

Status: Point in time view as at 01/12/1991.

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SCHEDULES

SCHEDULE 11

Section 93.

PROVISIONS AS TO ORDERS UNDER SECTION 93 OF THIS ACT

Limitations on matters to be dealt with by orders

- 1 The Minister shall not by an order under section 93 of this Act (hereafter in this Schedule referred to as “an order”) direct that a swing bridge crossing a canal is to be operated otherwise than by the owners of the canal unless he is satisfied, after considering any representations made to him by the owners of the canal, that the facilities for traffic on the canal will not be prejudiced thereby.
- 2 The Minister shall not by an order with respect to a swing bridge modify any statutory provisions relating to precedence of traffic.
- 3 The Minister shall not by an order with respect to a bridge crossing a railway or a canal modify any statutory provisions relating to the headway of the bridge or the width of the canal without the consent of the owners of the railway or canal.
- 4 An order made with respect to—
 - (a) a bridge owned by railway undertakers which carries a highway over a railway of the the undertakers, or carries both a highway and such a railway, or
 - (b) a bridge owned by dock undertakers or harbour undertakers, or
 - (c) a bridge, other than one falling within sub-paragraph (a) above, owned by the British Waterways Board and forming part of so much of the undertaking of that Board as corresponds to the undertaking of the Weaver Navigation Trustees prior to the vesting of that undertaking in the British Transport Commission (the predecessors of the British Waterways Board) under the ^{M1}Transport Act 1947,shall not, without the consent of the owners of the bridge, either—
 - (i) require works for the reconstruction or improvement of the bridge to be carried out otherwise than by the owners, or
 - (ii) direct the bridge to be maintained otherwise than by the owners, or
 - (iii) transfer the property in the bridge to a highway authority, or
 - (iv) in the case of a swing bridge, direct the bridge to be operated otherwise than by the owners.

Marginal Citations

M1 1947 c. 49.

- 5 Nothing in an order made with respect to—
 - (a) a bridge owned by railway undertakers and crossing a railway of the undertakers, or

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- (b) a bridge owned by canal undertakers and crossing a canal of the undertakers, or
- (c) a bridge owned by dock undertakers, or by harbour undertakers, crossing a railway, lock, passage or other work of the undertakers,

shall, without the consent of the owners of the bridge, require the bridge to be altered or reconstructed in such a manner as to necessitate an alteration in the level, or reduction in the width, of the railway, canal, lock, passage or work, or to reduce the headway of the bridge as existing at the date of the order.

- 6 An order requiring the reconstruction of a bridge crossing a canal, or of the approaches to such a bridge, shall, unless the owners of the bridge agree to the contrary, direct the bridge, the highway carried by the bridge, and the approaches to the bridge to be maintained by a highway authority.

Procedure for making orders

- 7 (1) An order to which this paragraph applies shall be prepared in draft and made by the Minister in accordance with this paragraph and paragraphs 8 to 10 below.
- (2) The order shall describe by reference to a map the land on which the works to which the order relates are proposed to be executed or constructed.
- (3) Subject as aforesaid, the form of the order shall be such as the Minister may determine.
- (4) This paragraph applies to an order which requires or authorises the owners of a bridge or a highway authority to execute or construct any works.

- 8 Before making an order to which paragraph 7 above applies the Minister shall in 2 successive weeks publish in one or more local newspapers circulating in the area in which the proposed works are to be executed or constructed a notice—

- (a) stating the general effect of the proposed order,
- (b) naming a place in the said area where a copy of the draft order, the map referred to in it, and plans and sections of the proposed works, may be inspected free of charge at all reasonable hours, and
- (c) specifying the time (which shall not be less than 21 days from the date of the first publication of the notice) within which and the manner in which objections to the draft order may be made,

and shall serve on all statutory undertakers appearing to him to be affected by the proposed works a notice stating the general effect of the order and that it is proposed to be made, and specifying the time (which shall not be less than 21 days from the date of service of the notice) within which and the manner in which objections to the draft order may be made.

- 9 (1) If no objection is duly made by any person who will be affected by the proposed works, or if all objections so made are withdrawn, the Minister, on being satisfied that the proper notices have been published and served, may, if he thinks fit, make the order with or without modifications.
- (2) If an objection duly made as aforesaid is not withdrawn, the Minister shall, before making the order, either cause a local inquiry to be held or afford to any person by whom any objection has been duly made as aforesaid and not withdrawn an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose and, after considering the objection and the report of the

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person who held the inquiry or the person appointed as aforesaid, may make the order either with or without modifications.

- (3) If any person by whom an objection has been made avails himself of the opportunity of being heard, the Minister shall afford to the local highway authority, or to the owners of a bridge, by whom the proposed works are to be executed or constructed, and to any other person to whom it appears to him expedient to afford it, an opportunity of being heard on the same occasion.
- (4) Notwithstanding anything in sub-paragraphs (2) and (3) above, the Minister may require any person who has made an objection to state in writing the grounds of it.
- 10 As soon as may be after the order has been made the Minister shall publish in one or more local newspapers circulating in the area in which the proposed works are to be executed or constructed a notice describing the proposed works, stating that the order has been made and naming the place where a copy of the order and of the map referred to therein, and a copy of plans and sections of the proposed works, may be inspected free of charge at all reasonable hours, and shall serve a like notice and a copy of the order on any statutory undertakers on whom a notice was required to be served under paragraph 8 above.
- 11 Subject to paragraphs 7 to 10 above, the Minister of Transport may make regulations for prescribing the procedure to be followed in connection with the making of orders.

Power to postpone commencement of orders

- 12 The Minister may postpone the date of the coming into operation of an order in a case where it appears to him that, owing to the number or nature of the orders and applications affecting the same highway authority or affecting bridges belonging to the same owners, the making of an order which would be immediately operative would work hardship to that authority or to those owners.

Provisions as to public utility undertakers

- 13 (1) Before making an order for the reconstruction or improvement of a bridge, the Minister shall take into consideration the desirability of the provision of special facilities or accommodation for carrying across the bridge the mains, [^{F1}sewers,] pipes, cables or wires of public utility undertakers; but in a case where the provision of facilities or accommodation greater than those available in the bridge before reconstruction or improvement would increase the cost of the reconstruction or improvement, he shall have regard to the amount of any contribution towards the cost of the reconstruction or improvement which any public utility undertakers may be willing to make.
- (2) In this paragraph, and in paragraph 14 below, “public utility undertakers” includes persons authorised by any enactment to carry on an undertaking for the operation of a light railway, a tramway, or trolley vehicles (that is to say, mechanically propelled vehicles adapted for use upon highways without rails and moved by power transmitted thereto from some external source).

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Textual Amendments

F1 Word inserted 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(15), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58

- 14 (1) Where an order provides for the transfer to a highway authority—
- (a) of the property in a bridge, or in the highway carried by a bridge, or in the approaches to a bridge, or
 - (b) of the responsibility for the maintenance of a bridge, or of any such highway or approaches, or
 - (c) of rights or obligations attaching to a bridge or to any such highway or approaches,
- any statutory provisions in force in relation thereto for the protection or benefit of any public utility undertakers shall, except so far as may be otherwise expressly provided by the order for giving effect to an agreement made between the parties concerned, remain in force notwithstanding the transfer.
- (2) In relation to property, responsibilities, rights or obligations transferred by an order which provides as aforesaid, any such statutory provisions shall apply to the highway authority, and to the exercise by them of any powers under the order, in like manner as they applied, before the transfer, to the owners of the bridge, highway or approaches, and to the exercise of powers by the owners thereof.

Apportionment of expenses

- 15 (1) Subject to sub-paragraph (2) below, where an order has been made with respect to a bridge other than a trunk road bridge—
- (a) requiring the reconstruction or improvement of the bridge, or of the highway carried by the bridge, or of the approaches to the bridge, or
 - (b) relating to the maintenance of the bridge, or of any such highway or approaches, or
 - (c) relating to the operation of the bridge, being a swing bridge,
- the expense of such reconstruction, improvement, maintenance or operation shall be defrayed either by the owners of the bridge or by one or more of the highway authorities entitled to make application with respect thereto by virtue of section 95 of this Act, or partly by the owners of the bridge and partly by one or more of those highway authorities, as, in default of agreement, may be determined by arbitration.
- (2) Sub-paragraph (1) above is subject to the following, namely that, unless otherwise agreed,—
- (a) where the bridge is a bridge crossing a railway of railway undertakers, or a canal of canal undertakers, or a railway, lock, passage or other work of dock undertakers or of harbour undertakers, any additional expense incurred by the owners of that railway, canal, lock, passage or work by reason of any alteration thereof due to the provisions of the order (other than provisions applied for by the undertakers for the improvement of their undertaking) shall be defrayed by one or more of the highway authorities;
 - (b) where the bridge is a swing bridge, any additional expense incurred by the owners in relation to the operation of the bridge due to the provisions of the order (other than provisions applied for by the owners for the improvement

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- of their undertaking) shall be defrayed by one or more of the highway authorities; and
- (c) except so far as any additional expense is due to works executed at the instance of the owners of the bridge for the improvement of their undertaking, the owners' share of the expense of the reconstruction, improvement, maintenance or operation shall be an amount equivalent to what would have been the amount of the owners' liability if no such order had been made.
- 16 Where the reconstruction or improvement of a bridge crossing—
- (a) a railway of railway undertakers, or
- (b) a canal of canal undertakers, or
- (c) a railway, lock, passage or other work of dock undertakers or of harbour undertakers,
- effected in pursuance of an order made otherwise than upon the application of the owners of the bridge, has caused the width between the parapets of the bridge, or the width of the approaches to it, to be increased, any additional expense thereafter incurred in consequence of the increase by the owners of that railway, canal, lock, passage or work in connection with the widening or alteration thereof under the bridge or the approaches to it shall be defrayed by one or more of the highway authorities referred to in paragraph 15 above, and any question whether any such additional expense has been so incurred or as to the amount thereof shall, in default of agreement, be determined by arbitration.
- 17 Where an order providing for a matter referred to in any of sub-paragraphs (a), (b) and (c) of paragraph 15(1) above relates to a trunk road bridge the provisions of paragraphs 15 and 16 above have effect as if, for references to the highway authorities entitled to make application with respect to a bridge by virtue of section 95 of this Act, there were substituted references to the Minister.
- 18 Where it is determined by agreement or an award that the whole or part of the expenses of reconstruction, improvement, maintenance or operation is to be borne by two or more highway authorities, the expenses or part thereof shall be apportioned between them in such manner as, in default of agreement, may be determined by arbitration.
- 19 Where it is determined by agreement or an award that the owners of a bridge are to contribute to the expense of a highway authority, the contribution shall, at the option of the owners of the bridge, be paid—
- (a) as a lump sum, or
- (b) by annual payments of such amount, and continuing for such number of years, as may be agreed between the owners and the authority or, in default of agreement, as may be determined by arbitration, or
- (c) by perpetual annual payments of such amount as may be so agreed or determined.

Arbitration

- 20 Where a question is by any provision of this Schedule, or of an order, to be determined by arbitration, the arbitrator shall be a single arbitrator appointed, in default of agreement between the parties concerned, by the President of the Institution of Civil Engineers.

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