



# Roads (Scotland) Act 1984

## 1984 CHAPTER 54

### PART I

#### PUBLIC ROADS

##### *General powers and duties of roads authorities*

#### **1 Powers and duties of local roads authorities.**

- (1) Subject to subsection (10) below, a local roads authority shall manage and maintain all such roads in their area as are for the time being entered in a list (in this Act referred to as their “list of public roads”) prepared and kept by them under this section; and for the purposes of such management and maintenance (and without prejudice to this subsection’s generality) they shall, subject to the provisions of this Act, have power to reconstruct, alter, widen, improve or renew any such road or to determine the means by which the public right of passage over it, or over any part of it, may be exercised.
- (2) Subject to subsection (10) below, the list of public roads prepared by the local roads authority shall, at the date of commencement of this section, comprise all public roads which immediately prior to that date were required to be entered by the local highway authority for the area in a list of the roads highways and bridges under their management and control under section 41 of the <sup>M1</sup>Roads and Bridges (Scotland) Act 1878 or in a register of streets under section 5 of the <sup>M2</sup>Burgh Police (Scotland) Act 1903 or any corresponding local enactment.
- (3) The list of public roads shall be open for inspection free of charge at such reasonable times and places as the local roads authority may determine.
- (4) The local roads authority may, subject to the provisions of this Act, add to or delete from their list of public roads; but before any entry for a road which for the time being is a private road is so added or any entry for a public road is so deleted they shall—
  - (a) give notice of their intention in that regard to the frontages of that road; and
  - (b) publish a notice of such intention in at least one newspaper circulating in the area,

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and, where any representation is made within 28 days after the requirements of paragraphs (a) and (b) above have been fulfilled, the authority shall consider that representation and give notice to the person making it and, with a note or copy of the representation, to the frontagers (or to the other frontagers if it was a representation by a frontager) of the authority's decision as regards whether or not to proceed with the addition or deletion following the representation:

Provided that—

- (i) any addition or deletion giving effect to a decision under subsection (5) below;
- (ii) any deletion in consequence of the stopping up of a public road under this Act; or
- (iii) any deletion on transfer of such a road to another roads authority,

shall not require such intimation or publication as is mentioned in paragraphs (a) and (b) above.

- (5) The requisite number of frontagers to whom notice of a decision following a representation is given under subsection (4) above may, within 28 days of such notice, refer the matter by summary application to the sheriff. His decision thereon shall, subject to subsection (8) below, be final and, where that decision requires the addition or deletion to be proceeded with, shall be given effect to forthwith by the local roads authority.
- (6) A decision of which notice is given under subsection (4) above shall not be given effect to until the 28 days mentioned in subsection (5) above have expired or, if the matter has been referred under the said subsection (5) to the sheriff, until the summary application has been disposed of or abandoned.
- (7) In subsection (5) above, “the requisite number” means—
  - (a) a majority; or
  - (b) such number as together owns land which . . . <sup>F1</sup> . . . <sup>F1</sup> includes not less than half of the boundary between the land fronting or abutting the road mentioned in subsection (4)(a) above and that road; . . . <sup>F1</sup> . . . <sup>F1</sup>
- (8) Subsection (5) above is without prejudice to the rights of the local roads authority to proceed again under subsection (4) above as regards the same addition or deletion (or as regards an addition or deletion which comprehends, or is comprehended in, the same addition or deletion) where there has been a material change of circumstances since the publication, in relation to the original proposed addition or deletion, of the notice under subsection (4)(b) above.
- (9) Subject to subsection (10) below, every road which is entered in the list of public roads kept by a local roads authority shall vest in the authority for the purposes of their functions as roads authority: but such vesting shall not confer on an authority any heritable right in relation to a road.
- (10) There shall not vest under subsection (9) above any bridge which both—
  - (a) immediately prior to the commencement of this section was not so managed and controlled as is mentioned in subsection (2) above; and
  - (b) has not since such commencement been acquired (whether compulsorily or by agreement) by the local roads authority,

and without prejudice to sections 79 to 81 of this Act, until such acquisition the authority shall not manage and maintain the bridge (as distinct from any road carried by it) and any entry in their list of public roads in respect of such a road shall include a

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statement to the effect that the road does not, for the purposes of subsection (1) above, comprise the bridge carrying the road.

#### Textual Amendments

- F1** Words “either—(i)”, “or” and subparagraph (ii) repealed by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2\)](#), ss. 34, 35(2)(3), [Sch. 6](#)

#### Marginal Citations

- M1** 1878 c. 51.  
**M2** 1903 c. 33.

## 2 Powers and duties of Secretary of State as roads authority: management and maintenance.

- (1) The Secretary of State shall manage and maintain—
- trunk roads;
  - special roads provided by him; and
  - any other road constructed by him under section 19 of this Act (or section 8 of the <sup>M3</sup>Development and Road Improvement Funds Act 1909) and not entered in a list of public roads by a local roads authority,
- and for the purposes of such management and maintenance (and without prejudice to this subsection’s generality) he shall have power to reconstruct, alter, widen, improve or renew any such road or to determine the means by which the public right of passage over it, or over any part of it, may be exercised.
- (2) The Secretary of State shall prepare and keep a list of roads which he is for the time being liable to manage and maintain under subsection (1) above; and the list shall, at the date of commencement of this section, comprise all roads which immediately prior to that date were managed and maintained by him.
- (3) The list referred to in subsection (2) above shall be open for inspection free of charge at such reasonable times and places as the Secretary of state may determine.
- (4) Every road maintainable by the Secretary of State under subsection (1) above shall vest in him for the purposes of his functions as roads authority; but such vesting shall not confer on him any heritable right in relation to a road.

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

- C1** [S. 2\(1\)](#) power to contract out functions of Secretary of State (16.3.1996) by [S.I. 1996/878](#) art. 2, Sch. para. 5(a)

#### Marginal Citations

- M3** 1909 c. 47.

## 3 Power of Secretary of State to make advances to local roads authorities etc.

- (1) The Secretary of State <sup>F2</sup>. . . may subject to subsection (2)(b)(iii) below make to a local roads authority—

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- (a) advances (other than advances in respect of the acquisition of land) in respect of the construction of new roads or the maintenance or improvement of roads or make such advances in conjunction with such an authority (whether or not that authority is the roads authority by whom the road is, or as the case may be will be, maintainable) to any person;
  - (b) advances in respect of the acquisition of land by them where he is satisfied that the land has been or is to be acquired by the authority with a view to the construction of a new road or the improvement of a road.
- (2) The advances mentioned—
- (a) in paragraph (a) of subsection (1) above may include advances for the purpose of carrying out surveys with a view to ascertaining the need for the construction or improvement of roads (whether or not such construction or improvement is thereafter proceeded with); and
  - (b) in paragraphs (a) and (b) of that subsection—
    - (i) may include advances in connection with the exercise of any power conferred on a local roads authority by section 52, 53 or 106 of this Act;
    - (ii) may include advances for any purpose incidental, or conducive, to the purposes mentioned in those paragraphs; and
    - (iii) shall be made only where it appears to the Secretary of State that the whole or any part of the expenditure in respect of which such advances could be made should not fall on the authority.
- (3) Without prejudice to subsection (2)(b)(iii) above, the advances mentioned in paragraph (b) of subsection (1) above may include, where the land is acquired by the authority, either or both of—
- (a) any amount by which the annual expenditure incurred by the authority in maintaining the land, during the period between its acquisition and the construction or improvement of the road in question, and in the payment of loan charges accruing due during that period in respect of any debt incurred by the authority for the purpose of acquiring the land, exceeds the annual income accruing to the authority from the land during that period; and
  - (b) any loan charges accruing due after the end of that period in respect of any money borrowed by the authority for the purpose of acquiring the land.
- (4) An advance under subsection (1)(a) or (b) above may be either by way of grant or by way of loan, or partly in one way and partly in the other, and shall be upon such terms and subject to such conditions as the Secretary of State thinks fit.
- (5) In subsection (3) above, “loan charges”, in relation to any borrowed money, means the sums required for the payment of interest on that money and for the repayment thereof by instalments or by means of a sinking fund.

#### Textual Amendments

**F2** Words in s. 3(1) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 76(1)(2), Pt. IV (with art. 5)

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#### 4 Agreements between authorities.

- (1) Subject to subsections (2) to (5) below, the Secretary of State may enter into an agreement with a local roads authority<sup>F3</sup> . . . in relation to cleansing, with a district council, for the carrying out by the authority<sup>F3</sup> . . . or any of his functions as roads authority—
  - (a) in relation to a trunk or other road or land acquired by him under this Act in connection with, but not forming part of, a trunk road;
  - (b) in relation to cattle-grids.
- (2) Subsection (1) above does not apply as regards functions under section 55 of this Act, but subject to subsections (4) and (5) below, the Secretary of State may enter into an agreement with a general or district planning authority for the carrying out by the authority of any of his functions under that section.
- (3) Where an agreement under subsection (1) above affects a trunk road in the area of a local roads authority who are not a party to the agreement, the agreement shall have effect only if the authority consent to it.
- (4) An authority doing anything under an agreement entered into under this section act as agents for the Secretary of State, and nothing in any such agreement affects his status as roads authority.
- (5) The functions of the Secretary of State mentioned in sub-sections (1) and (2) above do not include his functions under Schedules 1 and 2 to this Act.

##### Textual Amendments

**F3** Words in s. 4(1) repealed (1.4.1996) by 1994 c. 39, s. 180(2), **Sch. 14**; S.I. 1996/323 art. 4(1)(d), Sch. 2

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

**C2** S. 4(1) power to contract out functions of Secretary of State (as restricted) (16.3.1996) by S.I. 1996/878 art. 2, Sch., para. 5(b)

#### *Trunk roads*

#### 5 Trunk roads.

- (1) Subject to the provisions of this section, all roads which immediately before the commencement of this section were trunk roads within the meaning of the Trunk Roads Acts<sup>M4</sup> 1936 and<sup>M5</sup> 1946 shall continue to be, and to be known as, trunk roads.
- (2) The Secretary of State shall keep under review the national system of routes for through traffic in Scotland, and if he is satisfied, after taking into consideration the requirements of local and national planning, including the requirements of agriculture and industry, that it is expedient for the purpose of extending, improving or reorganising that system either—
  - (a) that any existing road, or any road proposed to be constructed by him, should become a trunk road, or
  - (b) that any trunk road should cease to be a trunk road,

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he may by order direct that the road shall become, or as the case may be shall cease to be, a trunk road as from such date as may be specified in that regard in the order.

- (3) The power of the Secretary of State under subsection (2)(a) above shall include power to direct that a road, or a proposed road, which he considers suitable for the purpose of relieving the trunk road from local traffic shall become part of the trunk road, whether or not there is (or will be) intervening land between those roads.
- (4) Subject to subsection (7)(i) below, 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.
- (5) If objection to an order under this section is duly made in accordance with Schedule 1 to this Act by the local roads authority who are responsible for the maintenance of any road to which the order relates, or who will become so responsible by virtue of the order, 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 <sup>M6</sup> Statutory Orders (Special Procedure) Act 1945.
- (6) Where an order under this section directs that a road shall cease to be a trunk road it may also direct that—
  - (a) as from the date specified in that regard in the order, the local roads authority for the area shall become the roads authority for the road; and
  - (b) the authority shall enter the road in their list of public roads.
- (7) If an order—
  - (a) under this section, or
  - (b) under section 1(3) of the <sup>M7</sup> Trunk Roads Act 1936 and continuing in force by virtue of paragraph 5 of Schedule 6 to this Act,
 directing that a road which the Secretary of State proposes to construct shall become a trunk road—
  - (i) is revoked by a subsequent order made at any time before the date on which that road is opened for the purposes of through traffic, Schedules 1 and 2 to this Act shall have no effect as regards the revoking order, but within 28 days of the revoking order's having been made notice of the revocation shall be published by the Secretary of State in the Edinburgh Gazette and in such other manner as he thinks best adapted for informing persons affected;
  - (ii) is revoked or varied by a subsequent order made at any such time as aforesaid, the revoking or varying order shall not be deemed for the purposes of subsection (6) above to be an order directing that a road shall cease to be a trunk road.
- (8) Without prejudice to the powers of the Secretary of State under this Act—
  - (a) to improve trunk roads by the construction of cycle tracks and footways for use in connection therewith, or
  - (b) to provide such tracks or footways as part of any trunk road which he is authorised to construct,

the power to make an order under this section directing that a road proposed to be constructed by the Secretary of State shall become a trunk road may be exercised in relation to any cycle track or footpath which the Secretary of State proposes to

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construct upon land separated by intervening land from the trunk road in connection with which it is to be used.

- (9) A local roads authority, if they think fit, may contribute towards costs incurred by the Secretary of State in the construction or improvement of any trunk road.

#### **Marginal Citations**

- M4** Edw. 8 & 1 Geo. 6 c. 5.  
**M5** 9 & 10 Geo. 6 c. 30.  
**M6** 9 & 10 Feo. 6 c. 18.  
**M7** Edw. 8 & 1 Geo. 6 c.5.

## **6 Local and private Act functions with respect to trunk roads.**

As from the date when a road becomes a trunk road, any functions of construction, maintenance or improvement exercisable as respects that road by a local roads authority under any local or private Act shall instead be exercisable by the Secretary of State.

### *Special roads*

## **7 General provision as to special roads.**

- (1) Subject to the provisions of this Act, all such roads as immediately before the commencement of this Act were special roads, being roads provided in pursuance of a scheme made under section 1 of the <sup>M8</sup>Special Roads Act 1949, shall continue to be, and to be known as, special roads.
- (2) Roads which continue to be special roads by virtue of subsection (1) above shall continue, subject to the provisions of this Act, to be special roads for the use of traffic of the classes for the use of which they were special roads immediately before the commencement of this Act.
- (3) A roads authority may be authorised by means of a scheme under this section to provide, along a route prescribed by the scheme, a special road for the use of traffic of any class so prescribed.
- (4) Subject to subsection (10) below, a roads authority authorised by a scheme under this section, or by any such scheme as is referred to in subsection (1) above, to provide a special road are in this Act referred to in relation to that road as the “special road authority”.
- (5) A special road authorised by a scheme under this section may be provided by means of—
- the construction by the special road authority of a new road along the route prescribed by the scheme or along any part of that route;
  - the appropriation under this Act of any road (or proposed road in course of construction) comprised in that route for which the special road authority are the roads authority;

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- (c) the transfer to that authority under this Act of any road (or proposed road in course of construction) comprised in that route for which they are not the roads authority.
- (6) A scheme under this section authorising the provision of a special road shall—
- (a) in the case of a road to be provided by the Secretary of State, be made by the Secretary of State, and
  - (b) in the case of a road to be provided by a local roads authority, be made by that authority and confirmed by the Secretary of State,
- in accordance with the provisions of Parts II and III of Schedule 1 to this Act.
- (7) Before making or confirming a scheme under this section, the Secretary of State shall give due consideration to the requirements of local and national planning, and to the requirements of agriculture and industry.
- (8) If objection to a scheme under this section is duly made in accordance with Schedule 1 to this Act—
- (a) by the roads authority for any road (or proposed road) comprised in the route of the special road authorised by the scheme;
  - (b) by any navigation authority or water authority on whom notice is required to be served under paragraph 3 of that Schedule on the ground that any bridge or tunnel over or under navigable waters for which provision is made by the scheme is likely to obstruct or impede the performance of their functions under any enactment or to interfere with the reasonable requirements of navigation over the waters affected by the scheme,
- and is not withdrawn, the scheme shall be subject to special parliamentary procedure.
- (9) Part IV of Schedule 1 to this Act shall have effect for the purposes of the application to schemes under this section of the <sup>M9</sup> Statutory Orders (Special Procedure) Act 1945; and Schedule 2 to this Act shall have effect with respect to the validity and date of operation of such schemes.
- (10) A scheme under this section 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 special road authority for the special road and may provide—
- (a) for the performance by the special road authority, in relation to the road, of any roads functions of another authority who are party to the submission; and
  - (b) for the making of contributions by that other authority to the special road authority in respect of expenditure incurred in the performance of those functions.

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

**C3** S. 7 definition of "special road scheme" applied (21.10.1991) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), [s. 47\(1\)](#)(with savings s. 47(4)); [S.I. 1991/2286, art. 2\(1\)](#), [Sch. 1](#)

**Marginal Citations**

**M8** 1949 c. 32.

**M9** 9 & 10 Geo. 6 c. 18.



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## 8 Further provision as regards classification of traffic for purposes of special roads.

- (1) Different classes of traffic may be prescribed by a scheme under section 7 of this Act in relation to different parts of the special road to which the scheme relates.
- (2) The classes of traffic prescribed by any such scheme shall be prescribed by reference to the classes set out in Schedule 3 to this Act.
- (3) The Secretary of State may by order vary the classes of traffic specified in the said Schedule 3 and the composition of any such class; <sup>F4</sup> . . .
- [<sup>F5</sup>(4) A variation order may contain provision applying the variations made by the order to existing schemes (whether made by the Secretary of State or a local roads authority); and in the absence of such provision a variation order does not affect the classes of traffic prescribed in an existing scheme.
- (5) In subsection (4) above an “existing scheme” means a scheme under section 7 made before the order comes into operation.]

### Textual Amendments

- F4** Words in s. 8(3) omitted (21.10.1991) by virtue of [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), [s. 45](#) (with savings s. 47(4)); S.I. 1991/2286, art. 2(1), [Sch. 1](#)
- F5** [S. 8\(4\)\(5\)](#) inserted (21.10.1991) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), [s. 45](#) (with savings s. 47(4)); S.I. 1991/2286, art. 2(1), [Sch. 1](#)

## 9 Supplementary orders relating to special roads.

- (1) Subject to section 113 of this Act, provision in relation to a special road may be made by an order under this section—
  - (a) for appropriating as part of the special road, as from such date as may be specified in the order, any road (or proposed road in course of construction) comprised in the route prescribed by the scheme authorising the special road and which is a road (or proposed road) for which the special road authority are the roads authority;
  - (b) for transferring to the special road authority, as from such date as may be specified in the order, any road (or proposed road in course of construction) comprised in that route and for which they are not the roads authority;
  - (c) for authorising the special road authority—
    - (i) to stop up, divert, improve or otherwise alter any road which crosses or enters the route of the special road or is or will be otherwise affected by the construction or improvement of the special road;
    - (ii) to construct any new road for purposes connected with any such alterations as aforesaid or for any other purpose connected with the special road or its construction and to close after such period as may be specified in the order any new road temporarily so constructed;
  - (d) for transferring to such roads authority as may be specified in the order, as from such date as may be so specified any road constructed by the special road authority in pursuance of the order or any previous order made under this section;

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- (e) for authorising or requiring the special road authority to exercise, either concurrently with or to the exclusion of any [<sup>F6</sup>local authority], any functions which, apart from the order, would be exercisable by that [<sup>F6</sup>local authority] in relation to the special road or any part thereof other than functions of [<sup>F6</sup>special road] authority as regional or general planning authority within the meaning of the <sup>M10</sup>Town and Country Planning (Scotland) Act 1972; or
  - (f) for any other purpose incidental to the purposes aforesaid or otherwise incidental to the construction or maintenance of, or other dealing with, the special road.
- (2) An order under this section shall—
- (a) in the case of a special road provided or to be provided by the Secretary of State, be made by the Secretary of State;
  - (b) in the case of a special road provided or to be provided by a local roads authority, be made by that authority and confirmed by the Secretary of State, in accordance with Parts I and III of Schedule 1 to this Act; and Schedule 2 to this Act shall have effect with respect to the validity and date of operation of any such order.
- (3) No order authorising the stopping up of a road shall be made or confirmed by the Secretary of State under this section unless he is satisfied that another reasonably convenient route is available or will be provided in pursuance of an order under this section before the road is stopped up.
- (4) No order providing for the appropriation by or transfer to a special road authority of an existing road comprised in the route prescribed by the scheme authorising the special road shall be made or confirmed by the Secretary of State under this section unless he is satisfied—
- (a) that another reasonably convenient route is available for traffic other than traffic of the class authorised by the scheme, or will be provided in pursuance of an order under this section before the date on which the appropriation or transfer takes effect, or
  - (b) that no such other route is reasonably required for any such other traffic.
- (5) An order under this section may provide for the payment of contributions—
- (a) by the special road authority to any other roads authority in respect of any additional liabilities imposed on that other authority in consequence of the provisions of the order or of any previous order made under this section;
  - (b) to the special road authority by any other authority in respect of any liabilities so imposed on the special road authority, being liabilities which would otherwise have fallen to be discharged by the other authority;
- and may also provide for the determination by arbitration of disputes as to the payment of such contributions.

#### Textual Amendments

**F6** Words in s. 9(1)(e) substituted (1.4.1996) by 1994 c. 39 s. 180(1), Sch. 13, para. 135(2); S.I. 1996/323 art. 4(c)

#### Marginal Citations

**M10** 1972 c. 52.

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## 10 Certain special roads to be trunk roads.

- (1) A special road to be provided by the Secretary of State in accordance with a scheme under section 7 of this Act shall, except in so far as it is provided by means of the appropriation or transfer of any existing road, become a trunk road on such date as may be specified in the scheme.
- (2) A road (not being a trunk road) which, by means of an order under section 9 of this Act, is appropriated as a special road to be provided by the Secretary of State, and a road which, by means of such an order, is transferred to the Secretary of State, shall become a trunk road on the date on which it is so appropriated or is so transferred, as the case may be.
- [<sup>F7</sup>(3) Subsections (1) and (2) above shall have effect subject to any provision of the scheme under section 7 of this Act directing that the special road in question or any part of it shall not be a trunk road; but any such provision shall not affect the power of the Secretary of State to make an order under section 5(2)(a) of this Act with respect to the special road or part.]

### Textual Amendments

- F7** S. 10(3) inserted (21.10.1991) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), [s. 46](#) (with saving [s. 47\(4\)](#)); [S.I. 1991/2286](#), [art. 2\(1\)](#), [Sch. 1](#)

### *Classification of roads*

## 11 Classification of roads.

- (1) The Secretary of State may, for the purposes of—
  - (a) any provision of this Act which refers to a classified or unclassified road; or
  - (b) any other enactment (whether passed or made before or after the passing of this Act) which refers to a road classified by the Secretary of State,classify a road or proposed road (whether as a principal road or otherwise) from time to time in such manner as he may determine after consultation with any roads authority in whose area the road is, or will be, situated.
- (2) In any enactment in force at the commencement of this Act a reference to a classified road (or any cognate reference) shall be construed as a reference to a road (or proposed road) which for the time being is classified, for the purposes of that enactment, under subsection (1) above.
- (3) A road which, immediately before the commencement of this Act, bore (or fell to be treated as bearing) a classification (whether as a principal road or otherwise) given by the Secretary of State under any enactment shall, until the Secretary of State otherwise directs, be treated as continuing to bear that classification and as having been so classified under subsection (1) above.
- (4) The Secretary of State may by order assign a new description to a class of roads (or proposed roads) classified under subsection (1) above; and except in so far as the order otherwise provides, any reference in any enactment passed or made before the date of the order to a road (or to a proposed road) in terms of the old description shall be construed as a reference to a road (or to a proposed road) of the new description.

*Status: Point in time view as at 06/04/2001.*

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

- C4 S. 11 definition of "principal road" applied (1.1.1993) by [New Roads and Street Works Act 1991](#) (c. 22, SIF 59, 108), [s. 136\(3\)](#); S.I. 1992/2990, art. 2(2), [Sch. 2](#)

*Supplementary*

**12 Powers as respects roads that cross or join public roads other than special roads.**

- (1) Subject to section 113, and without prejudice to section 9(1)(c), of this Act, provision may be made by the roads authority by an order under this section in relation to a public road (or proposed public road) other than a special road (or proposed public road which is to be a special road)—
- (a) for authorising the roads authority for the road or proposed road (such road (or proposed road) being in this section referred to as the “main road”)—
    - (i) to stop up, divert, improve or otherwise alter a road (in this section referred to as the “side road”) which crosses or enters the route of the main road or is or will be otherwise affected by the construction or improvement of the main road;
    - (ii) to construct a new road for purposes concerned with any such operation as is mentioned in sub-paragraph (i) above or for any other purpose connected with the main road or its construction, and to close after such period as may be specified in the order any new road temporarily so constructed;
  - (b) for transferring to such other roads authority as may be specified in the order, as from such date as may be so specified, a road constructed in pursuance of the order or of any previous order made under this section;
  - (c) for any purpose incidental to the purposes aforesaid.
- (2) Parts I and III of Schedule 1 to this Act shall have effect as to the making of an order under this section by the Secretary of State as roads authority; and Schedule 2 to this Act shall have effect as to the validity and date of operation of any such order.
- (3) No order under this section authorising the stopping up of a road shall be made by the Secretary of State unless he is satisfied that another reasonably convenient route is available or will be provided before the road is stopped up.
- (4) An order under this section may provide for the payment of contributions—
- (a) by the roads authority to any other roads authority in respect of any additional liabilities imposed on that other authority in consequence of the order or of any previous order made under this section;
  - (b) to the roads authority by any other roads authority in respect of any liabilities so imposed on the first mentioned authority which would otherwise have fallen to be discharged by that other authority;
- and may also provide for the determination by arbitration of disputes as to the payment of such contributions.
- (5) Except in a case to which section 132 of this Act applies, an order under this section shall include provision for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across the side road.

*Status: Point in time view as at 06/04/2001.*

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- (6) The Secretary of State may by regulations prescribe the procedure to be followed by a local roads authority in making an order under this section; and such regulations may in particular make provision as to the means of public notification of the proposal to make such an order and may make like provision in relation to the local roads authority as is made by subsection (3) above in relation to the Secretary of State.
- (7) Where a local roads authority propose to make an order under this section, then, before the expiry of 28 days from the date of the first public notification, in accordance with regulations under subsection (6) above, of the proposal to make the order, any person may object to it to the authority, and—
- (a) if no such objection is made, or objection is made but withdrawn, they may confirm the order themselves and
  - (b) if such objection is made and not withdrawn, the Secretary of State shall determine the matter, and may confirm the order with or without modification or refuse to confirm it.

*F<sup>8</sup> Transitory provisions*

**Textual Amendments**

**F8** S. 12A-12F added (4.1.1995) by 1994 c. 39, s. 7(2), 38(2) (with s. 7(2)); S.I. 1994/2850 art. 3(a), Sch. 2

**12A Transitional power of Secretary of State as respects existing roads.**

- (1) Without prejudice to section 5 of this Act, where the Secretary of State considers that it is necessary or expedient as a result of, or in connection with, the establishment of new local government areas on 1st April 1996—
- (a) that any existing road should become a trunk road; or
  - (b) that any trunk road should cease to be a trunk road,
- he may by order direct that the road shall become a trunk road or, as the case may be, shall cease to be a trunk road, as from such date as may be specified in that regard in the order.
- (2) Where an order under this section directs that a road shall cease to be a trunk road, it may also direct that—
- (a) as from the date specified in that regard in the order, the local roads authority for the area shall become the roads authority for the road; and
  - (b) the authority shall enter the road in their list of public roads.
- (3) An order under this section may relate to one or more roads.

**12B Transitional power of Secretary of State as respects proposed roads.**

- (1) Without prejudice to section 5 of this Act, where the Secretary of State considers that it is necessary or expedient as a result of, or in connection with, the establishment of new local government areas on 1st April 1996—
- (a) that any proposed road—
    - (i) to be constructed by the local roads authority; and

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- (ii) in respect of which all necessary planning permission has been granted or is deemed to have been granted,  
should become a trunk road; or
- (b) that any proposed road—
- (i) to be constructed by the Secretary of State as a trunk road; and
- (ii) in relation to which an order has been made under section 5 of this Act,  
should not become a trunk road,
- he may by order direct that the proposed road shall or, as the case may be, shall not become a trunk road.
- (2) Where an order is made in respect of a proposed road as mentioned in subsection (1) (a) above—
- (a) subject to subsection (6) below, the Secretary of State may, for the purposes of the construction of that road, do any thing which he would have been entitled to do if an order under section 12 of this Act (in this section referred to as a “section 12 order”) had been made in relation to that road; and
- (b) where an environmental statement has been published in respect of the project, the Secretary of State shall not be required to publish a further environmental statement,
- but otherwise the Secretary of State shall in all respects be in the same position in relation to that proposed road as the local roads authority would have been if such order had not been made.
- (3) Where an order is made in respect of a proposed road as mentioned in subsection (1) (b) above—
- (a) the local roads authority may proceed with construction of the said road as if all necessary planning permission had been granted;
- (b) the section 12 order made in relation to that road shall apply as if—
- (i) the local roads authority were the roads authority referred to in such order; and
- (ii) all necessary planning permission has been granted; and
- (c) where an environmental statement has been published in respect of the project, the local roads authority shall not be required to publish a further environmental statement.
- (4) Where an order under this section directs that a proposed road shall not become a trunk road, it may also direct that—
- (a) as from the date specified in that regard in the order, the local roads authority for the area shall become the roads authority for the proposed road; and
- (b) on such date as may be specified in that regard in the order, the authority shall enter the road in their list of public roads.
- (5) An order under this section may relate to one or more proposed roads.
- (6) The Secretary of State shall not by virtue of this section be empowered—
- (a) to stop up a road as mentioned in section 12(1)(a)(i) of this Act; or
- (b) to do anything mentioned in paragraphs (a) and (b) of section 70 of this Act except where the local roads authority have been so authorised under a section 12 order; and where such an order has been made, the Secretary of

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State may do anything he would have been authorised to do if the order had been made by him.

- (7) In this section and in section 12C of this Act “planning permission” means permission under <sup>F9</sup>Part III of the Town and Country Planning (Scotland) Act 1997].

#### Textual Amendments

**F9** S. 12B(7) words substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), Sch. 2, para. 38(1)

### 12C Transitional power of Secretary of State as respects special road schemes.

- (1) Where the Secretary of State considers that it is necessary or expedient as a result of, or in connection with, the establishment of new local government areas on 1st April 1996 that—

- (a) a special road which the Secretary of State is authorised to provide by virtue of a scheme under section 7 of this Act (a “section 7 scheme”) should be provided by a local roads authority; or
- (b) a special road which a local roads authority is authorised to provide by virtue of a section 7 scheme which has been confirmed by the Secretary of State should be provided by the Secretary of State,

he may by order direct that the local roads authority or, as the case may be, the Secretary of State shall be authorised to provide such special road; and the section 7 schemes relating to those special roads shall (notwithstanding their terms) be deemed to authorise the provision of such special roads by the local roads authority and the Secretary of State respectively.

- (2) Where an order is made in respect of a special road as mentioned in subsection (1) (a) above—

- (a) where the Secretary of State has made an order under section 9 of this Act (a “section 9 order”) in relation to that special road, the local roads authority may treat that order as if it were an order made by them and confirmed by the Secretary of State;
- (b) any necessary planning permission (whether relating to the special road or the doing of anything authorised by virtue of the section 9 order) shall be deemed to have been granted to the local roads authority; and
- (c) where an environmental statement has been published in respect of the project, the local roads authority shall not be required to publish a further environmental statement.

- (3) Where an order is made in respect of a special road as mentioned in subsection (1) (b) above—

- (a) if the local roads authority have made a section 9 order which has been confirmed by the Secretary of State, the Secretary of State may treat that section 9 order as if it were an order made by him; and
- (b) where an environmental statement has been published in respect of the project, the Secretary of State shall not be required to publish a further environmental statement,

but otherwise the Secretary of State shall in all respects be in the same position in relation to that special road as the local roads authority would have been if such order had not been made.



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**12D Application of section 112 to orders under sections 12A, 12B, 12C and 12E.**

The provisions of section 112 of this Act shall apply, subject to such modifications as the Secretary of State may by order specify, to roads, proposed roads and special roads such as may be mentioned in orders made under sections 12A, 12B, 12C and 12E of this Act as they apply to roads mentioned in the said section 112.

**12E Further power of Secretary of State as respects proposed roads and special road schemes.**

- (1) Where the Secretary of State considers that it is necessary or expedient as a result of, or in connection with, the establishment of new local government areas on 1st April 1996 that any proposed road to be constructed by a local roads authority should become a trunk road, but the condition mentioned in subsection (1)(a)(ii) of section 12B of this Act is not satisfied in relation to such proposed road, he may, notwithstanding the provisions of that subsection, by order direct that the proposed road shall become a trunk road.
- (2) The provisions of paragraphs (a) and (b) of section 12B(2) of this Act shall apply where an order is made under subsection (1) above as they apply where an order is made under subsection (1)(a) of that section.
- (3) Where the Secretary of State considers that it is necessary or expedient as a result of, or in connection with, the establishment of new local government areas on 1st April 1996 that a special road in respect of which a section 7 scheme has been made by a local roads authority but not confirmed by the Secretary of State should be provided by him, he may, notwithstanding the provisions of subsection (1)(b) of section 12C of this Act, by order, direct that he shall be authorised to provide such special road by virtue of such scheme.
- (4) The provisions of paragraphs (a) and (b) of section 12C(3) of this Act shall apply where an order is made under subsection (3) above as they apply where an order is made under subsection (1)(b) of that section.
- (5) An order under subsection (1) or (3) above may include provision specifying the extent to which compliance before the making of that order with any statutory requirement in relation to the proposed road or, as the case may be, special road shall be deemed to satisfy for all purposes any statutory requirement which the Secretary of State would, apart from such provision, have been required to comply with in relation to that proposed road or special road.
- (6) As from the date of an order under subsection (1) or (3) above, the proposed road or, as the case may be, special road shall be deemed always to have been a proposed road to be constructed by the Secretary of State or a special road which the Secretary of State is authorised to provide.

**12F Further provisions as to orders.**

An order under section 12A, 12B, 12C, 12D or 12E of this Act may not be made so as to take effect more than 3 years after 1st April 1996.]



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## PART II

### PRIVATE ROADS

#### 13 Making up and maintenance of private roads.

- (1) The local roads authority may by notice to the frontagers of a private road require them to make the road up to, and maintain it at, such reasonable standard as may be specified in the notice.
- (2) Without prejudice to the generality of subsection (1) above there may be required by notice under that subsection work as regards levelling, paving, lighting or drainage.
- (3) A notice under subsection (1) above shall, without prejudice to the generality of section 136 of this Act, specify—
  - (a) the local roads authority's estimate of the cost of the work required by the notice;
  - (b) a scheme whereby the cost is to be apportioned among the frontagers (being a scheme which is equitable in the opinion of the authority and which describes for each frontager the proportion of cost to be paid by him); and
  - (c) the dates by which the work shall be commenced and completed:Provided that the authority may subsequently by notice allow a postponement of commencement or completion (or both).
- (4) Without prejudice to subsection (5) below, a requirement imposed on frontagers by a notice under subsection (1) above may, if the requisite number of the frontagers so agree, be fulfilled on behalf of the frontagers by the local roads authority.
- (5) Where the date specified in a notice under subsection (1) above for the commencement or, as the case may be, completion of the work specified in the notice expires without the work having been commenced or, as the case may be, completed, the local roads authority may carry out or complete the work.
- (6) Without prejudice to section 14 of this Act, the expenses incurred by a local roads authority under subsection (4) or (5) above shall be recoverable from the frontagers in accordance with the scheme referred to in the notice mentioned in those subsections.
- (7) A person upon whom a notice has been served under subsection (1) above may within 28 days of such service appeal by summary application to the sheriff; and the sheriff's decision on the matter shall be final.
- (8) In subsection (4) above, "the requisite number" has the same meaning in relation to the private road and the land fronting or abutting the road as it has in section 1(7) of this Act in relation to the road and land mentioned in that section.

#### 14 Power to contribute to, or carry out, work on private roads.

- (1) A local roads authority may, if they think fit, pay the whole or any part of any expenditure incurred by a person in making up or maintaining a private road; and may, without prejudice to section 15 of this Act, at their own expense carry out any repair which they consider necessary in relation to a private road after giving such notice as is reasonable in the circumstances.
- (2) For the avoidance of doubt—

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- (a) a local roads authority do not incur responsibility for making up or maintenance of the private road by reason only of their acting under subsection (1) above;
- (b) the carrying out of work by a local roads authority under subsection (1) above does not create any implication that the private road, on completion of the work, is of a standard satisfactory to the authority for the purposes of section 16(1)(b) of this Act.

## **15 Emergency work in relation to private roads.**

- (1) The local roads authority may, if in their opinion work in relation to a private road is necessary because circumstances constituting an emergency (other than an emergency constituted by such danger as is mentioned in section 91 of this Act) have arisen, carry out that work; and they shall not require to give any notice of their intention in that regard other than such (if any) as those circumstances appear to them to admit.
- (2) The expenses of carrying out work under subsection (1) above shall be borne by the authority.

## **16 Application for private road to become public road.**

- (1) If a private road—
  - (a) is of such standard as has last been required by relevant notice under section 13(1) of this Act; or
  - (b) where no such standard has been so required, is of a standard satisfactory to the local roads authority,

then, if application is made to them under this subsection by the requisite number of frontagers for such addition, the authority shall, subject to subsection (4) below, within 12 months of the application add the road to their list of public roads:

Provided that where the requirement mentioned in paragraph (a) above has been fulfilled by the authority under subsection (4) of the said section 13 or the work specified in the notice has been carried out or completed by them under subsection (5) thereof no such application shall be required and the authority shall add the road to the said list forthwith.

- (2) If, on completion of a private road constructed in accordance with a construction consent granted under section 21(3) of this Act, the person granted such consent applies, as respects the road, under this subsection to the local roads authority they shall within 12 months of the application add the road to their list of public roads.
- (3) Any dispute in relation to—
  - (a) subsection (1) above, between the local roads authority and any frontager; or
  - (b) subsection (2) above, between that authority and a person applying (or purporting to apply) under that subsection,
 shall be determined by arbitration by a single arbiter appointed in default of agreement by the sheriff on the application of either party.
- (4) Without prejudice to any addition made under subsection (1) or (2) above, the said subsection (1) or as the case may be (2) does not impose a duty as respects a road which within the period there allowed for such addition deteriorates to a standard below that mentioned in the said subsection (1).

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- (5) In the foregoing provisions of this section—
- “road” does not include a footpath; and
  - “the requisite number” has the same meaning in relation to that road and the land fronting or abutting the road as it has in section 1(7) of this Act in relation to the road and land mentioned in that section.

## **17 Security for private road works relating to housing.**

- (1) Subject to subsection (3)(a) below, this section applies where—
- (a) it is proposed to—
    - (i) erect a building; or
    - (ii) alter an existing building which is not a private dwellinghouse, for use as a private dwellinghouse; and
  - (b) the land comprising the building fronts or abuts or, as the case may be, will front or abut a private road which—
    - (i) has not been constructed; or
    - (ii) is not of a standard mentioned in section 16(1) of this Act.
- (2) The Secretary of State may by regulations make provision for securing that, in a case to which this section applies, the erection or alteration shall not commence until—
- (a) any construction consent required for the road under section 21(1) of this Act has been obtained; and
  - (b) there has been deposited with the local roads authority, or secured to their satisfaction, a sum sufficient to meet the cost of constructing the road in accordance with the construction consent or, as the case may be, of making the road up to the standard mentioned as aforesaid.
- (3) Without prejudice to the generality of subsection (2) above, regulations under that subsection may—
- (a) provide that this section—
    - (i) shall not apply to a particular class or particular classes of dwellinghouse; or
    - (ii) shall apply to any such class or classes subject to such modifications as the regulations may specify;
  - (b) provide that in a case to which this section applies a person carrying out works in contravention of, or otherwise than in accordance with, the regulations commits an offence and is liable on summary conviction to a fine not exceeding the statutory maximum and conviction on indictment to a fine;
  - (c) provide that—
    - (i) in a case where circumstances mentioned in provisions made under paragraph (d)(vi) below have arisen the local roads authority shall construct the road or, as the case may be, make it up to the standard mentioned in section 16(1) of this Act; and
    - (ii) subsection (2) of section 20 of this Act shall apply to a road so constructed or made up as that subsection applies to a road constructed under subsection (1) of that section; and
  - (d) make provision as to—
    - (i) such deposit or security as is mentioned in subsection (2)(b) above;

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- (ii) circumstances in which such deposit or security may be dispensed with;
  - (iii) calculation of the amount of the sum mentioned in the said subsection (2)(b) and the apportionment of that amount where more than one person is liable, by virtue of this section, to deposit or secure that sum in respect of the same road;
  - (iv) conditions under which the local roads authority shall hold any such deposit;
  - (v) repayment of such deposit or discharge of such security; and
  - (vi) circumstances in which, and procedure by which, such deposit may be applied or, as the case may be, such security may be called up and the proceeds thereof applied, to meet the cost of the works in respect of which the deposit or security was held.
- (4) Any dispute between a local roads authority and any person as to a matter arising from the foregoing provisions of this section or from regulations made thereunder shall be determined by a single arbiter appointed, in default of agreement, by the sheriff on the application of either party.
- (5) In subsection (3) above, “the statutory maximum” has the meaning ascribed to it by section 74 of the <sup>M11</sup>Criminal Justice Act 1982.

#### Marginal Citations

M11 1982 c. 48.

## 18 Power of local roads authority to take over footpaths associated with development.

- (1) A local roads authority may enter into an agreement—
- (a) with every owner of land which is associated with or forms part of a development and on which there is, or is to be constructed, a footpath so associated; or
  - (b) where a person other than the owner of the land is or will be responsible for the maintenance or construction of the footpath, with that other person,
- whereby, if the footpath, is made up to the satisfaction of the authority, they shall enter it in their list of public roads; but where the owner or other person fails within such reasonable period as may be specified in the agreement to make up the footpath to the authority’s satisfaction, they may themselves carry out the work and recover from him such expenses as are reasonably incurred in so doing.
- (2) Subject to subsection (3) below, where as regards an existing footpath a local roads authority are of the opinion that the obtaining of such agreement as is mentioned in subsection (1) above is not reasonably practicable, they may notwithstanding the absence of such agreement, enter the footpath in their list of public roads.
- (3) A local roads authority shall not exercise the power conferred on them by subsection (2) above unless they have taken all reasonable steps to ascertain the identity of every owner of the land on which the footpath is, or is to be constructed and have obtained the consent to such exercise of a majority of those owners whose identities they have ascertained.

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- (4) In the foregoing provisions of this section “development” means residential or commercial building operations which will be, are being, or have been, carried out on land.

### PART III

#### NEW ROADS

#### 19 Construction of new roads by Secretary of State as roads authority.

- (1) Subject to, subsections (2) and (3) below, the Secretary of State, <sup>F10</sup> . . . , may construct new trunk and other roads.
- (2) Without prejudice to section 5(4) and (5) of this Act, before constructing a road other than a trunk road under subsection (1) above, the Secretary of State shall consult every local roads authority in whose area any part of the road will be situated and shall consider any objections to the road which he may receive from them.
- (3) Without prejudice to section 7(3) and (5)(a) of this Act, the “other roads” referred to in subsection (1) above do not include special roads.

#### Textual Amendments

**F10** Words in s. 19(1) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 76(1)(3), Pt. IV (with art. 5)

#### 20 Construction of new roads other than special roads by local roads authority; and entry of such new roads and of special roads in list of public roads.

- (1) Without prejudice to section 7(3) and (5)(a) of this Act, a local roads authority may construct in their area any new road, other than a special road, which they consider requisite.
- (2) When such construction by them as is mentioned in subsection (1) above or in the said section 7(5)(a) is completed, the local roads authority shall enter the road (or as the case may be special road) in their list of public roads.

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

**C5** S. 20(2) extended by S.I. 1985/2080, reg. 14(b)

#### [20A] <sup>F11</sup> Environmental assessment of certain road construction projects

- (1) If the Scottish Ministers have under consideration the construction of a new road for which they are the roads authority they shall before details of the project are published, determine whether or not it falls within Annex I or II.
- (2) If the Scottish Ministers determine that the project—
- (a) falls within Annex I, or

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- (b) is a relevant project falling within Annex II and that having regard to the selection criteria contained in Annex III it should be made subject to an environmental impact assessment in accordance with the Directive, they shall, not later than the date when details of the project are published, publish an environmental statement.
- (3) The Scottish Ministers shall publish any determination made by them in accordance with subsection (2) above.
- (4) Any project for the construction of a special road which falls within Annex II shall be treated as having characteristics that require it to be made subject to an environmental impact assessment.
- (5) The Scottish Ministers shall publish any environmental statement so as to ensure that members of the public who are likely to be concerned are given a reasonable opportunity to express an opinion before they decide whether to proceed with the project, and they shall not make any such decision without taking into consideration any opinion so expressed to them within a period of 3 weeks from the date of publication of the environmental statement.
- (6) The Scottish Ministers shall ensure that the consultation bodies are given an opportunity to express an opinion on the published details of the project and the environmental statement before they decide whether to proceed with the project.
- (7) Subject to subsection (8) below, to the extent to which the Scottish Ministers consider that—
- (a) it is relevant to the specific characteristics of the project and of the environmental features likely to be affected by it, and
  - (b) having regard in particular to current knowledge and methods of assessment, the information may reasonably be gathered,
- the environmental statement published in accordance with subsection (2) above shall contain the information referred to in Annex IV.
- (8) The environmental statement published in accordance with subsection (2) above shall contain at least the following information—
- (a) a description of the project comprising information on the site, design and size of the project;
  - (b) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
  - (c) the data required to identify and assess the main effects which the project is likely to have on the environment;
  - (d) an outline of the main alternatives studied by the Scottish Ministers and an indication of the main reason for their choice (taking into account the environmental effects); and
  - (e) a non-technical summary of the information mentioned in paragraphs (a) to (d).
- (9) In this section and section 20B of this Act—

“the Directive” means Council Directive No. [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment as amended by Council Directive No. [97/11/EC](#);

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“Annex” means an Annex to the Directive;

“relevant project” means a project for the construction of a new road where the completed works (together with any area occupied by apparatus, equipment, machinery, materials, plant, spoil heaps or other such facilities or stores required during the period of construction)–

- (a) exceed 1 hectare in area; or
- (b) are situated in whole or in part in a sensitive area;

“sensitive area” shall have the meaning ascribed to that expression in regulation 2(1) of the Environmental Impact Assessment (Scotland) Regulations 1999.]

#### Textual Amendments

**F11** Ss. 20A and 20B substituted for s. 20A (1.8.1999) by [S.S.I. 1999/1, reg. 49](#)

### [<sup>F12</sup>**20B Projects with significant transboundary effects**

- (1) This section applies if–
  - (a) it appears to the Scottish Ministers that a project to which section 20A(2) of this Act applies is likely to have a significant effect on the environment in another EEA State; or
  - (b) an EEA State the environment of which is likely to be significantly affected by such a project asks the Scottish Ministers for information about it.
- (2) The Scottish Ministers shall give to the EEA State–
  - (a) a description of the project together with any information available to them which suggests that it may have a significant effect on the environment in the EEA State;
  - (b) any information which they have about the nature of the decision which may be taken on the project;
  - (c) where they consider it appropriate, information about the environmental impact assessment procedure; and
  - (d) a reasonable period within which to indicate whether the EEA State wishes to participate in that procedure of this Act.
- (3) Subsection (2)(a) and (b) above must be complied with no later than the date of publication of the notice referred to in section 20A(3) of this Act.
- (4) If the EEA State indicates that it wishes to participate in the environmental impact assessment procedure, the Scottish Ministers shall give it–
  - (a) a copy of the environmental statement where that has not already been given to that EEA State; and
  - (b) any information about the environmental impact assessment procedure which they consider it appropriate to give and which has not already been made available to that EEA State.
- (5) The Scottish Ministers shall also–
  - (a) arrange for the information which they have given to the EEA State to be made available within a reasonable time to–
    - (i) the authorities referred to in Article 6(1) of the Directive; and

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- (ii) members of the public in the EEA State who are likely to be concerned; and
  - (b) ensure that those authorities and the members of the public concerned are given a reasonable opportunity to express an opinion before they decide whether to proceed with the project.
- (6) In accordance with Article 7(4) of the Directive, the Scottish Ministers shall—
- (a) enter into consultation with the EEA State concerned regarding in particular the potential significant effects of the project on the environment of that EEA State and the measures envisaged to reduce or eliminate those effects; and
  - (b) agree with the EEA State a reasonable period for that consultation.
- (7) Where an EEA State has been consulted in accordance with subsection (4) above, the Scottish Ministers shall inform the EEA State of the decision and give it copies of the documents referred to in paragraph 7(1B) or 13(1B) as the case may be of Schedule 1 to this Act.
- (8) In this section “EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 <sup>M12</sup> as adjusted by the Protocol signed at Brussels on 17th March 1993 <sup>M13</sup>.]

#### Textual Amendments

**F12** Ss. 20A and 20B substituted for s. 20A (1.8.1999) by S.S.I. 1999/1, reg. 49

#### Marginal Citations

**M12** Cm 2073.

**M13** Cm 2183.

## 21 Requirement of consent for new roads built other than by roads authority.

- (1) A person other than a roads authority who wishes to construct a new road or an extension of an existing road shall before commencing such construction obtain the consent (in this section and in sections 22 and 23 of this Act referred to as “construction consent”) thereto of the local roads authority.
- (2) An application for construction consent—
- (a) shall be in writing in such form as the local roads authority may determine; and
  - (b) shall by notice be intimated by the applicant to—
    - (i) the owners of all land which would front, abut or be comprehended in the new road or the extension of the existing road; and
    - (ii) such other persons, if any, as the authority may, for the purposes of the application, specify..
- (3) The local roads authority shall consider any written representations, made to them within 28 days of the date of intimation, by any person to whom an application has been intimated under subsection (2)(b) above, and may thereafter—
- (a) subject to subsection (4) below, grant construction consent, either without conditions or subject to such conditions as they think fit; or
  - (b) refuse construction consent;



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and before granting the consent subject to a condition (other than the condition mentioned in subsection (4) below) or refusing consent, the authority shall allow the person applying for the consent an opportunity to be heard by them as regards his application.

- (4) It shall be a condition of any construction consent that the construction be completed within such period, being a period of not less than three years from the date on which the consent is given, as the local roads authority may specify in writing in the consent; but the authority may subsequently by notice extend the period so specified.
- (5) Without prejudice to section 22(b) of this Act, where a condition imposed by a construction consent has been contravened or not complied with, the local roads authority may, by notice served on the person holding the consent, require him to bring the new road into conformity with the construction consent within such reasonable period as they shall specify in the notice.
- (6) An applicant for construction consent may, within 28 days of the date of the intimation to him of a decision of the local roads authority—
  - (a) refusing his application; or
  - (b) granting it subject to conditions other than a condition that the construction be completed within 3 years of the date on which the consent was given,appeal to the Secretary of State in accordance with the procedure prescribed by any regulations under subsection (7) below.
- (7) The Secretary of State may by regulations prescribe the procedure to be followed in relation to an appeal to him under subsection (6) above, and such regulations may, without prejudice to the foregoing generality, make provision for the determination of any such appeal by a person appointed by the Secretary of State and for the powers and duties of such a person in that regard.
- (8) The determination of an appeal under subsection (6) above may allow or dismiss the appeal, may modify any part of the decision of the local roads authority and shall be final.

## **22 Offences in relation to construction of new roads.**

Any person (other than a roads authority)—

- (a) who constructs a new road or an extension of an existing road without construction consent; or
- (b) who contravenes, or fails to comply with, a condition (other than such condition as is mentioned in section 21(4) of this Act) imposed by a construction consent,

commits an offence, which shall be triable either summarily or on indictment.

## **23 Power to stop up or temporarily close new road where construction consent absent or not conformed with.**

- (1) The local roads authority may stop up or temporarily close any new road which another person (other than a roads authority) has constructed—
  - (a) without construction consent; or
  - (b) in contravention of, or non-compliance with, a condition imposed by a construction consent.

*Status: Point in time view as at 06/04/2001.*

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- (2) Stopping up or temporary closure under subsection (1) above may take place whether or not proceedings are pending under section 22 of this Act but shall be ended if, in any such proceedings, it is found—
- (a) in a case where the stopping up or closure took place on the basis that there was no construction consent, that there was such consent; or
  - (b) in any other case, that there was no contravention of, or failure to comply with, the construction consent condition to which the proceedings relate.

## PART IV

### IMPROVEMENTS AND MAINTENANCE

#### *Levels*

#### **24 Alteration of levels of public roads.**

Subject to any order under section 9 or 12 of this Act, the roads authority may raise or lower or otherwise alter, as they think fit, the level of a public road.

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

- C6 [S. 24](#) power to contract out functions of Secretary of State (16.3.1996) by [S.I. 1996/878](#), art. 2, [Sch. para. 5\(c\)](#)

#### *Safety*

#### **25 Provision of footways.**

A roads authority shall provide, wherever it appears to them necessary or desirable for the safety or convenience of pedestrians so to do, proper and sufficient footways for public roads.

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

- C7 [S. 25](#) power to contract out functions of Secretary of State (16.3.1996) by [S.I. 1996/878](#), art. 2, [Sch. para. 5\(d\)](#)

#### **26 Pedestrian subways and footbridges.**

The roads authority may, for the purpose of making the crossing of a public road less dangerous for pedestrians or of protecting traffic along the road from danger, construct, light, and maintain subways under, or footbridges over, the road for the use of pedestrians.

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## 27 Dual carriageways, roundabouts and refuges.

The roads authority may construct and maintain works in the carriageway of a public road—

- (a) along any length of the road for separating a part which is to be used by traffic moving in one direction from a part which is to be used (whether at all times or at particular times only) by traffic moving in the other;
- (b) at junctions of the road for regulating the movement of traffic; or
- (c) for providing places of refuge for the protection of pedestrians crossing the road.

## 28 Fences etc. to safeguard persons using public roads.

The roads authority may, for the purpose of safeguarding persons using a public road, provide and maintain such raised paving, pillars, walls, rails, fences or barriers as they think necessary at any of the following places—

- (a) between any of the following and any other of the following—
  - (i) a footway;
  - (ii) a footpath;
  - (iii) a cycle track;
  - (iv) a carriageway,
- (b) along a cycle track so as to segregate classes of users thereof,
- (c) where a footpath gives direct access to the road on the footpath at or near the point of access, or
- (d) along the sides of bridges, embankments or other dangerous parts of the road.

### Modifications etc. (not altering text)

C8 S. 28: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, arts. 2, Sch. para. 5(e)

## 29 Further provision as to fences.

- (1) Subject to subsection (2) below, the roads authority may erect and maintain—
  - (a) fences or posts for the purpose of preventing access to a road or proposed road; and
  - (b) fences, posts, stones or other markers for the purpose of delimiting the road or proposed road.
- (2) The powers conferred by subsection (1) above shall not be exercised so as to—
  - (a) interfere with a fence or gate required for the purposes of agriculture;
  - (b) obstruct a public right of way;
  - (c) obstruct a means of access for the construction, formation or laying out of which planning permission has been granted under [<sup>F13</sup>the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997] (general planning control) or under any enactment replaced by the said Part III; or
  - (d) obstruct any means of access which was constructed, formed or laid out before 1st July 1948, unless it was so constructed, formed or laid out in contravention

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of restrictions in force under section 1 or 2 of the Restriction of Ribbon Development Act 1935.

#### Textual Amendments

**F13** Words in s. 29(2)(c) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), Sch. 2 para. 38(3)

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

**C9** S. 29: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(f)

### *Natural dangers*

#### **30 Works for protecting roads against hazards of nature.**

Without prejudice to section 28 of this Act, but subject to section 31 thereof, the roads authority may, for the purpose of protecting a public road or proposed public road against snow, flood, landslide or other hazards of nature, provide and maintain such barriers or other works as they consider necessary.

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

**C10** S. 30: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(g)

#### **31 Drainage of roads.**

- (1) The roads authority may, for the purpose of draining a public road or proposed public road or of otherwise preventing surface water from flowing onto it—
  - (a) construct or lay, in it or in land adjoining or lying near to it, such drains as they consider necessary;
  - (b) erect and maintain barriers in it or in such land as aforesaid to divert surface water into or through any existing drain;
  - (c) scour, cleanse and keep open all drains in it or in such land as aforesaid;
  - (d) drain surface water from it into any inland waters (whether natural or artificial) or tidal waters.
- (2) Without prejudice to subsection (1)(c) above, where any drain referred to therein was constructed or laid by the roads authority, they shall scour, cleanse and keep it open.
- (3) Before carrying out any works under this section, the roads authority shall serve on the owner and the occupier of the land affected notice of the intention to do so, describing the proposed works, and informing them that they may object to the proposed works by notice to the authority within 28 days of service of the notice.
- (4) Where an owner or occupier of the land affected objects in accordance with subsection (3) above to the proposed works and the objection is not withdrawn, then—
  - (a) if the roads authority is the Secretary of State, he shall not carry out the proposed works without having considered the objection; and

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- (b) if the roads authority is a local roads authority, they shall not carry out the proposed 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.
- (5) If a person, without the consent of the roads authority, alters, obstructs or interferes with any drain or barrier which has been constructed, laid or erected by the authority in exercise of their functions under subsection (1) above or which is under their control, then—
- (a) the authority may carry out any work of repair or reinstatement necessitated by his action and may recover from him the expenses reasonably incurred by them in so doing, and
  - (b) without prejudice to their right to exercise that power, he commits an offence.
- (6) In the foregoing provisions of this section, except where the context otherwise requires, “drain” includes a ditch, gutter, watercourse, bridge, culvert, tunnel, pipe or holding pond and any pumping machinery associated with any of those things.

### 32 Contributions to drainage works and flood prevention operations.

Where it appears to the roads authority that the execution of any drainage works under the <sup>M14</sup>Land Drainage (Scotland) Act 1958 or flood prevention operations under the <sup>M15</sup>Flood Prevention (Scotland) Act 1961 is desirable for the protection or enjoyment of a public road or proposed public road they may make such contributions as they think fit towards any expenses incurred in the execution and maintenance of those works.

#### Marginal Citations

M14 1958 c. 24.

M15 1961 c. 47.

### 33 Snow gates.

- (1) Gates (hereafter in this section referred to as “snow gates”) may be provided and maintained by the roads authority for the purpose of temporarily closing a road to vehicular traffic on any occasion when snow is rendering or has rendered that road unsafe for such traffic; and where in the opinion of a constable such an occasion has arisen as respects a road he (or, where the constable is a chief constable, a person acting on his behalf) may, until the road is once again safe for vehicular traffic, close and secure any snow gate on the road against all such traffic except that engaged in the provision or restoration of essential services.
- (2) In subsection (1) above—
- “constable” and “chief constable” shall be construed in accordance with sections 50 and 51 of the <sup>M16</sup>Police (Scotland) Act 1967 (interpretation);
  - “engaged in the provision or restoration of essential services” means in the opinion of a constable so engaged; and
  - “safe” means in such opinion safe.

*Status: Point in time view as at 06/04/2001.*

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#### Marginal Citations

M16 1967 c. 77.

### 34 Clearance of snow and ice.

A roads authority shall take such steps as they consider reasonable to prevent snow and ice endangering the safe passage of pedestrians and vehicles over public roads.

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

C11 S. 34: power to contract out functions of Secretary of State (16.3.1996) S.I. 1996/878, art. 2, Sch. para. 5(h)

### *Lighting*

### 35 Provision of lighting by roads authorities.

- (1) A local roads authority shall provide and maintain lighting for roads, or proposed roads, which are, or will be, maintainable by them and which in their opinion ought to be lit.
- (2) In subsection (1) above, the reference to roads, or proposed roads, which will be maintainable by the local roads authority does not include a reference to—
  - (a) an existing road which is a prospective public road within the meaning of the [F14Part IV of the New Roads and Street Works Act 1991];
  - (b) a new road in course of construction, or to be constructed, other than by or on behalf of the authority; or
  - (c) a road which would be maintainable by them only if application were made to them under section 16(1) of this Act.
- (3) The Secretary of State may provide and maintain lighting for roads, or proposed roads, which are, or will be, maintainable by him.
- (4) A local roads authority may, within their area, provide and maintain lighting for any road, or proposed road, which in their opinion ought to be lit and as regards which no duty is imposed on them by subsection (1) above.
- (5) Without prejudice to the generality of this section and after giving 28 days notice to the owner or occupier of any land affected, a roads authority may, in acting under subsection (1), (3) or (4) above, fix to rails, walls or buildings fronting or abutting the road or proposed road, such lamps and related structures as they consider requisite.
- (6) No compensation shall be payable by a roads authority by reason only of—
  - (a) the maintenance of lighting under subsection (1), (3) or (4) above; and
  - (b) such fixing as is mentioned in subsection (5) above.
- (7) A person upon whom a notice has been served under subsection (5) 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.

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#### Textual Amendments

**F14** Words in s. 35(2)(a) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para. 81](#); [S.I. 1992/2990](#), art. 2(2), [Sch. 2](#)

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

**C12** [S. 35](#) power to contract out functions of the Secretary of State (16.3.1996) by [S.I. 1996/878](#), arts. 2, [Sch. para. 5\(i\)](#)

### Road humps

#### 36 Construction of road humps by roads authority.

A roads authority may construct road humps in a road maintainable by them if—

- (a) the road is subject to a statutory speed limit for motor vehicles of 30 miles per hour or less; or
- (b) [<sup>F15</sup>(whether or not the road is subject to such a limit)]the road humps are authorised.

#### Textual Amendments

**F15** Words in s. 36(b) inserted (1. 7. 1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), s. 48, [Sch. 4 para. 38\(1\)](#); [S.I. 1992/1286](#), art. 2, [Sch.](#), with [S.I. 1992/1410](#)

#### 37 Consultation and local inquiries as regards road humps.

- (1) Where a roads authority propose to construct a road hump under section 36 of this Act, they shall consult with—
  - (a) the chief officer of police for the area in which the road concerned is situated; and
  - (b) such other persons or bodies as may be prescribed by regulations made by the Secretary of State.
- (2) The roads authority shall also—
  - (a) publish in one or more newspapers circulating in the area in which the road concerned is situated; and
  - (b) place at appropriate points on that road, notice of the proposal stating the nature, dimensions and location of the proposed road hump and the address to which and the period within which any objections to the proposal may be sent.
- (3) The period stated in the notice under subsection (2) above shall be not less than 28 days beginning with the date on which notice is first published in accordance with paragraph (a) of that subsection.
- (4) The roads authority shall consider any objections sent to them in accordance with a notice under subsection (2) above and may, if they think fit, cause a local inquiry to be held.

*Status: Point in time view as at 06/04/2001.*

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- (5) Subsections (2) to (8) of section 210 of the <sup>M17</sup>Local Government (Scotland) Act 1973 (provisions as to inquiries) shall apply to an inquiry under subsection (4) above as they apply to a local inquiry under that section, but with such modifications as may be prescribed by regulations made by the Secretary of State.
- (6) Before making regulations under this section the Secretary of State shall consult such representative organisations as he thinks fit.

#### Marginal Citations

M17 1973 c. 65.

### 38 Regulations concerning construction and maintenance of road humps.

- (1) The Secretary of State may by regulations make such provision in relation to the construction and maintenance of road humps as appears to him to be necessary or expedient in the interests of safety and the free movement of traffic, and may in particular—
- (a) provide that road humps shall be constructed only on roads of such descriptions and in such circumstances as may be prescribed by the regulations;
  - (b) impose requirements as to—
    - (i) the nature, dimensions, location and spacing of road humps;
    - (ii) the placing of signs of such type or character as may be so prescribed;
    - (iii) the carrying out and maintenance of other ancillary or consequential works.
- (2) Before making any regulations under this section the Secretary of State shall consult such representative organisations as he thinks fit.
- (3) Regulations under this section shall not apply where a road hump is authorised but conditions attached by the Secretary of State to the authorisation may, in particular, relate to any of the matters with respect to which regulations may be made under this section.

### 39 Status of road humps.

- (1) Where a road hump conforms to regulations under section 38 of this Act and the further condition mentioned in subsection (2) below as being applicable is satisfied, the road hump shall not be treated as constituting an obstruction to the road but as part of the road, so that in particular—
- (a) the obligation of any person to maintain the road, and
  - (b) the obligation of any person having power to break open the road to make good any damage or otherwise reinstate the road,
- extend to maintaining or, as the case may be, to making good any damage to, or otherwise reinstating, the road hump.
- (2) The further condition applicable is that either—
- (a) the road concerned is for the time being subject to a statutory speed limit for motor vehicles of 30 miles per hour or less; or
  - (b) the road hump is authorised.



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- (3) In relation to an authorised road hump the reference in subsection (1) above to conformity with regulations shall be construed as a reference to conformity with the conditions attached to the authorisation.
- (4) In so far as it does not apply apart from this subsection [<sup>F16</sup>section 117 of the New Roads and Street Works Act 1991 (restricting road works following substantial works for roads purposes)] applies in relation to the construction, maintenance and removal of a road hump as if the works were executed for road purposes and were mentioned in [<sup>F16</sup>subsection (3) of that section] and as if the person executing them were the promoting authority within the meaning of that [<sup>F16</sup>section].

#### Textual Amendments

**F16** Words in s. 39(4) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para.82](#); S.I. 1992/2990, art. 2(2), [Sch. 2](#)

*[<sup>F17</sup>Other traffic calming works*

#### Textual Amendments

**F17** Heading before ss. 39A-39C inserted (16.5.1992) by [Traffic Calming Act 1992 \(c. 30\)](#), ss. 2(1), 3, [Sch. 2](#)

### <sup>F18</sup>**39A Powers to carry out traffic calming works.**

- (1) A roads authority may, in a road maintainable by them, construct traffic calming works which—
  - (a) are of a description prescribed by regulations under section 39B of this Act, or
  - (b) are authorised,and may remove such works (whenever constructed).
- (2) A roads authority shall not exercise the powers conferred by subsection (1) above except in accordance with any requirements imposed by the regulations or authorisation concerned.
- (3) Requirements imposed by an authorisation given under this section may relate to any matter with respect to which regulations may be made under section 39B of this Act.
- (4) Nothing in this section shall prejudice any power of a roads authority to construct or remove traffic calming works which are neither of a description prescribed by regulations under section 39B of this Act nor authorised.

#### Textual Amendments

**F18** [S. 39A](#) inserted (16. 5. 1992) by [Traffic Calming Act 1992 \(c. 30\)](#), ss. 2(1), 3, [Sch. 2](#)

### <sup>F19</sup>**39B Prescribing of works.**

- (1) The Secretary of State may make regulations—

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- (a) prescribing any description of traffic calming works for the purposes of section 39A of this Act, and
  - (b) making such provision (if any) as appears to him necessary or expedient in relation to the construction, maintenance and removal of works of a prescribed description.
- (2) Regulations under this section may in particular—
- (a) provide that works of a prescribed description shall be constructed only in roads of such descriptions and in such circumstances as may be prescribed by the regulations;
  - (b) impose requirements as to—
    - (i) the dimensions and location of works;
    - (ii) the placing of signs;
    - (iii) the carrying out and maintenance of ancillary or consequential works;
  - (c) impose requirements as to consultation and publicity in respect of proposed works.

#### Textual Amendments

**F19** S. 39B inserted (16. 5. 1992) by [Traffic Calming Act 1992 \(c. 30\)](#), ss. 2(1), 3, [Sch. 2](#)

#### <sup>F20</sup>**39C Status of works authorised by section 39A.**

Works (whenever constructed) of a description prescribed by regulations under section 39B, or authorised under section 39A, of this Act, which conform to any requirements imposed by the regulations or authorisation shall not be treated as constituting an obstruction to the road but as part of the road, so that in particular—

- (a) the obligation of any person to maintain the road, and
- (b) the obligation of any person having power to break open the road to make good any damage or otherwise reinstate the road,

extend to maintaining or, as the case may be, making good any damage to or otherwise reinstating the works.]

#### Textual Amendments

**F20** S. 39C inserted (16. 5. 1992) by [Traffic Calming Act 1992 \(c. 30\)](#), ss. 2(1), 3, [Sch. 2](#)

*[<sup>F21</sup>Interpretation: Road humps and other traffic calming works]*

#### Textual Amendments

**F21** Heading after s. 39C inserted (16.5.1992) by [Traffic Calming Act 1992 \(c. 30\)](#), ss. 2(1), 3, [Sch. 2](#)

#### **40 Interpretation of sections 36 to [<sup>F22</sup>39C].**

In sections 36 to [<sup>F22</sup>39C] of this Act—

“authorised” means specially authorised by the Secretary of State;

*Status: Point in time view as at 06/04/2001.*

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“motor vehicle” has the same meaning as in the <sup>M18</sup>Road Traffic regulation Act 1984;

“road hump” means an artificial hump which is in, or on the surface of, a road and which is designed to control the speed of vehicles; and references to a road hump include references to any other works (including signs or lighting) required in connection with such a hump; <sup>F23</sup> . . .

“statutory”, in relation to a speed limit, means having effect by virtue of an enactment [<sup>F24</sup> other than section 84(1)(b) or (c) of the Road Traffic Regulation Act 1984 (temporary and variable speed limits)] [<sup>F25</sup>]; and

“traffic calming works”, in relation to a road, means works affecting the movement of vehicular and other traffic for the purpose of promoting safety or preserving or improving the environment through which the road runs.]

#### Textual Amendments

- F22** Words in s. 40 substituted (16.5.1992) by virtue of [Traffic Calming Act 1992 \(c. 30\), ss. 2\(a\), 3](#)
- F23** Words in s. 40 ceased to have effect (16.5.1992) by virtue of [Traffic Calming Act 1992 \(c. 30\), ss. 2\(b\), 3](#)
- F24** S. 40: words in definition of "statutory" added (1.7.1992) by [Road Traffic Act 1991 \(c. 40, 107:1\), s. 48, Sch. 4 para. 38\(2\); S.I. 1992/1286, art. 2, Sch.](#) (with S.I. 1992/1410)
- F25** Words in s. 40 added (16.5.1992) by [Traffic Calming Act 1992 \(c. 30\), ss. 2\(c\), 3](#)

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

- C13** S. 40 definition of "road hump" applied (14.7.1992) by [New Roads and Street Works Act 1991 \(c. 22, SIF 58, 108\), s. 145\(3\)\(d\)](#), (with saving s. 167(4)(5)); S.I. 1992/1671, art. 2, Sch.

#### Marginal Citations

- M18** 1984 c. 27.

### *Cattle-grids*

#### **41 Provision of cattle-grids and by-passes.**

- (1) Where, whether on the representations of owners or occupiers of agricultural land or otherwise, and after such consultation with any such owners and occupiers as the roads authority consider requisite, it appears to the authority expedient so to do for controlling the passage of animals along a road, the authority may, subject to this section and sections 42 to 47 of this Act, provide and maintain a cattle-grid in the road, or partly in the road and partly in adjoining land; and such provision and maintenance may take place whether the road is in existence and open to public traffic or is a proposed road in course of construction.
- (2) Where the roads authority provide a cattle-grid under this Act they shall also provide, either by means of a gate or other works on the road (or proposed road) or by means of a by-pass, or partly by one of those means and partly by the other, facilities for the passage under proper control of animals and all other traffic unable to pass over the cattle-grid, being traffic entitled by law to go along the road (or, where the road is a proposed road, which will on completion of that road be so entitled); and the authority shall maintain the facilities so provided.
- (3) Subject to subsection (4) below, subsection (1) and (2) above do not confer power—

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- (a) to place any part of a cattle-grid on land not forming part of the road and not belonging to the authority; or
  - (b) to provide a by-pass over land not belonging to the authority,
- except in so far as is authorised by any such agreement as is provided for by section 46 of this Act.
- (4) Where, after complying with Schedule 4 to this Act, the authority determine, as respects any common or waste land adjoining the road or adjacent thereto, that it is expedient so to do, they may place any part of a cattle-grid, or provide a by-pass, on any of that land notwithstanding that the land does not form part of the road and does not belong to the authority.
- (5) Without prejudice to subsection (3) above, the authority shall not provide a by-pass along any part of a road other than the road for which the cattle-grid is being provided unless, after complying with Schedule 4 to this Act, they determine that it is expedient to provide that by-pass.
- (6) In this Act—
- “cattle-grid” means a device designed to prevent the passage of animals, or animals of any particular description, but to allow the passage of all or some other traffic, and includes any fence or other works necessary for securing the efficient operation of the said device; and
  - “by-pass”, in relation to a cattle-grid provided for any road, means a way, over land not comprised within the limits of the road, for the traffic for which the by-pass is provided, with a public right of passage there-over for that traffic, or (if any part of the by-pass is provided along an existing road) for that traffic and for any other traffic entitled to use the road before the by-pass was provided.
- (7) The roads authority may provide and maintain on a by-pass any gate or other works necessary for the proper control of traffic and the efficient operation of the cattle-grid for which the by-pass is provided.
- (8) The roads authority may alter or improve any cattle-grid, by-pass, gate or other works provided under this section, but not so as to prevent traffic of any description which before the alteration or improvement could lawfully have gone along the road (either by passing over the cattle-grid or by going through any gate or along any by-pass provided under subsection (2) above) from so going along the road.
- (9) Without prejudice to subsection (1) and (2) of this section, in subsections (3) to (7) of this section and in Schedule 4 to this Act references to a road shall be construed as including references to a proposed road.

## **42 Removal of cattle-grids and discontinuance of by-passes.**

- (1) Where it appears to the roads authority, after such consultation with owners and occupiers of agricultural land as the authority consider requisite, that a cattle-grid provided under this Act is no longer required, the authority may remove the cattle-grid and any gate or other works on the road which have been provided for use in connection with the cattle-grid, and shall make good the site thereof.
- (2) Where a by-pass has been provided for use in connection with a cattle-grid and the authority remove the cattle-grid, they may direct that the by-pass shall be discontinued

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and may, where they give such a direction, remove all or any of the gates or other works provided for the purposes of the by-pass.

- (3) If a direction under subsection (2) above so provides, then subject to subsection (4) below, as from such date as may be specified in the direction the public right of passage over the by-pass shall be extinguished.
- (4) Where the whole or any part of a by-pass has been provided along an existing road then—
  - (a) notwithstanding subsection (3) above, a direction under subsection (2) above shall not extinguish any right of passage which existed before the by-pass was provided; and
  - (b) if the cattle-grid for which the by-pass was provided is removed, as soon as may be thereafter the authority shall (whether or not they direct that the by-pass shall be discontinued, but without prejudice to their powers under subsection (2) above to remove gates or other works if they so direct) remove so much of the gates or other works provided for the purpose of the by-pass as obstructs the exercise of the right of passage which existed before the by-pass was provided.

#### **43 Maintenance of cattle-grids and by-passes.**

For the purposes of maintenance and management (including any liability in respect of loss, injury or damage arising therefrom) any cattle-grid, by-pass, gate or other works provided under sections 41 to 47 of this Act shall be deemed to be vested in the roads authority.

#### **44 Exercise of powers in respect of cattle-grids etc. by agreement between neighbouring authorities.**

- (1) Where a public road is intersected, joined or continued by a road for which some authority other than the roads authority for the first-mentioned road are the roads authority, the following provisions of this section shall have effect.
- (2) The two authorities may enter into an agreement as to the exercise, by one, of the other's powers under sections 41 and 42 of this Act; and any such agreement may provide for the defraying by the one of the whole or any part of the expenses incurred by the other in consequence of the agreement.
- (3) An authority shall not unreasonably refuse to enter into an agreement under this section; and if any question arises as to the terms (including terms as to payments) to be included in such an agreement, or whether an authority has unreasonably refused to enter into such an agreement, the question shall be determined by arbitration.
- (4) Any question which is required by this section to be determined by arbitration shall be determined by a single arbiter appointed, in default of agreement, by the Court of Session, or by the sheriff, on the application of either party to the question.

#### **45 Supersession of gates by cattle-grids.**

- (1) Where—
  - (a) a person has the right to instal a gate in a road, and

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- (b) the roads authority providing or proposing to provide a cattle-grid in the road under section 41 of this Act determine, after complying with the provisions of Schedule 4 to this Act, that the purpose for which that right is exercisable will be adequately achieved by the provision of the cattle-grid,
- the right shall not be exercisable, so long as the cattle-grid is provided, except with the approval of the authority, and they may require that any gate installed in the exercise of the right before the provision of the cattle-grid shall be removed or may themselves remove any such gate.
- (2) The authority shall on demand repay any expenses reasonably incurred in removing a gate in compliance with a requirement under subsection (1) above.
- (3) Where in pursuance of subsection (1) above a gate has been removed (whether by, or in compliance with a requirement of, the authority) and they subsequently remove the cattle-grid then, if within 12 months after the removal of the cattle-grid any person reinstals a gate in the exercise of a right the exercise of which was suspended while the cattle-grid was provided, the authority shall on demand repay the expenses reasonably incurred in reinstalling the gate.
- (4) No objection shall be made or proceedings brought in respect of the purported exercise by the roads authority of their powers under subsection (1) above as respects any gate on the ground that no right to instal the gate existed; but the purported exercise by the authority of their powers under that subsection shall not affect the question whether any such right existed, or prejudice the powers of the authority or any other person under any enactment or rule of law to protect public rights of way or to prevent or remove obstructions.

#### **46 Agreements for use of land for cattle-grids or by-passes.**

- (1) The roads authority may, for the purpose of providing, altering or improving a cattle-grid or by-pass under the powers conferred by this Act, enter into an agreement with persons having an interest in any land for the use of the land for that purpose; and there shall be exercisable by the authority and the public such rights over the land as may be specified in the agreement.
- (2) An agreement under subsection (1) above—
- (a) may contain provisions for payment to persons who are parties to it in consideration of the use of the land or otherwise in respect of their entering into the agreement; and
- (b) shall not operate so as to prejudice the rights of any person not a party thereto or confer upon any other person any right against him.
- (3) Section 5(3) and (4) of, and paragraph 4 of Schedule 2 to, the <sup>M19</sup>Forestry Act 1967 (enforcement of forestry dedication agreements and classes of person who may enter into such agreements) shall apply in relation to agreements under this section as they apply in relation to forestry dedication agreements, but with the substitution for the reference in the said section 5(3) to the Forestry Commissioners of a reference to the roads authority.

#### **Marginal Citations**

**M19** 1967 c. 10.

*Status: Point in time view as at 06/04/2001.*

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#### **47 Contributions towards expenditure of roads authorities in connection with cattle-grids.**

- (1) A roads authority may enter into an agreement with any person at whose instance a cattle-grid has been or is to be provided by them under this Act, or with any other person willing to make a contribution towards expenses of the authority under this Act in connection with a cattle-grid, for the making by that person of such a contribution (whether by a single payment or by periodical payments) of such amount as may be specified in the agreement and either towards such description of such expenditure as may be so specified.
- (2) An agreement under this section may contain such incidental and consequential provisions as appear to the parties thereto expedient for the purposes of the agreement; and in particular such an agreement providing for a contribution towards the cost of installing a cattle-grid may provide for repayment of the contributions, to such extent as may be specified in the agreement, in the event of the cattle-grid being removed.
- (3) In determining whether or not to provide a cattle-grid the roads authority shall be entitled to have regard to the extent to which persons who in the opinion of the authority will derive special benefit from the provision of the cattle-grid are willing to enter into agreements under this section.

#### *Miscellaneous improvements*

#### **48 Contributions towards expenditure on constructing or improving roads.**

The roads authority may enter into an agreement with any person willing to contribute to the construction or improvement of a road and may have regard to the extent of the contributions (if any) obtainable by virtue of such agreements in determining whether to undertake the construction or effect the improvement.

#### **49 Provision of bus shelters, etc. by local roads authorities.**

- (1) In the <sup>M20</sup>Local Government, (Omnibus Shelters and Queue Barriers) (Scotland) Act 1958, for the words “local authority” wherever they occur other than the places mentioned in subsection (2) below there shall be substituted the words “local roads authority”.
- (2) The expected places referred to in subsection (1) above are—
  - (a) the first place where the words “local authority” occur in section 1(2) of the said Act of 1958;
  - (b) section 3(2) of that Act;
  - (c) the first place where those words occur in section 4(1) of that Act; and
  - (d) section 7(1) of that Act.

#### **Marginal Citations**

**M20** 1958 c. 50.

*Status: Point in time view as at 06/04/2001.*

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*[<sup>F26</sup>Equipment for detection of traffic offences]*

**Textual Amendments**

**F26** S. 49A and preceding cross-heading inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\), s. 40\(2\)](#); [S.I. 1992/1286, art. 2, Sch](#)

**[<sup>F27</sup>49A Power to install equipment for detection of traffic offences.**

A roads authority may install and maintain on or near a road structures and equipment for the detection of traffic offences.]

**Textual Amendments**

**F27** S. 49A and preceding cross-heading inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\), s. 40\(2\)](#); [S.I. 1992/1286, art. 2, Sch](#)

**50 Planting of trees, shrubs and grass or other plants by roads authority.**

- (1) The roads authority may plant trees, shrubs, grass or other plants within, or partly within, the boundaries of a public road or of a proposed public road which is in course of construction; and may erect and maintain guards of fences, and otherwise do anything expedient, for maintenance and protection of trees, shrubs, grass and other plants there planted (whether or not by them).
- (2) No such tree, shrub, grass other plant, guard or fence shall be planted (or as the case may be erected) or allowed to remain in such a situation as to hinder the reasonable use of the road (or proposed road) by persons entitled to the use thereof, or so as to be a nuisance or injurious to the owner or occupier of any land fronting or abutting the road (or proposed road).
- (3) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall, subject to subsection (4) below, apply, for the purposes of any works which may be done in exercise of the powers conferred by this section, to the roads authority.
- (4) 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 (3) above.

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

**C14** S. 50: power to contract out functions of Secretary of State (16.3.1996) by [S.I. 1996/878, art. 2, Sch. para. 5\(j\)](#)

**51 Planting of trees, shrubs and grass or other plants by person other than roads authority.**

- (1) The roads authority may in writing authorise an owner or occupier of land adjoining a public road, or any other person, to plant or maintain trees, shrubs, grass or other



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plants within, or partly within, the boundaries of that road subject to such conditions as the authority may specify in the authorisation.

- (2) The conditions referred, to in subsection (1) above may include a requirement that the authorised person give any written undertaking which, in the opinion of the authority, is necessary—
  - (a) to ensure the safety and convenience of road users; or
  - (b) to protect the apparatus of statutory undertakers.
- (3) The roads authority may at any time withdraw an authorisation under subsection (1) above by giving 28 days notice to the authorised person; and such notice may require that person within the 28 days—
  - (a) to remove all or any of the trees, shrubs, grass or other plants to which the authorisation related; and
  - (b) to reinstate the road.

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

**C15** S. 51 power to contract out functions to the Secretary of State (16.3.1996) by [S.I. 1998/878, art. 2](#), [Sch. para. 5\(k\)](#)

**52 Power to execute works to mitigate adverse effect of constructing or improving etc. road.**

- (1) A roads authority may carry out on—
  - (a) land acquired by them under section 106 of this Act;
  - (b) other land belonging to them;
  - (c) a road for which they are the roads authority;
  - (d) a road which they have been authorised to improve or, as the case may be construct, by an order under section 9 or 12 of this Act.,works for mitigating any adverse effect which the construction, improvement, existence or use of any road has or will have on the surroundings of the last mentioned road.
- (2) Without prejudice to the generality of subsection (1) above, the works that may be carried out under that subsection include the planting of trees, shrubs or plants of any other description and the laying out of any area as grassland.
- (3) A roads authority may develop or redevelop land acquired by them under section 106 of this Act, or any other land belonging to them, for the purpose of improving the surroundings of a road or proposed road.

**53 Agreements as to use of land near roads.**

- (1) For the purpose of mitigating any adverse effect which the construction, improvement, existence or use of a road (or proposed road) has or will have on its surroundings, a roads authority may enter into an agreement with any person having an interest in land adjoining or in the vicinity of the road (or proposed road) for restricting or regulating the use of the land either permanently or during such period as may be specified in the agreement; and any such agreement may, in particular, make provision for the planting

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and maintenance of trees, shrubs or plants of any other description on the land and for restricting the lopping or removal of trees, shrubs or other plants on the land.

- (2) An agreement under this section may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the roads authority to be necessary or expedient.
- (3) Subject to subsection (4) below, the provisions of an agreement made under this section with a person interested in land shall be binding on persons deriving title from that person in respect of the land.
- (4) No provision shall be enforceable by virtue of subsection (3) above against a third party who shall have in good faith and for value acquired right (whether completed by infestment or not) to land prior to the agreement being registered in the Land Register of Scotland or, as the case may be, recorded in the Register of Sasines, or against any person deriving title from such third party.
- (5) This section is without prejudice to [F28]section 75 of the Town and Country Planning (Scotland) Act 1997] (agreements regulating development or use of land).

#### Textual Amendments

**F28** Words in s. 53(5) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 38(4)**

#### 54 Power to instal refuse or storage bins in roads.

The roads authority may provide and maintain in or under a road, or a proposed road in course of construction, bins or other receptacles, of such dimensions and in such positions as the authority may determine, for the collection and temporary deposit of road refuse and waste paper, or the storage of sand, grit or other materials.

#### 55 Provision of picnic sites for trunk roads etc.

- (1) The Secretary of State may provide on land adjoining, or in the vicinity of, a trunk road, or a proposed public road which is to be a trunk road, a picnic site with space for parking vehicles and with means of access from and egress to the road or proposed road; and subject to subsection (3) below he may manage and maintain the site (including such buildings, works or facilities as are mentioned in subsection (2) below.)
- (2) The Secretary of State may erect and equip buildings, and execute works, on the picnic site so as to provide such facilities as he considers appropriate for that site; and without prejudice to the generality of this subsection those facilities may include—
  - (a) water closets, urinals, and washing facilities for use in connection with either; and
  - (b) facilities for the provision and consumption of meals and refreshments.
- (3) The Secretary of State shall not provide meals or refreshments on the picnic site but may make arrangements for some person other than a [F29]local authority] so to provide and may for the purpose of those arrangements lease the site, or a part thereof, to that other person.

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#### Textual Amendments

**F29** S. 55(3) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13**, para. 135(3); S.I. 1996/323, **art. 4(1)(c)**

### [<sup>F30</sup> 55A Environmental assessment of certain road improvement projects

- (1) If the Scottish Ministers as roads authority have under consideration—
  - (a) the making of an order such as is mentioned in paragraph 1 of Schedule 1 to this Act relating to the improvement of a road; or
  - (b) the improvement of a road without such an order,they shall, before details of the project are published, determine whether or not it falls within Annex I or Annex II.
- (2) If the Scottish Ministers determine that the project—
  - (a) falls within Annex I, or
  - (b) is a relevant project falling within Annex II and that, having regard to the selection criteria contained in Annex III, it should be made subject to an environmental impact assessment in accordance with the Directive,they shall no later than the date when details of the project are published, publish an environmental statement.
- (3) The Scottish Ministers shall publish any determination made by them in accordance with subsection (2) above.
- (4) Any project for the improvement of a special road which falls within Annex II shall be treated as having characteristics that require it to be made subject to an environmental impact assessment.
- (5) The Scottish Ministers shall publish any environmental statement so as to ensure that members of the public who are likely to be concerned are given a reasonable opportunity to express an opinion before they decide whether to proceed with the project, and they shall not make any such decision without taking into consideration any opinion so expressed to them within a period of 3 weeks running from the date of publication of the environmental statement.
- (6) The Scottish Ministers shall ensure that the consultation bodies are given an opportunity to express an opinion on the published details of the project and the environmental statement before they decide whether to proceed with the project.
- (7) In this section, the expressions “the Directive”, “Annex”, “relevant project” and “sensitive area” shall have the meanings assigned to those expressions in section 20A(9) of this Act with the proviso that in the definition of “relevant project” the reference to the construction of a new road shall be a reference to the improvement of a road and cognate expressions shall be construed accordingly.]

#### Textual Amendments

**F30** Ss. 55A and 55B substituted for s. 55A (1.8.1999) by S.I. 1999/1, **reg. 50**

*Status: Point in time view as at 06/04/2001.*

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### [<sup>F31</sup>55B Application of section 20B

The provisions of section 20B of this Act shall apply to a project in terms of section 55A of this Act as they apply to a project in terms of section 20A of this Act.]

#### Textual Amendments

**F31** Ss. 55A and 55B substituted for s. 55A (1.8.1999) by S.S.I. 1999/1, regs. 1, 50

## PART V

### ROADS AND BUILDING CONTROL

#### *Works and excavations*

### 56 Control of works and excavations.

- (1) Subject to section 61 of this Act and without prejudice to any requirement imposed by, under or by virtue of any other enactment, no works shall be executed in, or excavation made under, a public road except with the roads authority's consent in writing and in accordance with any reasonable conditions which they think fit to attach to the consent.
- (2) An application for the consent of a roads authority under subsection (1) above shall be in writing. On receipt of the application they shall give the applicant notice of all statutory undertakers whose apparatus is, in the opinion of the authority, likely to be affected by the works or excavation and the applicant shall then forthwith in writing intimate the application to those undertakers of whom he has received such notice.
- (3) This section does not apply to works or excavations to which the [<sup>F32</sup>provisions of Part IV of the New Roads and Street Works Act 1991 apply].
- (4) A person shall, as soon as reasonably practicable after he—
  - (a) executes such works as are, or
  - (b) makes such excavation as is,
 mentioned in subsection (1) above, make good any damage to the road occasioned by the works or excavation and shall immediately thereafter give notice to the authority that the damage is made good; and without prejudice to section 66 of this Act, until twelve months have elapsed from the authority certifying that the damage has been made good to their satisfaction (which certificate shall not be withheld unreasonably) the person shall maintain so much of the road as is made good.
- (5) At the completion of the works or excavation mentioned in subsection (1) above any opening left in the road shall be provided with a door or cover by the person executing the works or making the excavation; and such door or cover shall be constructed in such manner, and of such materials, as may be specified by the roads authority.
- (6) A person who contravenes—
  - (a) subsection (1) above; or
  - (b) subsection (5) above,
 commits an offence.

*Status: Point in time view as at 06/04/2001.*

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- (7) Works executed, or an excavation made, in contravention of subsection (1) above may be removed, or as the case may be filled in, by the roads authority; and the authority may recover such expenses as are reasonably incurred in so doing, or in maintaining an excavation which has under this subsection been filled in, from the person who executed those works or made that excavation.
- (8) The roads authority shall, where practicable, notify the person mentioned in subsection (7) above about anything removed under that subsection; but if the person cannot be traced, or if he has not recovered the thing within a reasonable period of time after being so notified, the authority may dispose of the thing.
- (9) Any proceeds of a disposal under subsection (8)
- above shall be used to meet any such expenses in relation to the removal or filling in as are mentioned in subsection (7) above. Thereafter any surplus shall be given to the person so mentioned if he can be traced and if he cannot may be retained by the roads authority.
- (10) Where a person contravenes subsection (4) (other than by a failure duly to give information) or (5) above, the roads authority may make good the damage to the road, or as the case may be provide a door or cover for the opening, and recover from him such expenses as are reasonably incurred in so doing.

#### Textual Amendments

**F32** Words in s. 56(3) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para. 83](#); S.I. 1992/2990, art. 2(2), [Sch. 2](#)

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

**C16** [S. 56](#): power to contract out functions of Secretary of State (16.3.1996) by [S.I. 1996/878, art. 2, Sch. para. 5\(l\)](#)

## 57 Dangerous works.

- (1) Where, in the opinion of the roads authority, works which a person is executing in, or excavations which he is making under, a road are causing, or are likely to cause, a danger the authority may by notice to him require him within such period as may be specified in the notice to take such steps as will ensure that such danger is brought to an end or as the case may be does not arise.
- (2) Notwithstanding any consent granted under section 56 or 61 of this Act and without prejudice to the generality of subsection (1) above, steps specified in the notice under that subsection may include the removal of the works or filling in of the excavations.
- (3) Subsections (1) and (2) above do not apply to works or excavations which are in contravention of section 56(1) or 61(1) of this Act.
- (4) Without prejudice to sections 56 and 61 of this Act, but notwithstanding any consent granted under either of those sections, a person executing works, or making excavations—
- (a) which constitute a danger; or
  - (b) who permits them to become a danger,
- commits an offence.

*Status: Point in time view as at 06/04/2001.*

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- (5) This section does not apply to works or excavations to which the <sup>F33</sup>provisions of Part IV of the New Roads and Street Works Act 1991 apply].
- (6) A person upon whom a notice has been served under subsection (1) 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

**F33** Words in s. 57(5) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para. 84](#); S.I. 1992/2990, art. 2(2), [Sch. 2](#)

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

**C17** [S. 57](#): power to contract out functions of the Secretary of State (16.3.1996) art. 2, Sch. para. 5(m)

## 58 Occupation of parts of road for deposit of building materials etc.

- (1) Subject to subsection (7) below, a person who without, or otherwise than in accordance with, the written permission of the roads authority, in conducting operations for the construction, repair, maintenance or demolition of any building, occupies for the purpose of depositing materials or otherwise in connection with those operations, a part of a road, whether public or private, or erects staging or scaffolding which projects over a part of a road, commits an offence.
- (2) Such permission as is mentioned in subsection (1) above may be granted either unconditionally or subject to such conditions, including conditions as to the duration of the permission, as may be specified therein; and notwithstanding anything in any enactment or in any rule of law, a person who complies with the permission (including the conditions) does not by the occupation or erection in respect of which the permission is granted commit an offence:
- Provided that the foregoing provisions of this subsection shall not constitute a defence as regards any such contravention as is mentioned in section 128(1) of this Act.
- (3) Subject to subsection (7) below, where a person by such occupation as is mentioned in subsection (1) above commits an offence under that subsection, any other person who, in connection with the operations, either by himself or by his servant or agent, deposits materials on the part of the road so occupied commits an offence.
- (4) Where a person is charged with an offence under subsection (1) above it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (5) Where a person is charged with an offence under subsection (3) above, it shall be a defence for him to prove that the offence—
- (a) took place on the instructions, or by the authority, of his employer or of the person conducting the operations, or
  - (b) was due to a mistake, or
  - (c) was due to reliance on information supplied to him,
- and that he was unaware that he was depositing the materials otherwise than under and in accordance with a permission granted under subsection (1) above.



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- (6) If in any case the defence provided by subsection (5) above involves the allegation that the offence took place on the instructions, or by the authority, of another person, or was due to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven days before the hearing, he has served on the prosecutor notice giving such information identifying or assisting in the identification of that other person as is then in his possession.
- (7) The occupation mentioned in the foregoing provisions of this section does not include occupation with a builder's skip (within the meaning of section 85 of this Act).

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

**C18** S. 58: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(n)

**59 Control of obstructions in roads.**

- (1) Subject to subsection (6) below, nothing shall be placed or deposited in a road so as to cause an obstruction except with the roads authority's consent in writing and in accordance with any reasonable conditions which they think fit to attach to the consent.
- (2) A person who contravenes subsection (1) above commits an offence.
- (3) Without prejudice to subsection (2) above, a person who contravenes subsection (1) above may be required by the roads authority or by a constable in uniform to remove the obstruction forthwith, and commits an offence if he fails to do so.
- (4) Where—
  - (a) a requirement under subsection (3) above is not complied with;
  - (b) the person who placed or deposited the obstruction cannot be readily traced; or
  - (c) the case is one of emergency,the roads authority or a constable may remove the obstruction (or cause it to be removed) and recover such expenses as are reasonably incurred in so doing from the said person.
- (5) Subsections (8) and (9) of section 56 of this Act shall apply in relation to anything removed under subsection (4) above as they apply in relation to anything removed under subsection (7) of that section, except that where the removal is by a constable the said subsections (8) and (9) shall be read as if any reference therein to the roads authority were a reference to the police authority.
- (6) The foregoing provisions of this section do not apply—
  - (a) where section 58, 85 or 86 of this Act or section 2 of the <sup>M21</sup>Refuse Disposal (Amenity) Act 1978 (penalty for unauthorised dumping of motor vehicles etc.) applies; or
  - (b) to works to which the <sup>F34</sup>provisions of Part IV of the New Roads and Street Works Act 1991 apply].

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#### Textual Amendments

**F34** Words in s. 59(6)(b) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para. 85](#); S.I. 1992/2990, art. 2(2), [Sch. 2](#)

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

**C19** [S. 59](#): power to contract out functions of the Secretary of State (16.3.1996) by [S.I. 1996/878, art. 2, Sch. para. 5\(o\)](#)

#### Marginal Citations

**M21** [1978 c. 3.](#)

## 60 Fencing and lighting of obstructions and excavations.

- (1) Without prejudice to <sup>F35</sup> . . . sections 57 to 59 or section 85 of this Act, where any person places or deposits anything on a road so as to cause an obstruction, or executes works in a road, he shall, whether or not the obstruction is, or works are, on or in the road with the consent of the roads authority—
- (a) cause the obstruction or works to be marked in such manner and with such materials as may, for the purpose of making it or them immediately visible to oncoming traffic, be specified;
  - (b) provide such lighting of the obstruction or works during the hours of darkness as is necessary for preventing danger to traffic and for warning traffic of danger;
  - (c) erect such fences, barriers and traffic signs for preventing danger to traffic, for regulating traffic, and for warning traffic of danger, as may be necessary and remove them as soon as they cease to be necessary therefor; and
  - (d) in the case of an obstruction or works whose nature so requires, cause any building adjoining the road to be shored up or otherwise protected.
- (2) If the person referred to in subsection (1) above fails to fulfil a requirement imposed on him by that subsection, the roads authority may fulfil the requirement and recover the expenses reasonably incurred by them in so doing from that person.
- (3) A person who fails to fulfil a requirement imposed on him by subsection (1) above commits an offence.
- (4) A person who, without lawful authority or reasonable excuse, takes down, alters or removes any fence, barrier, shoring or other support or protection, or any traffic sign erected in pursuance of subsection (1) or (2) above, or removes, interferes with or extinguishes any light placed in pursuance of either of those subsections to indicate an obstruction or works on or in any road commits an offence.
- (5) In this section—
- “hours of darkness” means the time between half an hour after sunset and half an hour before sunrise; and
- “specified” means specified by the Secretary of State in regulations.
- [<sup>F36</sup>(6) This section shall not apply to an undertaker executing road works, within the meaning of Part IV of the New Roads and Street Works Act 1991.]



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#### Textual Amendments

- F35** Words in s. 60(1) omitted (1.1.1993) by virtue of [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para. 86\(a\)](#); S.I. 1992/2990, art. 2(2), [Sch. 2](#)
- F36** S. 60(6) inserted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para. 86\(b\)](#); S.I. 1992/2990, art. 2(2), [Sch. 2](#)

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

- C20** S. 60: power to contract out functions of Secretary of State (16.3.1996) by [S.I. 1996/878, art. 2, Sch. para. 5\(p\)](#)

## 61 Granting of permission to place and maintain etc. apparatus under a road.

- (1) Subject to subsections (3) and (5) below, the roads authority may permit, subject to such reasonable conditions as they consider appropriate (including, without prejudice to the generality of this subsection, conditions as to future cessation or withdrawal of the permission and indemnification of the authority against claims arising out of what is so permitted), a person to place and leave, or to retain, and thereafter (in either case) to maintain, repair and reinstate, apparatus in or under a public road or proposed public road and to break open, and to have access to, the road or proposed road, for those purposes <sup>F37</sup>; and such permission shall be in writing].
- (2) In subsection (1) above, “proposed public road” means a new road in course of construction by or on behalf of the roads authority.
- (3) Before giving permission under subsection (1) above, the roads authority shall give not less than 28 days notice of their intention so to do to any other person whose apparatus is, or plans for the installation of apparatus are, likely to be affected by the works which would thereby be authorised.
- (4) <sup>F38</sup>Works carried out by a person in pursuance of permission under subsection (1) above are not <sup>F39</sup>road works within the meaning of section 107 of the New Roads and Street Works Act 1991].
- (5) Subsection (1) above does not apply to the apparatus of statutory undertakers or of local authorities <sup>F40</sup>nor does it apply to apparatus in respect of which permission has been granted under section 109 of the New Roads and Street Works Act 1991 to execute road works].

#### Textual Amendments

- F37** Words in s. 61(1) inserted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para. 87\(a\)](#); S.I. 1992/2990, art. 2(2), [Sch. 2](#)
- F38** Words in s. 61(4) substituted by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1)(3), [Sch. 16 para. 30, Sch. 17 paras. 33, 35\(1\)](#)
- F39** Words in s. 61(4) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para. 87\(b\)](#); S.I. 1992/2990, art. 2(2), [Sch. 2](#)
- F40** Words in s. 61(5) inserted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para. 87\(c\)](#); S.I. 1992/2990, art. 2(2), [Sch. 2](#)

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

**C21** S. 61 power to contract out functions of the Secretary of State (16.3.1996) by [S.I. 1996/878, art. 2, Sch. para. 5\(q\)](#)

**[61A** <sup>F41</sup>**Charge for occupation of road.**

- (1) The Secretary of State may make provision by regulations requiring a person who occupies a public road by doing anything to which this section applies to pay a charge to the roads authority if the duration of the occupation exceeds the longer of the following periods—
  - (a) such period as may be prescribed; or
  - (b) such period as is agreed by the authority and the person to be reasonable or, in default of such agreement, is determined by arbitration to be reasonable in the circumstances.
- (2) This section applies to the occupation of a public road by doing anything which would require the consent or permission of a roads authority under any of the following provisions of this Act—
  - section 56 (works executed in or excavations under a public road);
  - section 58 (occupation of road for deposit of building materials and erection of scaffolding);
  - section 59 (placing or depositing anything in a road);
  - section 61 (placing, leaving, retaining, maintaining, repairing and reinstating apparatus in or under a public road); or
  - section 85 (depositing a builder's skip).
- (3) For the purposes of paragraph (b) of subsection (1) above, in default of agreement, the roads authority's view as to what is a reasonable period shall be acted upon pending the decision of the arbiter.
- (4) The regulations may provide that if a person applying to the roads authority for consent or permission under any of the provisions of this Act specified in subsection (2) above submits together with his application an estimate of the likely duration of the occupation, the period stated in the estimate shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.
- (5) The regulations may provide that if it appears to the person occupying the road that by reason of matters not previously foreseen or reasonably foreseeable the duration of the occupation—
  - (a) is likely to exceed the prescribed period,
  - (b) is likely to exceed the period stated in the previous estimate, or
  - (c) is likely to exceed the period previously agreed or determined to be a reasonable period,

he may submit an estimate or revised estimate accordingly, and that if he does so any previous estimate, agreement or determination shall cease to have effect and the period stated in the new estimate shall be taken to be agreed by the roads authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.

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- (6) The amount of the charge shall be determined in such manner as may be prescribed by reference to the duration and extent of the occupation and different rates of charge may be prescribed according to the purpose of the occupation and such other factors as appear to the Secretary of State to be relevant.
- (7) The regulations may make provision as to the time and manner of making payment of any charge.
- (8) The regulations shall provide that a roads authority may reduce the amount, or waive payment, of a charge in any particular case, in such classes of case as they may decide or as may be prescribed, or generally.
- (9) In this section “prescribed” means prescribed by the Secretary of State by regulations.]

#### Textual Amendments

**F41** S. 61A inserted (1.1.1993) by New Roads and Street Works Act (c. 22, SIF 59, 108), s. 168(1), Sch. 8 para. 88; S.I. 1992/2990, art. 2(2), **Sch. 2**

### *Control of traffic*

## **62 Temporary prohibition or restriction of traffic etc. on roads for reasons of public safety or convenience.**

- (1) Where, as regards any road, an order [<sup>F42</sup>can be made under neither section 14 nor section 16A of the Road Traffic Regulation Act 1984 (temporary prohibition or restriction of traffic and foot passage on roads in certain circumstances and in connection with certain events)] but in the opinion of the roads authority considerations of public safety or convenience require, or make it desirable that there should be, a temporary restriction on, or temporary prohibition of, traffic or foot passage on the road, the authority may make an order imposing such restriction or prohibition and (where practicable) specifying an alternative route or alternative routes.
- (2) An order under subsection (1) above—
  - (a) shall not have the effect of preventing at any time access for foot passengers to any premises situated on or adjacent to the road or to any other premises accessible for foot passengers only from the road;
  - (b) may relate to vehicles, or persons, in general or to a class thereof; and
  - (c) without prejudice to paragraph (a) above may be subject to such conditions or exceptions as are considered necessary by the roads authority.
- (3) In subsection (1) above “temporary” means for a period not exceeding seven days.
- (4) Notice of an order under subsection (1) above shall be given by the authority by advertisement in a newspaper circulating in the area to which the order relates; and the order shall not come into effect before the date of the advertisement.
- (5) A person who contravenes a restriction or prohibition imposed by virtue of subsection (1) above commits an offence.

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### Textual Amendments

**F42** S. 62(1) substituted (3.5.1994) by 1994 c. 11, s. 3(1), **Sch. para. 6**

### *Footpaths, footways and verges*

## 63 New access over verges and footways.

- (1) Where, in the opinion of the roads authority, vehicles when driven to or from premises adjacent to a public road are habitually being taken across that road's verge or footway other than by way of a satisfactory vehicular crossing they may serve a notice on the owner or occupier of the premises requiring that—
  - (a) by such date as is specified in the notice he shall have commenced; and
  - (b) within such period thereafter as is, and to such detailed specifications as are, so specified he shall have completed,
 the construction of such a crossing over the affected part of the verge or footway.
- (2) A vehicular crossing constructed under or by virtue of this section shall on completion be part of the public road.
- (3) A person upon whom a notice has been served under sub-section (1) 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.

### Modifications etc. (not altering text)

**C22** S. 63 power to contract out functions of the Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, **Sch. para. 5(r)**

## 64 Use of appliances etc. on footways, footpaths and cycle tracks.

- (1) No enactment prohibiting or restricting the use of footways, footpaths or cycle tracks shall affect the use of appliances or vehicles—
  - (a) for the construction, maintenance, improvement or cleansing of a road;
  - (b) subject to subsection (2) below, by statutory undertakers for works on footways, footpaths or cycle tracks maintainable by a roads authority, in connection with apparatus belonging to the statutory undertakers.
- (2) Statutory undertakers may exercise rights enjoyed by them by virtue of subsection (1) (b) above only if they have obtained the consent of the roads authority; and such consent may be subject to such reasonable conditions as the authority think fit.
- (3) In this section “statutory undertakers” includes an authority responsible for sewerage.

### Modifications etc. (not altering text)

**C23** S. 64: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, **Sch. para. 5(s)**

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*Horse traffic etc.*

**65 Regulation of drivers of horsedrawn carts etc.**

- (1) The driver of a drawn vehicle commits an offence if he conveys on it on any road anything which is not adequately secured and which, were it to fall off, might be expected to endanger other road users.
- (2) The owner of a drawn vehicle commits an offence if he permits a child of under—
  - (a) 14 years of age to drive that vehicle on a road; or
  - (b) 16 years of age (not being such child as is mentioned in paragraph (a) above) to drive that vehicle on a road other than under the immediate supervision of a person of 18 years of age or more.
- (3) In subsections (1) and (2) above, “drawn vehicle” means a vehicle pulled by one or more draught animals.

*Miscellaneous*

**66 Maintenance of vaults and cellars etc.**

- (1) As regards any road, the following things shall be kept in good condition and repair by their owners or occupiers or by occupiers of the premises to which the thing belong—
  - (a) every vault, arch, cellar and tunnel under the road;
  - (b) every opening into any such vault, arch, cellar or tunnel from the surface of the road;
  - (c) every door or cover (whether fixed or removable) to any such opening;
  - (d) every pavement light in the surface of the road; and
  - (e) every wall or other structure supporting any such vault, arch, cellar, tunnel, door or cover.
- (2) Where an owner or occupier is in contravention of sub-section (1) above the roads authority may by notice to him require him within 28 days of the date of service of the notice to replace, repair or put into good condition the thing in respect of which the contravention arises.
- (3) A person upon whom a notice has been served under subsection (2) above may, within the 28 days mentioned in that subsection, refer the matter by summary application to the sheriff; and the decision of the sheriff on the matter shall be final.
- (4) A local roads authority may, if they think fit, pay the whole or any part of any expenditure incurred by a person in complying with subsection (1) or (2) above.

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

C24 S. 66: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(t)

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**67 Power to direct that doors etc. should not open outward into road.**

Where a door, gate, window, window shutter or bar opens outward into a road so as to interfere with the safety or convenience of road users the roads authority may by notice to the owner or occupier of the premises to which the thing belongs require him within such period as may be specified in the notice to take such steps as will ensure that such interference no longer occurs.

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

**C25** S. 67: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(u)

**PART VI**

ACCESS AND STOPPING UP

**68 Power of roads authorities to stop up roads by order.**

- (1) Subject to section 71(1) and (2) of this Act, the roads authority may, either on their own initiative or at the request of any person, make an order stopping up any road which they consider—
  - (a) has become dangerous to the public other than by reason of its crossing or entering the route of another road which is a public road or of its being affected by the construction or improvement of such other road; or
  - (b) is or will become unnecessary.
- (2) Before making an order under—
  - (a) subsection (1)(a) above; or
  - (b) subsection (1)(b) above on the ground that the road is unnecessary,
 the roads authority shall satisfy themselves that a suitable alternative road exists or that no alternative road is necessary.
- (3) An order under subsection (1)(b) above made only on the ground that a road will become unnecessary shall not come into operation until—
  - (a) the road has become unnecessary; and
  - (b) a suitable alternative road exists.
- (4) An order under subsection (1) above—
  - (a) may provide for the stopping up of a road subject to the reservation of a means of passage along the road for pedestrians, cyclists or both; and
  - (b) shall, except in a case to which section 132 of this Act applies, include provisions for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across the road to which the order relates.

**69 Stopping up of dangerous access from public road to land.**

- (1) Subject to section 71(1) and (2) of this Act, where the roads authority consider that a private means of access from a road or proposed road to land is likely to cause

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danger to, or to interfere unreasonably with, traffic on the road, they may make an order stopping up the access and may provide a new means of access to the land.

- (2) A private means of access shall not be stopped up under this section—
- (a) before all objections to the making of the order have been disposed of,
  - (b) before the expiry of 6 weeks from the date of the first public notification of the proposal to make the order, and
  - (c) in a case where a new means of access is to be provided by the roads authority, before it has been so provided.

## **70 Stopping up of access to land from certain roads being constructed.**

- (1) Without prejudice to section 69 of this Act, an order under section 9 or 12 of this Act may authorise the roads authority—
- (a) to stop up any private means of access to land adjoining or adjacent to land comprised in the route of the special, or as the case may be main, road, or forming the site of any works authorised by the order;
  - (b) to provide a new means of access to any such land.
- (2) The references in subsection (1) above to a special road and to a main road shall be construed as including references to a proposed such road.

## **71 Provisions supplementary to sections 68 to 70.**

- (1) Subject to subsection (2) below, the Secretary of State may by regulations prescribe the procedure to be followed in making an order under section 68 or 69 of this Act; and such regulations may in particular make provision as to—
- (a) the content of the order; and
  - (b) the means of public notification of the proposal to make such an order.
- (2) Where a roads authority propose to make an order under the said section 68 or 69, then, before the expiry of 28 days from the date of the first public notification, in accordance with regulations under subsection (1) above, of the proposal to make the order, any person may object to it to the authority, and—
- (a) where the roads authority is a local roads authority—
    - (i) if no such objection is made, or objection is made but withdrawn, they may confirm the order themselves; and
    - (ii) if such objection is made and not withdrawn, the Secretary of State shall determine the matter, and may confirm the order with or without modification or refuse to confirm it;
  - (b) where the roads authority is the Secretary of State, he shall not make the order without having considered any such objection.
- (3) Before stopping up the access to any land under section 69 or by virtue of section 70 of this Act, the roads authority shall satisfy themselves—
- (a) that no access to the land is reasonably required; or
  - (b) that another reasonably convenient means of access to the land is available or will be provided in pursuance of an order made under the said section 69, or by virtue of the said section 70 as the case may be.

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*Status: Point in time view as at 06/04/2001.*

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- (4) The roads authority may stop up a means of access under section 69 or by virtue of section 70 of this Act in any way which seems to them appropriate, but not so as to obstruct any public right of way on foot.
- (5) A person who uses a means of access which has been stopped up under section 69 or by virtue of section 70 of this Act, other than a person exercising a public right of way on foot, commits an offence.
- (6) Where access to any land has been stopped up under section 69 or by virtue of section 70 of this Act, or, as the case may be, is limited by virtue of the restrictions imposed under this Act on the use of a special road, and any person has suffered damage in consequence thereof by the depreciation of any interest in the land to which he is entitled or by being disturbed in his enjoyment of the land, he shall be entitled to recover from the roads authority compensation in respect of that damage; and in assessing such compensation regard shall be had to any new means of access provided by the roads authority.

## **72 Stopping up private access to land by agreement.**

- (1) Without prejudice to sections 69 and 70 of this Act, the roads authority may agree with the occupier of land and with any other person having an interest in the land that a private means of access from a public road, or proposed public road, to the land shall be stopped up by the authority; and such agreement may provide for the payment by the roads authority to the other party of compensation in respect of any damage suffered in consequence of the stopping up.
- (2) The roads authority may stop up a means of access by virtue of this section in any way which seems to them to be appropriate; but not so as to obstruct any public right of way on foot.
- (3) Without prejudice to subsection (4) below, the provisions of any agreement made under this section shall be binding on persons deriving title from the occupier or the other person; except that no provision shall be enforceable by virtue of this subsection against a third party who shall have in good faith and for value, acquired right (whether completed by infestment or not) to land prior to the agreement being either registered in the Land Register of Scotland or as the case may be recorded in the Register of Sasines.
- (4) A person who uses a means of access which has been stopped up by virtue of this section, other than a person exercising a public right of way on foot, commits an offence.

## **73 Expenses incurred under section 69 or by virtue of section 70 or 72.**

Any expenses incurred under section 69, or by virtue of section 70 or 72, of this Act by a local roads authority shall be deemed for the purposes of section 3 of this Act to be incurred in road construction or improvement.

## **74 Temporary provision of substitute road.**

- (1) Where proposed works for the maintenance, repair or improvement of a road are such as, in the opinion of the roads authority, will require a complete temporary prohibition



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- of a class, or classes, of or all traffic on the road the authority may, through any land adjoining the road, make a substitute road to accommodate the traffic so prohibited.
- (2) At least 28 days before a roads authority commence making a road under subsection (1) above, they shall serve on the owner and the occupier of the land concerned notice in that regard; and without prejudice to section 136 of this Act that notice shall contain a statement of when it is intended the works proposed in relation to the substitute road will commence and of the length of time for which the authority estimate that road will be required.
  - (3) The roads authority shall, as soon as is practicable after the substitute road is no longer required, reinstate the land.
  - (4) A person upon whom a notice has been served under subsection (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.
  - (5) A substitute road made under subsection (1) above—
    - (a) shall be managed and maintained by the roads authority but shall not be entered by the authority in their list of public roads or, as the case may be, in the list of roads kept under section 2(2) of this Act; and
    - (b) shall vest in the authority for the purposes of their functions as roads authority; but such vesting shall not confer on them any heritable right in relation to the substitute road.
  - (6) Without prejudice to section 116(1) of this Act, from the commencement of the making of a road through land under subsection (1) above until reinstatement of the land under subsection (3) above, rent shall by the roads authority be payable for so much of the land as is taken for the road; and the amount of that rent, and the person or persons to whom it is so payable, shall, in the absence of agreement between the roads authority and each person on whom they have served notice under subsection (2) above as regards the road, be determined by the Lands Tribunal for Scotland, whose decision on the matter shall be final.

## 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.

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- (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.
- (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, subparagraph (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.

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- (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 <sup>M22</sup> Statutory Orders (Special Procedure) Act 1945 to the order.

**Marginal Citations**

**M22** 9 & 10 Geo. 6 c.18.

**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 the 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 <sup>M23</sup> Statutory Orders (Special Procedure) Act 1945.

**Marginal Citations**

**M23** 9 & 10 Geo. 6 c. 18.

**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.

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- (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 not a body) acting in pursuance of any right conferred by or in accordance with the telecommunications code [F43] and a reference to the operator of a driver information system (whether or not a body) acting in pursuance of a right conferred by or in accordance with section 12 of the Road Traffic (Driver Licensing and Information Systems) Act 1989].

#### Textual Amendments

**F43** Words inserted by [Road Traffic \(Driver Licensing and Information Systems\) Act 1989 \(c. 22, SIF 107:1\)](#), s. 13(1), [Sch. 4 para. 5\(1\)\(2\)](#)

## 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.

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- (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 <sup>M24</sup>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—

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- (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 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.

#### **Marginal Citations**

**M24** 1968 c. 73.

## **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

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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.

#### [<sup>F44</sup>81A Roads authority for boundary bridges.

- (1) This section applies where a public road is carried by a bridge over a waterway and the bridge lies partly in the areas of two local roads authorities.
- (2) Where this section applies, the authorities concerned may make arrangements as to—
  - (a) which of them shall be the roads authority in relation to that bridge;
  - (b) the performance by such roads authority in relation to the bridge of any of the roads functions of the other authority; and
  - (c) the making of contributions by that other authority to the roads authority in respect of expenditure incurred in the performance of those functions.
- (3) Where arrangements are not made as mentioned in subsection (2) above, the Secretary of State may, on the application of one of the roads authorities concerned, make a determination in respect of the matters mentioned in paragraphs (a) to (c) of that subsection.
- (4) A determination of the Secretary of State under subsection (3) above shall be binding.]

#### Textual Amendments

F44 S. 81A added (6.4.1995) by 1994 c. 39, s. 39 (with s. 7(2)); S.I. 1995/702 art. 4(1), Sch. 2

#### 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

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- (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.

## 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 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.



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- (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 [F45 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

**F45** 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—
- (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.

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- (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 [<sup>F46</sup>written] 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**

**F46** 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)**

**C26** 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)

## **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

*Status: Point in time view as at 06/04/2001.*

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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)**

**C27** [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.

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

**C28** [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.

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- (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)**

**C29** 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.

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

**C30** 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.

*Status: Point in time view as at 06/04/2001.*

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- (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)**

C31 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.
- (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:

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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>M25</sup>Local Government (Scotland) Act 1973; and
    - (ii) “protected tree” means a tree which is subject to a tree preservation order under <sup>F47</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

**F47** 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)

**C32** 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)**

#### Marginal Citations

**M25** 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

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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)**

**C33** 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 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>F48</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.



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- (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

**F48** 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)

**C34** 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 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.



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

- C35** [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>F49</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**

- F49** 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)**

- C36** [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 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.

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- (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;
  - (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>M26</sup>Pedlars Act 1871 has been granted.

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(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>M27</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>F50</sup>local authority]:

Provided that in establishing or holding, or fixing the place of, the market and in regulating it the [<sup>F51</sup>local authority] shall consult the roads authority and shall, so far as the [<sup>F51</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

**F50** 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)**

**F51** 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

**M26** 1871 c. 96.

**M27** 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>F52</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.
- (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):

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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>F53</sup>(6) .....

#### Textual Amendments

- F52** 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**
- F53** 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)

- C37** 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 so specified, being works or excavations in their opinion necessary for compliance by him with subsection (1) above.

*Status: Point in time view as at 06/04/2001.*

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- (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)**

**C38** 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.

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## PART IX

### ACQUISITION, TRANSFER, VESTING AND COMPENSATION

#### *Acquisition*

#### **103 General provision as to acquisition of land.**

Subject to any express provision to the contrary, any power under this Act to acquire land may be exercised compulsorily or by agreement.

#### **104 Acquisition of land for construction, improvement or protection of public roads etc.**

- (1) Subject to section 109 of this Act, a roads authority may acquire land required—
  - (a) in connection with the construction, improvement or protection of a public road under or by virtue of this Act; or
  - (b) for the purpose—
    - (i) of providing or improving a road which is to be provided or improved in pursuance of an order under [<sup>F54</sup>section 202, 203 or 207 of the Town and Country Planning (Scotland) Act 1997]; or
    - (ii) of providing a public right of way which is to be provided as an alternative to a right of way extinguished under [<sup>F54</sup>section 206(1)(a) or (b)],

or for any other purpose for which land is required in connection with such an order as is mentioned in sub-paragraph (i) above.
- (2) Subject to section 109 of this Act, the Secretary of State may acquire land which is required in connection with—
  - (a) the carrying out of any works authorised by an order relating to a trunk road under section 12 of this Act; or
  - (b) the provision of buildings or facilities for the purposes of constructing, improving, maintaining or servicing a trunk road other than a special road.
- (3) Subject to section 109 of this Act, the special road authority may acquire land which is required—
  - (a) in connection with the improvement of a road which is included in the route of a special road but has not been transferred to the authority by means of an order under section 9 of this Act,
  - (b) for the purpose of any order made in relation to a special road under the said section 9, or
  - (c) in connection with the provision of service stations or other buildings or facilities to be used in connection with a special road.
- (4) Where, in the exercise of any of the powers conferred by subsections (1) to (3) above or section 106 of this Act, a roads authority have acquired, or propose to acquire, land forming part of a common or open space, and other land is required for the purpose of being given in exchange for the first-mentioned land, the authority may acquire that other land as if it were land required by them in connection with the construction or improvement of a public road; and nothing in section 109 of this Act applies to an acquisition by virtue of this subsection.

*Status: Point in time view as at 06/04/2001.*

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- (5) In the foregoing provisions of this section any reference to—
- (a) a public road shall be construed as including a reference to a proposed public road;
  - (b) a trunk road shall be construed as including a reference to a proposed public road which is to be a trunk road; and
  - (c) a special road shall be construed as including a reference to a proposed public road which is to be a special road.

#### Textual Amendments

**F54** Words in s. 104(1)(b) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2**, para. 38(7)

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

**C39** S. 104(1)(b)(ii): power to modify conferred (27.5.1997) by 1997 c. 8 ss. 211(2)(b), 278(2)

**C40** S. 104(3)(c) extended (21.10.1991) by **New Roads and Street Works Act 1991** (c. 22, SIF 59, 108), s. 39(3)(with savings in s. 47(4), 167(2)); S.I. 1991/2286, art. 2(1), **Sch. 1**

### 105 Further provision as regards acquisition of land for construction, improvement etc. of public roads.

- (1) The roads authority may acquire, but, under this subsection, only by agreement, any land in the neighbourhood of a public road (or proposed public road) being land which they consider it desirable to acquire for preserving or improving the amenity of the road.
- (2) Subject to section 109 of this Act, the roads authority may acquire land wherever situated which in their opinion is required in connection with the carrying out of works authorised by section 12, 69 or 70 of this Act.
- (3) The local roads authority may acquire land wherever situated which in their opinion is required for the provision of any buildings or facilities needed for the purpose of constructing, improving, maintaining or servicing a public road (or proposed public road).
- (4) The foregoing provisions of this section are without prejudice to section 104 of this Act.
- (5) Any power of a roads authority under section 104 of this Act or subsection (1) or (3) above to acquire land by agreement for the purpose mentioned in the provision in question shall be exercisable in respect of any land which, in the opinion of the roads authority, may be required for that purpose, notwithstanding that the land is not immediately required for that purpose.

### 106 Acquisition of land for mitigating adverse effects of construction of road.

- (1) Subject to subsection (3) below, the roads authority may acquire land for the purpose of mitigating any adverse effect which the existence or use of a road constructed or improved by them, or proposed to be constructed or improved by them, has or will have on the surroundings of the road.
- (2) Subject to subsection (3) below, the roads authority may acquire, but only by agreement—

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- (a) land the enjoyment of which is seriously affected by the carrying out of works by the authority for the construction or improvement of a road;
  - (b) land the enjoyment of which is seriously affected by the use of a road which the authority have constructed or improved,
- if the interest of the seller is one which falls within [F55]section 100(2) of the Town and Country Planning (Scotland) Act 1997] (interests qualifying for protection under blight provisions) taking references to the date of service of a notice under [F55]section 101] of that Act as references to the date on which the purchase agreement is made.
- [F56](2A) Where the roads authority propose to carry out works on land to which this subsection applies for the construction or improvement of a road, they may acquire by agreement land the enjoyment of which will in their opinion be seriously affected by the carrying out of the works or the use of the road if the interest of the seller is an interest such as is mentioned in [F57]section 100(2) (interests qualifying for protection under blight provisions) of the Town and Country Planning (Scotland) Act 1997]].
- (2B) Subsection (2A) above applies to any land such as is mentioned in [F58]Schedule 14 to the said Act of 1997].
- (3) The powers conferred by subsections (1) and (2)(a) above shall not be exercisable unless the acquisition is begun before the date on which the road or, as the case may be, the improved road is opened to public traffic; and the powers conferred by subsection (2)(b) above shall not be exercisable unless the acquisition is begun before the end of one year after that date.
- (4) For the purposes of subsection (3) above the acquisition of land is begun—
- (a) if it is compulsory, on the date on which the notice required by paragraph 3(1)(a) of Schedule 1 to the M28 Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 is first published;
  - (b) if it is by agreement, on the date on which the agreement is made;
- and where the compulsory acquisition of land under subsection (1) above is begun in accordance with subsection (3) above but is not proceeded with, any subsequent compulsory acquisition of that land under the said subsection (1) shall be treated for the purposes of this section as begun in accordance with the said subsection (3).
- (5) For the purpose of assessing the compensation payable on the compulsory acquisition of land under this section the land shall be treated as if it were being acquired for the construction of the road or, as the case may be, the improvement in question.
- (6) In this section references to the construction or improvement of a road include references to the construction or improvement of a road under an order under section 9 or 12 of this Act.
- (7) In [F59]paragraph 11 of Schedule 14 to the Town and Country Planning (Scotland) Act 1997]—
- (a) the reference to a power of compulsory acquisition there mentioned shall include a reference to the power of compulsory acquisition conferred by subsection (1) above; and
  - (b) the reference to land acquired for purposes of construction, improvement or alteration as indicated in an order or scheme there mentioned shall include a reference to land required for the purposes of subsection (1) above.
- (8) [F60]The said Schedule 14]



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shall have effect as if the land specified therein included land which—

- (a) is land shown in plans approved by a resolution of a local roads authority as land proposed to be acquired by them for the purposes of subsection (1) above; or
- (b) is land shown in a written notice given by the Secretary of State to the local planning authority as land proposed to be acquired in connection with a trunk road or special road which he proposes to provide.

#### Textual Amendments

- F55** Words in s. 106(2) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 38(8)(a)**
- F56** S. 106(2A)(2B) inserted (25.09.1991) by Planning and Compensation Act 1991 (c. 34, SIF 28:2), s. 76(2)(with saving s. 84(5)); S.I. 1991/2092, art. 3.
- F57** Words in s. 106(2A) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 38(8)(b)**
- F58** Words in s. 106(2B) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 38(8)(c)**
- F59** Words in s. 106(7) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 38(8)(d)**
- F60** Words in s. 106(8) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 38(8)(e)**

#### Marginal Citations

- M28** 1947 c. 42

### 107 Acquisition of land in connection with cattle-grids.

A roads authority may acquire land for the purpose of providing, altering or improving a cattle-grid (or a by-pass in relation to a cattle-grid) in the exercise of powers conferred by this Act; and where they so acquire land by agreement the acquisition may be by way of purchase, lease or otherwise.

### 108 Acquisition of land for provision of picnic site.

Subject to section 109 of this Act, the Secretary of State may acquire land required in connection with the provision under section 55 of this Act of a picnic site.

### 109 Distance limits for purposes of compulsory acquisition.

- (1) Subject to subsection (3) below, a roads authority shall not, in the exercise of a power to acquire land under any of the provisions of this Act specified in column 1 of Part I of Schedule 5 to this Act, acquire compulsorily land lying beyond the limit specified in relation to that power in column 2 of that Part of that Schedule.
- (2) Part II of that Schedule shall have effect with respect to limits specified in Part I of that Schedule.
- (3) Nothing in this section applies to land required for purposes connected with the drainage or protection of a public road.
- (4) In subsection (3) above and in Schedule 5 to this Act, references to a road and to a public road shall be construed, respectively, as including references to a proposed road and to a proposed public road.

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## 110 General provisions as to acquisition of land.

- (1) Any power to acquire land compulsorily conferred by sections 104 to 107 of this Act on a local roads authority shall be exercisable in any particular case on their being authorised to do so by the Secretary of State.
- (2) Any power to acquire land compulsorily conferred by any of the said sections shall include power to acquire a servitude or other right in or over land by the creation of a new right.
- (3) In relation to the compulsory acquisition of land under any of sections 104 to 108 of this Act by a roads authority, the <sup>M29</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall have effect as if this Act had been in force immediately before the commencement of that Act and, in a case where the compulsory acquisition is by the Secretary of State, as if the said sections were included among the enactments specified in section 1(1)(b) of that Act.
- (4) In assessing the compensation payable in respect of the compulsory acquisition of land by a roads authority under powers conferred by section 104 or sections 106 to 108 of this Act, the Lands Tribunal for Scotland—
  - (a) shall have regard to the extent to which the remaining contiguous land belonging to the same person may be benefited by the purpose for which the land is authorised to be acquired;
  - (b) without prejudice to the generality of paragraph (a) above shall, in the case of land authorised to be acquired for widening a public road, set off against the value of the land to be acquired any increase in the value of other land belonging to the same person which will accrue to him by reason of the creation of a frontage to the road as widened;
  - (c) shall take into account, and embody in its award, any undertaking given by the authority as to the use to which the land, or any part of it, will be put;
 and the <sup>M30</sup>Land Compensation (Scotland) Act 1963 shall, in its application to a compulsory acquisition by a roads authority under any of the said sections, have effect subject to the provisions of this subsection.
- (5) Where under any of sections 104 to 108 of this Act a roads authority are authorised to acquire land by agreement, the Lands Clauses Acts (except the provisions relating to the purchase of land otherwise than by agreement and the provisions relating to access to the special Act, and except sections 120 to 125 of the <sup>M31</sup>Lands Clauses Consolidation (Scotland) Act 1845) and sections 6 and 70 of the <sup>M32</sup>Railways Clauses Consolidation (Scotland) Act 1845, and sections 71 to 78 of that Act, as originally enacted and not as amended for certain purposes by section 15 of the <sup>M33</sup>Mines (Working Facilities and Support) Act 1923, shall be incorporated with this Act; and in construing those Acts for the purposes of this subsection this Act shall be deemed to be a special Act, and the roads authority to be the promoters of the undertaking or company, as the case may require, and the word “land” shall have the meaning assigned to it by Schedule 1 to the <sup>M34</sup>Interpretation Act 1978.

### Marginal Citations

**M29** 1947 c. 42.

**M30** 1963 c. 51.

**M31** 1845 c. 19.

**M32** 1845 c. 33.

*Status: Point in time view as at 06/04/2001.*

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**M33** 1923 c. 20.

**M34** 1978 c. 30.

## **111 Concurrent proceedings for special and trunk roads schemes and orders.**

- (1) Proceedings required by Schedule 1 to the <sup>M35</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to be taken in respect of the compulsory acquisition of land for purposes connected with a special road or trunk road may be taken concurrently with proceedings required to be taken for the purposes of a scheme under section 7, or an order under section 9, of this Act relating to the special road, or, as the case may be, an order under section 5 or 12 of this Act relating to the trunk road.
- (2) An order under section 9 or 12 of this Act or an order for the compulsory acquisition of land for purposes connected with a special road or trunk may be made to come into operation on the same day as a scheme under section 7 of this Act authorising the provision of a special road or, as the case may be, an order under section 5 of this Act directing that a road shall become a trunk road.
- (3) In the foregoing provisions of this section, references to special roads or to trunk roads shall be construed as including references to proposed public roads which are to be special roads or as the case may be are to be trunk roads.

### **Marginal Citations**

**M35** 1947 c. 42.

## *Vesting and transfer*

## **112 Transfer of property and liabilities upon road becoming or ceasing to be a trunk road.**

- (1) Where a road becomes a trunk road, then, subject to the provisions of this section, as from the date on which it does so (“the operative date”), there shall, by this section, be transferred to and shall vest in the Secretary of State for the purposes of his functions as roads authority—
    - (a) the road in so far as it was, immediately before the operative date, vested in the former roads authority;
    - (b) all property in so far as it was, immediately before the operative date, vested in the former roads authority for the purposes of their functions in relation to the road;
    - (c) all liabilities which have been incurred by the authority for the purposes mentioned in paragraph (b) above and have not been discharged before the operative date, other than loans and loan charges.
- [<sup>F61</sup>(d) any property such as is mentioned in subsection (1A) below]

[<sup>F62</sup>(1A) The property mentioned in paragraph (d) of subsection (1) above is property which—

- (a) was, immediately before the operative date, vested in the former roads authority for the purposes of their functions in relation to more than one road (including the road mentioned in that subsection); and
- (b) is specified in an order made by the Secretary of State.

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- (1B) Where any property is transferred to and vests in the Secretary of State as mentioned in subsection (1)(d) above, he shall make arrangements with the former roads authority as respects the use of that property; and any dispute between the Secretary of State and the former roads authority as to any arrangements made under this subsection shall be determined in like manner as any dispute such as is mentioned in subsection (7) below.]
- (2) In [<sup>F63</sup>subsections (1) and (1A)] above, “property”—
- (a) includes the unexpended balances of any grants paid by the Secretary of State to any such authority for the purposes of their functions in relation to the road but not of any loans raised by any such authority for those purposes; and
  - (b) does not include—
    - (i) land vested in the authority for the storage of materials required wholly or partly for the maintenance, repair or improvement of other roads;
    - (ii) land acquired for the improvement or development of frontages or of land abutting on or adjacent to the road; and
    - (iii) materials for maintenance, repair or improvement of the road.
- (3) Such vesting as is mentioned in subsection (1) above shall not confer on the Secretary of State any heritable right in relation to a road.
- (4) There shall not be transferred to the Secretary of State by this section any right or liability in respect of—
- (a) work done, services rendered, goods delivered, or money due for payment, before the operative date;
  - (b) damages or compensation for any act or omission before that date; or
  - (c) the price of, or compensation for, any land purchased, or for which a contract to purchase has been made, before that date.
- (5) Anything vested in the Secretary of State by this section shall be held by him subject to all covenants, conditions and restrictions subject to which it was held by the former roads authority and to all liabilities affecting it (except a liability referred to in subsection (4) above).
- (6) The Secretary of State may enter into an agreement with the former roads authority—
- (a) that any property or liabilities (except loans and loan charges) acquired or incurred by the authority for the purposes of their functions in relation to a road which has become a trunk road, other than properties or liabilities transferred to the Secretary of State by this section, shall be transferred to him, or
  - (b) that any property or liabilities transferred to the Secretary of State by this section shall be transferred back to the authority.
- (7) Any dispute between the Secretary of State and any authority or person as to the property or liabilities transferred by this section shall be determined by arbitration by a single arbiter appointed in default of agreement by the Court of Session, or the sheriff, on the application of either party.
- (8) The foregoing provisions of this section shall apply where a road ceases to be a trunk road in like manner as they apply where a road becomes a trunk road, with the substitution—
- (a) for references to the former roads authority of references to the Secretary of State, and

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- (b) for references to the Secretary of State of references to the local roads authority who become the roads authority for the road.
- (9) The former roads authority for a road which becomes a trunk road shall produce to the Secretary of State such documents and other information as he may require relating to their functions, property and liabilities in respect of the road.
- (10) Schedule 6 to this Act shall have effect for the purpose of providing for transitional matters arising where a road becomes or ceases to be a trunk road and for making certain other transitional provisions.
- (11) In the foregoing provisions of this section—
- “former roads authority” means, in relation to a road which has become a trunk road, the roads authority in whom the road was vested immediately before it became a trunk road; and
- “property”, subject to subsections (2) and (3) above, includes property, rights and powers of every description.

#### Textual Amendments

- F61** S. 112(1)(d) added (4.1.1995) by 1994 c. 39, s. 38(3)(a) (with s. 7(2)); S.I. 1994/2850, art. 3(a), Sch. 2
- F62** S. 112(1A)(1B) added (4.1.1995) by 1994 c. 39, s. 38(3)(b) (with s. 7(2)); S.I. 1994/2850, art. 3(a), Sch. 2
- F63** Words in s. 112(2) substituted (4.1.1995) by 1994 c. 39, s. 38(3)(c) (with s. 7(2)); S.I. 1994/2850, art. 3(a), Sch. 2

### 113 Transfer of property and liabilities in connection with special roads etc.

- (1) Where provision is made by an order under section 9 or, as the case may be, 12 of this Act—
- (a) for transferring a road from one roads authority to another;
- (b) for enabling a roads authority to alter a road vested in another; or
- (c) for authorising or requiring any functions of a [<sup>F64</sup>local authority] to be exercised by a roads authority,
- the order may transfer to the roads authority to whom the road is transferred or, as the case may be, in whom it is vested, or by whom those functions are to be exercised, any property, rights or liabilities (other than loans or loan charges) vested in or incurred by the other authority in connection with the road, or the alteration, or for the purposes of those functions.
- (2) An order transferring property, rights or liabilities under section 9 or 12 of this Act may for that purpose (whether or not the road in question is a trunk road) apply any of the provisions of section 112 of this Act or any of the transitional provisions contained in Schedule 6 to this Act, subject to such modifications as may be specified in the order.
- (3) No order under section 9 or 12 of this Act shall provide for transferring to any authority (except by agreement with that authority) any bridge over or tunnel under the road as distinct from any approaches to the bridge or tunnel.

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#### Textual Amendments

**F64** Words in S. 113(1)(c) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 135(7)**; S.I. 1996/323, **art 4(1)(c)**

### [<sup>F65</sup> 113A Dissolution of certain bodies in consequence of order under section 9.

- (1) Where—
- (a) an order under section 9 of this Act transfers to a special road authority a road for the management and maintenance of which a body other than a roads authority was, prior to the coming into force of the order, responsible under any enactment; and
  - (b) the functions of that body relate solely to that road,
- the Secretary of State may by order (in this section referred to as a “dissolution order”) dissolve the body.
- (2) A dissolution order may transfer or provide for the transfer to—
- (a) the special road authority referred to in subsection (1)(a) above; or
  - (b) such other person as the Secretary of State considers appropriate,
- of such of the property, rights and liabilities of the body dissolved by the order as the Secretary of State considers appropriate.
- (3) A dissolution order may make provision in connection with the transfer of staff employed by or for the purposes of the body.
- (4) Without prejudice to the generality of subsection (2) above, a dissolution order may make provision regarding liability for the payment of any pensions, allowances or gratuities which would otherwise have been the responsibility of the body.
- (5) A dissolution order may make incidental provision as to the interests, rights and liabilities of third parties with respect to property, rights and liabilities transferred by the order.
- (6) In subsection (5) above the reference to third parties is a reference to persons other than the body and the persons referred to in subsection (2)(a) and (b) above.
- (7) A dissolution order may repeal or amend—
- (a) any enactment in a private Act; and
  - (b) any provision of an order made under or confirmed by a private Act,
- which, in consequence of the making of the order, is no longer required or, as the case may be, requires to be amended.]

#### Textual Amendments

**F65** S. 113A added (4.1.1995) by 1994 c. 39, s.147; S.I. 1994/2850, art. 3(a), **Sch. 2**

### 114 Transfers of officers and property in connection with lighting and bus shelters, etc.

- (1) This section applies where, by virtue of section 35 or 49 of this Act, a function which was, before the commencement of this Act, exercisable by a district council

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(whether or not concurrently with another local authority) is exercisable by a local roads authority.

- (2) An officer of a district council who, in the period immediately before the coming into force of this Act, was wholly or mainly employed in duties pertaining, irrespective of how his office or employment was formally described, to a function referred to in subsection (1) above, shall be transferred into the employment of the local roads authority; but such transfer shall not affect any legal right or entitlement of the officer.
- (3) Subject to any such agreement as is provided for in subsection (4) below, any heritable or moveable property of a district council which is wholly or mainly used, or held, by the council in relation to the discharge of a function referred to in subsection (1) above shall transfer to and vest in the local roads authority.
- (4) If or in so far as the district council and the local roads authority agree that property shall not be transferred by subsection (3) above, that subsection shall have no effect as regards the property; but the property shall no longer be used or held by the district council in relation to the discharge of a function referred to in subsection (1) above.
- (5) Any dispute between a district council and a local roads authority as to whether or when a transfer falls to take place under subsection (2) or (3) above or as to any other matter concerning such a transfer shall be determined by arbitration by a single arbiter appointed in default of agreement by the Court of Session, or the sheriff, on the application of either party.

## **115 Vesting of solum of stopped up road.**

- (1) Where a road is stopped up under this Act or any other enactment and has ceased to be used as a road, the solum of the road shall, subject to any prior claim of any person by reason of title, vest in the owner or owners of the land which adjoins the road.
- (2) Any dispute arising under this section as to the vesting of the solum may be referred on summary application by any interested party to the sheriff, and the decision of the sheriff on the matter shall be final.

### *Compensation*

## **116 Right to compensation for damage from works.**

- (1) Without prejudice to any right of compensation enjoyed apart from this section, a person who sustains damage by reason of the execution of works authorised by section 24, 28, 30, 31(1) or (2), 50(1), 74(1), 78(1), 94 or 124(1) of this Act, or subject to section 35(6) thereof, by section 35(1) or (3) thereof, shall be entitled to recover compensation for that damage from the person executing the works.
- (2) For the purposes of the application of subsection (1) above—
  - (a) to section 50 of this Act, in that subsection “works” includes such planting as is mentioned in subsection (1) of that section; and
  - (b) to section 124 of this Act, in that subsection “works” includes experiments or trials conducted under that section.



*Status: Point in time view as at 06/04/2001.*

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## 117 Determination of disputes as to compensation.

- (1) Any question of disputed compensation under section 71, 72, 83(8), 88(2), 106, 116, 121 or 140 or disputed expenditure under section 134(3) or 135(3) of this Act shall be determined in the same manner as compensation for the acquisition of land falls to be determined under the <sup>M36</sup>Land Compensation (Scotland) Act 1963, and sections 8, 9 and 11 of that Act shall have effect accordingly subject to any necessary modifications.
- (2) [<sup>F66</sup>Section 87(1) and (2) of the Town and Country Planning (Scotland) Act 1997] (assessment of compensation for the purposes of [<sup>F66</sup>Part IV of that Act]) shall apply in relation to the assessment of the disputed compensation mentioned in subsection (1) above, being compensation in respect of the depreciation in value of any interest in land, as that section applies in relation to the assessment of compensation payable under [<sup>F66</sup>the said Part IV].

### Textual Amendments

**F66** Words in s. 117(2) substituted (27.5.1997) by 1997 c. 11 ss. 4, 6(2), Sch. 2, para. 38(9)

### Marginal Citations

**M36** 1963 c. 51.

## 118 Compensation where interest in land subject to heritable security.

Subsection (4) of [<sup>F67</sup>section 87 of the Town and Country Planning (Scotland) Act 1997] (provisions as to compensation where an interest in land is subject to a heritable security) shall apply in relation to such compensation as is mentioned in section 71(6), 72(1), 83(8) or 88(2), or as may be provided for in an agreement under section 53(2), of this Act as the said subsection (4) applies in relation to compensation to which [<sup>F67</sup>the said section 87] applies.

### Textual Amendments

**F67** Words in s. 118 substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), Sch. 2 para. 38(10)

## 119 Compensation for land acquired as service area for special road.

- (1) Where land is compulsorily acquired—
  - (a) under section 104(3)(c) of this Act in a case where the acquisition is authorised by a compulsory purchase order which does not also authorise the acquisition of land required for the provision of the adjacent length of special road;
  - (b) in pursuance of a notice under [<sup>F68</sup>section 88 of the Town and Country Planning (Scotland) Act 1997] (protection of owners of land affected by certain planning decisions) in a case where the Lands Tribunal for Scotland is satisfied that there are proposals for using the whole or part of the relevant land for such purposes in connection with a special road as are mentioned in the said section 104(3)(c) and that the amount of the compensation would apart from this section be affected by the provision or proposed provision of the special road; or
  - (c) in pursuance of a notice under [<sup>F69</sup>section 101 of the said Act of 1997] or section 73 of the <sup>M37</sup>Land Compensation (Scotland) Act 1973 (protection of



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owner-occupiers of land affected by planning proposals) in a case where the appropriate enactment for the purposes of [section 105 of the said Act of 1997] is or includes the said section 104(3)(c),

then, for the purpose of assessing compensation in respect of the compulsory acquisition, the value of the relevant interest shall be ascertained—

- (i) so far as it is attributable to any relevant planning permission, on the assumption that traffic carried by the special road will not have direct or indirect access to the relevant land; and
- (ii) so far as it is not attributable to any such planning permission, on the assumption that traffic carried by the special road will not have direct access to the relevant land.

(2) In this section—

“direct access” means access by means of a special road or private road and “indirect access” means access by means of a public road which is not a special road;

“relevant planning permission” means any planning permission for service area development which is in force on the date of service of the notice to treat, or as to the grant of which any assumption is required to be made by virtue of section 23 or 24 of the <sup>M38</sup>Land Compensation (Scotland) Act 1963, or the possibility of the grant of which is taken into account in assessing the compensation;

“service area development” means development of the relevant land, or of any part thereof, for the purpose of providing such service stations or other buildings or facilities as are mentioned in the said section 104(3)(c) or of providing any other buildings or facilities designed to cater to a significant extent for traffic carried or to be carried by the special road;

and any expression which is also used in the said Act of 1963 has the same meaning as in that Act.

#### Textual Amendments

**F68** Words in s. 119(1)(b) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 38(11)(a)**

**F69** Words in s. 119(c) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 38(11)(b)**

#### Marginal Citations

**M37** 1973 c. 56.

**M38** 1963 c. 51.

## PART X

### MISCELLANEOUS

#### 120 Duty to have regard to needs of disabled and blind in executing works etc.

(1) A roads authority, local authority or other person exercising a statutory power to execute works in a road shall have regard to—

- (a) the needs of disabled or blind persons whose mobility may be impeded by the works; and

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- (b) without prejudice to the generality of paragraph (a) above, the needs of blind persons to have any openings, whether temporary or permanent, in the road properly protected.
- (2) An authority or person mentioned in subsection (1) above shall have regard to the needs of disabled persons and blind persons when placing lamp-posts, bollards, traffic signs, apparatus or other permanent obstructions in a road.
- (3) A roads authority shall have regard to the needs of disabled persons when considering the desirability of providing ramps at appropriate places between carriageways and footways.
- (4) Section 28 of the <sup>M39</sup>Chronically Sick and Disabled Persons Act 1970 (power to define certain expressions for the purposes of provisions of that Act) shall have effect as if any reference in it to a provision of that Act included a reference to this section.
- (5) In the foregoing provisions of this section, references to a road shall be construed as including references to a proposed road.

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

**C41** S. 120: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(ai)

**Marginal Citations**

**M39** 1970 c. 44.

**121 Power to obtain road-making materials.**

- (1) The roads authority may enter land to search for, dig and carry away materials for the purpose of making or repairing a public road or of repairing a prospective public road and may carry such materials through any land.
- (2) In subsection (1) above “prospective public road” has the same meaning as in the <sup>F70</sup>Part IV of the New Roads and Street Works Act 1991].
- (3) Before carrying out any operations under this section, the roads authority shall serve on the owner and occupier of the land affected notice of their intention to carry out the operations, describing the proposed works and informing him that he may object to the proposed works by notice to the authority within 28 days of the notice of intention being served on him.
- (4) Where an owner or occupier of land affected objects to the proposed works in accordance with subsection (3) above and the objection is not withdrawn, then—
- (a) if the roads authority is the Secretary of State, he shall consider the objection before carrying out the proposed works, and
- (b) if the roads authority are a local roads authority, they shall not carry out the proposed works without the consent of the Secretary of State who may grant such consent either unconditionally or subject to such conditions as he thinks fit.
- (5) The roads authority shall pay compensation to the owner or occupier of the land for any damage done to it by exercise of their powers under this section and for the value of the materials carried away by them.

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- (6) Where an excavation is made by the roads authority in exercise of their powers under this section, they shall—
- (a) while the work is in progress, and thereafter so long as the excavation remains open, keep the excavation sufficiently fenced to prevent accidents to persons or animals;
  - (b) as soon as reasonably practicable after completion of the work either—
    - (i) fill up the excavation; or
    - (ii) slope it down and fence it off, if the owner or occupier so requires, and thereafter keep it so fenced;
  - (c) so far as is reasonably practicable, when filling up the excavation, make good, and level, the ground.

#### Textual Amendments

**F70** Words in s. 121(2) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para. 90](#); S.I. 1992/2990, art. 2(2), [Sch. 2](#)

### 122 Saving for Coast Protection Act 1949.

Nothing in this Act authorises—

- (a) the excavation or removal of any materials the excavation or removal of which is prohibited by section 18 of the <sup>M40</sup>Coast Protection Act 1949 (prohibition of excavation, etc., of materials on or under seashore); or
- (b) the carrying out of any operation in contravention of section 34 of that Act (restriction of works detrimental to navigation).

#### Marginal Citations

**M40** 1949 c. 74.

### 123 Saving for obligation to obtain planning permission.

Subject to any express provision to the contrary, nothing in this Act authorises the carrying out of any development of land for which permission is required by virtue of [<sup>F71</sup>section 28 of the Town and Country Planning (Scotland) Act 1997] (development requiring planning permission) and which is not authorised by permission granted or deemed to be granted under or for the purposes of Part III of that Act.

#### Textual Amendments

**F71** Words in s. 123 substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 38\(12\)](#)

### 124 Power to conduct experiments as regards roads construction etc.

- (1) The Secretary of State may, either by himself or through any authority or other organisation approved by him, conduct experiments or trials for the improvement of the construction of roads, or for testing the effect of various classes of vehicles on various types of roads, and may construct such roads and works, erect such plant,

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provide such accommodation and, subject to the approval of the Treasury, incur such expenditure as may be necessary.

- (2) An experiment or trial under this section shall not be conducted on a road which is maintainable by a local roads authority except with the consent of that authority.

## 125 Extension of section 34 of Road Traffic Regulation Act 1984.

Section 34 of the <sup>M41</sup>Road Traffic Regulation Act 1984 (which makes provision for access to premises through off-street parking places) shall extend to Scotland; and accordingly in subsection (1) of that section the words “in England and Wales” shall cease to have effect.

### Marginal Citations

M41 1984 c.27

## 126 Restricted roads: amendment of Road Traffic Regulation Act 1984.

Schedule 7 to this Act (which amends provision regarding restricted roads under the Road Traffic Regulation Act 1984) shall have effect.

<sup>F72</sup>127 .....

### Textual Amendments

F72 S. 127 repealed (01.11.1991) by [New Road Works and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(2), [Sch. 9](#); S.I. 1991/2286, art. 2(2), [Sch. 2](#)

## 128 Saving for, and extension of section 80 of, Health and Safety at Work etc. Act 1974.

- (1) Nothing in this Act authorises the carrying out of any operation in contravention of “the relevant statutory provisions” defined in Part I of the <sup>M42</sup>Health and Safety at Work etc. Act 1974 or in contravention of any regulation made, or prohibition notice or improvement notice served, under or by virtue of that Act or any of those provisions.
- (2) For the purpose of the application of section 80 (1) of the said Act of 1974 (general power to repeal or modify Acts and instruments where such repeal or modification appears expedient in consequence of or in connection with any provision made by or under Part I of that Act), this Act shall be deemed an Act passed before that Act.

### Marginal Citations

M42 1974 c. 37.

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## PART XI

### OFFENCES

#### 129 Miscellaneous summary offences.

- (1) A person who in or beside any road leaves open and unfenced, or insufficiently covered or insufficiently fenced, an opening into a vault or cellar commits an offence:

Provided that the foregoing provisions of this subsection do not apply in relation to the duty under section 56(5) of this Act first to provide a door or cover.

- (2) A person who, without lawful authority or reasonable excuse, places or deposits anything in a road so as to obstruct the passage of, or to endanger, road users commits an offence:

Provided that no person shall, in respect of the same acting be convicted both under the foregoing provisions of this subsection and under section 59(2), 90, 95, 100(a) or 101 of this Act, or subsection (9) of this section, of an offence.

- (3) A person who, in a road, as the case may be drives, leads or propels a vehicle or animal commits an offence if any load which is thereby being carried projects beyond the vehicle or animal so as in any way to obstruct or endanger other road users.

- (4) Without prejudice to subsection (2) above, a person who, in a road, pitches a tent or encamps commits an offence.

- (5) Subject to section 64 of this Act, a person who, in a footway, footpath or cycle track, as the case may be drives, rides, leads or propels a vehicle or horse, or any swine or cattle, commits an offence:

Provided that the foregoing provisions of this subsection do not apply—

- (a) where and in so far as the vehicle or animal is being taken across the footway, footpath or cycle track;
  - (b) in relation to a pedal cycle which is either not being ridden or is being ridden on a cycle track;
  - (c) except on a cycle track where there is no public right of passage on foot, in relation to—
    - (i) a perambulator, push-chair or other form of baby carriage; or
    - (ii) an invalid carriage whose motive power is provided solely by its rider or some other person, or by an electric motor, or by a combination of these sources; or
  - (d) where there is a specific right so to drive, ride, lead or propel.
- (6) A person who parks a motor vehicle (“motor vehicle” having the same meaning as in the <sup>M43</sup>Road Traffic Act 1972) wholly or partly on a cycle track commits an offence.
- (7) A person who in a road rides or drives furiously, recklessly or carelessly a horse or other animal (whether or not that horse or animal is attached to a cart or carriage) commits an offence.
- (8) Without prejudice to subsection (2) above, a person who, over or along a footway, places a shade, awning or other projection less than either or both—
- (a) 2.25 metres above the level of the footway;
  - (b) 50 centimetres inwards from a carriageway,

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commits an offence.

- (9) A person who displays goods for sale by placing them in, or hanging them over, a footway or footpath commits an offence:

Provided that the foregoing provisions of this subsection do not apply to—

- (a) the offer or exposure for sale of newspapers;
- (b) the display of goods for sale by a street trader trading under and in accordance with a street trader’s licence;
- (c) the display of goods for sale in connection with the carrying on of a private market under and in accordance with a market operator’s licence; or
- (d) any activity in respect of which a certificate under the <sup>M44</sup>Pedlars Act 1871 has been granted,

and in the foregoing paragraphs of this proviso “street trader’s licence”, “private market” and “market operator’s licence” shall be construed in accordance with section 97(6) of this Act.

- (10) Where materials, tools, machinery or other equipment—

- (a) have been deposited in any place for use by the roads authority in constructing or maintaining a road; or
- (b) are in a quarry which has been opened by the authority for the purpose of their obtaining such materials for that use,

a person who without reasonable excuse takes away, or displaces, the materials, tools, machinery or equipment commits an offence.

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

C42 S. 129(6) excluded (temp.) (16.6.1997) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), ss. 43, 84(1), [Sch. 3 para. 2\(4\)\(c\)](#); S.I. 1997/1580, [art. 2\(b\)](#)

**Marginal Citations**

M43 1972 c. 20.

M44 1871 c.96,

**130 Offences by bodies corporate.**

- (1) Where an offence under or by virtue of this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in such capacity, he as well as the body corporate is guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

**131 Penalties and mode of trial.**

- (1) An offence under this Act shall, unless there is express provision to the contrary, be triable only summarily.

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- (2) The penalty on conviction of any offence under this Act shall be determined in accordance with Schedule 8 thereto; and in that Schedule—
- (a) column 1 specifies the provision of this Act creating the offence and column 2 the maximum penalty which may be imposed in respect of that offence;
  - (b) references to a level on the standard scale are references to the standard scale
  - <sup>F73</sup> . . .
  - <sup>F74</sup>(c) .....

#### Textual Amendments

- F73** Words in s. 131(2)(b) repealed (5.11.1993) by 1993 (c. 50), s. 1(1), Sch. 1 Pt. XIV.  
**F74** S. 131(c) repealed (5.11.1993) by 1993 (c. 50), s. 1(1), Sch. 1 Pt. XIV.

## PART XII

### STATUTORY UNDERTAKERS

#### 132 Saving for operators of telecommunications code systems.

- (1) Subject to the provisions of this section, nothing in this Act or in any scheme or enactment under or by virtue of this Act—
- (a) shall affect any rights conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or any duty of any such operator under that code; or
  - (b) applies to any telecommunication apparatus kept installed for the purposes of any such system.
- (2) Where in pursuance of an order under this Act (or under an Act repealed by this Act) a road is (or was) stopped up or diverted and, immediately before that order comes (or came) into force, there is (or was) under, in, upon, over, along or across the road any telecommunications apparatus kept installed for the purposes of a telecommunications code system, the operator of that system shall have the same powers in respect of that apparatus as if the order had not come into force; but any person entitled to land over which the road subsisted may require the alteration of the apparatus.
- (3) Where an order under this Act (or under an Act repealed by this Act) provides for the alteration of a road and, immediately before the date on which the order comes (or came) into force, there is (or was) under, in, upon, over, along, or across the road any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the roads authority shall be entitled to require the alteration of the apparatus. This subsection does not have effect so far as it relates to the alteration of any telecommunication apparatus for the purpose of authority's works as defined in [<sup>F75</sup>Part IV of the New Roads and Street Works Act 1991].
- (4) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of subsections (1) to (3) above as it applies for the purposes of that code.
- (5) Paragraph 21 of the telecommunications code (restriction on removal of telecommunication apparatus) shall apply in relation to any right conferred by this



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section to require the alteration, moving or replacement of any telecommunications apparatus as it applies in relation to a right to require the removal of such apparatus.

#### Textual Amendments

**F75** Words in s. 132(3) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para. 91](#); S.I. 1992/2990, art. 2(2), [Sch. 2](#)

<sup>F76</sup>**133** .....

#### Textual Amendments

**F76** S. 133 repealed (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(2), [Sch. 9](#); S.I. 1992/2990, art. 2(2), [Sch. 2](#)

### **134 Extinguishment of rights of statutory undertakers to apparatus etc. in connection with schemes under section 7 and orders under section 9.**

- (1) <sup>F77</sup>. . . [<sup>F78</sup>section 224 of the Town and Country Planning (Scotland) Act 1997] (extinguishment of certain subsisting rights of statutory undertakers over land required under [<sup>F78</sup>Part VIII] of that Act) shall apply—
- (a) in relation to land acquired or appropriated by a special road authority for the purpose of carrying out works in pursuance of a scheme under section 7 or an order under section 9 of this Act; and
  - (b) in relation to land forming the site of any part of an existing road which is appropriated or transferred to a special road authority under this Act,
- as it applies in relation to land acquired under the said [<sup>F78</sup>Part VIII]; and [<sup>F78</sup>sections 227 to 231 of the said Act of 1997](which contain provisions consequential upon the extinguishment of any right under [<sup>F78</sup>the said section 224]) shall have effect accordingly.
- (2) The provisions of [<sup>F79</sup>the said Act of 1997] mentioned in subsection (1) above shall have effect, as applied for the purposes of this section, with the substitution for references therein to the purchasing authority of references to the special road authority.
- (3) Where apparatus of statutory undertakers supplying electricity, gas, hydraulic power or water is removed in pursuance of a notice or order given or made under [<sup>F80</sup>the said section 224] (as applied for the purpose of this section), any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the special road authority expenditure for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given if that expenditure was reasonably incurred in consequence of the removal.

#### Textual Amendments

**F77** Words in s. 134(1) repealed (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(2), [Sch. 9](#); S.I. 1992/2990, art. 2(2), [Sch. 2](#)

**F78** Words in s. 134(1) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), [Sch. 2 para. 38\(13\)\(a\)\(i\)-\(iv\)](#)

**F79** Words in s. 134(2) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), [Sch. 2 para. 38\(13\)\(b\)](#)



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**F80** Words in s. 134(3) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 38(13)(c)**

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

**C43** S. 134(1)(2) modified by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), s. 13(1), **Sch. 4 para. 2**

**135 Restriction of powers of local authority in whom sewer is vested.**

- (1) [<sup>F81</sup>Section 134] of this Act (including the provisions of the [<sup>F82</sup>the Town and Country Planning (Scotland) Act 1997] applied by subsection (1) of the said section 134), shall, so far as applicable, apply in relation to the sewers and sewage disposal works of any [<sup>F83</sup>sewerage] authority as they apply in relation to the apparatus of statutory undertakers.
- (2) In the said provisions of the [<sup>F84</sup>the said Act of 1997] applied for the purposes of this section, references to the appropriate Minister shall be construed, in relation to a [<sup>F85</sup>sewerage] authority, as references to the Secretary of State.
- (3) Where a public sewer is removed in pursuance of a notice or order given or made under [<sup>F86</sup>section 224 of the said Act of 1997] as applied for the purposes of this section, a person who is the owner or occupier of premises the drains of which communicated with that sewer, or the owner of a private sewer which communicated with that sewer, shall be entitled to recover from the special road authority expenditure for the purpose of
  - (a) linking his drain or sewer with—
    - (i) any other public sewer; or
    - (ii) a private sewage disposal plant; or
  - (b) constructing a private sewage disposal plant and linking his drain or sewer to that plant,if that expenditure was reasonably incurred in consequence of the removal.

**Textual Amendments**

- F81** Words in s. 135(1) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 para. 92**; S.I. 1992/2990, art. 2(2), **Sch. 2**
- F82** Words in s. 135(1) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 38(14)(a)**
- F83** Word in s. 135(1) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 135(8)**; S.I. 1996/323, **art. 4(1)(c)**
- F84** Words in s. 135(2) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 38(14)(b)**
- F85** Word in s. 135(2) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 135(8)**; S.I. 1996/323, **art. 4(1)(c)**
- F86** Words in s. 135(3) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 38(14)(c)**

*Status: Point in time view as at 06/04/2001.*

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## PART XIII

### GENERAL

#### Notices

#### 136 Contents of notices.

Except where and in so far as otherwise expressly provided in this Act, a notice issued or served by a roads authority under this Act regarding the doing of anything in relation to land, shall—

- (a) so far as necessary and reasonably practicable give details, including the location, of the land;
- (b) so far as necessary and reasonably practicable specify the nature of any works which have to be carried out and of any requirements which have to be met;
- (c) specify any period within which the notice has to be complied with;
- (d) state any power of the authority, if the notice is not complied with, to enter the land and carry out the works specified in the notice and to recover their expenses in so doing; and
- (e) intimate any right of appeal under this Act against the notice.

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

**C44** Ss. 136-139 applied (21.10.1991) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), [s. 47\(2\)](#)(with savings s. 47(4), 167(2)); S.I. 1991/2286, art. 2(1), [Sch. 1](#)

#### 137 Service of notices.

Section 192 of the <sup>M45</sup>Local Government (Scotland) Act 1973 (service of notices) shall apply to notices under this Act relating to land as that section applies to notices under that Act relating to premises.

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

**C45** Ss. 136-139 applied (21.10.1991) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), [s. 47\(2\)](#)(with savings s. 47(4), 167(2)); S.I. 1991/2286, art. 2(1), [Sch. 1](#)

#### Marginal Citations

**M45** 1973 c. 65.

#### 138 Time for enforcing certain notices.

Subject to any express provision in this Act to the contrary, a notice containing a requirement which may be appealed against under this Act shall not be acted upon by a roads authority or a person authorised by them until the time for appealing against the notice has expired or, if an appeal has been lodged, until that appeal has been disposed of or abandoned.

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

**C46** Ss. 136-139 applied (21.10.1991) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), [s. 47\(2\)](#)(with savings ss. 47(4), 167(2)); [S.I. 1991/2286](#), art. 2(1), [Sch. 1](#)

### *Inquiries*

#### **139 Holding of inquiries.**

- (1) Without prejudice to any express provision in this Act in that regard, the Secretary of State may hold an inquiry—
  - (a) in connection with any matters as to which he is under this Act authorised to act; or
  - (b) for the purpose of determining any matter which he is required under this Act to determine.
- (2) subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 shall apply to an inquiry under subsection (1) above as they apply to a local inquiry under that section.
- (3) The <sup>M46</sup>Tribunals and Inquiries Act [<sup>F87</sup>1992] shall apply to an inquiry under subsection (1) above as that Act applies to a statutory inquiry held by the Secretary of State.

#### **Textual Amendments**

**F87** Word in [s. 139\(3\)](#) substituted (1.10.1992) by [Tribunals and Inquiries Act 1992 \(c. 53\)](#), ss. 18(1), 19(2), [Sch. 3 para. 16](#)

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

**C47** Ss. 136-139 applied (21.10.1991) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), [s. 47\(2\)](#)(with savings ss. 47(4), 167(2)); [S.I. 1991/2286](#), art. 2(1), [Sch. 1](#)

#### **Marginal Citations**

**M46** 1971 c. 62.

### *Powers of entry etc.*

#### **140 Powers of entry.**

- (1) A person authorised by a roads authority shall, on producing, if so required, some duly authenticated document showing his authority in that regard, have a right to enter any land at all reasonable hours for the purpose of—
  - (a) surveying that or any other land in connection with the exercise of the functions of the roads authority under this Act;
  - (b) laying and leaving on the land apparatus for the purpose of the survey or removing such apparatus;
  - (c) searching or boring to ascertain for the purpose of the survey—
    - (i) the nature of the subsoil or the presence of minerals; or

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- (ii) the nature of any mining operations or other activity taking place beneath the surface of the land which may affect the stability of a public road;
  - (d) inspecting anything which any person is under a duty to maintain under this Act;
  - (e) ascertaining whether any work required to be done by or under this Act by any person in relation to any land has been done;
  - (f) inspecting any work to which a consent or authorisation granted by the authority under this Act relates;
  - (g) carrying out anything which is required, by a notice served by the authority under this Act, to be done by any person in relation to any land and which the person has failed to do in accordance with the notice; or
  - (h) taking any other action, or executing any work, authorised or required by, under or by virtue of this Act to be taken or executed by the roads authority.
- (2) Without prejudice to subsection (8) below, and subject to any provision of this Act which allows an authority to act in an emergency, entry to land shall not be demanded as of right under or by virtue of this Act unless at least 7 days notice of the intended entry has been given to the occupier.
- (3) Without prejudice to any other provision of this Act which requires notice of proposed works to be given, works shall not be carried out on any land in pursuance of subsection (1)(b) or (c) above by a person unless at least 7 days notice of the intention to do so has been given by that person—
- (a) to the owner and occupier of the land; and
  - (b) in the case referred to in subsection (1)(c) above, to <sup>F88</sup>the Coal Authority, any licensed operator (within the meaning of the Coal Industry Act 1994), and], and any other proprietor of underground mineral workings, where <sup>F88</sup>the Coal Authority, any licensed operator (within the meaning of the Coal Industry Act 1994), and]the other proprietor’s interests are liable to be affected by the searching or boring.
- (4) Statutory undertakers <sup>F89</sup> . . . may object to the roads authority about the carrying out of works proposed to be carried out under subsection (1)(b), (c) or (h) above on the grounds that the carrying out thereof would be seriously detrimental to the carrying on of their undertaking; and in that event the works shall not be carried out except with the authority of the Secretary of State after consultation with the Minister responsible for the undertaking.
- (5) A person contravening subsection (3) or (4) above commits an offence.
- (6) A roads authority shall be entitled to recover the expenses reasonably incurred by them in doing anything in relation to any land under—
- (a) subsection (1)(e) above from the person who has been required to do the work;
  - (b) subsection (1)(f) above, from the person to whom the consent or authorisation has been granted,
- but may remit any sum, or any part of that sum, due to them under this subsection as they think fit.
- (7) Where such expense as is mentioned in subsection (6) above is recoverable under that subsection from more than one person, the roads authority may apportion such expense among them.

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- (8) If it is shown to the satisfaction of the sheriff, or of a magistrate or justice of the peace having jurisdiction in the place where the land is situated, on evidence on oath—
- (a) that admission to land which any person is entitled to enter by virtue of this section has been refused to that person, or that refusal is apprehended, or that the land is unoccupied, or the occupier is temporarily absent, or that the case is one of urgency, and
  - (b) that there are reasonable grounds for entry to the land for any purpose for which the right of entry is exercisable,
- the sheriff, magistrate or justice may by warrant authorise the person to enter the land.
- (9) A person who wilfully obstructs a person upon whom a right of entry has been conferred by any of the provisions of this section or by a warrant issued thereunder commits an offence.
- (10) Where, in the exercise of a power of entry conferred by this section, damage has been caused to land or to corporeal moveables, any person having an interest in the land or moveables may recover compensation in respect of that damage from the roads authority by whom or on whose behalf the power was exercised; and where in consequence of the exercise of such power a person is disturbed in his enjoyment of land or corporeal moveables, he may recover from the roads authority compensation in respect of the disturbance.

#### Textual Amendments

- F88** Words in s. 140(3)(b) substituted (31.10.1994) by 1994 c. 21, s. 67, **Sch. 9 para. 31(a)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F89** Words in s. 140(4) repealed (31.10.1994) by 1994 c. 21, s. 67, **Sch. 9, para. 31(b)**, **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**

#### **141 Power of roads authority to execute works etc. on default of person required to do so.**

- (1) Where by notice under this Act a roads authority require works or excavations to be executed within a specified period then, subject to subsection (3) below, if those works or excavations are not timeously executed they may themselves execute them:
- Provided that this section does not apply as regards any particular such requirement for which this Act makes express provision analogous to the foregoing provisions of this subsection.
- (2) Subsections (6) and (7) of section 140 of this Act shall apply in relation to works or excavations executed by a roads authority under subsection (1) above and to the person who had been required to execute the works or excavations as those subsections apply to entry and inspection under subsection (1)(f) of that section and to the person who has been granted the consent or authorisation.
- (3) The roads authority may in writing grant an extension of the period specified in any such notice as is mentioned in subsection (1) above.
- (4) In the application to the foregoing provisions of this section of the definition of “works” in section 151(1) of this Act the expression shall also include such—
- (a) removal and reinstatement as is mentioned in section 51(3) or 87(1);

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- (b) steps as are mentioned in section 57(1), 67 or 93(2);
  - (c) replacement, repair or putting into good condition as is mentioned in section 66(2);
  - (d) alteration as is mentioned in section 83(1);
  - (e) work as is mentioned in section 91(1) or (2); and
  - (f) removal as is mentioned in section 92(2),
- of this Act.

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

**C48** S. 141: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 5(aj)

**142 Power to require occupier to permit work to be executed by owner.**

If, on an application made by the owner of any land, it appears to the sheriff that the occupier of that land is preventing the owner from executing work which the owner is by this Act required to execute, the sheriff may order the occupier to permit the execution of the work.

*Regulations, orders and schemes*

**143 Regulations, orders and schemes.**

- (1) Where a power to make regulations or orders, or to make or confirm schemes, is exercisable by the Secretary of State by virtue of this Act, the exercise of that power shall be by statutory instrument under this subsection, and may—
- (a) make different provision in relation to different cases or classes of case;
  - (b) exclude certain cases or classes of case.
- (2) A statutory instrument—
- (a) made under subsection (1) above and containing—
    - (i) regulations other than such regulations as are mentioned in paragraph (b)(i) below; or
    - (ii) an order under section <sup>F90</sup>8 <sup>F91</sup>, 12A, 12B, 12C, 12D, 12E] <sup>F92</sup>113A] or] 154 of this Act,
 shall be subject to annulment in pursuance of a resolution of either House of Parliament;
- and
- (b) containing—
    - (i) regulations under section 17 of this Act <sup>F93</sup> or regulations made for the first time under section 61A of this Act]; or
    - (ii) an order under section <sup>F94</sup> . . . 153 of this Act,
 shall not be made under subsection (1) above unless a draft of the instrument has been laid before Parliament and has been approved by resolution of each House of Parliament.

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#### Textual Amendments

- F90** Words in s. 143(2)(a)(ii) inserted (21.10.1991) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para. 93\(a\)](#); S.I. 1991/2286, art. 2(1), [Sch. 1](#)
- F91** Words in s. 143(2)(a)(ii) inserted (4.1.1995) by [1994 c. 39, s. 38\(4\)](#) (with s. 7(2)); S.I. 1994/2850, [art. 3\(a\)](#)
- F92** Words in s. 143(2)(a)(ii) inserted (1.4.1996) by [1994 c. 39, s. 180\(1\)](#), [Sch. 13 para. 135\(9\)](#); S.I. 1996/323, [art. 4\(1\)\(c\)](#)
- F93** Words in s. 143(2)(b)(i) inserted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 para. 93\(b\)](#); S.I. 1992/2990, art. 2(2), [Sch. 2](#)
- F94** Words in s. 143(2)(b)(ii) repealed (21.10.1991) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1)(2), [Sch. 8 para. 93\(c\)](#), [Sch. 9](#); S.I. 1991/2286, art. 2(1), [Sch. 1](#)

#### 144 Regulations for procedure in schemes and orders for special roads and trunk roads.

- (1) Subject to section 143 of, and Schedules 1 and 2 to, this Act, the Secretary of State may make regulations prescribing the procedure to be followed in connection with the making and confirmation of schemes under section 7 and orders under sections 5, 9 and 12 of this Act.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may provide for securing that the centre-line of—
  - (a) a special road authorised by a scheme under section 7 of this Act,
  - (b) a road directed by order to become a trunk road under section 5 of this Act, or
  - (c) a road affected by an order under section 9 or 12 of this Act,shall be indicated on a map on such scale as may be prescribed by the regulations.
- (3) The centre-line of any road referred to in subsection (2) above as constructed may deviate from the centre-line as indicated on the map referred to in that subsection within such limits of deviation, not exceeding 50 metres, as may be specified in the scheme or order.

#### 145 Revocation and variation of certain schemes and orders.

- (1) A scheme or order made by a roads authority under this Act or confirmed by the Secretary of State under section 5, 7, 9, 12 or 75(3) of this Act may, subject to subsection (5) below and to subsection (7)(i) of the said section 5, be revoked or varied by a subsequent scheme or order so made or confirmed; and subject to the provisions of this section any such revoking or varying scheme or order may make such consequential provision as appears to the Secretary of State to be expedient.
- (2) Where a scheme under section 7 of this Act is revoked by a subsequent scheme, any part of the special road authorised by the scheme, being a part constructed before the date on which the revoking scheme comes into operation, and any road appropriated by or transferred to the special road authority before that date, shall cease on that date to be a special road within the meaning of this Act, but shall, where the special road is a trunk road, continue to be a trunk road.
- (3) Where a scheme under section 7 of this Act is varied by a subsequent scheme, subsection (2) above shall apply in relation to any part of the special road which ceases to form part of the route of that road in consequence of the variation.



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- (4) Subject to the foregoing provisions of this section, the revocation or variation of a scheme under section 7 or 75(3) of this Act shall not affect the validity of anything done in pursuance of the scheme before the date on which the revoking or varying scheme comes into force, or the validity of any order under section 9 of this Act before that date in connection with the special road to be provided under the scheme.
- (5) Where—
- (a) a scheme under section 7 or 73(3) of this Act; or
  - (b) an order under section 9 or 12 of this Act in relation to—
    - (i) a special road; or
    - (ii) a main road (within the meaning of the said section 12),
 which has not been opened for the purposes of through traffic,

is revoked at any time before the special road, main road, bridge or tunnel is opened for the purposes of through traffic, Schedules 1 and 2 to this Act shall have no effect as regards the revocation but, within 28 days of the revocation, notice of it shall be published by the Secretary of State in the Edinburgh Gazette and in such other manner as he thinks best adapted for informing persons affected.

#### *Crown application*

### **146 Application of Act to Crown land.**

- (1) Subject to the following provisions of this section, nothing in this Act shall apply in relation to any land belonging to Her Majesty in right of the Crown or otherwise, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department.
- (2) The appropriate Crown authority in relation to any land and a roads authority may agree that any provisions of this Act specified in the agreement shall apply to that land and, while the agreement is in force, those provisions shall apply to the land accordingly, subject however to the terms of the agreement.
- (3) An agreement under subsection (2) above may contain such consequential and incidental provisions, including provisions of a financial character, as appear to the appropriate Crown authority to be necessary or equitable,<sup>F95</sup> . . .
- (4) In the foregoing provisions of this section “the appropriate Crown authority” means—
  - (a) in relation to land belonging to Her Majesty in right of the Crown or otherwise, the Crown Estates Commissioners or such other government department or other person as has the management of the land in question; and
  - (b) in relation to land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that department;
 and if any question arises as to what authority is the appropriate Crown authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

#### **Textual Amendments**

**F95** Words in s. 146(3) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 76(1)(4)**, Pt. IV (with art. 5)



*Status: Point in time view as at 06/04/2001.*

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

**C49** S. 146 applied (21. 10. 1991) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), [s. 167\(1\)](#); [S.I. 1991/2286](#), art. 2(1), [Sch. 1](#).

*Financial provisions*

**147 Recovery of costs of certain orders.**

Where a person requests a roads authority to make an order under section 68(1) of this Act the authority may require him, as a condition of their compliance with the request, to make such provision as they consider reasonable as regards any costs to be incurred by them in so complying.

**148 Exemption from stamp duty.**

Where the Secretary of State certifies that stamp duty which, but for this section, would be payable on an instrument made by, to or with him in relation to a road which is, or is to become, a trunk road would be payable as an expense by him under this Act, that stamp duty shall not be payable.

**149 Interest on expenses.**

Where under any provision of this Act a roads authority are entitled to recover expenses, they shall also be entitled to interest thereon at the rate for the time being prescribed under section 40 of the <sup>M47</sup>Land Compensation (Scotland) Act 1963 from the date on which a demand for the expenses is served until payment; but they may remit any sum or part of any sum due to them as interest if they think fit.

**Marginal Citations**

**M47** 1963 c. 51.

**150 Expenses.**

There shall be paid out of money provided by Parliament—

- (a) any administrative expenses incurred by the Secretary of State under this Act;
- (b) any sums required for the payment of grants or advances under, and any other expenses of the Secretary of State under, this Act; and
- (c) any increase attributable to this Act in the sums so payable under any other Act.

*Interpretation*

**151 Interpretation.**

(1) In this Act, unless the context otherwise requires—

“approaches”, in relation to a bridge or tunnel, includes the facings of any embankment or cutting adjacent to the bridge or tunnel;

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F96 . . .

“building” includes any erection, however, and with whatever material, it is constructed and any part of a building;

“carriageway” shall be construed in accordance with subsection (2) below;

“cattle-grid” has the meaning given by section 41(6) of this Act;

“classified road” shall be construed in accordance with section 11 of this Act;

“common” has the same meaning as in the <sup>M48</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947;

[“<sup>F97</sup>consultation bodies” means—

(a) the appropriate planning authority where the proposed project is likely to affect land in their area;

[<sup>F98</sup>(aa) the National Park authority for any National Park where the proposed project is likely to affect land in the National Park;]

(b) Scottish Natural Heritage;

(c) the Scottish Environment Protection Agency established under section 20 of the Environment Act 1995; and

(d) Historic Scotland;

“cycle track” shall be construed in accordance with subsection (2) below;

“days” means clear days;

[<sup>F99</sup>“driver information system” has the same meaning as in Part II of the Road Traffic (Driver Licensing and Information Systems) Act 1989, and references to an “operator” of a driver information system are references to an operator licensed under that Part of that Act;]

“enactment” includes an enactment in this Act or in a local or private Act and a provision of an order, a scheme, regulations or any other instrument made under or confirmed by a public general, local or private Act;

[“<sup>F100</sup>environmental impact assessment” means an assessment in accordance with Council Directive No. [85/377/EEC](#) as amended by Council Directive No. [97/11/EC](#);

[“<sup>F101</sup>environmental statement” means a statement containing the information required by section 20A(7) or (8) of this Act;]

“footpath” shall be construed in accordance with subsections (2) and (3)(a) and (b), and “footway” in accordance with subsection (2), below;

“frontager”, in relation to a road or proposed road, means the owner of any land fronting or abutting it;

“improvement”, in relation to a road, means the doing of anything for the benefit of road users, or any class of road users, beyond that which is essential to placing the road in a proper state of repair, and includes the improvement of the amenity—

(a) of the road; and

(b) of land abutting on, or adjacent to, the road;

“local authority” means a [<sup>F102</sup>council constituted under section 2 of the Local Government etc. (Scotland) Act 1994];

“local roads authority” has the meaning given by paragraph (a) of the definition of “roads authority” in this subsection;

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“maintenance” includes—

- (a) repair; and
- (b) watering to allay dust but, without prejudice to subsection (1) of section 25 of the <sup>M49</sup>Local Government and Planning (Scotland) Act 1982 (restriction of powers of local authorities as regards street cleansing), not such cleansing as [<sup>F103</sup>a local authority] are required by subsections (1) and (3) of that section to undertake;

“navigation authority” means persons authorised by any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock;

“notice” means notice in writing;

“obstruction” includes obstruction of view;

“occupier” means the person in occupation or having the charge, management or control of land, either on his own account or as the agent of another person;

“open space” has the same meaning as in the <sup>M50</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947;

“operator”, in relation to a telecommunications code system, has the same meaning as in paragraph 1 of Schedule 4 to the <sup>M51</sup>Telecommunications Act 1984;

“owner”—

- (a) in relation to land means, subject to paragraph (b) below, the person for the time being entitled to receive, or who would, if the same were let, be entitled to receive, the rents of the land, and includes a trustee, factor, tutor or curator, and in the case of public or municipal property applies to the persons to whom the management thereof is entrusted; and
- (b) in relation to special roads (whether existing or proposed) includes any person who under the Lands Clauses Acts would be entitled to sell and convey the land to promoters of an undertaking and also includes a lessee under a lease the unexpired portion of which exceeds three years;

“pedal cycle” means a cycle whose motive power is provided solely by the legs of its rider or riders or which complies with the requirements specified in Regulation 4 of the <sup>M52</sup>Electrically Assisted Pedal Cycles Regulations 1983;

“private road” means any road other than a public road;

“proposed road” means (without prejudice to the definition in this subsection of “proposed public road”) a new road in course of construction, or proposed to be constructed, by or on behalf of any person;

“proposed public road” means either—

- (a) a new road in course of construction, or proposed to be constructed, by or on behalf of a roads authority; or
- (b) an existing road which is a prospective public road within the meaning of the [<sup>F104</sup>Part IV of the New Roads and Street Works Act 1991];

“public road” means a road which a roads authority have a duty to maintain;

“railway undertakers” means persons authorised by any enactment to carry on a railway undertaking;

*Status: Point in time view as at 06/04/2001.*

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“road” means, subject to subsection (3) below, any way (other than a waterway) over which there is a public right of passage (by whatever means <sup>F105</sup>and whether subject to a toll or not]) and includes the road’s verge, and any bridge (whether permanent or temporary) over which, or tunnel through which, the road passes; and any reference to a road includes a part thereof;

“roads authority” means—

- (a) in relation to a road or proposed road other than any such as is mentioned in paragraph (b) of this definition, the <sup>F106</sup>council constituted under section 2 of the Local Government etc. (Scotland) Act 1994] within whose area the road is (such <sup>F106</sup>local authority] being in this Act referred to as a “local roads authority”); and
- (b) <sup>F107</sup>as respects functions relating to the matters reserved by paragraph (c) of Section E1 of Part II of Schedule 5 to the Scotland Act 1998 and exercisable] in relation to a trunk road (whether existing or in course of construction) or, without prejudice to section 4 of this Act, to a special road provided by him under section 7(5) (or to be provided by him under section 7(5)(a) or (b)) or to any other road constructed (or to be constructed) by him under section 19(1) of this Act, the Secretary of State <sup>F108</sup>and as respects any other functions exercisable in relation to any such roads, the Scottish Ministers]; and references to “they” in relation to a roads authority shall <sup>F109</sup>, where the authority is the Secretary of State,] be taken to relate also to <sup>F110</sup>him];

<sup>F111</sup>“sewerage authority” shall be construed in accordance with section 62 of the Local Government etc. (Scotland) Act 1994;]

“special road authority” has the meaning given by section 7(4) of this Act;

“special road” means a road provided or to be provided in accordance with a scheme under section 7 of this Act;

“statutory undertakers” has the same meaning as in <sup>F112</sup>section 214 of the Town and Country Planning (Scotland) Act 1997] except that it includes

- (a) <sup>F113</sup>the Post Office
- (b) <sup>F114</sup>except in sections 133 and 140(4) of this Act, the operator of any telecommunications code system <sup>F115</sup>and
- (c) except in section 140(4) of this Act, the operator of any driver information system;]

“swing bridge” includes any opening bridge operated by mechanical means;

“telecommunication apparatus”, “the telecommunications code” and “telecommunications code system” have the same meanings as in paragraph 1 of Schedule 4 to the <sup>M53</sup>Telecommunications Act 1984;

“tidal waters” has the same meaning as in section 35(1) of the <sup>M54</sup>Rivers (Prevention of Pollution) (Scotland) Act 1951;

“traffic” includes pedestrians and animals;

“traffic sign” has the same meaning as in section 64(1) of the <sup>M55</sup>Road Traffic Regulation Act 1984;

“trunk road” means a road which is a trunk road by virtue of section 5 of this Act or of an order or direction under that section or <sup>F116</sup>section 202(3) of the Town and Country Planning (Scotland) Act 1997];

“use”, in relation to a road, includes crossing;

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“vehicle” means a vehicle of any description and includes a machine or implement of any kind drawn or propelled along roads (whether or not by mechanical power);

“water authority” shall be construed in accordance with section [F117]62 of the Local Government etc. (Scotland) Act 1994]; and

“works”, as regards any road, includes—

- (a) making an alteration to it;
- (b) breaking up or opening it;
- (c) constructing or laying anything under it;
- (d) building anything into it; and
- (e) carrying out any other operations of a like nature;

and cognate expressions shall be construed accordingly.

[F118](1A) A way to which the public has access (by whatever means and whether subject to a toll or not) which passes over a bridge constructed in pursuance of powers conferred by, or by an order made under or confirmed by, a private Act shall, for the purposes of the definition of “road” in subsection (1) above, be treated as if there were a public right of passage over it.]

(2) For the purpose of this Act, where over a road the public right of passage referred to in the definition of “road” in subsection (1) above—

- (a) is by foot only, the road is—
  - (i) where it is associated with a carriageway, a “footway”; and
  - (ii) where it is not so associated, a “footpath”;
- (b) is by pedal cycle only, or by pedal cycle and foot only, the road is a “cycle track”;
- (c) includes such a right by vehicle, other than a right by pedal cycle only, the road is a “carriageway”.

(3) This Act does not confer any power or impose any duty as regards a road or proposed road which—

- (a) being a footpath only, is a public path created under section 30 of the <sup>M56</sup>Countryside (Scotland) Act 1967 (power of planning authority to create public paths by agreement);
- (b) being a footpath only, forms part of a long-distance route the proposals for which have been approved by the Secretary of State under section 40(1) of that Act (approval of proposals relating to a long-distance route); or
- (c) forms part of land owned or managed by [F119]a local authority] and used by them for the provision of facilities for recreational, sporting, cultural or social activities in the discharge of their duties under section 14 of the <sup>M57</sup>Local Government and Planning (Scotland) Act 1982.

(4) Any reference in this Act to apparatus belonging to statutory undertakers shall, in relation to the operator of a telecommunications code system, have effect as a reference to telecommunication apparatus kept installed for the purposes of that system.

#### Textual Amendments

**F96** It is provided that the definition of “appropriate environmental body” in s. 151 shall be deleted (1.8.1999) by [S.S.I. 1999/1](#), [reg. 51\(a\)](#)

**F97** Definition of “consultation bodies” in s. 151 inserted (1.8.1999) by [S.S.I. 1999/1](#), [reg. 51\(a\)](#)

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- F98** S. 151(1): para.(aa) in definition of "consultation bodies" inserted (8.9.2000) by 2000 asp 10, s. 36, **Sch. 5 para. 12** (with s. 32); S.S.I. 2000/312, **art. 2**
- F99** Definition inserted by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), s. 13(1), **Sch. 4 para. 5(1)(3)(a)**
- F100** Definition of "environmental impact assessment" in s. 151 substituted for definition of "environmental assessment" (1.8.1999) by S.S.I. 1999/1, **reg. 51(b)**
- F101** Definition of "environmental statement" in s. 151 substituted (1.8.1999) by S.S.I. 1999/1, **reg. 51(c)**
- F102** Words in definition of "local authority" in s. 151(1) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 135(10)(a)(i)**; S.I. 1996/323, **art. 4(c)**
- F103** Words in para. b in definition of "maintenance" in s. 151(1) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 135(10)(a)(ii)**; S.I. 1996/323, **art. 4(1)(c)**
- F104** Words in s. 151(1) in the definition of "proposed public road" substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 para. 94(a)**; S.I. 1992/2990, art. 2(2), **Sch. 2**
- F105** Words in s. 151(1) in the definition of "road" inserted (21.10.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 para. 94(b)**; S.I. 1991/2286, art. 2(1), **Sch. 1**
- F106** Words in definition of "roads authority" in s. 151(1) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 135(10)(a)(iii)**; S.I. 1996/323, **art. 4(1)(c)**
- F107** S. 151(1): words in para. (b) in the definition of "roads authority" inserted (6.4.2001) by S.I. 2001/1400, art. 2, **Sch. para. 2(1)(2)**
- F108** S. 151(1): words in para. (b) in the definition of "roads authority" inserted (6.4.2001) by S.I. 2001/1400, art. 2, **Sch. para. 2(1)(3)**
- F109** S. 151(1): words in para. (b) in the definition of "roads authority" inserted (6.4.2001) by S.I. 2001/1400, art. 2, **Sch. para. 2(1)(4)**
- F110** S. 151(1): words in para. (b) in the definition of "roads authority" substituted (6.4.2001) by S.I. 2001/1400, **art. 2 Sch. para. 2(1)(5)**
- F111** Definition of "sewerage authority" in s.151(1) inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 135(10)(a)(iv)**; S.I. 1996/323, **art. 4(1)(c)**
- F112** Words in definition of "statutory undertakers" in s.151(1) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 38(15)(a)**
- F113** "(a)" inserted by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), s. 13(1), **Sch. 4 para. 5(1)(3)(b)**
- F114** "(b)" substituted by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), s. 13(1), **Sch. 4 para. 5(1)(3)(b)**
- F115** Words added by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), s. 13(1), **Sch. 4 para. 5(1)(3)(b)**
- F116** Words in definition of "trunk road" in s. 151(1) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 38(15)(b)**
- F117** Words in definition of "water authority" in s. 151(1) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. (10)(a)(v)**; S.I. 1996/323, **art. 4(1)(c)**
- F118** S. 151(1A) inserted (4.1.1995) by 1994 c. 39, s. 146; S.I. 1994/2850, art. 3(a), **Sch. 2**
- F119** Words in s. 151(3)(c) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 135(10)(b)**; S.I. 1996/323, **art. 4(1)(c)**

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

- C50** S. 151(1): definitions of "trunk road" and "classified road" applied (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 136(3) (with saving in s. 167(4)(5)); S.I. 1992/2990, art. 2(2), **Sch. 2**
- C51** S. 151(1): definition of "improvement" applied (14.7.1992) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 145(2)(b) (with saving s. 167(4)(5)); S.I. 1992/1671, art. 2, **Sch.**
- C52** S. 151(1): definitions of "roads authority" and "local roads authority" applied (14.7.1992) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 145(1) (with saving in s. 167(4)(5)); S.I. 1992/1671, art. 2, **Sch.**

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#### Marginal Citations

- M48 1947 c. 42.
- M49 1982 c. 43.
- M50 1947 c. 42.
- M51 1984 c. 12.
- M52 S.I. 1983/1168.
- M53 1984 c. 12.
- M54 1951 c. 66.
- M55 1984 c. 27.
- M56 1967 c. 86.
- M57 1982 c. 43.

### 152 Further provision as to interpretation and certain ancillary powers.

- (1) A power conferred on a roads authority by, under or by virtue of this Act to provide, erect, construct, lay or plant includes a power to alter, remove, re-lay, or, as the case may be, re-plant; and in relation to the power conferred by section 25 of this Act also includes the power temporarily to close:

Provided that the foregoing provisions of this subsection shall not apply where the context otherwise requires or where or in so far as such application would result in overlap with, or would admit avoidance of, express provisions of this Act.

- (2) The power conferred on a roads authority by section 1(1)  
or 2(1)

of this Act to determine the means of exercise of a public right of passage includes the power to redetermine by order under this subsection such means of exercise.

- (3) Subsections (1) and (2) of section 71 of this Act shall apply in relation to an order under subsection (2) above as they apply to an order under section 68 or 69 of this Act.

[<sup>F120</sup>(3A) Where an order under subsection (2) above states that it has effect only for such period not exceeding 18 months as is specified in the order, the order shall have effect during that period notwithstanding any failure to comply with—

- (a) any regulations made under subsection (1) of section 71 of this Act; or
- (b) subsection (2) of that section.

<sup>F120</sup>(3B) Subject to subsection (3C) below, an order which—

- (a) has effect by virtue of subsection (3A) above; and
- (b) makes the same provision in relation to the same right of public passage as was made in an order which has ceased to have effect,

may not have effect for a period which, when taken together with the period for which any order such as is mentioned in paragraph (b) above had effect, amounts to more than 18 months.

<sup>F120</sup>(3C) An order may have effect for a period which, when taken together with the period for which any order such as is mentioned in subsection (3B)(b) above had effect, amounts to more than 18 months only for the purpose of enabling the authority who made the order to take any steps necessary to seek to comply with—

- (a) any regulations made under subsection (1) of section 71 of this Act; or
- (b) subsection (2) of that section.]



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- (4) A local roads authority shall have power to carry out any works necessary for giving effect to an order by them under subsection (2) above; and in so far as the carrying out of any such works, or any change in the use of land resulting from any such order, constitutes development within the meaning of [F121the Town and Country Planning (Scotland) Act 1997], permission for that development shall be deemed granted under Part III of that Act.

[F122(5) Where—

- (a) during the period when an order under subsection (2) above has effect by virtue of subsection (3A) above, the authority carry out any works necessary for giving effect to the order (including any works carried out by virtue of subsection (4) above); and
- (b) on the order ceasing to have effect, no further order under subsection (2) above making the same provision in relation to the same right of public passage has effect,

the authority who made the order shall carry out any works necessary to reinstate the conditions pertaining before such works were carried out.]

#### Textual Amendments

**F120** S. 152(3A)-(3C) inserted (1.4.2001) by 2001 asp 2, s. 75(a) (with s. 66); S.S.I. 2001/132, art. 2, Sch. Pt. I

**F121** Words in S. 152(4) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), Sch. 2 para. 38(16)

**F122** S. 152(5) added (1.4.2001) by 2001 asp 2, s. 75(b) (with s. 66); S.S.I. 2001/132, art. 2, Sch. Pt. I

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

**C53** S. 152(4) restricted (30.10.1994) by S.I. 1994/2716, reg. 70

### Supplementary

#### 153 Consequential provision.

The Secretary of State may by order make such incidental, consequential, transitional or supplementary provision as appears to him to be necessary or proper—

- (a) for the general or any particular purposes of this Act or in consequence of any of the provisions of, or for giving full effect to, this Act; or
- (b) in consequence of such of the provisions of any other Act passed in the same session as this Act as apply to any area or authority affected by this Act;

and nothing in any other provision of this Act shall be construed as prejudicing the generally of this subsection.

#### 154 Local enactments.

- (1) Subject to subsection (2) below, where any local enactment provides for any matter which is also provided for by any provision of this Act or of any statutory instrument made thereunder, the provision of this Act, or, as the case may be, of that statutory instrument, shall have effect in substitution for the local enactment, which shall cease to have effect.



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- (2) The Secretary of State may by order except from the operation of subsection (1) above such local enactments as may be specified in the order and direct that the corresponding provisions of this Act or of any statutory instrument made thereunder as may to so specified shall not have effect in the areas in which the specified local enactments have effect.
- (3) If it appears to the Secretary of State that any local enactment, not being an enactment which has ceased to have effect by virtue of subsection (1) above, is inconsistent with any provision of this Act or of any statutory instrument made thereunder, or is no longer required, or requires to be amended, having regard to any provision of this Act or of any statutory instrument made thereunder, he may by order repeal or amend the local enactment as he may consider appropriate.

### 155 General adaptation of subordinate legislation etc.

Without prejudice to section 153 or 154 of this Act and except where the context otherwise requires or the Secretary of State by order under either of those sections otherwise provides, in any order, scheme, regulation or other instrument which before 1st January 1985 was made under or confirmed by a public general or local Act and in any local Act passed before or during the same session as this Act (such order, scheme, regulation, instrument or local Act not being an enactment which has ceased to have effect by virtue of subsection (1) of the said section 154) any reference—

- (a) to a street, to a highway or to a road shall be construed as a reference to a road within the meaning of this Act;
- (b) to a turnpike road, to a public carriage road, to a public highway, to a maintainable highway, to a public street or to a public road shall be construed as a reference to a public road within the meaning of this Act;
- (c) to a private street or to a private road shall be construed as a reference to a private road within the meaning of this Act;
- (d) to a prospective public road or to a prospective public street shall be construed as a reference to a road which is declared likely to become a public road in a declaration made by the local roads authority under <sup>F123</sup>section 146 of the New Roads and Street Works Act 1991];
- (e) to a highway authority or to a street authority shall be construed as a reference to a roads authority within the meaning of this Act;
- (f) to a roadway or to a carriageway shall be construed as a reference to a carriageway within the meaning of this Act; and
- (g) to a cycle track, to a footpath or to a footway shall be construed in accordance with this Act.

#### Textual Amendments

**F123** Words in s. 155(d) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\), s. 168\(1\), Sch. 8 para. 95](#); S.I. 1992/2990, art. 2(2), [Sch. 2](#)

### 156 Amendments, transitional provisions and repeals.

- (1) The enactments specified in Schedule 9 to this Act shall have effect subject to the amendments there specified (being minor amendments or amendments consequential on the foregoing provisions of this Act).

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- (2) The transitional provisions and savings contained in Schedule 10 to this Act shall have effect.
- (3) Subject to the provisions of the said Schedule 10, the enactments specified in Schedule 11 to this Act (which include enactments already obsolete or unnecessary) are hereby repealed to the extent specified in the third column of that Schedule.

#### **157 Short title, commencement and extent.**

- (1) This Act may be cited as the Roads (Scotland) Act 1984.
- (2) Subject to subsection (3) below, this Act, except this section, shall come into force on 1st January 1985 (in this Act referred to as “the commencement of this Act”).
- (3) The following provisions of this Act shall come into force on such day as the Secretary of State may by order appoint, and different purposes and for different areas—
  - section 36 to 40;
  - section 126 and Schedule 7;
  - section 156(3) and Schedule 11 in so far as they relate to Schedule 10 to the <sup>M58</sup>Road Traffic Regulation Act 1984.
- (4) This Act applies to Scotland only.

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

**C54** Power of appointment conferred by s. 157(3) fully exercised: [S.I. 1985/1953](#), 1989/1094, 1990/2622

#### **Marginal Citations**

**M58** [1984 c. 27](#).

**Status:**

Point in time view as at 06/04/2001.

**Changes to legislation:**

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