



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.

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, 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.

- (3) Subject to the following provisions of this section, a local highway authority may agree with any person to undertake the maintenance of—

- (a) a private carriage or occupation road which that person is willing, and has the necessary power, to dedicate as a highway; or
- (b) a way 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 road or 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.

- (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) Where—

- (a) any such highway as is referred to in paragraph (b) of subsection (3) above is intended to become a metropolitan road, or
- (b) any such bridge or viaduct as is referred to in subsection (4) above crosses or will cross a metropolitan road,

the powers conferred by subsections (3) and (4) above shall, as respects that highway, bridge or viaduct, be exercisable by the Greater London Council and not by any other local highway authority.

- (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.

39 Adoption of certain highways in livestock rearing areas

Where under section 1 of the Agriculture (Improvement of Roads) Act 1955 (proposals for effecting improvements in certain roads situated in, or affording access to, livestock rearing areas), a county council submit proposals to the Minister of Agriculture, Fisheries and Food for effecting an improvement to which that Act applies in respect of a highway that is not a highway maintainable at the public expense, and that Minister approves those proposals, then, without prejudice to any other enactment (whether contained in this Act or not) whereby the highway may become such a highway, the council submitting the proposals shall have power, by notice exhibited on or near the highway, to declare it to be for the purposes of this Act a highway maintainable at the public expense, and thereupon—

- (a) the highway shall become such a highway, and
- (b) if, apart from this section, any person would be liable to maintain the highway under a special enactment or by reason of tenure, enclosure or prescription, that liability shall be extinguished.

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 or London borough, or the Common Council, to adopt private streets as highways maintainable at the public expense under Part XI of this Act.