



Roads (Scotland) Act 1984

1984 CHAPTER 54

PART VII

BRIDGES, TUNNELS AND DIVERSION OF WATER

75 **Bridges over and tunnels under navigable waters**

- (1) Provision may be made by an order under section 5 of this Act or under this subsection for the construction of a bridge over or a tunnel under any specified navigable waters as part of a trunk road.
- (2) Provision may be made by a scheme under section 7 of this Act for the construction, as part of a special road, of a bridge over or a tunnel under any specified navigable waters.
- (3) Provision may be made by a scheme under this subsection—
 - (a) made by a local roads authority and confirmed by the Secretary of State, or
 - (b) where the Secretary of State is the roads authority, made by him,for the construction, as part of a public road (other than a special road) of a bridge over or a tunnel under any specified navigable waters.
- (4) Parts I and III of Schedule 1 to this Act shall have effect as to the making of an order under subsection (1) above, Parts II and III of that Schedule shall have effect as to the making of a scheme under subsection (3) above and Schedule 2 to this Act shall have effect as to the validity and date of operation of any such order or scheme.
- (5) A scheme under subsection (3)(a) above may be submitted to the Secretary of State jointly by any two or more local roads authorities, and any such scheme may determine which of those authorities shall be the roads authority for the bridge or tunnel or any part of it, and may provide—
 - (a) for the performance by that authority, in relation to the bridge or tunnel or that part of it, of any of the roads functions of any other authority who are party to the application, and
 - (b) for the making of contributions by that other authority to the roads authority in respect of expenditure incurred in the performance of those functions.

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- (6) The reference in—
- (a) subsection (1) above to a trunk road ;
 - (b) subsection (2) above to a special road ; or
 - (c) subsection (3) above to a public road,
- shall be construed as including a reference to a proposed trunk, special or public road as the case may be.
- (7) References in this section, in relation to any order or scheme, to " specified navigable waters " are references to such navigable waters (whether the sea, a river or other waters) as may be specified in the order or scheme.
- (8) References in section 76 of this Act to an order or scheme which provides for the construction of a bridge over or a tunnel under navigable waters are references to any order or scheme made under or, as the case may be, by virtue of subsection (1), (2) or (3) above.
- (9) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunications apparatus) shall, subject to subsection (10) below, apply, for the purposes of any works authorised by a scheme made under subsection (3) above, to the roads authority.
- (10) Where the roads authority is the Secretary of State, sub-paragraph (8) of paragraph 23 of the telecommunications code (offence) shall be omitted for the purposes of the application of that paragraph to him by subsection (9) above.

76 Provisions supplementary to section 75

- (1) Before making or confirming an order or scheme which provides for the construction of a bridge over or a tunnel under navigable waters, the Secretary of State shall take into consideration the reasonable requirements of navigation in the waters affected by the order or scheme.
- (2) An order or scheme which provides for the construction of such a bridge shall include such plans and specifications as may be necessary to indicate the position, clearances for the passage of vessels and dimensions of the proposed bridge; and in the case of a swing bridge shall contain such provisions as the Secretary of State considers expedient for regulating its operation.
- (3) An order or scheme which provides for the construction of such a tunnel shall include such plans and specifications as may be necessary to indicate the position and dimensions of the proposed tunnel, including the depth thereof below the bed of the sea, river or other navigable waters, as the case may be.
- (4) If an objection to an order or scheme proposed to be made or, as the case may be, to an order or scheme made and proposed to be confirmed, is duly made in accordance with Schedule 1 to this Act by any navigation authority or water authority on whom notice is required to be served under paragraph 3 of that Schedule or, as the case may be, paragraph 10 of that Schedule, on the ground that the bridge or tunnel is likely to obstruct or impede the performance of their functions under any enactment, or to interfere with the reasonable requirements of navigation in the waters affected by the order, and the objection is not withdrawn, the order shall be subject to special parliamentary procedure and Part IV of that Schedule shall have effect for the purposes of the application of the Statutory Orders (Special Procedure) Act 1945 to the order.

77 Discontinuation of operation of certain swing bridges

- (1) Subject to subsections (2) and (3) below, where, as regards navigable waters over which there is a swing bridge carrying a road, the Secretary of State is of the opinion that the number of ships using those waters and requiring the bridge to be opened has so declined over a period of years that the bridge ought no longer to be so operated, or ought to be so operated only in special circumstances, he may by order amend or repeal accordingly any enactment providing for such operation.
- (2) Parts I and III of Schedule 1 to this Act shall have effect in connection with the making of an order under this section; and Schedule 2 to this Act shall have effect in connection with the validity and date of operation of any such order.
- (3) If objection to an order under this section is duly made in accordance with Schedule 1 to this Act by a navigation authority on whom notice is required to be served under paragraph 3 of that Schedule and that objection is not withdrawn the order shall be subject to special parliamentary procedure, and Part IV of that Schedule shall have effect for the purposes of the application to the order of the Statutory Orders (Special Procedure) Act 1945.

78 Power to divert waters when constructing or improving public road etc.

- (1) Subject to subsections (2) and (3) below, the roads authority may divert, or carry out works in relation to, inland waters (whether natural or artificial) or tidal waters where, in the opinion of the authority, such diversion is, or as the case may be works are, necessary for the construction, improvement or protection of a public road (or proposed public road) or of a site or facilities provided under section 55 of this Act.
- (2) Before proceeding under subsection (1) above, the roads authority shall—
 - (a) serve on the owner and the occupier of any land affected, and on any navigation authority concerned with or having jurisdiction over the waters or over the area comprising those waters, notice of their intention so to proceed, describing the proposed diversion or works and informing them that they may object to the proposed diversion or works by notice to the authority within 28 days after service of the notice of intention on them; and
 - (b) consult any local authority in whose area the waters are situated and any other body acting under statutory powers, being powers the exercise of which may, in the opinion of the roads authority, be affected by the works:

Provided that, as regards any diversion or works, consultation under paragraph (b) above shall not be required with an authority or body receiving notice under paragraph (a) above.

- (3) Where such objection as is provided for in subsection (2)(a) above is made in accordance with that subsection and is not withdrawn, then—
 - (a) if the roads authority is the Secretary of State, he shall not carry out the diversion or works without having considered the objection; and
 - (b) if the roads authority is a local roads authority, they shall not carry out the diversion or works without the consent of the Secretary of State who may grant such consent either unconditionally or subject to such terms and conditions as he thinks fit and whose decision shall be final.
- (4) In subsection (2)(b) above the reference to a body acting under statutory powers includes a reference to the operator of a telecommunications code system (whether or

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not a body) acting in pursuance of any right conferred by or in accordance with the telecommunications code.

79 Powers of roads authorities and bridge owners to enter into agreements

- (1) Without prejudice to section 14(1) of this Act, the roads authority may agree with the owner of a bridge—
- (a) for the payment by the authority of contributions towards the cost of the maintenance, improvement or reconstruction of the bridge, or the road carried thereby, or the approaches thereto ;
 - (b) for the transfer to the authority of the responsibility for the maintenance and improvement of the road carried by the bridge or the approaches thereto ;
 - (c) that the bridge, or the road carried thereby, or the approaches to the bridge, shall heritably vest in the authority;

and it shall be lawful for the owner of the bridge, notwithstanding that the bridge was constructed under statutory powers, to enter into and carry into effect any such agreement.

- (2) Where any such agreement provides for the transfer to the roads authority of any rights or obligations attaching to a bridge, then, as from the date of the transfer, it shall be lawful for the authority to exercise the rights, and they shall, to the exclusion of the owner, be subject to the obligations so transferred.

80 Transfer to Secretary of State of privately maintainable bridges carrying trunk roads

- (1) Where, and on the date ("the transfer date") that, a road comprising a bridge to which this section applies becomes a trunk road, the bridge by which that road is carried shall be transferred to the Secretary of State by virtue of this section.
- (2) Where a bridge is transferred to the Secretary of State by virtue of this section then, subject to subsection (3) below—
- (a) the bridge, including any building or structure comprised in it and the road carried by it shall by virtue of this section vest heritably in the Secretary of State, and
 - (b) any statutory provision in force in relation to the bridge for the protection or benefit of statutory undertakers shall have effect, subject to any necessary modifications, as if for any reference therein to the owner of the bridge there were substituted a reference to the Secretary of State.
- (3) The Secretary of State and the owner may by agreement in writing made either before or after the transfer date agree that the provisions of subsection (2) above with respect to the transfer of property shall not apply, or as the case may be shall be deemed not to have applied, to such property comprised in the bridge as may be specified in the agreement.
- (4) Subject to section 119(1) of the Transport Act 1968 (ending of liability of certain Boards to make payments on being relieved of responsibility for bridges carrying trunk or special roads), in respect of any bridge which is transferred to the Secretary of State by virtue of this section, the owner shall pay to the Secretary of State such sum as may be agreed between the Secretary of State and the owner or, in default of agreement as to the sum, such sum as may be determined by arbitration to represent the value, to the owner, of the extinguishment of any liability of the owner for the maintenance or

improvement of the bridge and the Secretary of State shall pay to the owner such sum as may be so agreed or determined to represent the value, to the owner, of the bridge as an asset productive of revenue. Any arbitration under the foregoing provisions of this subsection shall be by a single arbiter appointed, in default of agreement as to the appointment, by the Court of Session, or by the sheriff, on the application of either party.

- (5) For the purposes of subsection (4) above, a bridge shall not be treated as an asset productive of revenue unless at the time when the bridge is transferred by virtue of this section—
- (a) a contract is in force under which payments have been made or will accrue to the owner in respect of the use of the bridge ; or
 - (b) the bridge includes any building constructed or adapted for use by the owner for the purposes of his undertaking or for letting to any other person.
- (6) Where any bridge transferred to the Secretary of State by virtue of this section carries the road over any railway, canal, road or other works used for the purposes of any undertaking carried on by the owner, then, so long as those works are so used—
- (a) the Secretary of State shall, before entering on any land of the owner for the purpose of executing any works for the maintenance, improvement or alteration of the bridge, give notice to the owner specifying the general nature of the works proposed to be executed ;
 - (b) except with the consent of the owner, the Secretary of State shall not reduce the headway or any span of the bridge; and
 - (c) if the headway of the bridge is reduced in consequence of subsidence due to mining operations, or of works carried out by the owner for the purpose of raising the railway, canal, road or other works to a level not higher than their level before the subsidence occurred, the Secretary of State shall, if so required by the owner, raise the bridge so far as may be necessary to give the same headway as before the subsidence occurred.
- (7) Any consent required for the execution of any works by the Secretary of State under subsection (6) above shall not be unreasonably withheld, and any question whether the withholding of such a consent is unreasonable shall be determined by such arbitration as is mentioned in subsection (4) above.
- (8) Any dispute between the Secretary of State and any person as to the property or liabilities transferred by virtue of this section, or as to the liability imposed on the Secretary of State by subsection (6)(c) above to carry out any works, shall be determined by such arbitration as is mentioned in subsection (4) above.
- (9) This section applies to all bridges which carry the road over any railway or road, over any canal, river, watercourse, marsh or other place where water flows or is collected, or over any ravine or other depression, other than—
- (a) swing bridges;
 - (b) bridges which carry a railway as well as the road ;
 - (c) bridges to which a right to levy tolls is attached ; or
 - (d) bridges maintainable by a roads authority.
- (10) In the foregoing provisions of this section " owner" means the person who immediately before the transfer of the bridge to the Secretary of State was responsible for the maintenance and repair of it and includes any person who, in pursuance of any

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agreement with the person so responsible, was then discharging that responsibility on his behalf.

- (11) Where a road carried by a bridge transferred to the Secretary of State under this section ceases to be a trunk road, the Secretary of State may contribute towards the expenses incurred in the maintenance and repair of the bridge by the authority who become the local roads authority for the road.

81 Transfer to special road authority of privately maintainable bridges carrying special roads

- (1) Where the route prescribed by a scheme under section 7 of this Act authorising the provision of a special road by a local roads authority includes a road carried by a bridge which, if the special road were a trunk road, would be transferred to the Secretary of State by virtue of section 80 of this Act, any order under section 9 of this Act by which that road is appropriated or transferred to the special road authority may provide for the transfer of the bridge to that authority.
- (2) Where any bridge is so transferred, subsections (2) to (8) of the said section 80 shall apply as they apply in relation to a bridge transferred under that section, and accordingly shall have effect as if for references therein to the Secretary of State and to the trunk road there were substituted references to the special road authority and the special road ; and no order shall be made by virtue of section 113(1) of this Act in respect of liabilities of the owner of the bridge.
- (3) In this section " owner" has the same meaning as in section 80 of this Act.

82 Protection of bridges and railways

- (1) The roads authority shall not, in the exercise of functions conferred by those provisions of this Act which relate to cattle-grids, carry out any work in—
- (a) so much of a road as passes over, or is comprised within the immediate approaches to, a bridge which is repairable by a person other than the authority;
 - (b) so much of a road passing under such a bridge as is within three metres of any part of the bridge or of the foundations thereof; or
 - (c) so much of a road passing above a tunnel provided for the purpose of a railway undertaking as is within three metres of any part of the tunnel,
- except with the consent of the person liable to repair the bridge or the person carrying on the railway undertaking as the case may be.
- (2) Where the consent mentioned in subsection (1) above is withheld, then—
- (a) if the roads authority is the Secretary of State; or
 - (b) if the roads authority is a local roads authority and they refer the matter to the Secretary of State,

he may, after affording the person whose consent is required an opportunity of being heard by a person appointed by the Secretary of State for the purpose, and after considering the report of any such hearing, direct that the work be carried out notwithstanding that the consent has been withheld but subject to compliance with any conditions which the Secretary of State may impose.