



Roads (Scotland) Act 1984

1984 CHAPTER 54

PART IV

IMPROVEMENTS AND MAINTENANCE

Cattle-grids

41 Provision of cattle-grids and by-passes

- (1) Where, whether on the representations of owners or occupiers of agricultural land or otherwise, and after such consultation with any such owners and occupiers as the roads authority consider requisite, it appears to the authority expedient so to do for controlling the passage of animals along a road, the authority may, subject to this section and sections 42 to 47 of this Act, provide and maintain a cattle-grid in the road, or partly in the road and partly in adjoining land; and such provision and maintenance may take place whether the road is in existence and open to public traffic or is a proposed road in course of construction.
- (2) Where the roads authority provide a cattle-grid under this Act they shall also provide, either by means of a gate or other works on the road (or proposed road) or by means of a by-pass, or partly by one of those means and partly by the other, facilities for the passage under proper control of animals and all other traffic unable to pass over the cattle-grid, being traffic entitled by law to go along the road (or, where the road is a proposed road, which will on completion of that road be so entitled); and the authority shall maintain the facilities so provided.
- (3) Subject to subsection (4) below, subsections (1) and (2) above do not confer power—
 - (a) to place any part of a cattle-grid on land not forming part of the road and not belonging to the authority ; or
 - (b) to provide a by-pass over land not belonging to the authority,except in so far as is authorised by any such agreement as is provided for by section 46 of this Act.

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

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

- (1) Where it appears to the roads authority, after such consultation with owners and occupiers of agricultural land as the authority consider requisite, that a cattle-grid provided under this Act is no longer required, the authority may remove the cattle-grid and any gate or other works on the road which have been provided for use in connection with the cattle-grid, and shall make good the site thereof.
- (2) Where a by-pass has been provided for use in connection with a cattle-grid and the authority remove the cattle-grid, they may direct that the by-pass shall be discontinued and may, where they give such a direction, remove all or any of the gates or other works provided for the purposes of the by-pass.
- (3) If a direction under subsection (2) above so provides, then, subject to subsection (4) below, as from such date as may be specified in the direction the public right of passage over the by-pass shall be extinguished.

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

43 Maintenance of cattle-grids and by-passes

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

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

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

45 Supersession of gates by cattle-grids

- (1) Where—
 - (a) a person has the right to instal a gate in a road, and
 - (b) the roads authority providing or proposing to provide a cattle-grid in the road under section 41 of this Act determine, after complying with the provisions of Schedule 4 to this Act, that the purpose for which that right is exercisable will be adequately achieved by the provision of the cattle-grid,the right shall not be exercisable, so long as the cattle-grid is provided, except with the approval of the authority, and they may require that any gate installed in the exercise

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of the right before the provision of the cattle-grid shall be removed or may themselves remove any such gate.

- (2) The authority shall on demand repay any expenses reasonably incurred in removing a gate in compliance with a requirement under subsection (1) above.
- (3) Where in pursuance of subsection (1) above a gate has been removed (whether by, or in compliance with a requirement of, the authority) and they subsequently remove the cattle-grid then, if within 12 months after the removal of the cattle-grid any person reinstals a gate in the exercise of a right the exercise of which was suspended while the cattle-grid was provided, the authority shall on demand repay the expenses reasonably incurred in reinstalling the gate.
- (4) No objection shall be made or proceedings brought in respect of the purported exercise by the roads authority of their powers under subsection (1) above as respects any gate on the ground that no right to instal the gate existed ; but the purported exercise by the authority of their powers under that subsection shall not affect the question whether any such right existed, or prejudice the powers of the authority or any other person under any enactment or rule of law to protect public rights of way or to prevent or remove obstructions.

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

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

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

- (1) A roads authority may enter into an agreement with any person at whose instance a cattle-grid has been or is to be provided by them under this Act, or with any other person willing to make a contribution towards expenses of the authority under this Act in connection with a cattle-grid, for the making by that person of such a contribution (whether by a single payment or by periodical payments) of such amount as may be specified in the agreement and either towards all such expenditure of the authority or towards such description of such expenditure as may be so specified.

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- (2) An agreement under this section may contain such incidental and consequential provisions as appear to the parties thereto expedient for the purposes of the agreement; and in particular such an agreement providing for a contribution towards the cost of installing a cattle-grid may provide for repayment of the contributions, to such extent as may be specified in the agreement, in the event of the cattle-grid being removed.
- (3) In determining whether or not to provide a cattle-grid the roads authority shall be entitled to have regard to the extent to which persons who in the opinion of the authority will derive special benefit from the provision of the cattle-grid are willing to enter into agreements under this section.