



# Highways Act 1980

## 1980 CHAPTER 66

### PART IV

#### MAINTENANCE OF HIGHWAYS

##### *Methods whereby highways may become maintainable at public expense*

- 37 Provisions whereby highway created by dedication may become maintainable at public expense.**
- (1) A person who proposes to dedicate a way as a highway and who desires that the proposed highway shall become maintainable at the public expense by virtue of this section shall give notice of the proposal, not less than 3 months before the date of the proposed dedication, to the council who would, if the way were a highway, be the highway authority therefor, describing the location and width of the proposed highway and the nature of the proposed dedication.
  - (2) If the council consider that the proposed highway will not be of sufficient utility to the public to justify its being maintained at the public expense, they may make a complaint to a magistrates' court for an order to that effect.
  - (3) If the council certify that the way has been dedicated in accordance with the terms of the notice and has been made up in a satisfactory manner, and if—
    - (a) the person by whom the way was dedicated or his successor keeps it in repair for a period of 12 months from the date of the council's certificate, and
    - (b) the way has been used as a highway during that period,then, unless an order has been made in relation to the highway under subsection (2) above, the highway shall, at the expiration of the period specified in paragraph (a) above, become for the purposes of this Act a highway maintainable at the public expense.
  - (4) If the council, on being requested by the person by whom the way was dedicated or his successor to issue a certificate under subsection (3) above, refuse to issue the certificate, that person may appeal to a magistrates' court against the refusal, and the

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court, if satisfied that the certificate ought to have been issued, may make an order to the effect that subsection (3) above shall apply as if the certificate had been issued on a date specified in the order.

- (5) Where a certificate has been issued by a council under subsection (3) above, or an order has been made under subsection (4) above, the certificate or a copy of the order, as the case may be, shall be deposited with the proper officer of the council and may be inspected by any person free of charge at all reasonable hours.

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

- C1** S. 30 modified (28.4.2003) by [The Network Rail \(West Coast Main Line\) Order 2003 \(S.I. 2003/1075\)](#), [art. 8\(11\)](#)

**38 Power of highway authorities to adopt by agreement.**

- (1) Subject to subsection (2) below, where any person is liable under a special enactment or by reason of tenure, enclosure or prescription to maintain a highway, the Minister<sup>F1</sup> or a strategic highways company, whichever is the highway authority], in the case of a trunk road, or a local highway authority, in any other case, may agree with that person to undertake the maintenance of that highway; and where an agreement is made under this subsection the highway to which the agreement relates shall, on such date as may be specified in the agreement, become for the purposes of this Act a highway maintainable at the public expense and the liability of that person to maintain the highway shall be extinguished.
- (2) A local highway authority shall not have power to make an agreement under subsection (1) above with respect to a highway with respect to which they or any other highway authority have power to make an agreement under Part V or Part XII of this Act.
- <sup>F2</sup>(3) A local highway authority may agree with any person to undertake the maintenance of a way—
- (a) which that person is willing and has the necessary power to dedicate as a highway, or
  - (b) which is to be constructed by that person, or by a highway authority on his behalf, and which he proposes to dedicate as a highway;
- and where an agreement is made under this subsection the way to which the agreement relates shall, on such date as may be specified in the agreement, become for the purposes of this Act a highway maintainable at the public expense.
- (3A) The Minister may agree with any person to undertake the maintenance of a road—
- (a) which that person is willing and has the necessary power to dedicate as a highway, or
  - (b) which is to be constructed by that person, or by a highway authority on his behalf, and which he proposes to dedicate as a highway,
- and which the Minister proposes should become a trunk road; and where an agreement is made under this subsection the road shall become for the purposes of this Act a highway maintainable at the public expense on the date on which an order comes into force under section 10 directing that the road become a trunk road or, if later, the date on which the road is opened for the purposes of through traffic.]

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(4) Without prejudice to the provisions of subsection (3) above and subject to the following provisions of this section, a local highway authority may, by agreement with railway, canal or tramway undertakers, undertake to maintain as part of a highway maintainable at the public expense a bridge or viaduct which carries the railway, canal or tramway of the undertakers over such a highway or which is intended to carry such a railway, canal or tramway over such a highway and is to be constructed by those undertakers or by the highway authority on their behalf.

(5) ..... F3

(6) An agreement under this section may contain such provisions as to the dedication as a highway of any road or way to which the agreement relates, the bearing of the expenses of the construction, maintenance or improvement of any highway, road, bridge or viaduct to which the agreement relates and other relevant matters as the authority making the agreement think fit.

**Textual Amendments**

- F1 Words in s. 38(1) inserted (5.3.2015) by [Infrastructure Act 2015 \(c. 7\)](#), s. 57(1), [Sch. 1 para. 19](#); S.I. 2015/481, reg. 2(a)
- F2 S. 38(3)(3A) substituted (01.11.1991) for s. 38(3) by [New Roads and Street Works Act 1991 \(c. 22\)](#), SIF 59, 108), [s. 22\(1\)](#); S.I. 1991/2288, art. 3, [Sch.](#)
- F3 S. 38(5) repealed by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 102, [Sch. 17](#)

39 ..... F4

**Textual Amendments**

- F4 S. 39 repealed by [Statute Law \(Repeals\) Act 1986 \(c. 12\)](#), s. 1(1), [Sch. 1 Pt. II](#)

**40 Adoption of private streets.**

The foregoing provisions of this Part of this Act are without prejudice to the power or, as the case may be, the duty of the council of a county [<sup>F5</sup>, metropolitan district] or London borough, or the Common Council, to adopt private streets as highways maintainable at the public expense under Part XI of this Act.

**Textual Amendments**

- F5 Words inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 8, [Sch. 4 para. 7](#)

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