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## SCHEDULES

### SCHEDULE 23

Section 343(1).

#### TRANSITIONAL PROVISIONS

##### Subordinate Legislation Made

**P1** [Sch. 23](#): for earlier exercises of power under Sch. 23, see Index to Government Orders

##### *Delegation of functions*

- 1 Section 6(1). . . <sup>F1</sup> of this Act shall have effect in relation to land acquired by a Minister in connection with a trunk road. . . <sup>F1</sup> under subsection (5) or (6) of section 214 of the <sup>M1</sup>Highways Act 1959 (or. . . <sup>F1</sup> under so much of section 13 of the <sup>M2</sup>Restriction of Ribbon Development Act 1935 as is re-enacted in those subsections) as [<sup>F2</sup>it has] in relation to land so acquired under section 246 of this Act (or, by virtue of paragraph 17 below, under section 22 of the <sup>M3</sup>Land Compensation Act 1973).

##### Textual Amendments

**F1** Words repealed by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 102, [Sch. 17](#)

**F2** Words substituted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 44](#)

##### Marginal Citations

**M1** 1959 c. 25.

**M2** 1935 c. 47.

**M3** 1973 c. 26.

##### *Trunk roads and related roads*

- 2 Section 11(1) of this Act applies to a highway which at the commencement of this Act is a trunk road as it applies to a highway which becomes a trunk road after the said commencement.
- 3 (1) The provisions of this Act (except section 19) and of paragraph 5 of Schedule 5 to the <sup>M4</sup>Town and Country Planning Act 1971 apply in relation to the trunk roads described in sub-paragraph (2) below, which are trunk roads by virtue of orders made under section 1 of the <sup>M5</sup>Trunk Roads Act 1946, as if they were special roads provided by the Minister in pursuance of schemes made under section 16 of this Act for the use of traffic of the classes specified in the third column of the table in sub-paragraph (2) below.
- (2) The trunk roads referred to in sub-paragraph (1) above are the trunk roads for which provision was made by the orders specified in the first column of the following

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table (referred to below as “the original orders”), as those roads are now constituted, having regard to any orders or schemes varying the original orders:

<b>Original order</b>	<b>Description of Road</b>	<b>Class of Traffic (as described in Schedule 4)</b>
S.R. & O. 1947, No. 2248.	Stevenage By-Pass, part of A1(M) motorway.	Classes I and II.
S.R. & O. 1947, No. 1562.	Severn Bridge and adjoining sections of M4 motorway.	For main carriageways: Classes I and II. For cycle track on Severn Bridge: Classes VII, X and XI. For footway on Severn Bridge: Class IX.
S.I. 1948, No. 924.	Haysgate to Crick, part of M4 motorway.	Classes I and II.
S.I. 1948, No. 62.	Newport By-Pass, part of M4 motorway.	Classes I and II.
S.I. 1949, No. 2360.	Twynning to Lydiate Ash, part of M5 motorway.	Classes I and II.
S.I. 1949, No. 2459.	Port Talbot By-Pass, part of M4 motorway.	Classes I and II.

- (3) Without prejudice to the generality of sub-paragraph (1) above, the power (under section 14 of the <sup>M6</sup>Interpretation Act 1978) to revoke or amend schemes under section 16 of this Act includes power to revoke or amend any of the original orders and to amend the provisions of the third column of the table in sub-paragraph (2) above.

#### Marginal Citations

- M4** 1971 c. 78.  
**M5** 1946 c. 30.  
**M6** 1978 c. 30.

- 4 (1) Any order under section 1(3) of the <sup>M7</sup>Trunk Roads Act 1936 (power to provide that a road superseding part of a trunk road should itself become a trunk road) continued in force by paragraph 29 of Schedule 24 to the <sup>M8</sup>Highways Act 1959, and still in force (whether or not varied under that paragraph) immediately before the commencement of this Act, continues in force and may be varied or revoked by a subsequent order made in the like manner and subject to the like provisions.
- (2) Schedule 2 to this Act has effect as to the validity and date of operation of an order made under this paragraph.
- (3) If an order under the said section 1(3) continued in force by sub-paragraph (1) above provides that on a date specified therein a route described therein is to become a trunk road and the order is revoked or varied by an order under this paragraph at any time before the route is opened for the purposes of through traffic, the revoking or

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varying order is not to be deemed for the purposes of section 2 of this Act to be an order directing that a trunk road is to cease to be a trunk road.

**Marginal Citations**

- M7** 1936 c. 5 (1 Edw. & 1 Geo. 6).  
**M8** 1959 c. 25.

- 5 (1) Any order under section 4 of the <sup>M9</sup>Trunk Roads Act 1946 (certain powers relating to side roads connected with trunk roads) continued in force by paragraph 30 of Schedule 24 to the Highways Act 1959 and still in force (whether or not varied under that paragraph) immediately before the commencement of this Act, continues in force and the provisions of subsections (1) to (3) of the said section 4 continue to apply to them as if that section had not been repealed.
- (2) Subject to sub-paragraph (3) below, an order under the said section 4 continued in force by sub-paragraph (1) above may be varied or revoked by a subsequent order made in the like manner and subject to the like provisions.
- (3) Parts I and III of Schedule 1 to this Act have effect as to the making of an order under this paragraph as they have effect as to the making of an order in relation to a trunk road under section 14 of this Act; and Schedule 2 to this Act has effect as to the validity and date of operation of an order under this paragraph.
- (4) Section 265 of this Act applies in relation to a highway for which any council become the highway authority by virtue of an order under the said section 4 or this paragraph as if it had previously been a trunk road.

**Marginal Citations**

- M9** 1946 c. 30.

*Special roads*

- 6 (1) In schemes under section 11 of the <sup>M10</sup>Highways Act 1959 made before 30th June 1961 references to traffic in Class VII set out in Schedule 4 to that Act are to be construed as including references to traffic in Classes X and XI set out in Schedule 4 to this Act.
- (2) Sub-paragraph (1) above is without prejudice to the operation of sections 17(2)(a) and 23(3) of the <sup>M11</sup>Interpretation Act 1978 as respects the construction of references generally in such schemes as are referred to in that sub-paragraph, and without prejudice to the powers under section 14 of that Act and section 17(3) of this Act to amend such schemes and to amend Schedule 4 to this Act.

**Marginal Citations**

- M10** 1959 c. 25.  
**M11** 1978 c. 30.

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### *Vehicle crossings*

- 7 (1) If a person knowingly uses a grass verge or a footway as a crossing as mentioned in subsection (1) of section 155 of the <sup>M12</sup>Highways Act 1959 (carriage crossings across grass verges or kerbed footways) in contravention of any condition imposed under paragraph (c) of the said subsection (1) and in force immediately before the commencement of this Act, or knowingly permits it to be so used, he is (notwithstanding the repeal of the said section 155 by the <sup>M13</sup>Highways Act 1971) guilty of an offence and liable to a fine not exceeding £20.
- (2) As respects any expenses recoverable by a council under subsection (3) of the said section 155 and outstanding at the commencement of this Act, section 305 of this Act has effect as though they were incurred under a provision of this Act to which that section applies.

#### **Marginal Citations**

**M12** 1959 c. 25.

**M13** 1971 c. 41.

### *Maintenance of highways*

- 8 Any question of liability for non-repair of a highway in respect of damage resulting from an event which occurred before 3rd August 1964 shall be determined in accordance with the former rule of law (abrogated by section 1 of the <sup>M14</sup>Highways (Miscellaneous Provisions) Act 1961) which exempted the inhabitants at large and any other persons as their successors from liability for non-repair of highways; and section 58 of this Act does not apply in relation to any such damage.

#### **Marginal Citations**

**M14** 1961 c. 63.

### *Cattle-grids etc.*

- 9 (1) Without prejudice to the application of this Act to any cattle-grid, works or by-pass provided, or deemed to have been provided, under the Highways Act 1959, subparagraphs (2) and (3) below have effect as respects—
- (a) any cattle-grid provided for a highway which consists of or comprises a carriageway,
  - (b) any gate or other works on such a highway for use in connection with such a cattle-grid,
  - (c) any by-pass for use in connection with such a cattle-grid, and
  - (d) any gate or other works for the proper control of traffic passing over such a by-pass,
- being a cattle-grid, works or by-pass provided before 28th July 1950, where application is made to the Minister for his approval thereof by the highway authority for the highway.
- (2) If, where such an application is made—
- (a) the Minister approves the cattle-grid, works or by-pass unconditionally, or

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- (b) he gives his approval subject to conditions as to the carrying out of works, the conclusion of an agreement under section 88 of this Act or any other matter, and those conditions have been complied with,
- then, as from the giving of the Minister’s approval unconditionally or, as the case may be, compliance with all conditions subject to which he gives his approval, the cattle-grid, works or by-pass are to be deemed to have been provided under this Act by the highway authority for whom the application for approval was made.
- (3) Where the Minister gives his approval of the cattle-grid, works or by-pass subject to conditions, the highway authority by whom the application for approval was made may carry out any work, or do any other thing, which is requisite for complying with the conditions; and in particular (but without prejudice to the foregoing provisions of this sub-paragraph) sections 85, 87 and 243 of this Act apply in relation to the exercise of the powers conferred by the foregoing provisions of this sub-paragraph as they apply in relation to the corresponding powers conferred by this Act.

*New streets*

F<sup>3</sup>10 .....

**Textual Amendments**

**F3** Sch. 23 para. 10 repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 84(6), Sch. 19 Pt.V (with ss. 81(2), 84(5)); 1991/2067, art.3

F<sup>4</sup>11 .....

**Textual Amendments**

**F4** Sch. 23 para. 11 repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 84(6), Sch. 19 Pt.V (with ss. 81(2), 84(5)); 1991/2067, art.3

*Private Street Works Code*

- 12 (1) Sub-paragraph (2) below has effect where—
- (a) before 1st January 1960 street works were executed under any of the relevant street works enactments with respect to part only of a private street, being a part consisting of the whole or part of a footway on one side only of the street, and those works were executed only by, or at the expense only of, the owners or occupiers of the premises fronting the footway or part of the footway, as the case may be; and
- (b) the street works authority resolve under section 205(1) of this Act to execute street works with respect to any part of the street constituting or comprising the whole or a part of the footway on the side of the street other than that in which street works were executed as mentioned in paragraph (a) above.

In this paragraph “the relevant street works enactments” means section 150 of the <sup>M15</sup>Public Health Act 1875, the <sup>M16</sup>Private Street Works Act 1892 and any local Act making provision corresponding to the provisions of that section or of the said Act of 1892.

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- (2) In the circumstances mentioned in sub-paragraph (1) above, the expenses incurred by the authority in executing the works mentioned in sub-paragraph (1)(b) above with respect to the footway or part of the footway there mentioned shall (notwithstanding anything in section 205(1) or (2) of this Act but subject to the other provisions of the private street works code) be apportioned only between the premises fronting that footway or part, as the case may be, and references in Part XI of this Act to the premises liable to be charged with the expenses of street works under the private street works code are to be construed in accordance with this sub-paragraph.
- (3) References in this paragraph to a footway include references to any roadside waste, and to any channel by the side of a footway.

#### Marginal Citations

**M15** 1875 c. 55.

**M16** 1892 c. 57.

- 13 (1) <sup>M17</sup>Subject to sub-paragraph (3) below, where a highway in existence on 16th December 1949 (the date of the coming into force of the National Parks and Access to the Countryside Act 1949, referred to below as “the 1949 Act”)—
- (a) was immediately before 1st January 1960 a highway repairable by the inhabitants at large by virtue only of section 47(1) of the 1949 Act (which extended to all public paths the then rule of law whereby a highway was repairable by the inhabitants at large), and
- (b) would, if the said section 47 had not been enacted, be a private street for the purposes of the private street works code,
- the fact that the highway is a highway maintainable at the public expense by virtue of section 36(1) of this Act shall not prevent its being treated for the purposes of the private street works code as a private street.
- This sub-paragraph does not apply to a highway in Greater London other than the outer London boroughs.
- (2) <sup>M18</sup>Subject to sub-paragraph (3) below, where a highway in existence on 3rd August 1968 (the date of the coming into force of the Countryside Act 1968) would, if paragraph 9(2)(a) of Schedule 3 to that Act (which provides that as from the date of publication of the definitive map and statement in a review carried out by an authority under Part III of that Schedule certain ways shown on the map are to be highways maintainable at the public expense) had not been enacted, be a private street, the fact that the highway is a highway so maintainable by virtue of the said paragraph 9(2) shall not prevent its being treated for the purposes of the private street works code as a private street.
- (3) Where the street works authority exercise the powers exercisable by them by virtue of sub-paragraph (1) or (2) above in relation to a highway or part of it, the sub-paragraph in question shall not thereafter apply to that highway or to that part, as the case may be, so as to enable the authority to exercise those powers in relation to it on any subsequent occasion.

Likewise, where before the commencement of this Act the street works authority exercised the powers exercisable by them by virtue of—

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- (a) paragraph 24 of Schedule 24 to the <sup>M19</sup>Highways Act 1959 (from which sub-paragraph (1) above is derived) or section 50 of the 1949 Act (from which the said paragraph 24 was derived), or
- (b) section 76(1) of the <sup>M20</sup>Highways Act 1971 (from which sub-paragraph (2) above is derived),

in relation to a highway or part of it, sub-paragraph (1) or, as the case may be, (2) above shall not apply to that highway or part, as the case may be, so as to enable the authority to exercise the powers exercisable by virtue of sub-paragraph (1) or (2) above in relation to it.

**Marginal Citations**

- M17** 1949 c. 97.
- M18** 1968 c. 41.
- M19** 1959 c. 25.
- M20** 1971 c. 41.

*Acquisition of land*

- 14 (1) Notwithstanding anything in section 1(2) of the Act of 1946 or in paragraph 9 of Schedule 1 to that Act, neither—
- (a) an order authorising a highway authority to acquire a right compulsorily as mentioned in section 242(3) of this Act, nor
  - (b) an order made as mentioned in section 254(1) of this Act, or so made and confirmed,

is, where notice of the making or preparation in draft of the order was first published before the 6th April 1976, subject to special parliamentary procedure by reason only of its authorising the acquisition of any such right as is mentioned in the said section 242(3) or, as the case may be, the said section 254(1).

- (2) Sub-paragraph (1) above is without prejudice to the operation of section 120 of the <sup>M21</sup>Local Government, Planning and Land Act 1980 (which re-enacts with modifications section 41 of the <sup>M22</sup>Community Land Act 1975) in relation to any such order as is mentioned in that sub-paragraph where notice of the making or preparation in draft of the order was or is first published on or after 6th April 1976.

**Marginal Citations**

- M21** 1980 c. 65.
- M22** 1975 c. 77.

*National Freight Corporation*

- 15 ..... F5

**Textual Amendments**

- F5** Sch. 23 paras. 15, 24 repealed by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), Sch. 1 Pt. X

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*Continuing offences*

16 Where an offence for the continuance of which a penalty was provided has been committed under any enactment repealed by this Act proceedings may be taken under this Act in respect of the continuance of the offence after the commencement of this Act in the like manner as if the offence had been committed under the corresponding provision of this Act.

*General*

17 Any reference in this Act (whether express or implied) to a thing done or required or authorised to be done, or omitted to be done, or to an event which has occurred, under or for the purposes of, or by reference to any provision of this Act includes, except where the context otherwise requires, a reference to the corresponding thing done or required or authorised to be done, or omitted, or to the corresponding event which occurred, as the case may be, under or for the purposes of or by reference to the corresponding enactment repealed by this Act.

18 Without prejudice to paragraph 17 above, any reference in this Act (whether express or implied) to a thing done by a highway authority or other authority under a provision of this Act includes, except where the context otherwise requires, a reference to the corresponding thing done, or having effect as if done, by a predecessor authority under the corresponding enactment repealed by this Act.

In this paragraph “predecessor authority” means—

- (a) in relation to the Secretary of State, the Minister of Transport or other Minister exercising the relevant function before the transfer of the function to the Secretary of State;
- (b) in relation to the Minister of Transport, the Secretary of State or other Minister exercising the relevant function before the transfer of the function to the Minister of Transport;
- (c) in relation to a council, the authority exercising the relevant function before the function vested in the council under the <sup>M23</sup>Local Government Act 1972 or, as the case may be, the <sup>M24</sup>London Government Act 1963.

<p><b>Marginal Citations</b></p> <p><b>M23</b> 1972 c. 70.</p> <p><b>M24</b> 1963 c. 33.</p>
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19 Without prejudice to paragraph 17 or 18 above, any power which was exercisable by a highway authority or other authority immediately before the commencement of this Act, under an enactment repealed by this Act, by reference (whether express or implied) to anything done before the said commencement may be exercised by that authority under the corresponding provision of this Act.

20 Where a period of time specified in any enactment repealed by this Act is current at the commencement of this Act, this Act has effect as if the corresponding provision of this Act had been in force when that period began to run.

<sup>F621</sup> .....



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**Textual Amendments**

**F6** Sch. 23 para. 21 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

22 Any enactment or other document of any kind referring to a highway repairable by the inhabitants at large or a highway maintainable by the inhabitants at large is to be construed as referring to a highway which for the purposes of this Act is a highway maintainable at the public expense.

23 Any enactment or other document of any kind referring to a surveyor of highways or a highway board is to be construed as referring to a highway authority.

*References to Magistrates' Courts Act 1980*

24 ..... **F7**

**Textual Amendments**

**F7** Sch. 23 paras. 15, 24 repealed by [Statute Law \(Repeals\) Act 1989 \(c. 43\)](#), s. 1(1), [Sch. 1 Pt. X](#)

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