

SCHEDULES

SCHEDULE 5

HIGHWAY AMENITIES

PART I

ADDITION OF PART VIIA TO HIGHWAYS ACT 1980

1 The following shall be inserted after section 115 of the Highways Act 1980—

“PART VIIA

PROVISION OF AMENITIES ON CERTAIN HIGHWAYS

115A Scope of Part VIIA.

- (1) This Part of this Act applies—
- (a) to a highway in relation to which a pedestrian planning order is in force ;
 - (b) to a bridleway ;
 - (c) to a footpath (including a walkway as defined in section 35(2) above);
 - (d) to a footway ;
 - (e) to a subway constructed under section 69 above ;
 - (f) to a footbridge constructed under section 70 above;
 - (g) to a highway of a description not mentioned in any of the preceding paragraphs of this definition whose use by vehicular traffic is prohibited by a traffic order but whose use by other traffic is not prohibited or restricted or regulated by such an order ; and
 - (h) to a local Act walkway.

- (2) In this Part of this Act—

" local Act walkway " means a way or place which is declared in pursuance of a local enactment to be a walkway, city walkway or pedestrian way ;

" pedestrian planning order " means an order made under section 212(2) of the Town and Country Planning Act 1971 ; and

" traffic order " means an order made under section 1 or 6 of the Road Traffic Regulation Act 1967 (traffic regulation orders) or under section 9 of that Act (experimental traffic orders); and

" walkway consent " means—

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- (a) in relation to a walkway as defined in section 35(2) above, the consent—
 - (i) of any person who is an occupier of the building in which the walkway subsists and to whom subsection (3) below applies ; and
 - (ii) of the persons whose agreement would be needed for the creation of the walkway if it did not already subsist; and
 - (b) in relation to a local Act walkway, the consent—
 - (i) of any person who is an owner or occupier of premises adjoining the walkway and to whom subsection (3) below applies ; and
 - (ii) of the owner of the land on, under or above which the walkway subsists.
- (3) The persons to whom this subsection applies are persons who, in the opinion of a council, are likely to be materially affected—
- (a) by the exercise of a power which the council may not exercise until they have first obtained walkway consent; or
 - (b) by a grant of permission which the council may not grant unless they have first obtained walkway consent.
- (4) In the following provisions of this Part of this Act " walkway " includes both a walkway as defined in section 35(2) above and a local Act walkway.
- (5) Any reference in this Part of this Act to a highway to which this Part of this Act applies includes a reference to a local Act walkway which but for this subsection—
- (a) is not a highway ; or
 - (b) is a highway only for certain purposes.
- (6) The use of a highway by vehicular traffic is to be taken as prohibited for the purposes of this Part of this Act where its use by such traffic is prohibited over the whole width of the highway even if the prohibition is contained in a traffic order which does not prohibit certain vehicles or certain classes of vehicle using the highway or part of it or using the highway or part of it at certain times or on certain days or during certain periods.
- (7) In this Part of this Act " frontagers " means the owners and occupiers of any premises adjoining the part of a highway on, in or over which an object or structure would be placed or on which facilities for recreation or refreshment or both have been, are being or would be provided ; but frontagers have an interest under this Part of this Act only in proposals to place objects or structures or provide or operate facilities wholly or partly between their premises and the centre of the highway.
- (8) References to a council in this Part of this Act include references to the Council of the Isles of Scilly.

115B Provision etc. of services and amenities by councils.

- (1) Subject to subsections (4), (5) and (7) below, a council shall have power—

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- (a) to carry out works on, in or over a highway to which this Part of this Act applies ; and
 - (b) to place objects or structures on, in or over such a highway,
for the purpose—
 - (i) of giving effect to a pedestrian planning order;
 - (ii) of enhancing the amenity of the highway and its immediate surroundings; or
 - (iii) of providing a service for the benefit of the public or a section of the public.
- (2) A council shall have power to maintain—
- (a) any works carried out under paragraph (a) of subsection (1) above ;
and
 - (b) any objects or structures placed on, in or over a highway under paragraph (b) of that subsection.
- (3) Without prejudice to the generality of this section, the amenity of a highway may be enhanced by providing lawns, trees, shrubs or flowers.
- (4) A council may not exercise the powers conferred by this section on, in or over a walkway unless they have first obtained walkway consent.
- (5) Where subsection (6) below applies, a council may not, in the exercise of the power conferred by subsection (1)(b) above, place an object or structure on, in or over a highway—
- (a) for a purpose which will result in the production of income ; or
 - (b) for the purpose of providing a centre for advice or information,
unless they have first obtained the consent of the frontagers with an interest—
 - (i) to the placing of the object or structure ; and
 - (ii) to the purpose for which it is to be placed.
- (6) This subsection applies where the object or structure would be placed—
- (a) on, in or over a footpath ;
 - (b) on, in or over a bridleway ; or
 - (c) on, in or over a footway in relation to which no pedestrian planning order or traffic order is in force.
- (7) Where a council propose—
- (a) to place an object or structure on, in or over a highway to which this Part of this Act applies—
 - (i) for a purpose which will result in the production of income ;
or
 - (ii) for the purpose of providing a centre for advice or information ; and
 - (b) to grant a person permission under section 115E below to use the object or structure,
they may not exercise the power conferred by subsection (1)(b) above unless they have first obtained the consent of the frontagers with an interest—
 - (i) to the placing of the object or structure ;
 - (ii) to the purpose for which it would be placed ; and

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(iii) to the proposed grant of permission.

115C Provision of recreation and refreshment facilities by councils.

- (1) Subject to subsections (2) and (3) below, a council shall have power to provide, maintain and operate facilities for recreation or refreshment or both on a highway to which this Part of this Act applies.
- (2) A council may not exercise the powers conferred by this section on a walkway unless they have first obtained walkway consent.
- (3) Where subsection (4) below applies, a council may not exercise the powers conferred by this section unless they have first obtained the consent of the frontagers with an interest.
- (4) This subsection applies where the facilities are to be provided—
 - (a) on a footpath ; or
 - (b) on a bridleway ; or
 - (c) on a footway in relation to which no pedestrian planning order or traffic order is in force.

115D Limits of powers under ss. 115B and 115C.

A council may exercise their powers under section 115B or 115C above to restrict the access of the public to any part of a highway to which this Part of this Act applies, but shall not so exercise them—

- (a) as to prevent traffic, other than vehicular traffic.—
 - (i) entering the highway at any place where such traffic could enter it before, as the case may be, the making of a pedestrian planning order or a traffic order in relation to it or the exercise in relation to it of a power conferred by this Part of this Act; or
 - (ii) passing along it; or
 - (iii) having normal access to premises adjoining it; or
- (b) as to prevent any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order; or
- (c) as to prevent statutory undertakers or sewerage authorities having access to any apparatus of theirs under, in, on or over the highway.

115E Execution of works and use of objects etc. by persons other than councils.

- (1) Subject to subsections (2) to (4) below, a council may grant a person permission—
 - (a) to do on, in or over a highway to which this Part of this Act applies anything which the council could do on, in or over such a highway under section 115B(1) to (3) or 115C above ; or
 - (b) to use objects or structures on, in or over a highway to which this Part of this Act applies—
 - (i) for a purpose which will result in the production of income ;

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- (ii) for the purpose of providing a centre for advice or information ; or
 - (iii) for the purpose of advertising.
- (2) A council may not grant a person permission under subsection (1)(a) above to place an object or structure on, in or over a highway to which this Part of this Act applies—
 - (a) for a purpose which will result in the production of income ; or
 - (b) for the purpose of providing a centre for advice or information, unless they have first obtained the consent of the frontagers with an interest—
 - (i) to the placing of the object or structure ;
 - (ii) to the purpose for which it would be placed ; and
 - (iii) to the proposed grant of permission.
- (3) A council may not grant a person permission to do anything which the council could only do under section 115C above unless they have first obtained the consent of the frontagers with an interest.
- (4) A council may not grant a person permission—
 - (a) to carry out works on, in or over a walkway ;
 - (b) to place an object or structure on, in or over a walkway ; or
 - (c) to provide, maintain or operate facilities for re creation or refreshment or both on a walkway,unless they have first obtained walkway consent.

115F Power to impose conditions on permissions under section 115E.

- (1) Subject to subsections (2) to (4) below, a council may grant a permission under section 115E above upon such conditions as they think fit, including conditions requiring the payment to the council of such reasonable charges as they may determine.
- (2) Except where the council are the owners of the subsoil beneath the part of the highway in relation to which the permission is granted, the charges may not exceed the standard amount.
- (3) In subsection (2) above, " the standard amount" means—
 - (a) in relation to permission to use an object or structure provided by a council, the aggregate—
 - (i) of the cost of providing it; and
 - (ii) of such charges as will reimburse the council their reasonable expenses in connection with granting the permission ;
 - (b) in relation to permission to operate facilities provided by a council for recreation or refreshment or both, the aggregate—
 - (i) of the cost of providing them ; and
 - (ii) of such charges as will reimburse the council their reasonable expenses in connection with granting the permission ; and

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- (c) in any other case, such charges as will reimburse the council their reasonable expenses in connection with granting the permission.
- (4) Nothing in this section shall prejudice the right of a council to require an indemnity against any claim in respect of injury, damage or loss arising out of the grant of the permission ; but this subsection is not to be taken as requiring any person to indemnify a council against any claim in respect of injury, damage or loss which is attributable to the negligence of the council.

115G Notices to be given before exercise of powers under Part VIIA.

- (1) Subject to subsection (4) below, a council shall not—
 - (a) exercise any power conferred by section 115B or 115C above ; or
 - (b) grant any permission under section 115E above unless they have first published a notice under this section.
- (2) A council shall publish a notice under this section—
 - (a) by affixing it in a conspicuous position at or near the place to which the proposal relates ; and
 - (b) by serving a copy of the notice on the owner and occupier of any premises appearing to the council to be likely to be materially affected.
- (3) A notice under this section—
 - (a) shall give details of the proposal; and
 - (b) shall specify a period (being not less than 28 days after the publication of the notice) during which representations regarding the proposal may be made to the council.
- (4) No notice under this section is required where a council propose to exercise a power conferred by section 115B or 115C above in relation to a highway in relation to which a pedestrian planning order or a traffic order has been made.
- (5) Where a council have published a notice under this section, they shall not exercise the power or grant the permission to which the notice relates until they have taken into consideration all representations made to them in connection with the proposal within the period specified in the notice.

115H Duties to consult or obtain consent of other authorities.

- (1) Subject to subsections (2) and (3) below, a council shall not—
 - (a) exercise any power conferred by section 115B or 115C above ; or
 - (b) grant any permission under section 115E above, in relation to a highway unless they have consulted—
 - (i) any authority other than themselves who are the highway authority for the highway; and
 - (ii) any authority other than themselves who are a local planning authority, as defined in the Town and Country Planning Act 1971, for the area in which, as the case may be, they propose to exercise the power or to which the proposed permission would relate.

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- (2) Where a highway to which this Part of this Act applies is situated in Greater London, subsection (1) above shall have effect in relation to the highway as if the requirement to consult the highway authority and the local planning authority were a requirement to obtain their consent to the exercise of the power or the granting of the permission.
- (3) Where
 - (a) a highway to which this Part of this Act applies is situated outside Greater London ; and
 - (b) there is no pedestrian planning order in force in relation to it,subsection (1) above shall have effect in relation to the highway as if the requirement to consult the highway authority were a requirement to obtain their consent to the exercise of the power or the granting of the permission.
- (4) Where a highway to which this Part of this Act applies is maintained by the British Railways Board or the London Transport Executive, a council shall not exercise any power conferred by section 115B or 115C above or grant a permission in relation to it under section 115E above except with the consent of the Board or, as the case may be, the Executive.

115J Consents not to be unreasonably withheld.

- (1) Consent to which this section applies is not to be unreasonably withheld but may be given subject to any reasonable conditions.
- (2) Without prejudice to the generality of subsection (1) above, it may be reasonable for consent to which this section applies to be given for a specified period of time or subject to the payment of a reasonable sum.
- (3) Consent is to be treated as unreasonably withheld for the purposes of this section if—
 - (a) the council have served a notice asking for consent on the person whose consent is required ; and
 - (b) he fails within 28 days of the service of the notice to give the council notice of his consent or his refusal to give it.
- (4) Any question whether consent is unreasonably withheld or is given subject to reasonable conditions shall be referred to and determined by an arbitrator to be appointed, in default of agreement, by the President of the Chartered Institute of Arbitrators.
- (5) If—
 - (a) the arbitrator determines that consent has been unreasonably withheld; but
 - (b) it appears to him that there are conditions subject to which it would be reasonable to give it,he may direct that it shall be treated as having been given subject to those conditions.
- (6) If—
 - (a) the arbitrator determines that any condition subject to which consent has been given is unreasonable ; but

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- (b) it appears to him that there are conditions subject to which it would have been reasonable to give it,
he may direct that it shall be treated as having been given subject to those conditions.
- (7) Subject to subsection (8) below, the expenses and remuneration of the arbitrator shall be paid by the council seeking the consent.
- (8) Where the arbitration concerns the consent of the British Railways Board or the London Transport Executive under section 115H(4) above, the arbitrator may give such directions as he thinks fit as to the payment of his expenses and remuneration.
- (9) This section applies to consent required under any provision of this Part of this Act except section 115H(1) above.

115K Failure to comply with terms of permission.

- (1) If it appears to a council that a person to whom they have granted a permission under section 115E above has committed any breach of the terms of that permission, they may serve a notice on him requiring him to take such steps to remedy the breach as are specified in the notice within such time as is so specified.
- (2) If a person on whom a notice is served under subsection (1) above fails to comply with the notice, the council may take the steps themselves.
- (3) Where a council have incurred expenses in the exercise of the power conferred on them by subsection (2) above, those expenses, together with interest at such reasonable rate as the council may determine from the date of service of a notice of demand for the expenses, may be recovered by the council from the person on whom the notice under subsection (1) above was served.”.