



Highways Act 1980

1980 CHAPTER 66

PART IV

MAINTENANCE OF HIGHWAYS

Highways maintainable at public expense

36 Highways maintainable at public expense.

- (1) All such highways as immediately before the commencement of this Act were highways maintainable at the public expense for the purposes of the ^{M1}Highways Act 1959 continue to be so maintainable (subject to this section and to any order of a magistrates' court under section 47 below) for the purposes of this Act.
- (2) Without prejudice to any other enactment (whether contained in this Act or not) whereby a highway may become for the purposes of this Act a highway maintainable at the public expense, and subject to this section and section 232(7) below, and to any order of a magistrates' court under section 47 below, the following highways (not falling within subsection (1) above) shall for the purposes of this Act be highways maintainable at the public expense—
 - (a) a highway constructed by a highway authority, otherwise than on behalf of some other person who is not a highway authority;
 - (b) a highway constructed by a council within their own area under [^{F1}Part II of the Housing Act 1985], other than one in respect of which the local highway authority are satisfied that it has not been properly constructed, and a highway constructed by a council outside their own area under [^{F1}the said Part II], being, in the latter case, a highway the liability to maintain which is, by virtue of [^{F1}the said Part II], vested in the council who are the local highway authority for the area in which the highway is situated;
 - (c) a highway that is a trunk road or a special road, ^{F2}. . .
 - (d) a highway, being a footpath or bridleway, created in consequence of a public path creation order or a public path diversion order or in consequence of an order made by the Minister of Transport or the Secretary of State under

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- [^{F3}section 247 of the Town and Country Planning Act 1990 or by a competent authority under section 257 of that Act], or dedicated in pursuance of a public path creation agreement.
- [^{F4}(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.]
- [^{F5}(f) a highway, being a footpath, a bridleway, a restricted byway or a way over which the public have a right of way for vehicular and all other kinds of traffic, created in consequence of a special diversion order or an SSSI diversion order.]
- (3) Paragraph (c) of subsection (2) above is not to be construed as referring to a part of a trunk road or special road consisting of a bridge or other part which a person is liable to maintain under a charter or special enactment, or by reason of tenure, enclosure or prescription.
- [^{F6}(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.]
- (4) Subject to subsection (5) below, where there occurs any event on the occurrence of which, under any rule of law relating to the duty of maintaining a highway by reason of tenure, enclosure or prescription, a highway would, but for the enactment which abrogated the former rule of law under which a duty of maintaining highways fell on the inhabitants at large (section 38(1) of the ^{M2}Highways Act 1959) or any other enactment, become, or cease to be, maintainable by the inhabitants at large of any area, the highway shall become, or cease to be, a highway which for the purposes of this Act is a highway maintainable at the public expense.
- (5) A highway shall not by virtue of subsection (4) above become a highway which for the purposes of this Act is a highway maintainable at the public expense unless either—
- (a) it was a highway before 31st August 1835; or
 - (b) it became a highway after that date and has at some time been maintainable by the inhabitants at large of any area or a highway maintainable at the public expense;
- and a highway shall not by virtue of that subsection cease to be a highway maintainable at the public expense if it is a highway which under any rule of law would become a highway maintainable by reason of enclosure but is prevented from becoming such a highway by section 51 below.
- (6) The council of every county [^{F7}, metropolitan district] and London borough and the Common Council shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense.
- (7) Every list made under subsection (6) above shall be kept deposited at the offices of the council by whom it was made and may be inspected by any person free of charge at all reasonable hours and in the case of a list made by the council of a county [^{F8}in England], the county council shall supply to the council of each district in the county an up to date list of the streets within the area of the district that are highways maintainable at the public expense, and the list so supplied shall be kept deposited at the office of the district council and may be inspected by any person free of charge at all reasonable hours.

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Textual Amendments

- F1** Words substituted by [Housing \(Consequential Provisions\) Act 1985 \(c. 71, SIF 61\)](#), s. 4, [Sch. 2 para. 47](#)
- F2** Word in s. 36(2) at the end of para. (c) repealed (31.1.1993) by [Transport and Works Act 1992 \(c. 42\)](#), ss. 64(2), 68(1), [Sch. 4 Pt. I](#); S.I. 1992/3144, art. 3, [Sch.](#)
- F3** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, [Sch. 2 para. 45\(3\)](#)
- F4** S. 36(2)(e) added (31.1.1993) by [Transport and Works Act 1992 \(c. 42\)](#), s. 64(3); S. I. 1992/3144, art. 3, [Sch.](#)
- F5** S. 36(2)(f) inserted (12.2.2003 for E. for certain purposes and 21.5.2007 in so far as not already in force, 15.7.2005 for W. for certain purposes and otherwise *prosp.*) by 2000 c. 37, ss. 57, 103(3), [Sch. 6 Pt. I para. 5](#); S.I. 2003/272, [art. 2\(a\)\(d\)](#); S.I. 2005/1314, [art. 3\(a\)](#); S.I. 2007/1493, [art. 2](#)
- F6** S. 36(3A) inserted (31.1.1993) by [Transport and Works Act 1992 \(c. 42\)](#), s. 64(4); S.I. 1992/3144, art. 3, [Sch.](#)
- F7** Words inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 7](#)
- F8** Words in s. 36(7) inserted (1.4.1996) by 1994 c. 19, s. 22(1), [Sch. 7 Pt. I para. 4](#) (with s. 54(7), [Sch. 17 paras. 22\(1\), 23\(2\)](#)); S.I. 1996/396, art. 3, [Sch. 1](#).

Modifications etc. (not altering text)

- C1** S. 36 applied (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), arts. 1(2)(4), 2, [Sch. Pt. I](#); S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2

Marginal Citations

- M1** 1959 c. 25.
M2 1959 c. 25.

Methods whereby highways may become maintainable at public expense

37 Provisions whereby highway created by dedication may become maintainable at public expense.

- (1) A person who proposes to dedicate a way as a highway and who desires that the proposed highway shall become maintainable at the public expense by virtue of this section shall give notice of the proposal, not less than 3 months before the date of the proposed dedication, to the council who would, if the way were a highway, be the highway authority therefor, describing the location and width of the proposed highway and the nature of the proposed dedication.
- (2) If the council consider that the proposed highway will not be of sufficient utility to the public to justify its being maintained at the public expense, they may make a complaint to a magistrates' court for an order to that effect.
- (3) If the council certify that the way has been dedicated in accordance with the terms of the notice and has been made up in a satisfactory manner, and if—
- (a) the person by whom the way was dedicated or his successor keeps it in repair for a period of 12 months from the date of the council's certificate, and
- (b) the way has been used as a highway during that period,
- then, unless an order has been made in relation to the highway under subsection (2) above, the highway shall, at the expiration of the period specified in paragraph (a)

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above, become for the purposes of this Act a highway maintainable at the public expense.

- (4) If the council, on being requested by the person by whom the way was dedicated or his successor to issue a certificate under subsection (3) above, refuse to issue the certificate, that person may appeal to a magistrates' court against the refusal, and the court, if satisfied that the certificate ought to have been issued, may make an order to the effect that subsection (3) above shall apply as if the certificate had been issued on a date specified in the order.
- (5) Where a certificate has been issued by a council under subsection (3) above, or an order has been made under subsection (4) above, the certificate or a copy of the order, as the case may be, shall be deposited with the proper officer of the council and may be inspected by any person free of charge at all reasonable hours.

Modifications etc. (not altering text)

- C2 S. 30 modified (28.4.2003) by [The Network Rail \(West Coast Main Line\) Order 2003 \(S.I. 2003/1075\)](#), [art. 8\(11\)](#)

38 Power of highway authorities to adopt by agreement.

- (1) Subject to subsection (2) below, where any person is liable under a special enactment or by reason of tenure, enclosure or prescription to maintain a highway, the Minister, in the case of a trunk road, or a local highway authority, in any other case, may agree with that person to undertake the maintenance of that highway; and where an agreement is made under this subsection the highway to which the agreement relates shall, on such date as may be specified in the agreement, become for the purposes of this Act a highway maintainable at the public expense and the liability of that person to maintain the highway shall be extinguished.
- (2) A local highway authority shall not have power to make an agreement under subsection (1) above with respect to a highway with respect to which they or any other highway authority have power to make an agreement under Part V or Part XII of this Act.
- [^{F9}(3) A local highway authority may agree with any person to undertake the maintenance of a way—
 - (a) which that person is willing and has the necessary power to dedicate as a highway, or
 - (b) which is to be constructed by that person, or by a highway authority on his behalf, and which he proposes to dedicate as a highway;
 and where an agreement is made under this subsection the way to which the agreement relates shall, on such date as may be specified in the agreement, become for the purposes of this Act a highway maintainable at the public expense.
- (3A) The Minister may agree with any person to undertake the maintenance of a road—
 - (a) which that person is willing and has the necessary power to dedicate as a highway, or
 - (b) which is to be constructed by that person, or by a highway authority on his behalf, and which he proposes to dedicate as a highway,

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and which the Minister proposes should become a trunk road; and where an agreement is made under this subsection the road shall become for the purposes of this Act a highway maintainable at the public expense on the date on which an order comes into force under section 10 directing that the road become a trunk road or, if later, the date on which the road is opened for the purposes of through traffic.]

- (4) Without prejudice to the provisions of subsection (3) above and subject to the following provisions of this section, a local highway authority may, by agreement with railway, canal or tramway undertakers, undertake to maintain as part of a highway maintainable at the public expense a bridge or viaduct which carries the railway, canal or tramway of the undertakers over such a highway or which is intended to carry such a railway, canal or tramway over such a highway and is to be constructed by those undertakers or by the highway authority on their behalf.
- (5)^{F10}
- (6) An agreement under this section may contain such provisions as to the dedication as a highway of any road or way to which the agreement relates, the bearing of the expenses of the construction, maintenance or improvement of any highway, road, bridge or viaduct to which the agreement relates and other relevant matters as the authority making the agreement think fit.

Textual Amendments

- F9** S. 38(3)(3A) substituted (01.11.1991) for s. 38(3) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), [s. 22\(1\)](#); S.I. 1991/2288, art. 3, [Sch.](#)
- F10** S. 38(5) repealed by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 102, [Sch. 17](#)

39^{F11}

Textual Amendments

- F11** S. 39 repealed by [Statute Law \(Repeals\) Act 1986 \(c. 12\)](#), s. 1(1), [Sch. 1 Pt. II](#)

40 Adoption of private streets.

The foregoing provisions of this Part of this Act are without prejudice to the power or, as the case may be, the duty of the council of a county [^{F12}metropolitan district] or London borough, or the Common Council, to adopt private streets as highways maintainable at the public expense under Part XI of this Act.

Textual Amendments

- F12** Words inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 7](#)

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Maintenance of highways maintainable at public expense

41 Duty to maintain highways maintainable at public expense.

- (1) The authority who are for the time being the highway authority for a highway maintainable at the public expense are under a duty, subject to subsections (2) and (4) below, to maintain the highway.
- (2) An order made by the Minister under section 10 above directing that a highway proposed to be constructed by him shall become a trunk road may, as regards—
 - (a) a highway to which this subsection applies which becomes a trunk road by virtue of the order, or
 - (b) a part of a highway to which this subsection applies, being a part which crosses the route of the highway to be so constructed,
 contain such a direction as is specified in subsection (4) below.
- (3) Subsection (2) above applies to—
 - (a) any highway maintainable at the public expense by a local highway authority, and
 - (b) any highway other than a highway falling within paragraph (a) above or a highway maintainable under a special enactment or by reason of tenure, enclosure or prescription.
- (4) The direction referred to in subsection (2) above is—
 - (a) in a case where the highway or part of a highway falls within subsection (3) (a) above, a direction that, notwithstanding subsection (1) above, it shall be maintained by the highway authority for that highway until such date, not being later than the date on which the new route is opened for the purposes of through traffic, as may be specified in a notice given by the Minister to that authority; and
 - (b) in a case where the highway or part of a highway falls within subsection (3) (b) above, a direction that, notwithstanding subsection (1) above, the Minister is to be under no duty to maintain it until such date as aforesaid.
- (5) Where an order under section 10 above contains a direction made in pursuance of subsections (2) to (4) above, then, until the date specified in the notice given by the Minister pursuant to the direction, in accordance with subsection (4) above, the powers of a highway authority under sections 97, 98, 270 and 301 below as respects the highway to which the direction relates are exercisable by the highway authority to whom the notice is required to be given, as well as by the Minister.

42 Power of district councils to maintain certain highways.

- (1) Subject to Part I of Schedule 7 to this Act, the council of a [^{F13}non-metropolitan] district may undertake the maintenance of any eligible highway in the district which is a highway maintainable at the public expense.
- (2) For the purposes of subsection (1) above the following are eligible highways:—
 - (a) footpaths,
 - (b) bridleways, and
 - (c) roads (referred to in Schedule 7 to this Act as “urban roads”) which are neither trunk roads nor classified roads and which—

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- (i) are restricted roads for the purposes of [^{F14}section 81 of the Road Traffic Regulation Act 1984] (30 m.p.h. speed limit), or
 - (ii) are subject to an order [^{F15}made by virtue of section 84(1)(a) of that Act imposing a speed limit] not exceeding 40 m.p.h., or
 - (iii) are otherwise streets in an urban area.
- (3) The county council who are the highway authority for a highway which is for the time being maintained by a [^{F16}non-metropolitan] district council by virtue of this section shall reimburse to the district council any expenses incurred by them in carrying out on the highway works of maintenance necessary to secure that the duty to maintain the highway is performed, and Part II of Schedule 7 to this Act shall have effect for this purpose.

Textual Amendments

- F13** Word inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, **Sch. 4 para. 11**
- F14** Words substituted by [Road Traffic Regulation Act 1984 \(c. 27, SIF 107:1\)](#), s. 146, **Sch. 13 para. 40**
- F15** Words in s. 42(2)(c)(ii) substituted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), s. 48, **Sch 4 para.11**; [S.I. 1992/1286, art. 2](#), Sch.
- F16** Word inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, **Sch. 4 para. 11**

Modifications etc. (not altering text)

- C3** S. 42 applied (with modifications) (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2, **Sch. Pt. I**; [S.I. 2006/1172, art. 2](#); [S.I. 2006/1279, art. 2](#)

43 Power of parish and community councils to maintain footpaths and bridleways.

- (1) The council of a parish or community may undertake the maintenance of any footpath or bridleway within the parish or community which is, in either case, a highway maintainable at the public expense; but nothing in this subsection affects the duty of any highway authority or other person to maintain any such footpath or bridleway.
- (2) The highway authority for any footpath or bridleway which a parish or community council have power to maintain under subsection (1) above, and a [^{F17}non-metropolitan] district council for the time being maintaining any such footpath or bridleway by virtue of section 42 above, may undertake to defray the whole or part of any expenditure incurred by the parish or community council in maintaining the footpath or bridleway.
- (3) The power of a parish or community council under subsection (1) above is subject to the restrictions for the time being imposed by any enactment on their expenditure, but for the purposes of any enactment imposing such a restriction their expenditure is to be deemed not to include any expenditure falling to be defrayed by a highway authority or district council by virtue of subsection (2) above.

Textual Amendments

- F17** Word inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, **Sch. 4 para. 12**

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Modifications etc. (not altering text)

- C4 S. 43 applied (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2, [Sch. Pt. I](#); [S.I. 2006/1172](#), art. 2; [S.I. 2006/1279](#), art. 2

44 Person liable to maintain highway may agree to maintain publicly maintainable highway.

Where any person is liable under a special enactment or by reason of tenure, enclosure or prescription to maintain a highway, he may enter into an agreement with the highway authority for that highway for the maintenance by him of any highway maintainable at the public expense by the highway authority; but nothing in this section affects the duty of a highway authority to maintain a highway as respects which any such agreement is made.

45 Power to get materials for repair of publicly maintainable highways.

- (1) For the purpose of repairing highways maintainable at the public expense by them, a highway authority may exercise such powers with respect to the getting of materials as are mentioned in this section.
- (2) Subject to subsection (3) below, the authority may search for, dig, get and carry away gravel, sand, stone and other materials in and from any waste or common land (including the bed of any river or brook flowing through such land).
- (3) The authority—
 - (a) shall not in the exercise of their powers under subsection (2) above divert or interrupt the course of any river or brook, or dig or get materials out of any river or brook within 50 yards above or below a bridge, dam or weir;
 - (b) shall not in the exercise of those powers remove such quantity of stones or other materials from any sea beach as to cause damage by inundation or increased danger of encroachment by the sea; and
 - (c) shall not exercise those powers in any land forming part of a common to which section 20 of the ^{M3}Commons Act 1876 applies, except in accordance with that section.
- (4) Subject to subsection (5) below, the authority may gather and carry away stones lying upon any land in the [^{F18}non-metropolitan county, metropolitan district] or London borough within which the stones are to be used.
- (5) The authority—
 - (a) shall not exercise the powers conferred by subsection (4) above in a garden, yard, avenue to a house, lawn, park, paddock or inclosed plantation, or in an inclosed wood not exceeding 100 acres in extent;
 - (b) shall not in the case of any other inclosed land exercise those powers unless either they have obtained the consent of the owner and of the occupier of that land, or a magistrates' court has made an order authorising them to exercise those powers in the case of that land; and
 - (c) shall not in the exercise of those powers remove such quantity of stones or other materials from any sea beach as to cause damage by inundation or increased danger of encroachment by the sea.

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- (6) If the authority cannot get sufficient materials by the exercise of their powers under the foregoing provisions of this section, a magistrates' court may make an order authorising them to search for, dig, get and carry away materials in and from any inclosed land in the [^{F18}non-metropolitan county, metropolitan district] or London borough within which the materials are to be used, other than any such land as is mentioned in subsection (5)(a) above.
- (7) For the purpose of repairing a bridge maintainable at the public expense and so much of a highway so maintainable as is carried by the bridge or forms the approaches to the bridge up to 100 yards from each end of the bridge, the authority may take and carry away the rubbish or refuse stones from any quarry in the [^{F19}non-metropolitan county or metropolitan district] within which the materials are to be used or, if the materials are to be used in Greater London, from any quarry in Greater London.
- (8) Subject to subsection (9) below, for the purpose of repairing or reconstructing a bridge maintainable at the public expense, the authority may be authorised by an order of a magistrates' court to quarry stone from any quarry in the [^{F19}non-metropolitan county or metropolitan district] in which the bridge is or, if the bridge is in Greater London, from any quarry in Greater London.
- (9) No order shall be made under subsection (8) above in relation to a quarry which has not been worked at any time during the 3 years immediately preceding the date on which a complaint for such an order is made; and no stone shall be taken from a quarry situated in a garden, yard, avenue to a house, lawn, paddock or inclosed plantation, or in land on which ornamental timber trees are growing, except with the consent of the owner of the quarry.
- (10) An authority who exercise any of the powers conferred by this section shall pay compensation to persons interested in any land for any damage done thereto by the carriage of the materials obtained by the authority and also, in cases falling within subsection (6) or subsection (8) above, for the value of those materials.
- (11) At least one month before making a complaint to a magistrates' court for an order under subsection (5) or subsection (6) above the authority shall give notice of their intention to make such a complaint to the owner, and to the occupier, of the land from which they propose to get materials.
- (12) In relation to highways in respect of which a [^{F20}non-metropolitan] district council's powers of maintenance under section 42 above are exercisable, references in this section and section 46 below to a highway authority include references to the district council; and for the purposes of this section—
- “inclosed land” includes any land in the exclusive occupation of one or more persons for agricultural purposes, though not separated by a fence or otherwise from adjoining land of another person, or from a highway; and
- “London borough” includes the City of London.

Textual Amendments

F18 Words substituted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 13\(a\)](#)

F19 Words substituted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 13\(b\)](#)

F20 Word inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 13\(c\)](#)

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Marginal Citations

M3 1876 c. 56.

46 Supplemental provisions with respect to the getting of materials under section 45.

- (1) Where an excavation is made by a highway authority in the exercise of powers conferred by section 45 above, the authority shall—
 - (a) while work is in progress, and thereafter so long as the excavation remains open, keep the excavation sufficiently fenced to prevent accidents to persons or animals,
 - (b) if no materials are found therein, fill up the excavation within 3 days from the date on which the excavation was made,
 - (c) if materials are found, then within 14 days from the date on which sufficient materials have been obtained, fill up the excavation or slope it down and fence it off, if the owner or occupier of the land in question so requires, and thereafter keep it so fenced, and
 - (d) when filling up an excavation, make good and level the ground and cover it with the turf or clod dug therefrom.
- (2) An authority who fail to comply with any of the provisions of subsection (1) above are guilty of an offence and liable to a fine not exceeding [^{F21}level 1 on the standard scale].
- (3) If in the exercise of powers conferred by section 45 above materials are dug so as to damage or endanger a highway, occupation road, ford, dam, mine, building, works or apparatus, the authority are guilty of an offence and, without prejudice to any civil proceedings which may be available against them, liable to a fine not exceeding [^{F22}level 1 on the standard scale].
- (4) A person who, without the consent of the highway authority,—
 - (a) takes away any materials purchased, gotten or gathered by them for the repair of highways, or
 - (b) takes away any materials from a quarry or excavation opened by the authority before their workmen have ceased working thereat for 6 weeks,
 is guilty of an offence and liable to a fine not exceeding [^{F23}level 1 on the standard scale]; but in the case of a quarry or excavation in private grounds, nothing in this subsection prevents the owner or occupier from getting materials therefrom for his own private use and not for sale.

Textual Amendments

F21 Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 46

F22 Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 46

F23 Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 46

47 Power of magistrates' court to declare unnecessary highway to be not maintainable at public expense.

- (1) Where a highway authority are of opinion that a highway maintainable at the public expense by them is unnecessary for public use and therefore ought not to be maintained

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at the public expense, they may, subject to subsections (2) to (4) below, apply to a magistrates' court for an order declaring that the highway shall cease to be so maintained.

- (2) No application shall be made under this section for an order relating to a trunk road, special road, metropolitan road, footpath or bridleway.
- (3) Where a county council, as highway authority, propose to make an application under this section for an order relating to any highway [^{F24}in England], they shall give notice of the proposal to the council of the district in which the highway is situated, and the application shall not be made if, within 2 months from the date of service of the notice by the county council, notice is given to the county council by the district council that the district council have refused to consent to the making of the application.
- (4) If a highway authority propose to make an application under this section for an order relating to a highway situated in a parish or a community they shall give notice of the proposal—
 - (a) to the council of the parish or community, or
 - (b) in the case of a parish not having a separate parish council, to the chairman of the parish meeting,and the application shall not be made if, within 2 months from the date of service of the notice by the highway authority, notice is given to the highway authority by the council of the parish or community or the chairman of the parish meeting, as the case may be, that the council or meeting have refused to consent to the making of the application.
- (5) Where an application is made to a magistrates' court under this section, 2 or more justices of the peace acting for the petty sessions area for which the court acts shall together view the highway to which the application relates, and no further proceedings shall be taken on the application unless they are of opinion, after viewing the highway, that there was ground for making the application.
- (6) The [^{F25}chief executive] to the justices who view a highway in accordance with the provisions of subsection (5) above shall, as soon as practicable after the view, notify the highway authority by whom an application under this section relating to the highway was made of the decision of the justices and, if the justices decide that there was ground for making the application, of the time, not being less than 6 weeks from the date of the notice, and place, at which the application is to be heard by a magistrates' court.
- (7) A magistrates' court shall not hear an application under this section unless it is satisfied that the highway authority making the application have—
 - (a) not less than one month before the date on which the application is to be heard by the court, given notice to the owners and the occupiers of all lands adjoining the highway to which the application relates of the making of the application, and the purpose of it, and of the time and place at which the application is to be heard by the court, and
 - (b) given public notice in the terms and manner required by subsection (8) below.
- (8) A highway authority making an application under this section shall publish, once at least in each of the 4 weeks immediately preceding the week in which the application is to be heard, in a local newspaper circulating in the area in which the highway to which the application relates is situated, a notice—
 - (a) stating that an application has been made to a magistrates' court under this section and the purpose of the application,

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- (b) describing the highway, and
 - (c) specifying the time and place at which the application is to be heard,
- and shall cause a copy of the notice to be fixed, at least 14 days before the date on which the application is to be heard by the court, to the principal doors of every church and chapel in the parish or community in which the highway is situated, or in some conspicuous position near the highway.
- (9) On the hearing of an application for an order under this section, a magistrates' court shall hear any person who objects to the order being made and may either dismiss the application or make an order declaring that the highway to which the application relates shall cease to be maintained at the public expense.
 - (10) Where an order is made under this section the highway to which the order relates shall cease to be a highway maintainable at the public expense.
 - (11) The highway authority on whose application an order is made under this section shall give notice of the making of the order to any public utility undertakers having apparatus under, in, upon, over, along or across the highway to which the order relates.

Textual Amendments

- F24** Words in s. 47(3) inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 5** (with s. 54(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**.
- F25** Words in s. 47(6) substituted (1.4.2001) by 1999 c. 22, s. 90, **Sch. 13 para.118** (with Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)** (with Sch. 2 para. 2)

48 Power of magistrates' court to order a highway to be again maintainable at public expense.

- (1) Subject to subsection (2) below, if it appears to a magistrates' court that, in consequence of any change of circumstances since the time at which an order was made under section 47 above, the highway to which the order relates has again become of public use and ought to be maintained at the public expense, the court may by order direct that the highway shall again become for the purposes of this Act a highway maintainable at the public expense.
- (2) An order under this section shall not be made except on the application of a person interested in the maintenance of the highway to which the application relates, and on proof that not less than 1 month before making the application he gave notice to the highway authority for the highway of his intention to make an application under this section.

Maintenance of privately maintainable highways

49 Maintenance of approaches to certain privately maintainable bridges.

Where a person is liable to maintain the approaches to a bridge by reason of the fact that he is liable to maintain the bridge by reason of tenure or prescription, his liability to maintain the approaches extends to 100 yards from each end of the bridge.

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50 Maintenance of privately maintainable footpaths and bridleways.

- (1) Where apart from section 41 above a person would under a special enactment or by reason of tenure, enclosure or prescription be under an obligation to maintain a footpath or bridleway, the operation of section 41(1) does not release him from the obligation.
- (2) The council of a [^{F26}non-metropolitan] district, parish or community may undertake by virtue of this subsection the maintenance of any footpath or bridleway within the district, parish or community (other than a footpath or bridleway the maintenance of which they have power to undertake under section 42 or, as the case may be, section 43 above) whether or not any other person is under a duty to maintain the footpath or bridleway; but nothing in this subsection affects the duty of any other person to maintain any such footpath or bridleway.
- (3) The power of a district council under subsection (2) above is subject to Part I of Schedule 7 to this Act; and the power of a parish or community council under that subsection is subject to the restrictions for the time being imposed by any enactment on their expenditure.

Textual Amendments

F26 Word inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 14](#)

51 No liability to maintain by reason of enclosure if highway fenced with consent of highway authority.

- (1) If a person across whose land there is a highway maintainable at the public expense erects a fence between the highway and the adjoining land, and the fence is erected with the consent of the highway authority for the highway, he does not thereby become liable to maintain the highway by reason of enclosure.
- (2) Nothing in subsection (1) above is to be construed as imposing on any person a liability to maintain a highway by reason of enclosure.

52 Power to get materials for repair of privately maintainable highways.

- (1) A person liable to maintain a highway by reason of tenure, enclosure or prescription has, for the purpose of repairing it, the like powers with respect to the getting of materials as are conferred on a highway authority by section 45(2) to (6) above for the purpose of repairing highways maintainable at the public expense by them.
- (2) A person on whom powers are conferred by this section is, with respect to the exercise of those powers, subject to the like duties and liabilities under section 45(10) and (11) above and under section 46(1) to (3) above as are a highway authority with respect to the exercise of the powers conferred on them by section 45.

53 Power of magistrates' court to extinguish liability to maintain privately maintainable highway.

- (1) Where a person is liable by reason of tenure, enclosure or prescription to maintain a highway, a magistrates' court may, on a complaint made either by that person or by the highway authority for the highway, make an order that the liability of that person to

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maintain the highway shall be extinguished, and on the extinguishment of that liability the highway, if it is not then a highway maintainable at the public expense, shall become for the purposes of this Act a highway maintainable at the public expense.

- (2) Where a complaint is made to a magistrates' court under this section by a person liable as aforesaid to maintain a highway—
- (a) the highway authority for the highway have a right to be heard by the court at the hearing of the complaint, and
 - (b) the court shall not make an order on the complaint unless it is satisfied that not less than 21 days before the date on which the complaint is heard by the court the complainant gave notice to the highway authority for the highway of the making of the complaint and of the time and place at which it was to be heard by the court.
- (3) Where by virtue of an order under this section the liability of a person to maintain a highway is extinguished, that person is liable to pay to the highway authority for the highway such sum as may be agreed between him and that authority or, in default of agreement, as may be determined by arbitration to represent the value to him of the extinguishment of his liability.
- (4) A sum payable by any person under subsection (3) above shall, at his option, be paid—
- (a) as a lump sum, or
 - (b) by annual payments of such amount, and continuing for such number of years, as may be agreed between him and the highway authority or, in default of agreement, as may be determined by arbitration.
- (5) Any matter which by virtue of subsection (3) or (4) above is to be determined by arbitration shall be determined by a single arbitrator appointed, in default of agreement between the parties concerned, by the Minister.
- (6) Nothing in this section affects any exemption from rating under any enactment as continued by section 117 of the ^{M4}General Rate Act 1967.

Marginal Citations

M4 1967 c. 9.

54 Extinguishment of liability to maintain privately maintainable highway diverted by order of magistrates' court.

- (1) Where a highway which a person is liable to maintain under a special enactment or by reason of tenure, enclosure or prescription is diverted in accordance with an order made under section 116 below, then—
- (a) the substituted highway becomes for the purposes of this Act a highway maintainable at the public expense, and
 - (b) the person liable as aforesaid to maintain the highway so diverted is liable to pay to the highway authority for the substituted highway such sum as may be agreed between him and that authority or, in default of agreement, as may be determined by arbitration to represent the value to him of the extinguishment of his liability.
- (2) A sum payable by any person under subsection (1) above shall, at his option, be paid—
- (a) as a lump sum, or

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- (b) by annual payments of such amount, and continuing for such number of years, as may be agreed between him and the highway authority or, in default of agreement, as may be determined by arbitration.
- (3) Any matter which by virtue of subsection (1) or (2) above is to be determined by arbitration shall be determined by a single arbitrator appointed, in default of agreement between the parties concerned, by the Minister.

55 Extinguishment of liability to maintain or improve bridges comprised in trunk roads and special roads.

- (1) Where a highway comprising a bridge becomes a trunk road, and the bridge is transferred to the Minister under this Act, then, if immediately before the transfer the bridge was not a highway maintainable at the public expense, any liability of the owners of the bridge for the maintenance or improvement of it or of the highway carried by it is thereupon extinguished.
- (2) Where the liability of the owners of a bridge is extinguished under subsection (1) above, the owners shall pay to the Minister such sum as may be agreed between them and the Minister or, in default of agreement, as may be determined by arbitration to represent the value to the owners of the extinguishment of their liability.
- (3) Any sum payable by the owners of a bridge under subsection (2) above shall, in so far as it exceeds any sum payable by the Minister to the owners under this Act, be paid, at the option of the owners—
 - (a) as a lump sum, or
 - (b) by annual instalments of such amount, and continuing for such number of years, as may be agreed between the owners and the Minister or, in default of agreement, as may be determined by arbitration, or
 - (c) by perpetual annual payments of such amount as may be so agreed or determined.
- (4) The foregoing provisions of this section apply where a highway comprising a bridge is included in the route prescribed by a scheme under section 16 above authorising the provision of a special road by a local highway authority and the bridge is transferred to the special road authority, as they apply where such a highway becomes a trunk road and the bridge is transferred to the Minister; and accordingly those provisions have effect as if the references therein to a trunk road and to the Minister included references to a special road and to the special road authority.
- (5) In this section—
 - “bridge” includes so much of the approaches thereto as supports or protects the surface of the trunk road or special road;
 - “owners”, in relation to a bridge, means the persons who, immediately before the transfer of the bridge to the Minister or the special road authority, were responsible for the maintenance of it, and includes any persons who, in pursuance of any agreement with the persons so responsible, were then discharging that responsibility on their behalf.

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Enforcement of liability for maintenance

56 Proceedings for an order to repair highway.

- (1) A person (“the complainant”) who alleges that a way or bridge—
 - (a) is a highway maintainable at the public expense or a highway which a person is liable to maintain under a special enactment or by reason of tenure, enclosure or prescription, and
 - (b) is out of repair,
 may serve a notice on the highway authority or other person alleged to be liable to maintain the way or bridge (“the respondent”) requiring the respondent to state whether he admits that the way or bridge is a highway and that he is liable to maintain it.
- (2) If, within 1 month from the date of service on him of a notice under subsection (1) above, the respondent does not serve on the complainant a notice admitting both that the way or bridge in question is a highway and that the respondent is liable to maintain it, the complainant may apply to the Crown Court for an order requiring the respondent, if the court finds that the way or bridge is a highway which the respondent is liable to maintain and is out of repair, to put it in proper repair within such reasonable period as may be specified in the order.
- (3) The complainant for an order under subsection (2) above shall give notice in writing of the application to the appropriate officer of the Crown Court and the notice shall specify—
 - (a) the situation of the way or bridge to which the application relates,
 - (b) the name of the respondent,
 - (c) the part of the way or bridge which is alleged to be out of repair, and
 - (d) the nature of the alleged disrepair;
 and the complainant shall serve a copy of the notice on the respondent.
- (4) If, within 1 month from the date of service on him of a notice under subsection (1) above, the respondent serves on the complainant a notice admitting both that the way or bridge in question is a highway and that the respondent is liable to maintain it, the complainant may, within 6 months from the date of service on him of that notice, apply to a magistrates’ court for an order requiring the respondent, if the court finds that the highway is out of repair, to put it in proper repair within such reasonable period as may be specified in the order.
- (5) A court in determining under this section whether a highway is out of repair shall not be required to view the highway unless it thinks fit, and any such view may be made by any 2 or more of the members of the court.
- (6) If at the expiration of the period specified in an order made under subsection (2) or (4) above a magistrates’ court is satisfied that the highway to which the order relates has not been put in proper repair, then, unless the court thinks fit to extend the period, it shall by order authorise the complainant (if he has not the necessary power in that behalf) to carry out such works as may be necessary to put the highway in proper repair.
- (7) Any expenses which a complainant reasonably incurs in carrying out works authorised by an order under subsection (6) above are recoverable from the respondent summarily as a civil debt.

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- (8) Where any expenses recoverable under subsection (7) above are recovered from the respondent, then, if the respondent would have been entitled to recover from some other person the whole or part of the expenses of repairing the highway in question if he had repaired it himself, he is entitled to recover from that other person the whole or the like part, as the case may be, of the expenses recovered from him.
- (9) Where an application is made under this section for an order requiring the respondent to put in proper repair a footpath or bridleway which, in either case, is a highway maintainable at the public expense and some other person is liable to maintain the footpath or bridleway under a special enactment or by reason of tenure, enclosure or prescription, that other person has a right to be heard by the court which hears the application, but only on the question whether the footpath or bridleway is in proper repair.

57 Default powers of highway authorities in respect of non-repair of privately maintainable highways.

- (1) Where a person is liable under a special enactment or by reason of tenure, enclosure or prescription to maintain a footpath or bridleway which, in either case, is a highway maintainable at the public expense, and the highway authority for the highway repair it in the performance of their duty to maintain it, they may, subject to subsection (3) below, recover the necessary expenses of doing so from that person in any court of competent jurisdiction.
- (2) Where a person is liable as aforesaid to maintain a highway other than such a footpath or bridleway as is referred to in subsection (1) above the highway authority for the highway may, if in their opinion the highway is not in proper repair, repair it and, subject to subsection (3) below, recover the necessary expenses of doing so from that person in any court of competent jurisdiction.
- (3) The right of recovery conferred by the foregoing provisions of this section is not exercisable—
 - (a) in a case where a highway authority repair a footpath or bridleway in obedience to an order of a court made under section 56 above, unless not less than 21 days before the date on which the application was heard by the court the authority gave notice to the person liable to maintain the path or way of the making of an application with respect to it and of the time and place at which the application was to be heard by the court (so however that there is no obligation to give notice to him under this paragraph if he was the person on whose application the order of the court was made);
 - (b) in any other case, unless the highway authority, before repairing the highway, have given notice to the person liable to maintain it that the highway is not in proper repair, specifying a reasonable time within which he may repair it, and he has failed to repair it within that time.
- (4) Where a highway authority exercise a right of recovery from any person under the foregoing provisions of this section, then, if that person would have been entitled to recover from some other person the whole or part of the expenses of repairing the highway if he had repaired it himself, he is entitled to recover from that other person the whole or the like part, as the case may be, of the expenses recovered from him by the highway authority.

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58 Special defence in action against a highway authority for damages for non-repair of highway.

- (1) In an action against a highway authority in respect of damage resulting from their failure to maintain a highway maintainable at the public expense it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the authority had taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous for traffic.
- (2) For the purposes of a defence under subsection (1) above, the court shall in particular have regard to the following matters:—
- (a) the character of the highway, and the traffic which was reasonably to be expected to use it;
 - (b) the standard of maintenance appropriate for a highway of that character and used by such traffic;
 - (c) the state of repair in which a reasonable person would have expected to find the highway;
 - (d) whether the highway authority knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway;
 - (e) where the highway authority could not reasonably have been expected to repair that part of the highway before the cause of action arose, what warning notices of its condition had been displayed;

but for the purposes of such a defence it is not relevant to prove that the highway authority had arranged for a competent person to carry out or supervise the maintenance of the part of the highway to which the action relates unless it is also proved that the authority had given him proper instructions with regard to the maintenance of the highway and that he had carried out the instructions.

- (3) This section binds the Crown.

^{F27}(4)

Textual Amendments

F27 S. 58(4) repealed (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22\)](#), s. 168(2), [Sch.9](#); [S.I. 1992/2984](#), art. 2(2), [Sch.2](#)

Modifications etc. (not altering text)

C5 S. 58 applied (1.2.2011) by [The River Mersey \(Mersey Gateway Bridge\) Order 2011 \(S.I. 2011/41\)](#), arts. 1, [11\(3\)](#) (with arts. 3(5), 51, [Sch. 10 paras. 68, 85](#))

Recovery by highway authorities etc. of certain expenses incurred in maintaining highways

59 Recovery of expenses due to extraordinary traffic.

- (1) Subject to subsection (3) below, where it appears to the highway authority for a highway maintainable at the public expense, by a certificate of their proper officer, that having regard to the average expense of maintaining the highway or other similar highways in the neighbourhood extraordinary expenses have been or will be incurred

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by the authority in maintaining the highway by reason of the damage caused by excessive weight passing along the highway, or other extraordinary traffic thereon, the highway authority may recover from any person (“the operator”) by or in consequence of whose order the traffic has been conducted the excess expenses.

- (2) In subsection (1) above “the excess expenses” means such expenses as may be proved to the satisfaction of the court having cognizance of the case to have been or to be likely to be incurred by the highway authority by reason of the damage arising from the extraordinary traffic; and for the purposes of that subsection the expenses incurred by a highway authority in maintaining a highway are (without prejudice to the application of this section to a by-pass provided under this Act for use in connection with a cattle-grid) to be taken to include expenses incurred by them in maintaining a cattle-grid provided for the highway under this Act.
- (3) If before traffic which may cause such damage commences the operator admits liability in respect of such traffic, then—
 - (a) the operator and the highway authority may agree for the payment by the operator to the highway authority of a sum by way of a composition of such liability, or
 - (b) either party may require that the sum to be so paid shall be determined by arbitration;and where a sum has been so agreed or determined the operator is liable to pay that sum to the highway authority and is not liable to proceedings for the recovery of the excess expenses under subsection (1) above.
- (4) ^{F28}The county court with jurisdiction to hear and determine a claim for a sum recoverable under this section is] the county court in the district in which the highway or any part of it is situated.
- (5) Proceedings for the recovery of any sums under this section shall be commenced within 12 months from the time at which the damage has been done or, where the damage is the consequence of any particular building contract or work extending over a long period, not later than 6 months from the date of completion of the contract or work.
- (6) In the application of this section to highways for which the Minister is the highway authority the words “by a certificate of their proper officer” in subsection (1) are to be omitted.

Textual Amendments

F28 Words substituted by [Administration of Justice Act 1982 \(c. 53, SIF 34\)](#), s. 37, [Sch. 3 Part IV para. 8\(2\)](#)

^{F29} **60**

Textual Amendments

F29 [S. 60](#) repealed (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. [168\(2\)](#), Sch. 9; S.I. 1992/2984, art. 2(2), [Sch. 2](#).

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Regulations supplementing maintenance powers of district councils

61 Regulations supplementing maintenance powers of district councils.

The Minister may by regulations empower [^{F30}non-metropolitan] district councils, in relation to highways in respect of which their powers of maintenance under sections 42 and 50 above are exercisable, to exercise subject to such terms and conditions as may be specified in the regulations such additional powers as appear to him—

- (a) to be appropriate to supplement powers of maintenance; and
- (b) to correspond to powers exercisable in relation to highways by highway authorities;

and accordingly in those sections, in Schedule 7 to this Act and in any other enactment referring to the powers of [^{F30}non-metropolitan] district councils under those sections, the expressions “maintenance” and “maintain” where used with respect to the powers of [^{F30}non-metropolitan] district councils under those sections, are to be construed as including the carrying out of operations in the exercise of powers conferred on [^{F30}non-metropolitan] district councils by regulations under this section.

Textual Amendments

F30 Word inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 15](#)

Status:

Point in time view as at 25/07/2003.

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