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## SCHEDULES

### THIRD SCHEDULE

Sections 7, 8, 9, 10.

#### REINSTATEMENT AND MAKING GOOD BY STREET AUTHORITY OR STREET MANAGERS AFTER EXECUTION OF UNDERTAKERS' WORKS

- 1 (1) In any case in which undertakers are under obligation by virtue of subsection (2) of section seven of this Act to reinstate and make good a [<sup>F1</sup>street][<sup>F1</sup>road] or controlled land after the completion of any code-regulated works involving breaking up or opening thereof, other than works relating to a service pipe or service line or an [<sup>F2</sup>overhead telecommunication apparatus] being works such as are mentioned in paragraph (b) or (d) of subsection (2) of section three of this Act, the [<sup>F3</sup>street][<sup>F3</sup>roads] authority or [<sup>F1</sup>street][<sup>F1</sup>road] managers may, by notice given to the undertakers as mentioned in the next succeeding sub-paragraph, elect to do the permanent reinstatement and making good of the [<sup>F1</sup>street][<sup>F1</sup>road] or controlled land or of any part thereof at upper levels:

Provided that the provisions of this Schedule shall not apply to a [<sup>F4</sup>street] being a highway which is not a maintainable highway and][<sup>F4</sup>private road] which no person is liable to the public to maintain or repair.

- (2) A notice of such an election shall be deemed to have been duly given if the code-regulated works are in a [<sup>F5</sup>street][<sup>F5</sup>road] or controlled land as to which the authority or managers had given to the undertakers notice of their desire that the provisions of this Schedule should have effect in the case of all code-regulated works executed by the undertakers therein or in the case of all such works of a class specified in the notice within which the works in question fall.

In any other case, a notice of such an election shall be given without any avoidable delay on the part of the authority or managers after they know of the intention of the undertakers to execute the code-regulated works, and—

- (a) where those works are executed after settlement of a plan and section thereof under section four of this Act if the works are in a [<sup>F5</sup>street][<sup>F5</sup>road] or under section five thereof if they are in controlled land, notice given after the expiration of eight days from the date on which the plan and section were settled shall not be effective; and
- (b) where they are not, notice given after the undertakers have begun reinstatement or making good of any part of the [<sup>F5</sup>street][<sup>F5</sup>road] or controlled land shall not be effective as to that part thereof.
- (3) If a notice of such an election is given in relation to reinstatement of a [<sup>F6</sup>street] which is prospectively a maintainable highway][<sup>F6</sup>prospective public road] both by the [<sup>F7</sup>street][<sup>F7</sup>roads] authority and by the [<sup>F8</sup>street][<sup>F8</sup>road] managers, the election of the authority shall have effect to the exclusion of that of the managers, and, if in relation to reinstatement of a [<sup>F8</sup>street][<sup>F8</sup>road] as to which two or more bodies or

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persons are [<sup>F8</sup>street][<sup>F8</sup>road] managers notice of such an election is given by two or more of them, the election of such of them as the [<sup>F9</sup>appropriate local][<sup>F9</sup>local roads] authority may determine shall have effect to the exclusion of that of any of the others.

#### Textual Amendments

- F1** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(a\)\(i\)](#)
- F2** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 29(2), [Sch. 5 para. 45](#)
- F3** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(a\)\(i\)](#)
- F4** Words “private road” substituted (S.) for words “street being a highway which is not a maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(a\)\(ii\)](#)
- F5** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(b\)](#)
- F6** Words “prospective public road” substituted (S.) for words “street which is prospectively a maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(c\)\(i\)](#)
- F7** Word “roads” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(c\)\(ii\)](#)
- F8** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(c\)\(ii\)](#)
- F9** Words “local roads” substituted (S.) for words “appropriate local” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(c\)\(iii\)](#)

- 2 (1) In case of such an election as aforesaid, the following provisions of this Schedule shall have effect as to so much of the [<sup>F10</sup>street][<sup>F10</sup>road] or controlled land as the election extends to.
- (2) In the said provisions, in relation to a [<sup>F10</sup>street][<sup>F10</sup>road] or controlled land that has been opened or broken up—
- “interim restoration” means all such works as are requisite for securing that it does not remain open or broken up for any longer time than is reasonably necessary, and that its state during the period before it is permanently reinstated and made good at surface level is not such as to be likely to cause danger;
- “permanent reinstatement and making good” means any works of reinstatement and making good executed on any occasion otherwise than with a view to their being superseded by further works to be executed shortly thereafter; and
- “surface level” means what was the surface level before the opening or breaking up.

#### Textual Amendments

- F10** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 50, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(d\)](#)

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3 The undertakers shall be under obligation (in accordance with the provisions of subsection (2) of section seven of this Act as to the time for the discharge of that obligation and otherwise) to execute the following reinstatement and making good, and no other, that is to say—

- (a) interim restoration at any place during the period between the time when their obligation under the said subsection (2) to begin reinstatement and making good there arises and the time when they are given notice under paragraph 5 of this Schedule that the electing authority or managers are about to begin their permanent reinstatement and making good there; and
- (b) such of the permanent reinstatement and making good as is not within the obligation of the electing authority or managers under the next succeeding paragraph.

4 (1) The electing authority or managers shall be under obligation (in accordance with the provisions of paragraph 5 of this Schedule as to the time for discharge of that obligation) to execute the permanent reinstatement and making good at surface level, and at lower levels so far as may be requisite for securing that the [F11street][F11road] or controlled land is permanently reinstated and made good at the surface level:

Provided that they shall not be under any obligation, and shall not have any power, to execute any of the permanent reinstatement and making good within twelve inches above apparatus of the undertakers, or, if and in so far as the electing authority or managers and the undertakers agree to the substitution of another measure for the said twelve inches for the purposes of this proviso, within that measure above such apparatus.

- (2) During the period between the time when the electing authority or managers give notice under paragraph 5 of this Schedule that they are about to begin their permanent reinstatement and making good at any place and the time of the completion thereof there, they shall be under obligation to execute interim restoration there.
- (3) The undertakers shall pay to the electing authority or managers an amount equal to the cost reasonably incurred by them in the discharge of their obligations under the preceding sub-paragraphs.
- (4) The electing authority or managers shall be entitled, if and so far as may be requisite for the discharge of their obligation under sub-paragraph (1) of this paragraph as to permanent reinstatement and making good, to undo and do again reinstatement and making good previously executed by the undertakers, and the cost thereof reasonably incurred by the electing authority or managers shall be included in the amount payable to them under the last preceding sub-paragraph.

#### Textual Amendments

**F11** Word “road” substituted (S.) for word “street” by [Roads \(Scotland\) Act 1984 \(c. 50, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(e\)](#)

5 (1) The electing authority or managers shall begin their permanent reinstatement and making good at any place as soon as is prudent and practicable after the time when the undertakers are to be treated under the next succeeding sub-paragraph as having

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completed their works there and such of the permanent reinstatement and making good there as they are under obligation to execute.

(2) When—

- (a) the undertakers have completed at any place their works and such of the permanent reinstatement and making good there as they are under obligation to execute; and
- (b) if any notice under subsection (4) of section seven of this Act requiring the undertakers to remedy any defect in what they have done there has been given, the proceedings consequent on the notice and any works which they are under obligation to execute by virtue thereof have been completed,

the undertakers shall give notice of the completion thereof to each of the authorities concerned who are entitled to give a notice under the said subsection (4), and on the giving by the undertakers of their notice they shall be treated for the purposes of this paragraph as having completed their works there and such of the permanent reinstatement and making good there as they are under obligation to execute, if either—

- (i) no notice under the said subsection (4) (or, if there has already been any such, no further such notice) is given by any such authority within the following time from the giving of the undertakers' notice, that is to say eight days in the case of such an authority being a <sup>F12</sup>Minister of the Crown, a county council<sup>F12</sup> roads authority] or a transport authority, or four days in the case of any other such authority; or
- (ii) any notice under the said subsection (4) so given (or every such notice if more than one) is withdrawn or is determined by arbitration not to be justified.

(3) When the electing authority or managers are about to begin their permanent reinstatement and making good at any place they shall give notice to the undertakers that they are about to begin it.

#### **Textual Amendments**

**F12** Words “roads authority” substituted (S.) for words “Minister of the Crown, a county council” by [Roads \(Scotland\) Act 1984 \(c. 50, SIF 108\)](#), [Sch. 9 para. 39\(35\)\(f\)](#)

- 6 (1) The duty to secure observance of the requirements of paragraphs (a) to (e) of subsection (1) of section eight of this Act (as to safety, obstruction and other matters) shall, as regards the observance thereof during and in connection with the execution of reinstatement and making good at any place, be on the undertakers until the electing authority or managers have given notice under the last preceding paragraph that they are about to begin their permanent reinstatement and making good there, but shall then devolve on the electing authority or managers.
- (2) The undertakers shall pay to the electing authority or managers an amount equal to the cost reasonably incurred by them of performing duties devolving on them under this paragraph.
- 7 Nothing in this Schedule shall affect the provisions of section twelve of this Act or of subsection (1) of section thirteen thereof as to the reinstatement and making good of sewers, drains and tunnels.

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