



# Roads (Scotland) Act 1984

## 1984 CHAPTER 54

### 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)**

- C1** 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>M1</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.

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: Roads (Scotland) Act 1984, Part XIII is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

**C2** 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**

**M1** 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.

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

**C3** 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>M2</sup>Tribunals and Inquiries Act [<sup>F1</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**

**F1** 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)**

**C4** 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](#)

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#### Marginal Citations

M2 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
    - (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>F2</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>F2</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>F3</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

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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.
- (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

- F2** 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**
- F3** 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**

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## **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);
  - (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)**

- C5** 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;

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- (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>F4</sup>8 <sup>F5</sup> [F<sup>5</sup>, 12A, 12B, 12C, 12D, 12E][<sup>F6</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>F7</sup> [F<sup>7</sup> or regulations made for the first time under section 61A of this Act]; or
- (ii) an order under section <sup>F8</sup>130A or] <sup>F9</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.

#### Textual Amendments

- F4** 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](#)
- F5** 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\(a\)](#)
- F6** 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\(1\)\(c\)](#)
- F7** 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](#)
- F8** Words in s. 143(2)(b)(ii) inserted (1.10.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), [ss. 37\(2\), 54\(2\)](#); S.S.I. 2008/15, art. 2(3), [sch. 2](#)
- F9** 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](#)

#### <sup>F10</sup>143A “Developments of national significance” etc.: special procedure

- (1) Subsection (3) below applies to a statutory instrument which—
- (a) contains an order under section 5 of this Act directing that a road proposed to be constructed shall be a trunk road and the construction of the road would constitute a national development;
- (b) contains or confirms a scheme under section 7 of this Act which authorises the carrying out of work which would constitute a national development; or
- (c) is the subject of a direction by the Scottish Ministers under this paragraph.
- (2) In subsection (1) above, the references to a “national development” are to any development (within the meaning of the Town and Country Planning (Scotland) Act 1997) for the time being designated under section 3A(4)(b) of that Act as a national development.
- (3) The statutory instrument—

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- (a) is to be laid before the Scottish Parliament; and
  - (b) cannot come into force unless the Scottish Parliament, by resolution, approves the instrument.
- (4) Unless the Scottish Ministers otherwise direct, an instrument containing or confirming an order or scheme which revokes, amends or re-enacts an instrument laid before the Scottish Parliament under paragraph (a) of subsection (3) above is not subject to the procedure in that subsection.]

#### Textual Amendments

**F10** S. 143A inserted (28.12.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), **ss. 24(2), 30(4)**; [S.S.I. 2007/516](#), art. 2

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

- (1) Subject to <sup>[**F11**]</sup> sections 143 and 143A ] 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.

#### Textual Amendments

**F11** Words in s. 144(1) substituted (28.12.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), **ss. 24(3), 30(4)**; [S.S.I. 2007/516](#), art. 2

### 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



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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.
- (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>F12</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;



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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

**F12** 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)

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

**C6** 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>M3</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

**M3** 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.

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## *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;

<sup>F13</sup> .....

“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>M4</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947;

<sup>F14</sup> [“consultation bodies” means—

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

(aa) <sup>F15</sup>[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; <sup>F16</sup>...

(d) Historic Scotland; <sup>F17</sup>and

(e) other bodies designated by statutory provision as having specific environmental responsibilities;]

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

“days” means clear days;

<sup>F18</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>F19</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>F20</sup>and Council Directive No. [2003/35/EC](#) ;]

<sup>F21</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—

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

“local authority” means a [<sup>F22</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;

“maintenance” includes—

- (a) repair; and
- (b) watering to allay dust but, without prejudice to subsection (1) of section 25 of the <sup>M5</sup>Local Government and Planning (Scotland) Act 1982 (restriction of powers of local authorities as regards street cleansing), not such cleansing as [<sup>F23</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>M6</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947;

<sup>F24</sup> ...

“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>M7</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>F25</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;

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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>F26</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>F27</sup>council constituted under section 2 of the Local Government etc. (Scotland) Act 1994] within whose area the road is (such [<sup>F27</sup>local authority] being in this Act referred to as a “local roads authority”); and
- (b) [<sup>F28</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>F29</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>F30</sup>, where the authority is the Secretary of State,]be taken to relate also to [<sup>F31</sup>him];

<sup>F32</sup>  
.....

“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>F33</sup>section 214 of the Town and Country Planning (Scotland) Act 1997] except that it includes

- (a) <sup>F34</sup>the Post Office
- (b) <sup>F35</sup>except in sections 133 and 140(4) of this Act, the operator of any [<sup>F36</sup>electronic communications code network][<sup>F37</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;

<sup>F24</sup>  
...

“tidal waters” has the same meaning as in section 35(1) of the <sup>M8</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>M9</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>F38</sup>section 202(3) of the Town and Country Planning (Scotland) Act 1997];

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

“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);

<sup>F39</sup>  
.....

.....; and

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“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.

[<sup>F40</sup>(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>M10</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 [<sup>F41</sup>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>M11</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 [<sup>F42</sup>an electronic communications code network], have effect as a reference to [<sup>F43</sup>electronic communications apparatus] kept installed for the purposes of that [<sup>F44</sup>network].

#### Textual Amendments

- F13** 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\(a\)](#)
- F14** Definition of “consultation bodies” in s. 151 inserted (1.8.1999) by [S.S.I. 1999/1](#), [reg. 51\(a\)](#)
- F15** 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](#)
- F16** Word in s. 151(1) omitted (1.2.2007) by virtue of [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006](#) (S.S.I. 2006/614), [regs. 1](#), [6\(4\)\(a\)](#)

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- F17** Words in s. 151(1) inserted (1.2.2007) by The Environmental Impact Assessment (Scotland) Amendment Regulations 2006 (S.S.I. 2006/614), regs. 1, **6(4)(a)**
- F18** 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)**
- F19** 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)**
- F20** Words in s. 151(1) inserted (1.2.2007) by The Environmental Impact Assessment (Scotland) Amendment Regulations 2006 (S.S.I. 2006/614), regs. 1, **6(4)(b)**
- F21** Definition of “environmental statement” in s. 151 substituted (1.8.1999) by S.S.I. 1999/1, **reg. 51(c)**
- F22** 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)**
- F23** 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)**
- F24** Words in s. 151(1) repealed (17.9.2003) by The Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 1(1), **Sch. 2** Table 1
- F25** 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**
- F26** 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**
- F27** 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)**
- F28** 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)**
- F29** 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)**
- F30** 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)**
- F31** 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)**
- F32** S. 151(1): definition of “sewerage authority” repealed (1.4.2002) by Water Industry (Scotland) Act 2002 (asp 3), s. 71(2), **Sch. 7 para. 14(5)** (with s. 67); S.S.I 2002/118, {art. 2(3)}
- F33** 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)**
- F34** “(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)**
- F35** “(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)**
- F36** Words in s. 151(1) substituted (17.9.2003) by The Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 1(1), **Sch. 1 para. 10(3)**
- F37** 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)**
- F38** 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)**
- F39** S. 151(1): definition of “water authority” repealed (1.4.2002) by Water Industry (Scotland) Act 2002 (asp 3), s. 71(2), **Sch. 7 para. 14(5)** (with s. 67); S.S.I 2002/118, {art. 2(3)}
- F40** S. 151(1A) inserted (4.1.1995) by 1994 c. 39, s. 146; S.I. 1994/2850, art. 3(a), **Sch. 2**
- F41** 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)**
- F42** Words in s. 151(4) substituted (17.9.2003) by The Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 1(1), **Sch. 1 para. 10(1)(e)(2)(c)**
- F43** Words in s. 151(4) substituted (17.9.2003) by The Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 1(1), **Sch. 1 para. 10(1)(e)(2)(b)**

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**F44** Word in s. 151(4) substituted (17.9.2003) by [The Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 10(1)(e)(2)(d)

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

- C7** 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**
- C8** 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.**
- C9** 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.**
- C10** S. 151(1): definition of "roads authority" extended (1.4.2002) by [The Forth Estuary Transport Authority Order 2002 \(S.S.I. 2002/178\)](#), art. 9

#### **Marginal Citations**

- M4** 1947 c. 42.  
**M5** 1982 c. 43.  
**M6** 1947 c. 42.  
**M7** S.I. 1983/1168.  
**M8** 1951 c. 66  
**M9** 1984 c. 27.  
**M10** 1967 c. 86.  
**M11** 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>F45</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>F45</sup>(3B) Subject to subsection (3C) below, an order which—

- (a) has effect by virtue of subsection (3A) above; and



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- (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>F45</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.]
- (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 [<sup>F46</sup>the Town and Country Planning (Scotland) Act 1997], permission for that development shall be deemed granted under Part III of that Act.
- <sup>F47</sup>(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

**F45** 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**

**F46** Words in S. 152(4) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 38(16)**

**F47** 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)

**C11** 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;

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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.
- (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 [F48section 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.

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#### Textual Amendments

**F48** 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).
- (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>M12</sup>Road Traffic Regulation Act 1984.
- (4) This Act applies to Scotland only.

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

**C12** Power of appointment conferred by s. 157(3) fully exercised: [S.I. 1985/1953](#), 1989/1094, 1990/2622

#### Marginal Citations

**M12** [1984 c. 27](#).

**Status:**

Point in time view as at 01/10/2008.

**Changes to legislation:**

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