes to make an order by virtue of section 7 above, and (in either case) the requirements of the preceding provisions of this Act in relation to any objections have been satisfied, he shall determine—

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

- (a) to make an order under section 1 or 3 above which gives effect to the proposals concerned without modifications, or
 - (b) to make an order which gives effect to those proposals with modifications, or
 - (c) not to make an order.
- (2) Where an application has been made to the Secretary of State under section 6 above and he considers that any of the objects of the order applied for could be achieved by other means, he may on that ground determine not to make the order (but this subsection is without prejudice to subsection (3) below).
- (3) The power of the Secretary of State to make a determination under subsection (1) above includes power to make a determination in respect of some only of the proposals concerned, while making a separate determination in respect of, or deferring consideration of, others (and accordingly the power to make an order under section 1 or 3 above includes power to make two or more orders on the same application).
- (4) Where the Secretary of State proposes to make an order which gives effect to the proposals concerned with modifications which will in his opinion make a substantial change in the proposals—
- (a) he shall notify any person who appears to him to be likely to be affected by the modifications,
 - (b) he shall give that person an opportunity of making representations to him about the modifications within such period as he may specify in the notice, and
 - (c) he shall before making the order consider any representations duly made to him.
- (5) An order under section 1 or 3 above shall come into operation on the date on which the notice required by subsection (1)(b) of section 14 below is first published, or on such later date, if any, as may be specified in the order.

14 Publicity for making or refusal of orders

- (1) As soon as practicable after making a determination under section 13(1) above, the Secretary of State shall—
- (a) give notice of the determination to the person (if any) who applied for the order and to every person who made an objection which was referred to an inquiry or hearing in accordance with section 11(3) above, and
 - (b) publish a notice of the determination in the London Gazette.
- (2) A notice under subsection (1)(a) above shall state the reasons for the determination.
- (3) A notice under subsection (1) above of a determination to make an order shall give such particulars of the terms of the order as the Secretary of State considers appropriate, and in particular shall (except where the order is made by virtue of section 7 above) state the name and address of the person who applied for the order.
- (4) Where the Secretary of State determines to make an order, the person who applied for the order (or, where the order is made by virtue of section 7 above, the Secretary of State) shall publish a copy of the notice given to him under subsection (1) above in a local newspaper circulating in the area (or each of the areas) in which any works authorised by the order are to be carried out.

- (5) As soon as practicable after the making of an order under section 1 or 3 above, the person who applied for the order (or, where the order is made by virtue of section 7 above, the Secretary of State) shall—
- (a) deposit in the office of the Clerk of the Parliaments a copy of the order, and of any plan or book of reference prepared in connection with the application (or proposed order), and
 - (b) deposit with each of the councils mentioned in subsection (7) below in whose area works authorised by the order are to be carried out a copy of each of those documents, or of so much of them as is relevant to those works.
- (6) Where a plan or book of reference is revised before the order is made, the reference in subsection (5)(a) above is to the latest version.
- (7) The councils referred to in subsection (5) above are district councils, London borough councils and the Common Council of the City of London.
- (8) A council with which documents are deposited in accordance with subsection (5) above shall make them available for inspection free of charge at all reasonable hours.

Consents etc under other enactments

15 Assimilation of procedures

- (1) This section applies to applications made under section 6 above relating to proposals for the purposes of which the giving of a consent, permission or licence under any enactment, or the making or confirmation of an order under any enactment, is required.
- (2) The Secretary of State may make regulations for securing that, where the requirement referred to in subsection (1) above would not be removed by the order to which the application relates—
- (a) the procedure for obtaining, or otherwise relating to, the consent, permission, licence, order or confirmation, and
 - (b) the procedure relating to the application made under section 6 above,
- are wholly or partly assimilated (and in particular that proceedings relating to the one may be held concurrently with proceedings relating to the other).
- (3) Regulations under this section may include provision—
- (a) excluding or modifying the application of any enactment;
 - (b) authorising the Secretary of State to give directions or take such other steps as may be appropriate for the purpose of securing the object mentioned in subsection (2) above.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) This section shall apply to proposals by the Secretary of State to make orders by virtue of section 7 above as it applies to applications under section 6 above.

16 Town and country planning

- (1) In section 90 of the Town and Country Planning Act 1990 (which gives power to deem planning permission to be granted in certain cases where development is authorised by a government department) after subsection (2) there shall be inserted—

“(2A) On making an order under section 1 or 3 of the Transport and Works Act 1992 which includes provision for development, the Secretary of State may direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.”

- (2) In Schedule 13 to the Town and Country Planning Act 1990 (blighted land) after paragraph 22 there shall be added—

“23 Land—

- (a) the compulsory acquisition of which is authorised by an order under section 1 or 3 of the Transport and Works Act 1992, or
- (b) which falls within the limits of deviation within which powers of compulsory acquisition conferred by such an order are exercisable, or
- (c) which is the subject of a proposal, contained in an application made in accordance with rules under section 6 of that Act or in a draft order prepared under section 7(3) of that Act, that it should be such land.”

17 Listed buildings and conservation areas

In section 12 of the Planning (Listed Buildings and Conservation Areas) Act 1990, after subsection (3) there shall be inserted—

“(3A) An application for listed building consent shall, without any direction by the Secretary of State, be referred to the Secretary of State instead of being dealt with by the local planning authority in any case where the consent is required in consequence of proposals included in an application for an order under section 1 or 3 of the Transport and Works Act 1992.”

18 Hazardous substances

In section 12 of the Planning (Hazardous Substances) Act 1990 (which gives power to deem hazardous substances consent to be granted in certain cases) after subsection (2) there shall be inserted—

“(2A) On making an order under section 1 or 3 of the Transport and Works Act 1992 which includes any provision that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the Secretary of State may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.”

19 Coast Protection Act 1949

In section 35 of the Coast Protection Act 1949 (which excepts certain operations from the requirement to obtain the Secretary of State’s consent under section 34) in subsection (1) there shall be added after paragraph (g)—

“(h) any operations authorised by an order under section 1 or 3 of the Transport and Works Act 1992.”

20 Power to apply for, or object to, orders

- (1) A body which has power to promote or power to oppose Bills in Parliament shall also have power to apply for, or as the case may be power to object to, orders under sections 1 and 3 above.
- (2) Where the power of a body to promote or to oppose Bills is subject to any condition, then, except as provided by subsection (3) below, the corresponding power conferred on the body by subsection (1) above shall be subject to the like condition.
- (3) The powers conferred by subsection (1) above on—
 - (a) the British Railways Board,
 - (b) the British Waterways Board, and
 - (c) London Regional Transport,shall be exercisable without the consent of the Secretary of State.

21 Transport Consultative Committees

- (1) In section 56 of the Transport Act 1962 (which establishes a Central Transport Consultative Committee and Area Transport Users Consultative Committees) after subsection (6) there shall be inserted—

“(6A) An Area Committee may consider, and if they think fit object to, any proposal for the discontinuance of railway services made in an application for an order under section 1 of the Transport and Works Act 1992 or made by the Secretary of State by virtue of section 7 of that Act.”
- (2) In section 41 of the London Regional Transport Act 1984 (which provides for the London Regional Passenger Committee to be treated as an Area Transport Users Consultative Committee for certain purposes) in subsection (2)(c) for “(7)” there shall be substituted “(6A)”.

Miscellaneous

22 Validity of orders under section 1 or 3

- (1) If a person aggrieved by an order under section 1 or 3 above desires to question the validity of it, or of any provision contained in it, on the ground—
 - (a) that it is not within the powers of this Act, or
 - (b) that any requirement imposed by or under this Act or the Tribunals and Inquiries Act 1971 has not been complied with,he may, within the period of 42 days beginning with the day on which the notice required by section 14(1)(b) above is published, make an application for the purpose to the High Court.
- (2) On any such application, the court—
 - (a) may by interim order suspend the operation of the order, or of any provision contained in it, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings, and

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

- (b) if satisfied that the order or any provision contained in it is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any requirement imposed by or under this Act or the Tribunals and Inquiries Act 1971, may quash the order or any provision contained in it, either generally or in so far as it affects any property of the applicant.
- (3) Subject to subsections (1) and (2) above, an order under section 1 or 3 above shall not, either before or after it has been made, be questioned in any legal proceedings whatever.

23 Exercise of Secretary of State's functions by appointed person

- (1) The Secretary of State may by regulations prescribe classes of application which are to be dealt with by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State.
- (2) The Secretary of State may if he thinks fit direct that an application which would otherwise fall to be determined by an appointed person shall be determined by the Secretary of State.
- (3) Subject to subsection (4) below, a person appointed under this section shall have in relation to the application—
 - (a) the same powers and duties as the Secretary of State has under sections 1 and 3 above, and
 - (b) such other powers and duties conferred on the Secretary of State under or by virtue of this Part of this Act as may be specified in the regulations;
 and for that purpose any reference in any Act or instrument (including this Act and any instrument made under it) to the Secretary of State, or to anything done or authorised or required to be done by or to the Secretary of State, shall be construed, so far as the context permits and subject to regulations under this section, as a reference to that person.
- (4) An order made on an application dealt with by a person appointed under this section shall not authorise the compulsory acquisition of land, or the compulsory creation or extinguishment of rights over land (including rights of navigation over water).
- (5) Where an application has been dealt with by a person appointed under this section, any order made by him under section 1 or 3 shall be treated as made by the Secretary of State.
- (6) At any time before the appointed person has determined the application the Secretary of State may—
 - (a) revoke his appointment, and
 - (b) appoint another person under subsection (1) above to deal with the application instead;
 and where such a new appointment is made the consideration of the application shall begin afresh, except to the extent that regulations under this section provide otherwise.
- (7) If the Secretary of State exercises the power conferred on him by subsection (6)(a) above, he shall give reasons to the appointed person for revoking his appointment.

- (8) Regulations under this section may provide for the giving of publicity to any directions given by the Secretary of State under subsection (2) above and to any appointment made by virtue of subsection (6) above.
- (9) The Tribunals and Inquiries Act 1971 shall apply to a local inquiry or other hearing by a person appointed under this section as it applies to a statutory inquiry held by the Secretary of State, but as if in section 12(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State were a reference to a decision taken by an appointed person.
- (10) Where a person appointed under this section is an officer of the Department of Transport, the Department of the Environment, the Department of Energy or the Welsh Office, his functions shall be treated for the purposes of the Parliamentary Commissioner Act 1967—
- (a) if he was appointed by the Secretary of State for the time being having general responsibility in transport matters, as functions of the Department of Transport;
 - (b) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to England, as functions of the Department of the Environment;
 - (c) if he was appointed by the Secretary of State for the time being having general responsibility in energy matters, as functions of the Department of Energy;
 - (d) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to Wales, as functions of the Welsh Office.
- (11) The power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

24 Private legislation procedure in Scotland

In section 1 of the Private Legislation Procedure (Scotland) Act 1936 (which requires the promotion of Provisional Orders rather than Private Bills in connection with powers relating to Scotland), in subsection (4) (which provides an exception from the requirement in certain cases relating to Scotland and elsewhere if the promotion of a Private Bill would be more appropriate than the promotion of a Private Bill and a Provisional Order) after the words “Provisional Order” there shall be inserted the words “(or a Provisional Order and an order under section 1 or 3 of the Transport and Works Act 1992)”.

25 Crown land

- (1) If the appropriate authority agrees—
- (a) an interest which—
 - (i) subsists in land in which there is a Crown or Duchy interest, but
 - (ii) is not itself a Crown or Duchy interest,may be acquired compulsorily by virtue of an order under section 1 or 3 above, and

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

- (b) any provision of this Act or of such an order (other than a provision by virtue of which an interest in land is compulsorily acquired) may apply in relation to land in which there is a Crown or Duchy interest.
- (2) In this section “Crown or Duchy interest” means an interest belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department.
- (3) In this section “the appropriate authority” means—
 - (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;
 - (b) in the case of other land belonging to Her Majesty in right of the Crown, the government department having the management of the land;
 - (c) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy;
 - (d) in the case of land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;
 - (e) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that department.
- (4) If any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

PART II

SAFETY OF RAILWAYS ETC

CHAPTER I

OFFENCES INVOLVING DRINK OR DRUGS

Preliminary

26 Transport systems to which Chapter I applies

- (1) This Chapter applies to transport systems of any of the following kinds—
 - (a) a railway;
 - (b) a tramway;
 - (c) a system which uses another mode of guided transport and is specified for the purposes of this Chapter by an order made by the Secretary of State.
- (2) This Chapter shall not apply to a transport system unless it is used, or is intended to be used, wholly or partly for the carriage of members of the public.
- (3) The power to make orders under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Principal offences

27 Offences involving drink or drugs on transport systems

- (1) If a person works on a transport system to which this Chapter applies—
 - (a) as a driver, guard, conductor or signaller or in any other capacity in which he can control or affect the movement of a vehicle, or
 - (b) in a maintenance capacity or as a supervisor of, or look-out for, persons working in a maintenance capacity,when he is unfit to carry out that work through drink or drugs, he shall be guilty of an offence.
- (2) If a person works on a transport system to which this Chapter applies—
 - (a) as a driver, guard, conductor or signaller or in any other capacity in which he can control or affect the movement of a vehicle, or
 - (b) in a maintenance capacity or as a supervisor of, or look-out for, persons working in a maintenance capacity,after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit, he shall be guilty of an offence.
- (3) For the purposes of this section, a person works on a transport system in a maintenance capacity if his work on the system involves maintenance, repair or alteration of—
 - (a) the permanent way or other means of guiding or supporting vehicles,
 - (b) signals or any other means of controlling the movement of vehicles, or
 - (c) any means of supplying electricity to vehicles or to the means of guiding or supporting vehicles,or involves coupling or uncoupling vehicles or checking that they are working properly before they are used on any occasion.
- (4) For the purposes of subsection (1) above, a person shall be taken to be unfit to carry out any work if his ability to carry out that work properly is for the time being impaired.

28 Offences by operators of transport systems

- (1) If a person commits an offence under section 27 above, the responsible operator shall also be guilty of an offence.
- (2) In this section “the responsible operator” means—
 - (a) in a case where the transport system on which the offence under section 27 above is committed has only one operator, that operator;
 - (b) in a case where the transport system on which the offence under section 27 above is committed has more than one operator, whichever of them is responsible for the work giving rise to the offence.
- (3) No offence is committed under subsection (1) above if the responsible operator has exercised all due diligence to prevent the commission on the transport system of any offence under section 27 above.
- (4) If a person commits an offence under section 27 above in the course of his employment with a person other than the responsible operator, his employer shall (without prejudice to any liability of that operator under subsection (1) above) also be guilty of an offence.

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

- (5) No offence is committed under subsection (4) above if the employer has exercised all due diligence to prevent the commission on the transport system by any of his employees of any offence under section 27 above.

Police powers etc

29 Breath tests

- (1) Where a constable in uniform has reasonable cause to suspect—
- (a) that a person working on a transport system to which this Chapter applies in any capacity mentioned in section 27(1) and (2) above has alcohol in his body, or
 - (b) that a person has been working on a transport system to which this Chapter applies in any capacity mentioned in section 27(1) and (2) above with alcohol in his body and still has alcohol in his body,
- he may require that person to provide a specimen of breath for a breath test.
- (2) Where an accident or dangerous incident occurs on a transport system to which this Chapter applies, a constable in uniform may require a person to provide a specimen of breath for a breath test if he has reasonable cause to suspect that—
- (a) at the time of the accident or incident that person was working on the transport system in a capacity mentioned in section 27(1) and (2) above, and
 - (b) an act or omission of that person while he was so working may have been a cause of the accident or incident.
- (3) In subsection (2) above “dangerous incident” means an incident which in the constable’s opinion involved a danger of death or personal injury.
- (4) A person may be required under subsection (1) or subsection (2) above to provide a specimen either at or near the place where the requirement is made or, if the requirement is made under subsection (2) above and the constable making the requirement thinks fit, at a police station specified by the constable.
- (5) A person who, without reasonable excuse, fails to provide a specimen of breath when required to do so in pursuance of this section shall be guilty of an offence.

30 Powers of arrest and entry

- (1) A constable may arrest a person without warrant if he has reasonable cause to suspect that that person is or has been committing an offence under section 27(1) above.
- (2) A constable may arrest a person without warrant if—
- (a) as a result of a breath test under section 29 above he has reasonable cause to suspect that the proportion of alcohol in that person’s breath or blood exceeds the prescribed limit, or
 - (b) that person has failed to provide a specimen of breath for a breath test when required to do so in pursuance of section 29 above and the constable has reasonable cause to suspect that he has alcohol in his body.
- (3) For the purpose of arresting a person under subsection (1) above, a constable may enter (if need be by force) any place where that person is or where the constable, with reasonable cause, suspects him to be.

- (4) A constable may, for the purpose of—
- (a) requiring a person to provide a specimen of breath under section 29(2) above in the case of an accident which the constable has reasonable cause to suspect involved the death of, or injury to, another person, or
 - (b) arresting a person in such a case under subsection (2) above, enter (if need be by force) any place where that person is or where the constable, with reasonable cause, suspects him to be.

31 Provision of specimens for analysis

- (1) In the course of an investigation into whether a person has committed an offence under section 27 above, a constable may require him—
- (a) to provide two specimens of breath for analysis by means of a device of a type approved by the Secretary of State, or
 - (b) to provide a specimen of blood or urine for a laboratory test.
- (2) A requirement under this section to provide specimens of breath shall only be made at a police station.
- (3) A requirement under this section to provide a specimen of blood or urine shall only be made at a police station or at a hospital; and it shall not be made at a police station unless subsection (4) below applies.
- (4) This subsection applies if—
- (a) the constable making the requirement has reasonable cause to believe that for medical reasons a specimen of breath cannot be provided or should not be required,
 - (b) at the time the requirement is made, either a device (or reliable device) of the type mentioned in subsection (1)(a) above is not available at the police station or it is for any other reason not practicable to use such a device there, or
 - (c) the suspected offence is one under section 27(1) above and the constable making the requirement has been advised by a medical practitioner that the condition of the person required to provide the specimen might be due to a drug.
- (5) A person may be required to provide a specimen of blood or urine in pursuance of this section notwithstanding that he has already provided or been required to provide two specimens of breath.
- (6) If the provision of a specimen other than a specimen of breath may be required in pursuance of this section, the question whether it is to be a specimen of blood or a specimen of urine shall be decided by the constable making the requirement; but if a medical practitioner is of the opinion that for medical reasons a specimen of blood cannot or should not be taken, the specimen shall be a specimen of urine.
- (7) A specimen of urine shall be provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine.
- (8) A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this section shall be guilty of an offence.
- (9) A constable shall, on requiring a person to provide a specimen in pursuance of this section, warn him that a failure to provide it may render him liable to prosecution.

32 Choice of specimens of breath

- (1) Of any two specimens of breath provided by a person in pursuance of section 31 above, the one with the lower proportion of alcohol in the breath shall be used and the other shall be disregarded.
- (2) But if the specimen with the lower proportion of alcohol contains no more than 50 microgrammes of alcohol in 100 millilitres of breath, the person who provided it may claim that it should be replaced by such specimen as may be required under section 31(6) above and, if he then provides such a specimen, neither specimen of breath shall be used.
- (3) The Secretary of State may by regulations substitute another proportion of alcohol in the breath for that specified in subsection (2) above.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument; and no such regulations shall be made unless a draft of the instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

33 Protection for hospital patients

- (1) While a person is at a hospital as a patient, he shall not be required to provide a specimen of breath for a breath test or to provide a specimen for a laboratory test unless the medical practitioner in immediate charge of his case has been notified of the proposal to make the requirement; and—
 - (a) if the requirement is then made, it shall be for the provision of a specimen at the hospital, but
 - (b) if the medical practitioner objects on the ground specified in subsection (2) below, the requirement shall not be made.
- (2) The ground on which the medical practitioner may object is that the requirement or the provision of a specimen or (in the case of a specimen of blood or urine) the warning required under section 31(9) above would be prejudicial to the proper care and treatment of the patient.
- (3) A person shall not be arrested under section 30(2) above while he is at a hospital as a patient.

Evidence in proceedings for offences under section 27

34 Use of specimens in proceedings

- (1) In proceedings for any offence under section 27 above—
 - (a) evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by the accused shall be taken into account, and
 - (b) it shall be assumed that the proportion of alcohol in the accused's breath, blood or urine at the time of the alleged offence was not less than in the specimen.
- (2) That assumption shall not be made if the accused proves—
 - (a) that he consumed alcohol before he provided the specimen and after he had stopped work on the occasion of the alleged offence, and

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

- (b) that, had he not done so, the proportion of alcohol in his breath, blood or urine would not have exceeded the prescribed limit and, where the offence alleged is an offence of being unfit to carry out the work in question through drink, would not have been such as to impair his ability to carry out that work properly.
- (3) Where, at the time a specimen of blood or urine was provided by the accused, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen shall not be admissible in the proceedings on behalf of the prosecution unless—
- (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the accused was divided at the time it was provided, and
 - (b) the other part was supplied to the accused.

35 Documentary evidence as to specimens

- (1) In proceedings for any offence under section 27 above, evidence of the proportion of alcohol in a specimen of breath may be given by the production of a document (or documents) purporting to be—
- (a) a statement automatically produced by the device by which the proportion of alcohol in the specimen was measured, and
 - (b) a certificate signed by a constable (which may but need not be contained in the same document as the statement) that the specimen was provided by the accused at the date and time shown in the statement.
- (2) In such proceedings, evidence of the proportion of alcohol or a drug in a specimen of blood or urine may be given by the production of a document purporting to be a certificate signed by an authorised analyst identifying the specimen and stating the proportion of alcohol or drug found in it.
- (3) In such proceedings, evidence that a specimen of blood was taken from the accused with his consent by a medical practitioner may be given by the production of a document purporting to be a certificate to that effect signed by the practitioner.
- (4) A document such as is mentioned in subsection (1) above shall be admissible in evidence on behalf of the prosecution in pursuance of this section only if a copy of it either was handed to the accused when the document was produced or was served on him not later than seven days before the hearing.
- (5) A document such as is mentioned in subsection (2) or (3) above shall be admissible in evidence on behalf of the prosecution in pursuance of this section only if a copy of it was served on the accused not later than seven days before the hearing.
- (6) A document purporting to be a certificate (or so much of a document as purports to be a certificate) shall not be admissible in evidence on behalf of the prosecution in pursuance of this section if the accused, not later than three days before the hearing or within such further time as the court may in special circumstances allow, has served notice on the prosecutor requiring the attendance at the hearing of the person by whom the document purports to be signed.
- (7) In this section “served” means served personally or sent by registered post or recorded delivery service.

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

- (8) In subsection (2) above “authorised analyst” means—
- (a) any person possessing the qualifications prescribed by regulations made under section 76 of the Food Act 1984 or section 27 of the Food and Drugs (Scotland) Act 1956 as qualifying persons for appointment as public analysts under those Acts, or
 - (b) any other person authorised by the Secretary of State to make analyses for the purposes of this section.

Penalties

36 Penalties

- (1) A person guilty of any offence under this Chapter other than an offence under section 29(5) above shall be liable on summary conviction to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the standard scale or to both.
- (2) A person guilty of an offence under section 29(5) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Miscellaneous and supplementary

37 Special provision for Scotland

- (1) Section 30(3) and (4) above shall not extend to Scotland, and nothing in those subsections shall affect any rule of law in Scotland concerning the right of a constable to enter any premises for any purpose.
- (2) In proceedings for any offence under section 27 above in Scotland—
 - (a) a document produced in evidence on behalf of the prosecution in pursuance of section 35 above and, where the person by whom the document was signed is called as a witness, the evidence of that person, shall be sufficient evidence of the facts stated in the document, and
 - (b) a written execution purporting to be signed by the person who handed to or served on the accused or the prosecutor a copy document or notice under section 35 above, together with, where appropriate, a post office receipt for the relevant registered or recorded delivery letter, shall be sufficient evidence of the handing or service of the copy document or notice.

38 Interpretation of Chapter I

- (1) In this Chapter—
 - “breath test” means a preliminary test for the purpose of obtaining, by means of a device of a type approved by the Secretary of State, an indication whether the proportion of alcohol in a person’s breath or blood is likely to exceed the prescribed limit;
 - “drug” includes any intoxicant other than alcohol;
 - “fail” includes refuse;
 - “hospital” means an institution which provides medical or surgical treatment for in-patients or out-patients.

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

- (2) In this Chapter “the prescribed limit” means, as the case may require—
 - (a) 35 microgrammes of alcohol in 100 millilitres of breath,
 - (b) 80 milligrammes of alcohol in 100 millilitres of blood, or
 - (c) 107 milligrammes of alcohol in 100 millilitres of urine,or such other proportion as may be prescribed by regulations made by the Secretary of State.
- (3) For the purposes of this Chapter, it is immaterial whether a person who works on a transport system does so in the course of his employment, under a contract for services, voluntarily or otherwise.
- (4) For the purposes of this Chapter, a person does not provide a specimen of breath for a breath test or for analysis unless the specimen—
 - (a) is sufficient to enable the test or the analysis to be carried out, and
 - (b) is provided in such a way as to enable the objective of the test or analysis to be satisfactorily achieved.
- (5) For the purposes of this Chapter, a person provides a specimen of blood if and only if he consents to its being taken by a medical practitioner and it is so taken.
- (6) The power to make regulations under subsection (2) above shall be exercisable by statutory instrument; and no such regulations shall be made unless a draft of the instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

39 Amendment of scope of offences involving drink or drugs under Road Traffic Act 1988

The following section shall be inserted in the Road Traffic Act 1988 after section 192—

“192A Tramcars and other guided vehicles: drink and drugs

- (1) Sections 4 to 11 of this Act shall not apply (to the extent that apart from this subsection they would) to vehicles on any transport system to which Chapter I of Part II of the Transport and Works Act 1992 (offences involving drink or drugs on railways, tramways and certain other guided transport systems) applies.
- (2) Subject to subsection (1) above, the Secretary of State may by regulations provide that sections 4 to 11 of this Act shall apply to vehicles on a system of guided transport specified in the regulations with such modifications as he considers necessary or expedient.
- (3) Regulations under subsection (2) above may make different provision for different cases.
- (4) In this section—

“guided transport” means transport by vehicles guided by means external to the vehicles (whether or not the vehicles are also capable of being operated in some other way), and

“vehicle” includes mobile traction unit.”

40 Consequential amendment

In section 17 of the Railway Regulation Act 1842 (punishment of persons employed on railways guilty of misconduct) the words “who shall be found drunk while so employed upon the said railway” shall be omitted.

CHAPTER II**OTHER SAFETY PROVISIONS***General***41 Approval of works, plant and equipment**

- (1) For the purpose of securing the safe operation of railways, tramways, trolley vehicle systems and prescribed systems of guided transport, the Secretary of State may make regulations requiring that his approval be obtained before—
 - (a) new works, plant or equipment are first brought into use, or
 - (b) works, plant or equipment are first brought into use after alterations have been made to them.
- (2) Regulations under this section—
 - (a) shall prescribe the cases in which approval is required and the procedure for obtaining it;
 - (b) may include provision as to the time when works, plant or equipment are to be treated as first brought into use, including provision for disregarding periods of testing and other periods of use before sufficient information is available for a decision to be made on an application for approval;
 - (c) may include provision prohibiting the giving of false information to the Secretary of State.
- (3) Regulations under this section may make different provision for different cases, and may include provision authorising the Secretary of State—
 - (a) to dispense (conditionally or unconditionally) with compliance with regulations that would otherwise apply, or
 - (b) to require compliance with regulations that would not otherwise apply, either in the case of any particular works, plant, equipment or alterations, or in the case of works, plant, equipment or alterations of such descriptions as he may determine.
- (4) Regulations under this section may provide that any person who without reasonable cause contravenes any specified provision of the regulations, or does so in specified circumstances, shall be guilty of an offence under this section.
- (5) 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 shall be 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) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) In this section—

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

“equipment” includes vehicles;

“prescribed systems of guided transport” means systems using a mode of guided transport prescribed by regulations under this section.

- (8) The power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

42 Inspectors

- (1) The functions of inspectors appointed under section 3 of the Regulation of Railways Act 1871 shall extend not only to railways (as defined by section 2 of that Act) but also to other railways and tramways, to trolley vehicle systems and to any system using a mode of guided transport prescribed by regulations under section 41 above; and in any enactment relating to those functions—
- (a) references to railways or matters relating to railways shall be construed accordingly, and
 - (b) references to a company working a railway shall have effect as references to an operator of a railway, tramway, trolley vehicle system or system using a mode of guided transport prescribed by such regulations.
- (2) In section 3 of the Regulation of Railways Act 1871, the proviso (which prohibits an inspector from interfering in the affairs of a company) shall cease to have effect.

43 Accidents etc

- (1) The Secretary of State may make regulations requiring the reporting to him of—
- (a) accidents involving death or personal injury, and
 - (b) circumstances involving a danger of death or personal injury,
- which occur in the operation of railways, tramways, trolley vehicle systems and systems using a mode of guided transport prescribed by the regulations.
- (2) Regulations under this section shall prescribe the cases in which reports are required, the persons required to make them, the time and manner in which they are to be made, and the particulars to be included in them.
- (3) Regulations under this section may make different provision for different cases, and may include provision authorising the Secretary of State—
- (a) to dispense with compliance with any provision of the regulations that would otherwise apply, or
 - (b) to require compliance with any provision that would not otherwise apply, in any case where he considers it appropriate to do so.
- (4) A person who, without reasonable excuse, fails to make a report as required by regulations under this section shall be guilty of an offence.
- (5) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (6) The power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

44 Accidents etc: consequential amendments

- (1) Section 6 of the Regulation of Railways Act 1871 (which is superseded by section 43 above) shall cease to have effect.
- (2) In section 7 of that Act (inquiries into accidents etc)—
 - (a) for the words “this Act” (in the words preceding the paragraphs) there shall be substituted the words “regulations under section 43 of the Transport and Works Act 1992”;
 - (b) after paragraph (4) there shall be added—

“In this section any reference to an accident includes a reference to circumstances involving a danger of death or personal injury.”
- (3) In section 8 of that Act (appointment of assessor to coroner) for the words “of this Act” there shall be substituted the words “of regulations under section 43 of the Transport and Works Act 1992”.

45 Directions limiting speeds and loads

- (1) The Secretary of State may give a direction under this section to any person carrying on an undertaking which includes the provision of transport services on a railway, tramway or system using any other mode of guided transport.
- (2) A direction under this section may impose—
 - (a) maximum speeds at which vehicles in use on the system may travel, and
 - (b) maximum weights that may be transmitted to the rails (or other structures which support vehicles in use on the system) by any one pair of wheels, or by such other parts of the vehicles as may be specified in the direction.
- (3) Directions under this section may make different provision for different vehicles, different parts of the system, or otherwise for different circumstances.
- (4) Before giving a direction under this section, the Secretary of State shall consult the person to whom he proposes to give it.
- (5) If a direction under this section is contravened in the course of the provision of transport services by the person to whom the direction was given, that person shall be guilty of an offence.
- (6) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

46 Directions requiring insurance

- (1) The Secretary of State may give a direction under this section to an operator of a railway, tramway, trolley vehicle system or system using any other mode of guided transport.
- (2) A direction under this section may require the person to whom it is given to ensure that there are at all times in force such policies of insurance against liability in respect of death or personal injury as comply with the requirements of the direction.
- (3) Before giving a direction under this section, the Secretary of State shall consult the person to whom he proposes to give it.

- (4) If a direction under this section is contravened, the person to whom the direction was given shall be guilty of an offence.
- (5) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Rail crossings

47 Stopping up and diversion of crossings

- (1) Schedule 2 to this Act (which amends the Highways Act 1980 so as to provide for the stopping up or diversion of footpaths and bridleways crossing railways and tramways) shall have effect.
- (2) Where a public right of way over a footpath or bridleway where it crosses a railway or tramway is extinguished by an order under sections 118 to 119A of the Highways Act 1980, any obligation (however imposed) to maintain the crossing for the benefit of the public shall cease to have effect.

48 Footpaths and bridleways over railways

- (1) This section applies where—
 - (a) a public right of way over a footpath or bridleway crosses a railway or tramway otherwise than by a tunnel or bridge,
 - (b) the operator of the railway or tramway has made a closure or diversion application in respect of the crossing, and
 - (c) in the opinion of the Secretary of State the crossing constitutes a danger to members of the public using it or likely to use it.
- (2) The Secretary of State may by order require the operator to provide a tunnel or a bridge, or to improve an existing tunnel or bridge, to carry the path or way over or under the railway or tramway at or reasonably near to the crossing to which the closure or diversion application relates.
- (3) An order under this section may include particulars as to the tunnel or bridge which is to be provided or as to the improvements which are to be made.
- (4) The Secretary of State shall not make an order under this section after the end of the period of two years beginning with the day on which the closure or diversion application is made, and not less than two months before making an order he shall give written notice of his proposal to make the order to the operator and to each local authority in whose area the crossing (or any proposed new crossing) is situated.
- (5) A notice given under subsection (4) above must be accompanied by a draft of the proposed order under this section; and any order eventually made may include modifications of the draft.
- (6) An operator shall not be regarded as in breach of a duty imposed by an order under this section if he has used his best endeavours to comply with the order.
- (7) Where an operator is required by an order under this section to provide or improve a bridge or tunnel, but is unable to do so because he does not have the powers or rights (including rights over land) needed for the purpose, he shall not be taken to have used

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

his best endeavours to comply with the order unless he has used his best endeavours to obtain those powers or rights (whether by means of an order under section 1 above or otherwise).

(8) In this section—

“bridleway” has the same meaning as in the Highways Act 1980;

“closure or diversion application” means—

(a) an application made under section 6 above, or

(b) a request made in accordance with section 120(3A)(b) of the Highways Act 1980,

for an order by virtue of which a public right of way would be extinguished or diverted;

“footpath” has the same meaning as in the Highways Act 1980;

“local authority” means a county council, a district council, a London borough council, the Common Council of the City of London, a parish or community council and a parish meeting of a parish not having a separate parish council;

“operator”, in relation to a railway or tramway, means any person carrying on an undertaking which includes maintaining the permanent way.

49 Securing of gates and barriers

(1) Section 75 of the Railways Clauses Consolidation Act 1845 and section 68 of the Railways Clauses Consolidation (Scotland) Act 1845 (which make it an offence for any person to fail to fasten gates) shall be amended as follows.

(2) After the word “gate” there shall be inserted the words “or to lower any barrier”.

(3) For the words “not exceeding” onwards there shall be substituted the words “not exceeding level 3 on the standard scale.”

50 Orders under Transport Act 1968

—Section 124 of the Transport Act 1968 (which gives the Secretary of State power to impose obligations in respect of level crossings), in its application in England and Wales, shall cease to have effect.

51 Amendment of Level Crossings Act 1983.

—In section 1 of the Level Crossings Act 1983 (safety arrangements at level crossings) in subsection (11), for the definition of “operator” there shall be substituted—

“ “operator”, in relation to a crossing, means any person carrying on an undertaking which includes maintaining the permanent way;”.

Signs and barriers at private crossings

52 Placing of signs and barriers

(1) Subject to any directions under subsection (2) below, the operator of a railway or tramway which is crossed in any place by a private road or path may cause or permit crossing signs or barriers of a character—

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

- (a) prescribed in regulations made by the Secretary of State, or
 - (b) otherwise authorised by him,
- to be placed on or near the road or path near the crossing.
- (2) The Secretary of State may give directions to the operator of a railway or tramway which is crossed in any place by a private road or path for the placing of crossing signs or barriers of a character specified in the directions on or near the road or path near the crossing.
- (3) For the purposes of this section—
- (a) the size and colour of a crossing sign and whether or not it is illuminated (by lighting or the use of reflectors or reflecting material), and
 - (b) the nature of the warnings, information, requirements, restrictions or prohibitions conveyed by it,
- shall be regarded as part of the sign's character.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Regulations under this section may make different provision for different cases.

53 Rights to enter land

- (1) The operator of a railway or tramway shall not enter or do anything on any land for the purpose of exercising his powers under section 52(1) above except—
- (a) with the consent of every owner of the land, or
 - (b) in accordance with an authorisation given by the Secretary of State under subsection (4) below.
- (2) Where the operator of a railway or tramway proposes to enter or do anything on any land for the purpose of exercising his powers under section 52(1) above but has not obtained the consent of every owner of the land to his proposals (after making reasonable efforts to do so), he shall serve on every owner whose consent he has not obtained a notice giving details of the proposals and stating that—
- (a) he is referring the proposals to the Secretary of State for a decision as to whether or not they should be carried out, and
 - (b) in making that decision, the Secretary of State will consider any written representations made to him by the owner within the period of forty-two days beginning with the date of the notice.
- (3) Where subsection (2) above applies, the operator shall—
- (a) submit a copy of every notice served by him under that subsection to the Secretary of State, and
 - (b) provide the Secretary of State with such further information about the proposals as he may require.
- (4) Where proposals are referred to the Secretary of State under this section, he shall after the expiry of the period of forty-two days beginning with the date of the latest notice served under subsection (2) above and after considering any representations made to him in accordance with that subsection—
- (a) authorise the operator to carry out the proposals (either without modifications or with such modifications as the Secretary of State may specify), or

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

- (b) direct him not to carry out the proposals,
and shall serve notice of his decision on every owner served with a notice under subsection (2) above.
- (5) Any authorisation under subsection (4) above may be given subject to such conditions as the Secretary of State may specify, including conditions that compensation shall be payable by the operator.
- (6) Any dispute as to the amount of any compensation payable by virtue of subsection (5) above shall be referred to and determined by the Lands Tribunal or, in relation to land in Scotland, the Lands Tribunal for Scotland.
- (7) The operator of a railway or tramway may enter any land and do anything necessary on it (without the consent of the owners of the land) for the purpose of—
 - (a) complying with any directions given under section 52(2) above, or
 - (b) maintaining a crossing sign or barrier lawfully placed on or near a private road or path near a place where it crosses the railway or tramway.
- (8) The Secretary of State may enter any land and do anything necessary on it (without the consent of the owners of the land) for the purpose of exercising his powers under section 54(1) below.
- (9) In this section “owner”—
 - (a) in relation to any land in England and Wales, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple (whether in possession or reversion) and includes also a person holding, or entitled to the rents and profits of, the land under a tenancy, other than a tenancy for a month or any period less than a month;
 - (b) in relation to any land in Scotland, means a person who, under the Land Clauses Acts, would be entitled to sell and convey land to the promoters of an undertaking and includes also a person who is or would be entitled to receive the rent of the land under a tenancy, other than a tenancy for a month or any period less than a month.

54 Default powers of Secretary of State

- (1) If the operator of a railway or tramway fails—
 - (a) to comply with a direction given under section 52(2) above, or
 - (b) to maintain a crossing sign or barrier lawfully placed on or near a private road or path near a place where it crosses the railway or tramway,
 the Secretary of State may himself carry out the work required by the direction or necessary to maintain the crossing sign or barrier.
- (2) Any expenses incurred by the Secretary of State in doing so shall be recoverable by him from the operator.
- (3) A direction given under section 52(2) above—
 - (a) if relating to a private road or path in England and Wales, shall be enforceable on the application of the Secretary of State by an order of mandamus;
 - (b) if relating to a private road or path in Scotland, shall be enforceable by order of the Court of Session on an application by the Lord Advocate under section 45 of the Court of Session Act 1988.

55 Offence of failing to comply with sign

- (1) A person who fails to comply with any requirement, restriction or prohibition conveyed by a crossing sign lawfully placed on or near a private road or path near a place where it crosses a railway or tramway shall be guilty of an offence.
- (2) In any proceedings for an offence under this section, a crossing sign on or near a private road or path near a place where it crosses a railway or tramway shall be taken to have been lawfully placed there unless the contrary is proved.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

56 Interpretation of sections 52 to 55

- (1) In sections 52 to 55 above (and this section)—
 - “barrier” includes gate;
 - “cross” means cross otherwise than by tunnel or bridge;
 - “crossing sign”, in relation to a private road or path and any place where it crosses a railway or tramway, means—
 - (a) any object or device (whether fixed or portable), or
 - (b) any line or mark on the road or path,for conveying to users of the road or path warnings, information, requirements, restrictions or prohibitions relating to the crossing;
 - “fail” includes refuse;
 - “lawfully placed” means placed in accordance with sections 52 to 54 above;
 - “maintain” includes repair and replace;
 - “place” includes erect and (in relation to a sign) display;
 - “private road or path” means any length of road or path to which the public does not have access.
- (2) In the case of a railway or tramway which has more than one operator, the powers conferred by sections 52 to 54 above shall only be exercisable by or in relation to the operator carrying on the undertaking which includes maintaining the permanent way.

CHAPTER III

SUPPLEMENTARY

57 Duty to consult

It shall be the duty of the Secretary of State, before he makes regulations under section 32, 38(2), 41 or 43 above, to consult such organisations as he considers to be representative of persons who will be affected by the regulations.

58 Prosecutions

No proceedings shall be instituted in England and Wales in respect of an offence under this Part except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

59 Offences by bodies corporate etc

- (1) Where an offence under this Part committed by a body corporate is committed with the consent or connivance of, or is attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity, he as well as the body corporate shall be guilty of the offence.
- (2) In subsection (1) above “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (3) Where, in Scotland, an offence under this Part committed by a partnership or by an unincorporated association other than a partnership is committed with the consent or connivance of, or is attributable to any neglect on the part of, a partner in the partnership or (as the case may be) a person concerned in the management or control of the association, he, as well as the partnership or association, shall be guilty of the offence.

PART III

MISCELLANEOUS AND GENERAL

Tramways

60 Powers of leasing

- (1) A person authorised by or under an enactment to operate a tramway (“the lessor”) may with the consent of the Secretary of State grant to another person (“the lessee”), for a period agreed between the lessor and the lessee, the right to operate the tramway (or any part of it) and such related statutory rights as may be so agreed.
- (2) The terms of any agreement made by virtue of subsection (1) above shall be subject to the approval of the Secretary of State.
- (3) Where an agreement is made by virtue of subsection (1) above, references in any enactment to the lessor shall, if and to the extent that the agreement so provides, have effect as references to the lessee.
- (4) This section shall apply only to tramways in operation at the passing of this Act.

61 Amendment of Public Passenger Vehicles Act 1981

- (1) The Public Passenger Vehicles Act 1981 shall be amended as follows.
- (2) In section 24 (regulation of conduct of drivers, inspectors and conductors)—
 - (a) at the end of subsection (1) there shall be added the words “and
 - (c) drivers, inspectors and conductors of tramcars”;
 - (b) in subsection (2), after the word “driver” there shall be inserted the words “of a public service vehicle”.
- (3) In section 25(1) (regulation of conduct of passengers) after the words “public service vehicles” there shall be inserted the words “or tramcars”, and after the words “public service vehicle” wherever they occur there shall be inserted the words “or tramcar”.

- (4) In section 27(1) (returns to be provided by persons operating public service vehicles) after the words “public service vehicles” there shall be inserted the words “or tramcars”.
- (5) In section 60(1) (general power to make regulations)—
 - (a) at the end of paragraph (j) (carriage of luggage and goods on public service vehicles) there shall be added the words “or tramcars”;
 - (b) in paragraph (k) (custody of property left on a public service vehicle) after the word “vehicle” there shall be inserted the words “or tramcar”.
- (6) After subsection (1A) of section 60 there shall be inserted—

“(1B) Regulations made under any provision of this Act and applying to tramcars may amend or exclude any provision of an Act or instrument of local application whose subject-matter is the same as that of the regulations.”

62 Exclusion of hackney carriage legislation

- (1) In section 4 of the Metropolitan Public Carriage Act 1869 (interpretation) in the definition of “hackney carriage”, for the words “not a stage carriage” there shall be substituted the words “neither a stage carriage nor a tramcar”.
- (2) In section 4 of the London Cab Act 1968 (display of signs etc) in subsection (5) in the definition of “private hire-car”, after the words “public service vehicle” there shall be inserted the words “or tramcar”.
- (3) In section 80 of the Local Government (Miscellaneous Provisions) Act 1976 (interpretation) in subsection (1) in the definition of “private hire vehicle”, after the words “London cab” there shall be inserted the words “or tramcar”.

Harbours

63 Harbours

- (1) The Harbours Act 1964 shall have effect with the amendments set out in Schedule 3 to this Act.
- (2) In section 37 of the Docks and Harbours Act 1966 (which gives to harbour authorities powers to acquire harbour businesses, and to subscribe for or acquire securities of bodies engaged, or to be engaged, in harbour businesses)—
 - (a) in subsection (1), for the words “harbour operations” and the words “such operations” there shall be substituted the words “activities relating to harbours”;
 - (b) in subsection (2), for the words “harbour operations” there shall be substituted the words “activities relating to harbours”;
 - (c) after subsection (2) there shall be inserted—

“(2A) Nothing in subsection (2) above shall be construed as authorising a harbour authority to delegate to another body any function that it could not delegate apart from that subsection.”;
 - (d) subsection (3) shall be omitted.

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

- (3) In section 35 of the Coast Protection Act 1949 (which excepts certain operations from the requirement to obtain the Secretary of State’s consent under section 34) in subsection (1) there shall be added after paragraph (h)—
- “(i) any operations authorised by an order under section 14 or 16 of the Harbours Act 1964.”

Miscellaneous

64 Maintenance of footpaths and bridleways

- (1) Section 36 of the Highways Act 1980 (highways maintainable at public expense) shall be amended as follows.
- (2) In subsection (2), at the end of paragraph (c), the word “and” shall be omitted.
- (3) After paragraph (d) of subsection (2), there shall be added—
- “(e) a highway, being a footpath or bridleway, created in consequence of a rail crossing diversion order, or of an order made under section 14 or 16 of the Harbours Act 1964, or of an order made under section 1 or 3 of the Transport and Works Act 1992.”
- (4) After subsection (3) there shall be inserted—
- “(3A) Paragraph (e) of subsection (2) above shall not apply to a footpath or bridleway, or to any part of a footpath or bridleway, which by virtue of an order of a kind referred to in that subsection is maintainable otherwise than at the public expense.”

65 Certain enactments to cease to have effect

- (1) The following enactments shall cease to have effect—
- (a) the General Pier and Harbour Act 1861;
- (b) in the Tramways Act 1870—
- section 3 (except as incorporated in, or otherwise applied by, any Act of Parliament or Provisional Order),
- sections 4 to 21,
- sections 22 to 24 (except as incorporated in, or otherwise applied by, any Act of Parliament or Provisional Order),
- in section 25, the words from the beginning to “surface of the road” (except as incorporated in, or otherwise applied by, any Act of Parliament or Provisional Order),
- in section 25, the words “and shall not be opened” onwards,
- sections 26 to 40 (except as incorporated in, or otherwise applied by, any Act of Parliament or Provisional Order),
- sections 41 and 42,
- sections 43 to 47 (except as incorporated in, or otherwise applied by, any Act of Parliament or Provisional Order),
- section 48,
- sections 49 to 64 (except as incorporated in, or otherwise applied by, any Act of Parliament or Provisional Order),

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

- Parts I and II of Schedule A (except as incorporated in, or otherwise applied by, any Act of Parliament or Provisional Order),
Part III of Schedule A,
Schedule B, and
Schedule C (except as incorporated in, or otherwise applied by, any Act of Parliament or Provisional Order);
- (c) the Military Tramways Act 1887;
 - (d) the Railways (Electrical Power) Act 1903;
 - (e) the Fishery Harbours Act 1915;
 - (f) section 220(1)(a) of the Insolvency Act 1986.
- (2) In the Coast Protection Act 1949, in sections 2(8)(a) and 17(8)(b), for the words “to which the Fishery Harbours Act 1915 applies” there shall be substituted the words “which is a fishery harbour for the purposes of section 21 of the Sea Fish Industry Act 1951”.

General

66 Service of notices

- (1) A notice or other document required or authorised to be served for the purposes of this Act may be served by post.
- (2) Where the person on whom a notice or other document to be served for the purposes of this Act is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.
- (3) For the purposes of section 7 of the Interpretation Act 1978 as it applies for the purposes of this section, the proper address of any person in relation to the service on him of a notice or document under subsection (1) above is, if he has given an address for service, that address, and otherwise—
 - (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body;
 - (b) in any other case, his last known address at the time of service.
- (4) Where for the purposes of this Act a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable inquiry, the notice may be served by—
 - (a) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it), and
 - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on the land.
- (5) This section shall not be taken to exclude the employment of any method of service not expressly provided for by it.
- (6) This section shall not apply to anything required or authorised to be served under section 35 above.

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

67 Interpretation

(1) In this Act, except where the context otherwise requires—

“carriageway” has the same meaning as in the Highways Act 1980, or in Scotland the Roads (Scotland) Act 1984;

“guided transport” means transport by vehicles guided by means external to the vehicles (whether or not the vehicles are also capable of being operated in some other way);

“inland waterway” includes both natural and artificial waterways, and waterways within parts of the sea that are in Great Britain, but not any waterway managed or maintained by a person who is a harbour authority (within the meaning of the Harbours Act 1964) in relation to the waterway;

“operator”, in relation to a transport system, means any person carrying on an undertaking which includes the system or any part of it or the provision of transport services on the system;

“railway” means a system of transport employing parallel rails which—

- (a) provide support and guidance for vehicles carried on flanged wheels, and
- (b) form a track which either is of a gauge of at least 350 millimetres or crosses a carriageway (whether or not on the same level),

but does not include a tramway;

“street” means—

- (a) in England and Wales, a street within the meaning of section 48 of the New Roads and Street Works Act 1991, together with land on the verge of a street or between two carriageways;
- (b) in Scotland, a road within the meaning of section 107 of the New Roads and Street Works Act 1991, together with land on the verge of a road or between two carriageways;

“tramway” means a system of transport used wholly or mainly for the carriage of passengers and employing parallel rails which—

- (a) provide support and guidance for vehicles carried on flanged wheels, and
- (b) are laid wholly or mainly along a street or in any other place to which the public has access (including a place to which the public has access only on making a payment);

“trolley vehicle system” means a system of transport by vehicles constructed or adapted for use on roads without rails under electric power transmitted to them by overhead wires (whether or not there is in addition a source of power on board the vehicles);

“vehicle” includes mobile traction unit.

(2) References in this Act to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.

68 Repeals

(1) The enactments mentioned in Schedule 4 to this Act (which include spent enactments) are hereby repealed to the extent specified in the third column of that Schedule.

(2) The repeal by this Act of the Notice of Accidents Act 1894 shall not affect section 75 of the Civil Aviation Act 1982 (by virtue of which regulations may include provisions applying section 3 of the 1894 Act).

69 Expenses

There shall be paid out of money provided by Parliament—

- (a) any expenses incurred by the Secretary of State under this Act, and
- (b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

70 Commencement

- (1) The preceding sections of, and the Schedules to, this Act shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument; and different days may be appointed for different purposes.
- (2) An order under subsection (1) above may include such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient.

71 Extent

This Act shall not extend to Northern Ireland.

72 Short title

This Act may be cited as the Transport and Works Act 1992.