



# New Roads and Street Works Act 1991

## 1991 CHAPTER 22

### PART III

#### STREET WORKS IN ENGLAND AND WALES

##### *Supplementary provisions*

#### **95 Offences**

- (1) Any provision of this Part imposing criminal liability in respect of any matter is without prejudice to any civil liability in respect of the same matter.
- (2) Where a failure to comply with a duty imposed by this Part is continued after conviction, the person in default commits a further offence.

#### **96 Recovery of costs or expenses**

- (1) Any provision of this Part enabling an authority, body or person to recover the costs or expenses of taking any action shall be taken to include the relevant administrative expenses of that authority, body or person including an appropriate sum in respect of general staff costs and overheads.

The Secretary of State may prescribe the basis on which such amounts are to be calculated; and different provision may be made for different cases or descriptions of case.

- (2) Where a right to payment enuring for the benefit of a person is conferred in respect of the same matter—
  - (a) both under this Part and under any enactment or agreement passed or made before the commencement of this Part, or
  - (b) by two or more provisions of this Part,a payment made in discharge of any of those rights shall be treated as being made in or towards satisfaction of the other or others.

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- (3) Where under any provision of this Part a person is entitled in certain circumstances to recover costs or expenses incurred by him in executing works or taking other steps, any dispute as to the existence of those circumstances or as to the amount recoverable shall be determined by arbitration.

This applies whether the provision is expressed as conferring a right to recover, or as imposing a liability to reimburse or indemnify or to bear the cost, but does not apply in relation to a provision expressed as providing for the charging of a fee or conferring a right to compensation or in relation to section 78 (contributions to cost of making good long-term damage to the street).

#### **97 Service of notices and other documents**

- (1) Notices required or authorised to be given for the purposes of this Part shall be given in the prescribed form.
- (2) The Secretary of State may make provision by regulations as to the manner of service of notices and other documents required or authorised to be served for the purposes of this Part.

#### **98 Reckoning of periods**

- (1) In reckoning for the purposes of this Part a period expressed as a period from or before a given date, that date shall be excluded.
- (2) For the purposes of this Part a working day means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday; and a notice given after 4.30 p.m. on a working day shall be treated as given on the next working day.
- (3) In subsection (2) a “bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the locality in which the street in question is situated.

#### **99 Arbitration**

Any matter which under this Part is to be settled by arbitration shall be referred to a single arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the President of the Institution of Civil Engineers.

#### **100 Agreements inconsistent with the provisions of this Part**

- (1) An agreement which purports to make provision regulating the execution of street works is of no effect to the extent that it is inconsistent with the provisions of this Part.
- (2) This does not affect an agreement for the waiver or variation of a right conferred on a relevant authority by any of the provisions of this Part which is made after the right has accrued and is not inconsistent with the future operation of those provisions.

#### **101 Effect of this Part on certain existing special enactments or instruments**

- (1) Any special enactment passed or made before the commencement of this Part which makes or authorises the making of provision regulating the execution of street works in a manner inconsistent with the provisions of this Part shall cease to have effect;

and unless a contrary intention appears no enactment passed or made after the commencement of this Part shall be construed as making or authorising the making of any such provision.

This subsection does not apply to any provision as to the obtaining of consent for the execution of the works or for any other purpose.

- (2) Any special enactment passed or made before the commencement of this Part which requires the consent of a relevant authority (in its capacity as such) to the execution of street works shall cease to have effect, except as mentioned below; and unless a contrary intention appears no special enactment passed or made after the commencement of this Part shall be construed as requiring such consent.

This subsection does not apply to a consent requirement so far as it relates to—

- (a) works above the surface of the highway, or
- (b) works outside the limits of supply of an undertaker in relation to whom such limits are imposed.

- (3) A provision made by way of condition imposed on the giving of a consent for the execution of street works is of no effect in so far as it would have been so by virtue of section 100 if it had been made by an agreement.

- (4) If it appears to the Secretary of State—

- (a) that by the operation of subsection (1) a person has been or will be deprived of some protection afforded by a special enactment and that corresponding protection is in all the circumstances required, or
- (b) that a requirement of consent imposed by a special enactment should be saved from the operation of subsection (2), either as regards all works to which the requirement extends or as regards any description of such works, or
- (c) that conditions of any descriptions should be rendered valid notwithstanding subsection (3), or
- (d) that uncertainty or obscurity has resulted or is likely to result from the operation on a special enactment of the general provisions of subsection (1), (2) or (3),

he may by order make such provision as he considers appropriate for affording such protection, saving the requirement, rendering the conditions valid or modifying the special enactment, as the case may be.

- (5) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament; and the provisions of Schedule 5 have effect with respect to the procedure for making such an order.
- (6) The provisions of this section apply in relation to an instrument having effect under or by virtue of an enactment as in relation to an enactment; and references to a special enactment shall be construed accordingly.

## **102 Effect of this Part on other existing enactments or instruments**

- (1) The Secretary of State may by order make such provision amending, repealing, or preserving the effect of, any enactment passed or made before the commencement of this Part (not being a special enactment to which section 101(1), (2) or (3) applies) as appears to him appropriate in consequence of the provisions of this Part.

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- (2) Subject to any order under this section and (in the case of a public general Act) to any express amendment made by this Act, any such enactment which proceeds by reference to any provision of the Public Utilities Street Works Act 1950, or any other provision repealed by this Act in consequence of this Part, shall continue to have effect as if the provision referred to had not been repealed.
- (3) An order under this section may, in particular, make provision in relation to—
  - (a) enactments providing for the keeping of records of apparatus, and
  - (b) enactments providing for the giving of notice of proposed street works.
- (4) An order under this section may contain such transitional provisions and savings as appear to the Secretary of State to be appropriate.
- (5) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Except as mentioned in section 79(6), the provisions of Schedule 5 have effect with respect to the making of an order under this section in relation to a special enactment.
- (7) The provisions of this section apply in relation to an instrument having effect under or by virtue of an enactment as in relation to an enactment; and references to a special enactment shall be construed accordingly.

### **103 Former controlled land**

- (1) The following provisions apply with respect to land (not forming part of a street) in which immediately before the commencement of this Part there is apparatus placed by virtue of Schedule 1 to the Public Utilities Street Works Act 1950 (authorisation of works in certain land abutting the highway).
- (2) If any person having a sufficient interest in the land gives notice to the undertaker that he objects to the continuance of the powers and rights over the land given by that Schedule, those powers and rights shall cease to have effect at the end of the period of six months from the date on which the notice was given.

For this purpose a person has a sufficient interest in the land if he is an owner, lessee or occupier of the land having an interest greater than that of tenant for a year or from year to year.

- (3) The street authority shall indemnify the undertaker in respect of the costs reasonably incurred by him in or in connection with—
  - (a) the removal of apparatus rendered necessary by the cessation of his powers and rights under this section, and
  - (b) the execution of any works, or taking of any other measures, rendered necessary for the purposes of the supply or service for which the apparatus was used.
- (4) Where the land becomes part of the street after the commencement of this Part, any consent which would have been required for the placing of the apparatus in the street had it been placed there immediately after the land in question became part of the street shall be deemed to have been given unconditionally.
- (5) Subject to any exercise of the right conferred by subsection (2), the rights and powers of the undertaker under Schedule 1 to the Public Utilities Street Works Act 1950 continue unaffected by the repeal of that Act.

#### **104 Meaning of “prescribed” and regulations generally**

- (1) In this Part “prescribed” means prescribed by the Secretary of State by regulations, which may (unless the context otherwise requires) make different provision for different cases.
- (2) Regulations under this Part shall be made by statutory instrument which, unless provision to the contrary is made, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Regulations under this Part may provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time.

#### **105 Minor definitions**

- (1) In this Part—
  - “apparatus” includes any structure for the lodging therein of apparatus or for gaining access to apparatus;
  - “carriageway” and “footway” have the same meaning as in the Highways Act 1980;
  - “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
  - “in”, in a context referring to works, apparatus or other property in a street or other place includes a reference to works, apparatus or other property under, over, across, along or upon it;
  - “railway” includes a light railway other than one in the nature of a tramway (see the definition of “tramway” below);
  - “reinstatement” includes making good;
  - “special enactment” means an enactment which is not a public general enactment, and includes—
    - (a) any Act for confirming a provisional order,
    - (b) any provision of a public general Act in relation to the passing of which any of the Standing Orders of the House of Lords or the House of Commons relating to Private Business applied, and
    - (c) any enactment to the extent that it is incorporated or applied for the purposes of a special enactment;
  - “statutory right” means a right (whether expressed as a right, a power or otherwise) conferred by an enactment (whenever passed or made), other than a right exercisable by virtue of a street works licence;
  - “traffic” includes pedestrians and animals;
  - “traffic authority” and “traffic sign” have the same meaning as in the Road Traffic Regulation Act 1984;
  - “tramway” means a system, mainly or exclusively for the carriage of passengers, using vehicles guided, or powered by energy transmitted, by rails or other fixed apparatus installed exclusively or mainly in a street.
- (2) A right to execute works which extends both to a street and to other land is included in references in this Part to a right to execute works in a street in so far as it extends to the street.

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- (3) A right to execute works which extends to part of the street but not the whole is included in references in this Part to a right to execute works in a street; and in relation to such a right references in this Part to the street in which it is exercisable shall be construed as references to the part to which the right extends.
- (4) For the purposes of this Part apparatus shall be regarded as affected by works if the effect of the works is to prevent or restrict access to the apparatus (for example, by laying other apparatus above or adjacent to it).
- (5) Section 28 of the Chronically Sick and Disabled Persons Act 1970 (power to define “disability” and other expressions) applies in relation to the provisions of this Part as to the provisions of that Act.

## **106 Index of defined expressions**

The expressions listed below are defined or otherwise fall to be construed for the purposes of this Part in accordance with the provisions indicated—

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|   |                           |
|---|---------------------------|
| affected by (in relation to apparatus and works)                              | section 105(4)            |
| apparatus   | sections 89(3) and 105(1) |
| arbitration   | section 99                |
| bridge  | section 88(1)(a)          |
| bridge authority  | section 88(1)(b)          |
| carriageway   | section 105(1)            |
| costs   | section 96                |
| disability  | (see section 105(5))      |
| emergency works   | section 52                |
| enactment   | section 105(1)            |
| expenses  | section 96                |
| footway   | section 105(1)            |
| highway authority   | section 86(1)             |
| in (in a context referring to works, apparatus or other property in a street) | section 105(1)            |
| licensee (in relation to a street works licence)                              | section 50(3)             |
| local highway authority   | section 86(1)             |
| maintainable highway  | section 86(1)             |
| major bridge works  | section 88(2)             |
| major highway works   | section 86(3)             |
| major transport works   | section 91(2)             |
| notice  | section 97                |

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| prescribed  | section 104                                       |
| public sewer  | section 89(1)(a)                                  |
| railway   | section 105(1)                                    |
| reinstatement   | section 105(1) (and see sections 70(5) and 90(1)) |
| relevant authority (in relation to street works)      | section 49(6) (and see section 91(3))             |
| sewer   | section 89(1)(a)                                  |
| sewer authority                                       | section 89(1)(b)                                  |
| special enactment                                     | section 105(1)                                    |
| statutory right                                       | section 105(1)                                    |
| street  | section 48(1)                                     |
| street authority                                      | section 49(1)                                     |
| street managers                                       | section 49(4)                                     |
| street works  | section 48(3) (and see section 105(2) and (3))    |
| street works licence                                  | section 50(1)                                     |
| traffic   | section 105(1)                                    |
| traffic authority                                     | section 105(1)                                    |
| traffic sign  | section 105(1)                                    |
| tramway   | section 105(1)                                    |
| transport authority                                   | section 91(1)(a)                                  |
| transport undertaking                                 | section 91(1)(b)                                  |
| undertaker (in relation to street works or apparatus) | sections 48(4) and(5) and 89(4)                   |
| working day   | section 98(2)                                     |
| works for road purposes                               | section 86(2).                                    |

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