



# Highways Act 1980

## 1980 CHAPTER 66

### PART IV

#### MAINTENANCE OF HIGHWAYS

##### *Enforcement of liability for maintenance*

#### **56 Proceedings for an order to repair highway**

- (1) A person ("the complainant") who alleges that a way or bridge—
  - (a) is a highway maintainable at the public expense or a highway which a person is liable to maintain under a special enactment or by reason of tenure, enclosure or prescription, and
  - (b) is out of repair,may serve a notice on the highway authority or other person alleged to be liable to maintain the way or bridge ("the respondent") requiring the respondent to state whether he admits that the way or bridge is a highway and that he is liable to maintain it.
- (2) If, within 1 month from the date of service on him of a notice under subsection (1) above, the respondent does not serve on the complainant a notice admitting both that the way or bridge in question is a highway and that the respondent is liable to maintain it, the complainant may apply to the Crown Court for an order requiring the respondent, if the court finds that the way or bridge is a highway which the respondent is liable to maintain and is out of repair, to put it in proper repair within such reasonable period as may be specified in the order.
- (3) The complainant for an order under subsection (2) above shall give notice in writing of the application to the appropriate officer of the Crown Court and the notice shall specify—
  - (a) the situation of the way or bridge to which the application relates,
  - (b) the name of the respondent,
  - (c) the part of the way or bridge which is alleged to be out of repair, and

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- (d) the nature of the alleged disrepair;  
and the complainant shall serve a copy of the notice on the respondent.
- (4) If, within 1 month from the date of service on him of a notice under subsection (1) above, the respondent serves on the complainant a notice admitting both that the way or bridge in question is a highway and that the respondent is liable to maintain it, the complainant may, within 6 months from the date of service on him of that notice, apply to a magistrates' court for an order requiring the respondent, if the court finds that the highway is out of repair, to put it in proper repair within such reasonable period as may be specified in the order.
- (5) A court in determining under this section whether a highway is out of repair shall not be required to view the highway unless it thinks fit, and any such view may be made by any 2 or more of the members of the court.
- (6) If at the expiration of the period specified in an order made under subsection (2) or (4) above a magistrates' court is satisfied that the highway to which the order relates has not been put in proper repair, then, unless the court thinks fit to extend the period, it shall by order authorise the complainant (if he has not the necessary power in that behalf) to carry out such works as may be necessary to put the highway in proper repair.
- (7) Any expenses which a complainant reasonably incurs in carrying out works authorised by an order under subsection (6) above are recoverable from the respondent summarily as a civil debt.
- (8) Where any expenses recoverable under subsection (7) above are recovered from the respondent, then, if the respondent would have been entitled to recover from some other person the whole or part of the expenses of repairing the highway in question if he had repaired it himself, he is entitled to recover from that other person the whole or the like part, as the case may be, of the expenses recovered from him.
- (9) Where an application is made under this section for an order requiring the respondent to put in proper repair a footpath or bridleway which, in either case, is a highway maintainable at the public expense and some other person is liable to maintain the footpath or bridleway under a special enactment or by reason of tenure, enclosure or prescription, that other person has a right to be heard by the court which hears the application, but only on the question whether the footpath or bridleway is in proper repair.

## **57 Default powers of highway authorities in respect of non-repair of privately maintainable highways**

- (1) Where a person is liable under a special enactment or by reason of tenure, enclosure or prescription to maintain a footpath or bridleway which, in either case, is a highway maintainable at the public expense, and the highway authority for the highway repair it in the performance of their duty to maintain it, they may, subject to subsection (3) below, recover the necessary expenses of doing so from that person in any court of competent jurisdiction.
- (2) Where a person is liable as aforesaid to maintain a highway other than such a footpath or bridleway as is referred to in subsection (1) above the highway authority for the highway may, if in their opinion the highway is not in proper repair, repair it and, subject to subsection (3) below, recover the necessary expenses of doing so from that person in any court of competent jurisdiction.

- (3) The right of recovery conferred by the foregoing provisions of this section is not exercisable—
- (a) in a case where a highway authority repair a footpath or bridleway in obedience to an order of a court made under section 56 above, unless not less than 21 days before the date on which the application was heard by the court the authority gave notice to the person liable to maintain the path or way of the making of an application with respect to it and of the time and place at which the application was to be heard by the court (so however that there is no obligation to give notice to him under this paragraph if he was the person on whose application the order of the court was made);
  - (b) in any other case, unless the highway authority, before repairing the highway, have given notice to the person liable to maintain it that the highway is not in proper repair, specifying a reasonable time within which he may repair it, and he has failed to repair it within that time.
- (4) Where a highway authority exercise a right of recovery from any person under the foregoing provisions of this section, then, if that person would have been entitled to recover from some other person the whole or part of the expenses of repairing the highway if he had repaired it himself, he is entitled to recover from that other person the whole or the like part, as the case may be, of the expenses recovered from him by the highway authority.

## **58 Special defence in action against a highway authority for damages for non-repair of highway**

- (1) In an action against a highway authority in respect of damage resulting from their failure to maintain a highway maintainable at the public expense it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the authority had taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous for traffic.
- (2) For the purposes of a defence under subsection (1) above, the court shall in particular have regard to the following matters:—
- (a) the character of the highway, and the traffic which was reasonably to be expected to use it;
  - (b) the standard of maintenance appropriate for a highway of that character and used by such traffic;
  - (c) the state of repair in which a reasonable person would have expected to find the highway;
  - (d) whether the highway authority knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway;
  - (e) where the highway authority could not reasonably have been expected to repair that part of the highway before the cause of action arose, what warning notices of its condition had been displayed;

but for the purposes of such a defence it is not relevant to prove that the highway authority had arranged for a competent person to carry out or supervise the maintenance of the part of the highway to which the action relates unless it is also proved that the authority had given him proper instructions with regard to the maintenance of the highway and that he had carried out the instructions.

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- (3) This section binds the Crown.
- (4) This section does not apply to damage resulting from breaking or opening or tunnelling or boring under a street by way of code-regulated works, being damage resulting from an event which occurred—
- (a) before the completion of the reinstatement or making good of the relevant part of the street in pursuance of the obligation imposed on the undertakers by section 7(2) of the Public Utilities Street Works Act 1950 ; or
  - (b) where the relevant part of the street is the subject of an election under Schedule 3 to that Act (which, with minor exceptions, limits the obligation of undertakers to the execution of interim restoration), during the period mentioned in paragraph 3(a) of that Schedule;

and expressions used in this subsection and that Act have the same meanings as in that Act.