



Highways Act 1980

1980 CHAPTER 66

PART XIV

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Savings etc.

[^{F1}333 Saving for rights and liabilities as to interference with highways.

- (1) No provision of this Act relating to obstruction of or other interference with highways is to be taken to affect any right of a highway authority or other person under any enactment not contained in this Act, or under any rule of law, to remove an obstruction from a highway or otherwise abate a nuisance or other interference with the highway, or to affect the liability of any person under such an enactment or rule to proceedings (whether civil or criminal) in respect of any such obstruction or other interference.
- (2) Nothing in section 134 or 135 above relating to disturbance of the surface of a highway in any manner is to be taken as affecting any right existing apart from this Act to disturb its surface in that manner.]

Textual Amendments

- F1** S. 333(2) inserted (the existing provision being renumbered as subsection (1)) as provided by [Rights of Way Act 1990 \(c. 24, SIF 59\), s. 3](#)

- [^{F2}334 (1) Subject to the provisions of this section, nothing in this Act or in any scheme or order made under it affects any rights conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or any duty of any such operator under that code or applies to any telecommunication apparatus kept installed for the purposes of any such system; ^{F3} . . .

- (2) Where—

Status: Point in time view as at 12/02/2003.

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- (a) land is conveyed by a highway authority in pursuance of section 256 above, or
- (b) a highway is stopped up or diverted in pursuance of an order to which this paragraph applies,

and immediately before the conveyance or, as the case may be, at the beginning of the day on which the order comes into force there is under, in, upon, over, along or across the land conveyed or, as the case may be, the highway stopped up or diverted any telecommunication apparatus kept installed for the purposes of a telecommunications code system, then the provisions of subsection (3) below have effect.

Paragraph (b) above applies to the following orders, namely an order made or confirmed by the Minister under section 14 or 18 above, a public path extinguishment order [F4, a special extinguishment order, a public path diversion order, a special diversion order and an SSSI diversion order].

- (3) In the circumstances mentioned in subsection (2) above, the operator of the telecommunications code system has the same power in respect of the telecommunication apparatus as if the conveyance had not been made or, as the case may be, the order had not come into force; but the transferee of the land or, as the case may be, any person entitled to land over which the stopped up or diverted highway subsisted shall be entitled to require the alteration of the apparatus.
- (4) Where in pursuance of an order made by a magistrates' court under section 116 above a highway is stopped up or diverted, the following provisions of this subsection have effect in relation to so much of any telecommunication apparatus kept installed for the purposes of a telecommunications code system as is under, in, upon, over, along or across land which by reason of the stopping up or diversion ceases to be a highway ("the affected apparatus")—
 - (a) the power of the operator of the system to remove the affected apparatus is exercisable notwithstanding the making of the order, so however that the said power is not exercisable, as respects the whole or any part of the affected apparatus, after the expiration of a period of 3 months from the date of the sending of the notice referred to in subsection (5) below unless before the expiration of that period the operator of the system has given notice to the authority on whose application the order was made of his intention to remove the affected apparatus or that part of it, as the case may be;
 - (b) the operator of the system may by notice in that behalf to the said authority abandon the affected apparatus or any part of it, and is to be deemed, as respects the affected apparatus or any part of it, to have abandoned it at the expiration of the said period of 3 months unless before the expiration of that period he has removed it or given notice of his intention to remove it;
 - (c) the operator of the system is entitled to recover from the said authority the expense of providing, in substitution for the affected apparatus and any telecommunication apparatus connected with it which is rendered useless in consequence of the removal or abandonment of the affected apparatus, any telecommunication apparatus in such other place as he may require;
 - (d) where under paragraph (b) above the operator of the system has abandoned the whole or any part of the affected apparatus, it vests in the authority there referred to and shall be deemed, with its abandonment, to cease to be kept installed for the purposes of a telecommunications code system.
- (5) As soon as practicable after the making of an order under section 116 above in circumstances in which subsection (4) above applies in relation to the operator of any

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telecommunications code system the authority on whose application the order was made shall by notice to the operator inform him of the making of the order.

- (6) Where an order under section 14 or 18 above provides for the alteration of a highway and, immediately before the date on which the order comes into force, there is under, in, upon, over, along or across the highway any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the highway authority shall be entitled to require the alteration of the apparatus.

This subsection does not have effect so far as it relates to the alteration of any telecommunication apparatus for the purposes of [^{F5}major highway works, major bridge works or major transport works within the meaning of Part III of the New Roads and Street Works Act 1991].

- (7) Where in pursuance of an order under section 14 or 18 above a highway is stopped up or diverted, or an order under either of those sections provides for the alteration of a highway, and, immediately before the date on which the order comes into force, there is under, in, upon, over, along or across the highway any telecommunication apparatus kept installed for the purposes of a telecommunications code system then, without prejudice to subsections (2), (3) and (6) above, the provisions of subsection (8) below have effect.

- (8) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply, for the purposes of the construction or improvement of the trunk road, special road or classified road, as the case may be, to which the order relates and of any works authorised by the order, to the Minister or other highway authority by whom the order in question was made.

- (9) Without prejudice to [^{F6}the provisions of Part III of the New Roads and Street Works Act 1991 relating to major highway works, major bridge works or major transport works] the said paragraph 23 shall apply for the purposes of—

- (a) any work authorised or required by an order under section 93 above to be done by a highway authority or the owners of a bridge,
- (b) any work which a highway authority is authorised to carry out under section 96 above, and
- (c) any work authorised or required by a licence under section 176 above to be done by the person to whom the licence is granted,

to the authority or person authorised or required to carry out the work.

- (10) Where, in pursuance of any order or scheme made or confirmed under this Act, a navigable watercourse is diverted and, immediately before the date on which the order or scheme comes into force, there is under, in, upon, over, along or across the watercourse, or any towing path or other way adjacent to it, any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system has the same powers in respect of that apparatus as if the order or scheme had not come into force; but—

- (a) the highway authority by whom the order or scheme was made, or
- (b) any person entitled to land on which so much of the watercourse, towing path or way as is diverted in pursuance of the order or scheme was previously situated,

shall be entitled to require the alteration of the apparatus.

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- (11) Sub-paragraph (8) of paragraph 23 of the telecommunications code (offence) shall be deemed to be omitted for the purposes of the application by this section of that paragraph to the Minister.
- (12) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this section as it applies for the purposes of that code.
- (13) Paragraph 21 of the telecommunications code (restriction on removal of telecommunication apparatus) shall apply in relation to any entitlement conferred by this section to require the alteration, moving or replacement of any telecommunication apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.]

Textual Amendments

- F2** S. 334 substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, [Sch. 4 para. 76\(14\)\(15\)](#), [Sch. 5 para. 45](#)
- F3** Words in s. 334(1) 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](#)
- F4** Words in s. 334(2) substituted (12.2.2003 for E. for specified purposes, otherwise prosp.) by [2000 c. 37, ss. 57, 103\(3\)](#), [Sch. 6 Pt. I para. 21](#); S.I. 2003/272, [art. 2\(a\)\(o\)](#)
- F5** Words in s. 334(6) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8](#), Part I, [para. 16\(2\)](#); S.I. 1992/2984, art. 2(2), [Sch. 2](#)
- F6** Words in s. 334(9) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 Part I para. 16\(3\)](#); S.I. 1992/2984, art. 2(2), [Sch. 2](#)

335 Saving for minerals etc.

- (1) Notwithstanding anything in Part XII of this Act all mines and minerals of any description whatsoever under any highway vested in a highway authority by virtue of any provision contained in the said Part XII belong to the person who would be entitled thereto if the highway were not vested in the authority, and the person entitled to any such mine or minerals has the same powers of working and of getting the same as if the highway were not vested in a highway authority.
- (2) Nothing in this section affects any liability (whether civil or criminal) of the person entitled to any such mine or minerals in respect of damage to the highway resulting from the exercise of the said powers.

336 Saving for Coast Protection Act 1949.

Nothing in this Act authorises the excavation or removal of any materials the excavation or removal of which is prohibited by section 18 of the ^{M1}Coast Protection Act 1949 (which makes it unlawful except as therein mentioned to excavate or remove certain materials on, under or forming part of any portion of the seashore to which the provisions of that section are applied), or the carrying out of any operation in contravention of section 34 of that Act (which restricts the carrying out of certain operations detrimental to navigation).

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Marginal Citations

M1 1949 c. 74.

337 Saving for obligation to obtain planning permission.

Nothing in this Act authorises the carrying out of any development of land for which permission is required by virtue of [^{F7}section 57 of the Town and Country Planning Act 1990] and which is not authorised by permission granted or deemed to be granted under or for the purposes of Part III of that Act.

Textual Amendments

F7 Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), [s. 4 Sch. 2 para. 45\(18\)](#)

338 Saving for works, etc., of dock, harbour and canal undertakers.

- (1) Subject to the provisions of this section, nothing in any of the provisions of this Act to which this section applies authorises a highway authority or council, without the consent of the dock, harbour or canal undertakers concerned—
 - (a) to execute any works in, across, or under any dock, harbour, basin, wharf, quay or lock; or
 - (b) to execute any works which will interfere with the improvement of, or the access to, any river, canal, dock, harbour, basin, lock, reservoir or towing path, or with any works appurtenant thereto or any land necessary for the enjoyment or improvement thereof.
- (2) A consent required for the purposes of subsection (1) above shall not be unreasonably withheld, and if any question arises whether the withholding of a consent is unreasonable either party may require it to be referred to an arbitrator to be appointed, in default of agreement, by the President of the Institution of Civil Engineers.
- (3) On an arbitration under this section, the arbitrator shall determine—
 - (a) whether any works which the highway authority or council propose to execute are such works as under subsection (1) above they are not entitled to execute without the consent of the undertakers concerned; and
 - (b) if they are such works, whether the injury, if any, to the undertakers will be of such a nature as to admit of being fully compensated by money; and
 - (c) if the works are of such a nature, the conditions subject to which the authority or council may execute the works, including the amount of the compensation, if any, to be paid by them to the undertakers.

If the arbitrator determines that the proposed works are such works as the highway authority or council are not entitled to execute without the consent of the undertakers and that the works would cause injury to the undertakers of such a nature as not to admit of being fully compensated by money, the authority or council shall not proceed to execute the works; but in any other case they may execute the works subject to compliance with such conditions, including the payment of such compensation, as the arbitrator determines.

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- (4) For the purposes of this section, dock, harbour and canal undertakers are to be deemed to be concerned with any river, canal, dock, harbour, basin, lock, reservoir, towing path, wharf, quay or land if it belongs to them and forms part of their undertaking, or if they have statutory rights of navigating on or using it, or of demanding tolls or dues in respect of navigation thereon or the use thereof.
- (5) This section applies to section 230(7) and section 294 above and to the provisions specified in Schedule 22 of this Act, but subsections (2) and (3) above do not apply as respect a consent required in relation to section 230(7).
- (6) In this section “canal” includes inland navigation.

339 Saving for works etc. of drainage authorities etc.

- (1) Subject to the provisions of this section, nothing in any of the provisions of this Act to which this section applies authorises a highway authority or any other person to use or interfere with any watercourse (including the banks thereof), or any drainage or other works, vested in or under the control of [^{F8}the National Rivers Authority] or other drainage body within the meaning of the [^{F9}Land Drainage Act 1991] without the consent of [^{F10}the National Rivers Authority or that] body.
- (2) A consent required for the purposes of subsection (1) above shall not be unreasonably withheld, and if any question arises whether the withholding of a consent is unreasonable either party may require it to be referred to an arbitrator to be appointed, in default of agreement, by the President of the Institution of Civil Engineers.
- (3) This section applies to sections 45, 100, 101, 110, 294 and 299 above and to the provisions specified in Schedule 22 to this Act.
- (4) In its application to sections 100, 110, and 299 above this section applies in relation to a navigation authority as it applies in relation to [^{F9}the National Rivers Authority] or other drainage body within the meaning of the [^{F11}Land Drainage Act 1991].

Textual Amendments

- F8** Words substituted by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 62(13)(a)(i), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**
- F9** Words substituted by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 62(13)(b), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F10** Words substituted by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 62(13)(a)(ii), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F11** Words in s. 339(1)(4) substituted (1.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 2, 4(2), **Sch. 1 para. 36(2)**

340 Preservation of amendments.

- (1) Notwithstanding the repeal by this Act of the ^{M2}Highways Act 1959—
 - (a) subsection (10) of section 3 of the ^{M3}Parish Councils Act 1957 (which was inserted by section 310 of the Highways Act 1959 and defines “road” for the purposes of the said section 3) continues to have effect, but subject to the amendments made to that subsection, in consequence of this Act, by Schedule 24 to this Act;

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- (b) the enactments mentioned in Schedule 22 to the said Act of 1959 continue to have effect with the amendments there made but subject, in the case of such of those enactments as are mentioned in Schedule 24 to this Act, to the amendments made, in consequence of this Act, by the said Schedule 24.
- (2) Notwithstanding the repeal by this Act of the ^{M4}Highways Act 1971 (referred to below as “the 1971 Act”)—
- ^{F12}(a)
 - (b) section 3(6) of the ^{M5}New Forest Act 1964 (which provides for the fencing of a source of danger in the New Forest) continues to have effect with the amendment made by section 34(2) of the 1971 Act;
 - ^{F13}(c)
 - ^{F14}(d)
 - ^{F15}(e)

Textual Amendments

- F12** S. 340(2)(a) repealed by Road Traffic Regulation Act 1984 (c. 27, SIF 107), s. 146, **Sch. 14**
- F13** S. 340(2)(c) repealed by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34, **Sch. 6 Pt. I**
- F14** S. 340(2)(d) repealed by Wildlife and Countryside Act 1981 (c. 69, SIF 4:5), s. 73, **Sch. 17 Pt. II**
- F15** S. 340(2)(e) 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**

Marginal Citations

- M2** 1959 c. 25.
- M3** 1957 c. 42.
- M4** 1971 c. 41.
- M5** 1964 c. 83.

341 Amendment of section 303 of Public Health Act 1875.

In section 303 of the ^{M6}Public Health Act 1875 (power of Secretary of State to repeal and alter local Acts by means of provisional orders), the reference to any local Act which relates to the same subject matters as that Act is to be construed as including a reference to any local Act which relates to the same subject matters as the following provisions of this Act, namely, sections 288, 294, 312, 338, 339 and the provisions specified in Schedule 22 to this Act.

Marginal Citations

- M6** 1875 c. 55.

^{X1}**342 Amendment of section 41 of the Countryside Act 1968.**

In section 41 of the Countryside Act 1968 ^{M7}—

- (a) in subsection (1), at the end of paragraph (c) insert “or” and after that paragraph insert—
 - “(d) a trunk road picnic area as respects which functions of the Minister stand delegated to the local authority under section 113(1) of the Highways Act 1980, or are functions

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of the local authority by virtue of an agreement under section 113(3) of that Act.”;

(b) after subsection (1) insert—

“(1A) The power of a local authority under subsection (1)(d) above is exercisable only in so far as any conditions attached to the relevant delegation or, as the case may be, included in the relevant agreement do not otherwise provide.”.

Editorial Information

X1 The text of s. 342 is in the form in which it was originally enacted; it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Marginal Citations

M7 1968 c.41.

343 ^{X2}**Transitional provisions, amendments and repeals.**

- (1) Schedule 23 to this Act, which contains transitional provisions, has effect.
- ^{X3}(2) The enactments specified in Schedule 24 to this Act are, in consequence of this Act, amended as there provided.
- ^{X3}(3) The enactments specified in Schedule 25 to this Act are repealed to the extent specified in the third column of that Schedule.

Editorial Information

X2 Unreliable marginal note

X3 The text of s. 343(2)(3) is in the form in which it was originally enacted; it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

344 **Application to Isles of Scilly.**

- (1) Subject to the provisions of this section, the provisions of this Act specified in subsection (2) below do not extend to the Isles of Scilly.
- (2) The provisions referred to in subsection (1) above are—
 - (a) sections 25 to 29, 118 to 121, 134, 135, 146, 147, 275 and 293; and
 - (b) sections 219 to 225 and 229.
- (3) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide that all or any of the provisions of this Act specified in subsection (2) (a) above are, subject to such modifications as may be specified in the order, to apply in the Isles of Scilly as if those Isles were a separate county.
- (4) The Secretary of State may, on the application of the Council of the Isles of Scilly, by order provide that the provisions of this Act specified in subsection (2)(b) above are to apply in those Isles and, on the making of an order under this subsection, any

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reference in the said provisions to the street works authority is to be construed as a reference to the Council of those Isles.

- (5) On the making of an order under subsection (4) above the Council of the Isles of Scilly shall take such steps for notifying the public of its having been made as the Secretary of State may direct.
- (6) Section 232 above, in its application in the Isles of Scilly, has effect subject to the modification that any reference therein to the street works authority or the prospective street works authority is to be construed as a reference to the Council of those Isles, and any regulations made under that section are in their application to those Isles to be construed accordingly.
- (7) Sections 9, 97, 98, 270 and 301 of this Act, in their application in relation to the Isles of Scilly, have effect subject to such modifications as the Secretary of State may by order direct.

345 Short title, commencement and extent.

- (1) This Act may be cited as the Highways Act 1980.
- (2) This Act shall come into force on 1st January 1981.
- (3) This Act (except paragraph 18(c) of Schedule 24) extends to England and Wales only.

Status:

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Changes to legislation:

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