



# Highways Act 1980

## 1980 CHAPTER 66

### PART IV

#### MAINTENANCE OF HIGHWAYS

##### *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.

[<sup>F1</sup>(1A) In particular, a highway authority are under a duty to ensure, so far as is reasonably practicable, that safe passage along a highway is not endangered by snow or ice.]

- (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

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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.

#### Textual Amendments

- F1** S. 41(1A) inserted (31.10.2003) by Railways and Transport Safety Act 2003 (c. 20), s. 111; S.I. 2003/2681, art. 2(a)

## 42 Power of district councils to maintain certain highways.

- (1) Subject to Part I of Schedule 7 to this Act, the council of a [<sup>F2</sup>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—
    - (i) are restricted roads for the purposes of [<sup>F3</sup>section 81 of the Road Traffic Regulation Act 1984] (30 m.p.h. speed limit), or
    - (ii) are subject to an order [<sup>F4</sup>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 [<sup>F5</sup>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

- F2** Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, Sch. 4 para. 11
- F3** Words substituted by Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), s. 146, Sch. 13 para. 40
- F4** 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.
- F5** Word inserted by Local Government Act 1985 (c. 51, SIF 81:1), s. 8, Sch. 4 para. 11

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

- C1** 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 [F<sup>6</sup>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**

- F6** Word inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, **Sch. 4 para. 12**

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

- C2** 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.

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- (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 <sup>M1</sup>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 [<sup>F7</sup>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.
- (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 [<sup>F7</sup>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 [<sup>F8</sup>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 [<sup>F8</sup>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

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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 [<sup>F9</sup>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

- F7** Words substituted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 13\(a\)](#)
- F8** Words substituted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 13\(b\)](#)
- F9** Word inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 13\(c\)](#)

#### Marginal Citations

- M1** [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—
- 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,
  - if no materials are found therein, fill up the excavation within 3 days from the date on which the excavation was made,
  - 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
  - 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 [<sup>F10</sup>level 1 on the standard scale].

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- (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 [<sup>F11</sup>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 [<sup>F12</sup>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

- F10** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 46](#)
- F11** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 46](#)
- F12** 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 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 [<sup>F13</sup>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.

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- (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 [F14 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,
  - (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

**F13** 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**.



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**F14** 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.



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