



# Roads (Scotland) Act 1984

## 1984 CHAPTER 54

### PART VIII

#### INTERFERENCE AND DAMAGE

##### *Obstruction of view*

#### **83 Prevention of obstruction of view at corners, bends and junctions.**

- (1) Where the roads authority are of the opinion that it is necessary, for the prevention of danger arising from obstruction of the view of road users, to impose restrictions with respect to land at or near a corner, bend or junction in a road they may serve a notice (in this section referred to as an “obstruction notice”)—
- (a) upon the owner or occupier of the land directing him, within such period (being not less than 28 days) as may be specified in the notice, to alter the height or character of any wall (not being a wall forming part of the structure of any other permanent building), fence, advertising hoarding, hedge, tree or shrub thereon so as to cause it to conform with any requirements specified in the notice;
  - (b) upon the owner, occupier and any lessee of the land restraining him, either absolutely or subject to such conditions as may be specified in the notice, from permitting any building, wall, fence or advertising hoarding to be erected or hedge, tree or shrub to be planted, on the land:

Provided that an obstruction notice shall not inhibit reconstruction, or repair, which does not create any new obstruction of the view of road users.

- (2) In subsection (1) above “advertising hoarding” means a hoarding or similar structure used, or adapted for use, for the display of advertisements.
- (3) Restrictions imposed by an obstruction notice shall come into force upon its service and shall remain in force until it is withdrawn by the roads authority; and such restrictions shall, while in force, be binding upon any successor in title to the owner or occupier of the land to which they relate unless that successor proves that when

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he became the owner or occupier of the land he had, after making due inquiries, no reasonable cause to suspect that any such restrictions were in force.

- (4) A person may, within 28 days of the receipt of an obstruction notice, object in writing (specifying the grounds of objection) to the roads authority; and the question whether the notice shall be withdrawn as respects any requirement or restriction objected to shall then be determined in the manner provided by section 84 of this Act.
- (5) A person upon whom an obstruction notice is served shall have power, notwithstanding anything in any conveyance or in any lease or other agreement, to do all such things as may be necessary for complying with the requirements of the notice.
- (6) Without prejudice to section 141 of this Act, where an obstruction notice has been served upon a person the roads authority may, with the consent of that person, do on his behalf anything necessary for complying with the requirements of the notice.
- (7) Subject to subsections (4) and (6) above, and without prejudice to any other proceedings which may be instituted against him, a person who fails to comply with the requirements of, or acts in contravention of, an obstruction notice served on him commits an offence.
- (8) A person upon whom an obstruction notice is served shall be entitled to recover from the roads authority any expenses reasonably incurred by him in carrying out any directions contained in the notice; and a person sustaining loss in direct consequence of any requirement of such a notice or a person who proves that his property is injuriously affected by restrictions imposed by such a notice shall, if he makes a claim within six months after its service, be entitled to recover from the roads authority compensation for the injury sustained.
- (9) Nothing in this section shall authorise the service by a local roads authority of an obstruction notice with respect to—
  - (a) any wall—
    - (i) forming part of an ancient monument or other object of archaeological interest, except with the consent in writing of the Secretary of State; or
    - (ii) forming part of, or necessary for the maintenance of, a railway, canal, inland waterway, dock or harbour;
  - (b) a protected tree; or
  - (c) a listed building.
- (10) In subsection (9) above—
 

“protected tree” means a tree which is subject to a tree preservation order under section [F1]section 160(1) of the Town and Country Planning (Scotland) Act 1997]; and

“listed building” has the meaning assigned to it by section 52(7) of that Act.

#### Textual Amendments

F1 Words in s. 83(10) substituted (27.5.1997) by 1997 c. 11 ss. 4, Sch. 2, para. 38(5)

## 84 Determination of questions arising out of section 83.

- (1) A question as to whether—

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- (a) a notice served under subsection (1) of section 83 of this Act shall be withdrawn as respects any requirement or restriction objected to under subsection (4) of that section; or
  - (b) any expenses were reasonably incurred by any person in carrying out directions contained in a notice served under that section,
- shall be decided—
- (i) if the parties so agree, by a single arbiter appointed by them; or
  - (ii) in default of such agreement by the sheriff.
- (2) In determining any such question as is mentioned in paragraph (a) of subsection (1) above, the arbiter or sheriff shall have power to order that the requirement or restriction shall have effect subject to such modifications, if any, as he may direct.

### *General obstruction*

## **85 Control of builders' skips on road.**

- (1) A builders' skip shall not be deposited on a road without—
  - (a) the [F2written] permission of the roads authority; and
  - (b) its being clearly and indelibly marked with its owner's name and with his telephone number or address.
- (2) Such permission as is mentioned in subsection (1)(a) above may be granted either unconditionally or subject to such conditions as may be specified in the permission; and the conditions may in particular relate to the siting and lighting of the skip, the care of the contents of the skip and the removal of the skip at the end of the period of permission.
- (3) An owner of a skip who uses it, or causes or permits it to be used, on a road in contravention of this section commits an offence.
- (4) In proceedings for an offence under subsection (3) above it shall be a defence, except in relation to a contravention of subsection (1)(b) above, to prove that some other person undertook the responsibility of complying with the permission or condition contravened, and that the offence was committed without the consent or connivance of the owner; and that other person may be charged with and convicted of the contravention as if he were the owner.
- (5) In this section and in section 86 of this Act, "builders' skip" means a container designed to be carried on a road vehicle and to be placed on a road for the removal and disposal of builders' materials, rubble, waste, household and other rubbish or earth.

#### **Textual Amendments**

- F2** Word in s. 85(1)(a) inserted (1.1.1993) by New Roads and Street Works Act (c. 22, SIF 59, 108), s. 168(1), Sch. 8 para. 89; S.I. 1992/2990, art. 2(2), Sch. 2

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

- C1** S. 85: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(v)

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## 86 Removal of builders' skips causing danger or obstruction.

- (1) Notwithstanding that there is in force a permission granted under section 85 of this Act for the depositing of a builders' skip on a road, a constable in uniform may require the removal or repositioning of, or himself cause to be removed or repositioned, any builders' skip which, in his opinion, is causing, or is likely to cause, a danger or obstruction
- (2) The roads authority may require the removal or repositioning of a builders' skip where there is a contravention of section 85 of this Act, and failing removal or repositioning within a reasonable period of time after so requiring, may remove or reposition it themselves.
- (3) Subsections (1) and (2) above are without prejudice to section 129(2) of this Act.
- (4) Any expenses reasonably incurred by the police authority under subsection (1), or the roads authority under subsection (2), above in the removal or repositioning of a builders' skip may be recovered from its owner.
- (5) The police authority or, as the case may be, the roads authority shall, where practicable, notify the owner of the skip of its removal under subsection (1) or (2) above; but if the owner cannot be traced or if a reasonable period of time after his being so notified has elapsed and he has not recovered the skip, the police authority or roads authority may dispose of the skip and its contents.
- (6) Any proceeds of a disposal under subsection (5) above shall be used in the first place to meet the expenses reasonably incurred in the said removal and thereafter any surplus shall be given to the owner if he can be traced and if he cannot may be retained by the police authority, or roads authority, as the case may be.

### Modifications etc. (not altering text)

- C2 [S. 86](#): power to contract out functions of Secretary of State (16.3.1996) by [S.I. 1996/878](#), [art. 2](#), [Sch. para. 5\(w\)](#)

## 87 Power to remove structures from roads.

- (1) Without prejudice to sections 59 and 129(2) of this Act, where a structure has been erected, deposited or placed on a road otherwise than under or by virtue of an enactment the roads authority may, by notice, require that within such period as may be specified in the notice the person having control or possession of the structure—
  - (a) shall remove it; and
  - (b) if the authority consider reinstatement of the road to be requisite, shall carry out such reinstatement.
- (2) In subsection (1) above, “structure” includes any machine, pump, post or other object of such a nature as to be capable of causing obstruction; and a structure may be treated for the purposes of that subsection as having been erected notwithstanding that it is on wheels.

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

- C3 S. 87: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(x)

**88 Removal of projections which impede or endanger road users.**

- (1) Without prejudice to section 129(8) of this Act, the roads authority may, after giving 28 days notice to the owner and occupier of any building, remove or alter any such projection therefrom as interferes with safe or convenient passage along a road and is specified in the notice.
- (2) Subject to subsection (3) below, the roads authority shall pay compensation to any person who sustains damage by reason of the removal or alteration of a projection in pursuance of subsection (1) above.
- (3) No compensation shall be payable under subsection (2) above in respect of a projection made without any consent which was, by or under any enactment, required for it.

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

- C4 S. 88: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, arts. 2, Sch. para. 5(y)

**89 Removal of accidental obstructions from roads.**

- (1) Where an object has fallen onto a road so as to cause an obstruction, the roads authority shall, where practicable, intimate to the owner of the object that he must remove it forthwith; and if the owner cannot be traced or if he fails to remove the object within a reasonable period of time after being so notified or if the case is one of emergency, the roads authority shall remove it themselves.
- (2) Pending the removal of such an object by the owner or by the roads authority, the authority may take all reasonable steps (including the placing of lights, signs and fences on the road) for the purpose of warning road users of the obstruction.
- (3) Any expenses reasonably incurred by the roads authority under this section may be recovered from the owner; but no such expenses shall be recoverable if the owner proves that he took reasonable care to secure that the object did not cause or contribute to an obstruction.
- (4) The roads authority shall, where practicable, give notice to the owner of an object of its removal by them under subsection (1) above; but if the owner cannot be traced or if after a reasonable period of time after being so notified he has not recovered the object, the roads authority may dispose of it.
- (5) Any proceeds of a disposal under subsection (4) above shall be used in the first place to meet the expenses reasonably incurred by the roads authority under this section and thereafter any surplus shall be given to the owner if he can be traced and if he cannot may be retained by the roads authority.

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

- C5 S. 89: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(z)

**90 Restriction on placing bridges, beams, rails etc. over roads.**

- (1) No overhead bridge, beam, rail, pipe, cable, wire or other similar apparatus shall be fixed or placed over, along or across a road without the consent of the roads authority; and that authority may attach to their consent such reasonable terms and conditions as they think fit.
- (2) A person who contravenes subsection (1) above or the terms or conditions of any consent given thereunder commits an offence.
- (3) Subsection (1) above does not apply to any works or apparatus of statutory undertakers.
- (4) A person aggrieved by the refusal of a consent required by this section, or by any terms or conditions attached to any such consent, may, within 28 days of the refusal or consent, refer the matter by summary application to the sheriff; and the decision of the sheriff on the matter shall be final.

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

- C6 S. 90: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(aa)

**91 Prevention of danger to road from nearby vegetation and fences etc. or from retaining walls being inadequate.**

- (1) Where a hedge, tree or shrub overhangs a road so as to—
  - (a) endanger or obstruct the passage of vehicles or pedestrians;
  - (b) obstruct or interfere with—
    - (i) road users' view of the road;
    - (ii) the light from a public lamp; or
    - (iii) a traffic sign; or
  - (c) increase the likelihood of obstruction of the road by drifting snow,
 the roads authority may, by notice served either on the owner of the hedge, tree or shrub, or on the occupier of the land on which it is growing, require him within 28 days from the date of service of the notice to carry out such work on the hedge, tree or shrub as is necessary to remove the cause of danger, obstruction or interference.
- (2) Subject to subsections (3) and (4) below, where it appears to the roads authority that a hedge, tree, shrub, fence or wall on or near a road is in such condition that it, or part of it, is likely to cause danger by falling on the road, or that a retaining wall (whether or not near the road) is in such condition that there is constituted a danger to the road or to road users, they may, by notice served either on the owner of the hedge, tree, shrub, fence or wall, or on the occupier of the land on which it is situated, require him within 28 days from the date of the service of the notice to carry out such work as will obviate the danger.

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(3) Subject to subsection (4) below, if in the opinion of the roads authority the danger referred to in subsection (2) above is imminent they may dispense with the service of the notice required by that subsection, may themselves carry out the work forthwith, and may recover the expenses reasonably incurred in so doing from the owner or occupier.

(4) Subsection (3) above does not apply, and subsection (2) above does not except in any case with the consent of the Secretary of State apply, as regards a wall (or retaining wall) forming part of an ancient monument or other object of archaeological interest; and any such consent may direct that the said subsection (2) shall apply in that case with such modifications as may be specified in the consent:

Provided that where in the opinion of the roads authority the danger referred to in the said subsection (2) is imminent, they may before obtaining such consent (and without service of the notice required by that subsection) carry out such work, or take such other steps, as will for the time being safeguard road users.

(5) The roads authority may make such contribution as they think fit towards any expenses reasonably incurred by a person in carrying out necessary work in pursuance of subsection (1) or (2) above.

(6) As soon as may be after the necessity for work under this section on a protected tree or on a wall (or retaining wall) forming part of a listed building arises and before any such work is commenced, the roads authority shall give notice of the proposed work to the planning authority:

Provided that, if in the opinion of the roads authority there is imminent danger of the tree or wall falling on the road, they may dispense with the giving of such notice.

(7) Nothing in this section shall impose on the roads authority any liability in respect of injury to persons or damage to property.

(8) In—

(a) subsection (2) above, “retaining wall” means a wall which serves, or is intended to serve, as a support for earth or other material on only one side; and

(b) subsection (6) above—

(i) “planning authority” has the meaning assigned by section 172 of the <sup>M1</sup>Local Government (Scotland) Act 1973; and

(ii) “protected tree” means a tree which is subject to a tree preservation order under [<sup>F3</sup>section 160(1) of the Town and Country Planning (Scotland) Act 1997].

(9) A person upon whom a notice has been served under subsection (1) or (2) above may within 28 days of such service refer the matter by summary application to the sheriff; and the decision of the sheriff on the matter shall be final.

#### Textual Amendments

**F3** Words in 91(8)(b)(ii) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 38(6)**

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

**C7** **S. 91**: power to contract out functions of Secretary of State (16.3.1996) by **S.I. 1996/878, art. 2, Sch. para. 5(ab)**

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#### Marginal Citations

M1 1973 c. 65.

### 92 Restriction on planting of trees etc. near carriageway.

- (1) No tree or shrub planted in accordance with section 51 of this Act shall be planted within 5 metres of the edge of a made-up carriageway without the roads authority's consent which shall not be unreasonably withheld.
- (2) If a tree or shrub is planted in contravention of this section, the roads authority may, by notice served either on the owner or on the occupier of the land in which the tree or shrub is planted, require him to remove it within 28 days from the date of the service of the notice.
- (3) A person who fails to comply with a notice given under subsection (2) above commits an offence.
- (4) In this section, "made-up carriageway" means a carriageway, or part thereof, which has been metalled or in any way provided with a surface suitable for the passage of vehicles.

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

C8 S. 92: power to contract out functions of the Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(ac)

### Roadside dangers

### 93 Protection of road users from dangers near a road.

- (1) If, in the opinion of the roads authority, anything which is on land beside or near to a road—
  - (a) but is not itself a building constitutes a danger to road users and there is no other provision of this Act under or by virtue of which they may take steps to obviate the danger, they shall, under this subsection, take such steps;
  - (b) and is a building constitutes a danger to road users and there is no other such provision as aforesaid, they shall under this subsection take such steps by way of enclosure or screening,
 as they consider appropriate to afford protection from the danger or to ensure that the danger is not so constituted; and they may, subject to subsection (6)(a) below, recover the expenses reasonably incurred in so doing from the owner of the land.
- (2) Where there is on land adjoining a road—
  - (a) a fence made with barbed wire, or in or on which barbed wire has been laid;
  - (b) an electrified fence; or
  - (c) a wall or window-sill incorporating spikes, broken glass, barbed wire or a similar device,

and such wire, electrified fence, spikes, glass or device is in the opinion of the roads authority likely to be injurious to persons or animals lawfully using the road, the roads authority may serve a notice on the occupier of the land requiring him, within such



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period as may be specified in the notice, to take such steps as may be so specified to remove the risk of injury.

- (3) Where the roads authority are occupiers of land adjoining a road, and there is on that land any such thing as is described in paragraphs (a) to (c) of subsection (2) above, then—
- (a) in the case of a local roads authority, any [<sup>F4</sup>person, being a ratepayer or person liable to pay council tax within their] area; and
  - (b) in the case of the Secretary of State, any person,
- may, if of the opinion required of a roads authority by the said subsection, serve a notice on the authority requiring them to take such steps as may be specified in the notice to remove the risk of injury.
- (4) If the period specified in a notice served under subsection (3) above expires without the steps so specified having been taken, the person who served the notice may apply to the sheriff who may, if he is satisfied that the steps specified in the notice are necessary, order the roads authority to take those steps.
- (5) In subsection (2) above “barbed wire” means any wire or strip metal with spikes or jagged projections.
- (6) A person who considers that in all the circumstances he should not be required—
- (a) to pay such expenses as are mentioned in subsection (1) above, may within 28 days of the first written intimation to him by the roads authority of their intention to recover those expenses from him; or
  - (b) to take such steps as are specified in a notice served on him under subsection (2) above, may within 28 days of such notice,
- refer the matter by summary application to the sheriff; and the decision of the sheriff on the matter shall be final.

#### Textual Amendments

**F4** Words in s. 93(3)(a) substituted (1.4.1996) by 1994 c. 39 s. 180(1), Sch. 13, para. 135(4); S.I. 1996/323, art. 4(1)(c)

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

**C9** S. 93: power to contract out functions of the Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(ad)

## 94 Power to fill in roadside ditches etc.

- (1) If it appears to the roads authority that a ditch on land adjoining or lying near to a public road constitutes a danger to road users, the authority may—
- (a) if they consider the ditch unnecessary for drainage purposes and the owner and every occupier of the land known to the authority agree in writing that it is unnecessary for those purposes, fill it in; or
  - (b) place in the ditch or in land adjoining or lying near to it, such pipes as they consider necessary in substitution for the ditch, and thereafter fill it in.
- (2) If a person, without the consent of the roads authority, opens up or keeps open any ditch which has been filled in under subsection (1) above, the authority may carry out any work of reinstatement or repair necessitated by his action and may recover from

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him the expenses reasonably incurred in so doing; and without prejudice to their right to exercise that power, the person commits an offence.

(3) In this section—

“ditch” includes a gutter or watercourse and any part of a ditch;

“pipes” includes culverts, tunnels and other works; and

“public road” includes a proposed public road.

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

**C10** S. 94(1)(a): power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(ae)

### Vehicles

#### 95 Deposit of mud from vehicles on roads.

- (1) A person who, being in charge of a vehicle on a road, allows such quantity of mud, clay, farmyard manure, or other material (of whatever nature) from the vehicle, or from anything carried on the vehicle, to drop onto or be deposited on the road so as to create, or be likely to create, a danger or substantial inconvenience to road users and who fails to remove the material as soon as reasonably practicable commits an offence.
- (2) Expenses reasonably incurred by the roads authority <sup>F5</sup>. . . and necessitated by a contravention of this section may be recovered by them from the person in default.
- (3) In this section any reference to a person in charge of a vehicle shall be construed as a reference to a person who as owner or otherwise has the immediate charge or control of the vehicle or who being present is entitled to give orders to the person having such charge or control.
- (4) In this section, “vehicle” includes anything towed or pushed by a vehicle, and any appliance.

#### Textual Amendments

**F5** Words in s. 95(2) repealed (1.4.1996) by 1994 c. 39 s. 180(1)(2), Sch. 13 para. 135(5), Sch. 14; S.I. 1996/323 art. 4(1)(c)(d)

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

**C11** S. 95: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(af)

#### 96 Extraordinary expenses in repairing roads damaged by heavy vehicles etc.

- (1) Subject to subsection (3) below, where as respects any public road it appears to the roads authority (where they are a local roads authority from a certificate of the proper officer of the authority) that having regard to the average expense of maintaining the road, or other similar roads in their area, extraordinary expenses have been, or will be, incurred by them in maintaining the road by reason of damage caused to it by excessively heavy, or other extraordinary, vehicles or traffic, they may recover from

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any person (in this section referred to as the “operator”) by or in consequence of whose orders the vehicles have, or traffic has, been on the road, so much of the expenses of maintenance as is, or is likely to be, attributable to that damage.

- (2) In subsection (1) above the expenses incurred by a roads authority in maintaining a road 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 road under this Act.
- (3) If, before operations which may cause such damage commence, the operator admits liability in respect of the vehicles or traffic, he and the authority may agree the payment by him to them of a sum by way of a composition of such liability, or either party may require that a sum to be so paid shall be determined by arbitration; and where a sum has been so agreed or determined the operator shall be liable to pay that sum to the roads authority and shall not be liable to proceedings for such recovery as is mentioned in subsection (1) above.
- (4) Subject to subsection (5) below, sums recoverable under this section shall be recoverable before the sheriff.
- (5) Such proceedings as are provided for in subsection (4) above shall not be commenced later than 12 months after the damage has been done unless that damage is the consequence of a particular building contract or of work extending over a long period, in which case they may, notwithstanding that such period of 12 months has elapsed, be commenced within six months of completion of the contract or work.

### *Miscellaneous*

## **97 Trading.**

- (1) Without prejudice to section 129(9) of this Act and subject to subsections (2) and (4) below, no person shall, for the purpose of selling anything, or offering or exposing anything for sale, use any stall or similar structure or any container or vehicle, kept or placed on—
  - (a) any part of a trunk or principal road; or
  - (b) unenclosed land within 15 metres of any part of any such road,except with the consent in writing of the roads authority and in accordance with such reasonable conditions as the authority think fit.
- (2) Without prejudice to the generality of subsection (1) above, the references in that subsection and in subsection (4) below to selling anything or offering or exposing anything for sale include supplying a service for profit or offering to do so.
- (3) A person who contravenes this section commits an offence.
- (4) The foregoing provisions of this section do not apply to—
  - (a) the sale or offer or exposure for sale of things from or on a vehicle which is used only for—
    - (i) the purpose of itinerant trading with the occupiers of premises; or
    - (ii) that purpose and purposes other than trading;
  - (b) the sale or offer or exposure for sale of things in, and as part of, a relevant public market;
  - (c) the sale or offer or exposure for sale of newspapers;

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- (d) street trading under and in accordance with a street trader’s licence;
  - (e) carrying on a private market under and in accordance with a market operator’s licence; or
  - (f) any activity in respect of which a certificate under the <sup>M2</sup>Pedlars Act 1871 has been granted.
- (5) This section is without prejudice to any other restriction, prohibition or requirement for consent, whether statutory or otherwise, which may apply to the activities mentioned in subsection (1) above.
- (6) In this section—
- “market operator’s licence” shall be construed in accordance with section 40 of the <sup>M3</sup>Civic Government (Scotland) Act 1982 (market operators’ licences);
  - “principal road” means a road which for the time being is classified as such by the Secretary of State under section 11(1) of this Act;
  - “private market” has the same meaning as in the said section 40;
  - “relevant public market” means a market or fair—
- (a) held by virtue of a grant from the crown or of prescription or under statutory authority; and
  - (b) established, held or having its place fixed, by a [<sup>F6</sup>local authority]:

Provided that in establishing or holding, or fixing the place of, the market and in regulating it the [<sup>F7</sup>local authority] shall consult the roads authority and shall, so far as the [<sup>F7</sup> local authority] consider it practicable to do so, give effect to any recommendations as respects the market made to them by the roads authority in the interests of road users;

“street trading” has the same meaning as in section 39 of the said Act of 1982 (street traders’ licences); and

“street trader’s licence” shall be construed in accordance with the said section 39.

#### Textual Amendments

**F6** Words in para. b in definition of “relevant public market” in s. 97(6) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 135(6)(a)**; S.I. 1996/323, **art. 4(1)(c)**

**F7** Words in proviso in definition of “relevant public market” in s. 97(6) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 135(6)(b)**; S.I. 1996/323, **art. 4(1)(c)**

#### Marginal Citations

**M2** 1871 c. 96.

**M3** 1982 c. 45.

## 98 Control of stray and other animals on roads.

- (1) An animal which is left on, or allowed to stray onto, a road other than at a place where that road is running through unenclosed [<sup>F8</sup>land] may be seized and detained by the roads authority or by a constable; and the person so leaving an animal or allowing it so to stray commits an offence.

*Status: Point in time view as at 01/02/2007.*

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- (2) Subject to subsection (3) below, the owner of an animal seized or detained under subsection (1) above may recover it from the roads authority, or as the case may be from the police authority, on payment to them of their reasonable expenses in acting under the said subsection (1):

Provided that no such payment shall be exigible where the owner took all reasonable steps to ensure that the animal was not so left as is mentioned in subsection (1) above or, as the case may be, did not so stray as is there mentioned.

- (3) Subject to the proviso to subsection (2) above, the roads authority, or as the case may be police authority, may sell, or otherwise dispose of, an animal so detained by them if, within three days of their giving intimation, in a newspaper circulating in their area, of the seizure, detention and prospective sale or disposal, the said expenses are not paid.
- (4) Any proceeds of a sale or disposal under subsection (2) above shall be used to meet the said expenses. Thereafter any surplus shall be given to the owner of the animal if he can be traced and if he cannot may be retained by the roads authority or as the case may be police authority.
- (5) In proceedings for an offence under subsection (1) above, it shall be a defence for a person accused of allowing an animal to stray onto a road to prove that he took all reasonable steps to prevent such straying.

<sup>F9</sup>(6) . . . . .

**Textual Amendments**

- F8** Word in s. 98(1) substituted (1.4.1992) by [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1\)](#), s. 27(1), [Sch. 10 para. 11\(3\)](#); [S.I. 1991/2633](#), [art. 4](#)
- F9** S. 98(6) repealed (1.4.1992) by [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1\)](#), s. 27(2), [Sch. 11](#); [S.I. 1991/2633](#), [art. 4](#)

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

- C12** S. 98: power to contract out functions of Secretary of State (16.3.1996) by [S.I. 1996/878](#), [art. 2](#), [Sch. para. 5\(ag\)](#)

**99 Prevention of flow of water etc. onto roads.**

- (1) The owner and the occupier of any land, whether or not that land is such as constitutes a structure over or across a road, shall prevent any flow of water or of filth, dirt or other offensive matter from, or any percolation of water through, the land onto the road.

(2)

A person may, with the consent of the roads authority and subject to such reasonable conditions as may be imposed by that authority, at his own expense carry out such works in, or make such excavations under, the road as appear to him to be necessary for the purposes of his complying with subsection (1) above.

- (3) Without prejudice to subsections (1) and (6) of this section, where there is onto a road such flow or percolation as is mentioned in subsection (1) above, the roads authority may by notice served on the owner or occupier of the land require him, within 28 days from the date of service of, or within such longer period from that date as may be specified in, the notice, to carry out such works or make such excavations as may be

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so specified, being works or excavations in their opinion necessary for compliance by him with subsection (1) above.

- (4) A person upon whom a notice has been served under subsection (3) above may within 28 days of such service refer the matter by summary application to the sheriff, and the decision of the sheriff on the matter shall be final.
- (5) Subsections (4) and (10) of section 56 of this Act shall apply in respect of works and excavations executed as is mentioned in subsection (2) or (3) above as the said subsections (4) and (10) apply in respect of works and excavations executed as is mentioned in subsection (1) of that section.
- (6) A person failing to comply with subsection (1) above commits an offence.

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

**C13** S. 99: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(ah)

*Offences*

**100 Damage to roads etc.**

A person who without lawful authority or reasonable excuse—

- (a) deposits anything whatsoever on a road so as to damage the road;
- (b) paints or otherwise inscribes or affixes upon the surface of a road or upon a tree, traffic sign, milestone, structure or works on or in a road, a picture, letter, sign or other mark; or
- (c) by lighting a fire within, or by permitting a fire for which he is responsible to spread to within, 30 metres of a road, damages the road or endangers traffic on it,

commits an offence.

**101 Placing rope, wire or other apparatus in road without adequate warning.**

A person who, for any purpose, places or causes to be placed in a road rope, wire or other apparatus in such manner as endangers road users and who fails to take all necessary steps to give adequate warning of the danger, commits an offence.

**102 Ploughing of unenclosed land.**

A person who, in ploughing unenclosed land adjoining a public road, fails to make side ridges at least 3 metres in breadth along the sides of the road, commits an offence.

**Status:**

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