

## SCHEDULES

### SCHEDULE 8

#### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART III

##### AMENDMENTS OF THE ROADS (SCOTLAND) ACT 1984

- 81 In section 35(2)(a) of the Roads (Scotland) Act 1984 (provision of lighting by roads authorities) for the words “Public Utilities Street Works Act 1950” substitute “Part IV of the New Roads and Street Works Act 1991”.
- 82 In section 39(4) of the Roads (Scotland) Act 1984 (status of road humps)—
- (a) for the words from “Part II” to “those roads)” substitute “section 117 of the New Roads and Street Works Act 1991 (restricting road works following substantial works for roads purposes)”,
  - (b) for the words “section 21(1)(a) of that Act” substitute “subsection (3) of that section”, and
  - (c) for the word “Part” substitute “section”.
- 83 In section 56(3) of the Roads (Scotland) Act 1984 (control of works and excavations) for the words from “street works code” to “applies” substitute “provisions of Part IV of the New Roads and Street Works Act 1991 apply”.
- 84 In section 57(5) of the Roads (Scotland) Act 1984 (dangerous works) for the words from “street works code” to “applies” substitute “provisions of Part IV of the New Roads and Street Works Act 1991 apply”.
- 85 In section 59(6) of the Roads (Scotland) Act 1984 (control of obstructions in roads) for the words from “street works code” to “applies” substitute “provisions of Part IV of the New Roads and Street Works Act 1991 apply”.
- 86 In section 60 of the Roads (Scotland) Act 1984 (fencing and lighting of obstructions and excavations)—
- (a) in subsection (1), omit the words from “section 8” to “or to”;
  - (b) after subsection (5) insert the following subsection—
    - “(6) This section shall not apply to an undertaker executing road works, within the meaning of Part IV of the New Roads and Street Works Act 1991.”
- 87 In section 61 of the Roads (Scotland) Act 1984 (granting of permission to place and maintain etc. apparatus under a road)—
- (a) at the end of subsection (1) insert “; and such permission shall be in writing”,

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- (b) in subsection (4) for the words from “undertakers” to the end substitute “road works within the meaning of section 107 of the New Roads and Street Works Act 1991”, and
- (c) at the end of subsection (5) insert “nor does it apply to apparatus in respect of which permission has been granted under section 109 of the New Roads and Street Works Act 1991 to execute road works”.

88 After section 61 of the Roads (Scotland) Act 1984 there shall be inserted the following section—

**“61A Charge for occupation of road**

- (1) The Secretary of State may make provision by regulations requiring a person who occupies a public road by doing anything to which this section applies to pay a charge to the roads authority if the duration of the occupation exceeds the longer of the following periods—
  - (a) such period as may be prescribed; or
  - (b) such period as is agreed by the authority and the person to be reasonable or, in default of such agreement, is determined by arbitration to be reasonable in the circumstances.
- (2) This section applies to the occupation of a public road by doing anything which would require the consent or permission of a roads authority under any of the following provisions of this Act—
  - section 56 (works executed in or excavations under a public road);
  - section 58 (occupation of road for deposit of building materials and erection of scaffolding);
  - section 59 (placing or depositing anything in a road);
  - section 61 (placing, leaving, retaining, maintaining, repairing and reinstating apparatus in or under a public road); or
  - section 85 (depositing a builder’s skip).
- (3) For the purposes of paragraph (b) of subsection (1) above, in default of agreement, the roads authority’s view as to what is a reasonable period shall be acted upon pending the decision of the arbiter.
- (4) The regulations may provide that if a person applying to the roads authority for consent or permission under any of the provisions of this Act specified in subsection (2) above submits together with his application an estimate of the likely duration of the occupation, the period stated in the estimate shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.
- (5) The regulations may provide that if it appears to the person occupying the road that by reason of matters not previously foreseen or reasonably foreseeable the duration of the occupation—
  - (a) is likely to exceed the prescribed period,
  - (b) is likely to exceed the period stated in the previous estimate, or
  - (c) is likely to exceed the period previously agreed or determined to be a reasonable period,

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he may submit an estimate or revised estimate accordingly, and that if he does so any previous estimate, agreement or determination shall cease to have effect and the period stated in the new estimate shall be taken to be agreed by the roads authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.

- (6) The amount of the charge shall be determined in such manner as may be prescribed by reference to the duration and extent of the occupation and different rates of charge may be prescribed according to the purpose of the occupation and such other factors as appear to the Secretary of State to be relevant.
- (7) The regulations may make provision as to the time and manner of making payment of any charge.
- (8) The regulations shall provide that a roads authority may reduce the amount, or waive payment, of a charge in any particular case, in such classes of case as they may decide or as may be prescribed, or generally.
- (9) In this section “prescribed” means prescribed by the Secretary of State by regulations.”.

- 89 In section 85 of the Roads (Scotland) Act 1984 (control of builders' skips on road), in paragraph (a) of subsection (1) after the word “the” where it first occurs insert “written”.
- 90 In section 121(2) of the Roads (Scotland) Act 1984 (power to obtain road-making materials) for the words “Public Utilities Street Works Act 1950” substitute “Part IV of the New Roads and Street Works Act 1991”.
- 91 In section 132(3) of the Roads (Scotland) Act 1984 (saving for operators of telecommunications code systems) for the words from “Part II” to the end of that subsection substitute “Part IV of the New Roads and Street Works Act 1991”.
- 92 In section 135(1) of the Roads (Scotland) Act 1984 (restriction of power of local authority in whom a sewer is vested) for the words “Sections 133 and 134” substitute “Section 134”.
- 93 In subsection (2) of section 143 of the Roads (Scotland) Act 1984 (provisions as to regulations and orders)—
- (a) in sub-paragraph (ii) of paragraph (a) (orders subject to negative resolution) after the word “section” insert “8 or”,
  - (b) in sub-paragraph (i) of paragraph (b) (orders subject to affirmative resolution) after the word “Act” insert “or regulations made for the first time under section 61A of this Act”, and
  - (c) in sub-paragraph (ii) of paragraph (b), omit the words “8 or”.
- 94 In section 151(1) of the Roads (Scotland) Act 1984 (interpretation)—
- (a) in the definition of “proposed public road” for the words “Public Utilities Street Works Act 1950” substitute “Part IV of the New Roads and Street Works Act 1991”, and
  - (b) in the definition of “road” after the words “whatever means” insert “and whether subject to a toll or not”.

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- 95 In section 155(d) of the Roads (Scotland) Act 1984 (general adaptation of subordinate legislation) for the words from “Schedule 2” to the end of that paragraph substitute “section 146 of the New Roads and Street Works Act 1991”.
- 96 (1) In Schedule 1 to the Roads (Scotland) Act 1984 (procedures for making or confirming certain orders or schemes), after paragraph 14 there shall be inserted the following Part—

**“PART IIA**

TOLL ORDERS UNDER SECTION 27 OF THE  
 NEW ROADS AND STREET WORKS ACT 1991

- 14A (1) Where the Secretary of State proposes to make a toll order under section 27 of the New Roads and Street Works Act 1991, he shall prepare a draft of the order and shall publish in at least one newspaper circulating in the area in which the proposed special road is to be situated, and in the Edinburgh Gazette, a notice—
- (a) stating the general effect of the proposed order;
  - (b) naming a place in that area where a copy of the draft order may be inspected by any person free of charge at all reasonable hours during a period specified in the notice, being a period of not less than six weeks from the date of the publication of the notice; and
  - (c) stating that, within that period, any person may by notice to the Secretary of State object to the making of the order.
- (2) Where a toll order is submitted to the Secretary of State by a local roads authority, the authority shall publish in at least one newspaper circulating in the area in which the proposed special road is to be situated, and in the Edinburgh Gazette, a notice—
- (a) stating the general effect of the order as submitted to the Secretary of State;
  - (b) naming a place in that area where a copy of the order may be inspected by any person free of charge at all reasonable hours during a period specified in the notice, being a period of not less than six weeks from the date of the publication of the notice; and
  - (c) stating that, within that period, any person may by notice to the Secretary of State object to the confirmation of the order.
- (3) Where it is intended that the proposed toll order shall authorise the special road authority to assign their rights to charge and collect tolls, the Secretary of State or, as the case may be, the local roads authority shall make a statement containing such information as may be prescribed with respect to that assignation and the person to whom the rights are intended to be assigned and—
- (a) the statement shall be made available for inspection with the copy of the order to which the notice under subparagraph (1) or (2) relates; and
  - (b) the notice shall state that such a statement will be so available.

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(4) In sub-paragraph (3) “prescribed” means prescribed by the Secretary of State by regulations made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

14B. The Secretary of State may, if he is satisfied that in the circumstances of the case the holding of an inquiry is unnecessary, dispense with such an inquiry.

14C (1) Subject to paragraph 19 below, after considering objections (if any) to the proposed order which are not withdrawn and, where a local inquiry is held, the report of the person who held the inquiry, the Secretary of State may make or confirm the order either without modification or subject to such modifications as he thinks fit.

(2) The power under this paragraph to make or confirm the order includes power to make or confirm it so far as relating to part of the proposals contained in it (either without modification or subject to such modifications as the Secretary of State thinks fit) while deferring consideration of the remaining part.

14D (1) A toll order shall be subject to special parliamentary procedure where—  
(a) the relevant special road scheme provides for the appropriation by or transfer to the special road authority of an existing public road comprised in the route prescribed by the scheme, and  
(b) the toll order authorises the charging of tolls for the use of that existing road or any part of it,

unless the Secretary of State is satisfied as regards all classes of traffic entitled to use the existing road that another reasonably convenient route free of toll is available, or will be provided before the date on which the appropriation or transfer takes effect, and certifies accordingly.

(2) Where the Secretary of State proposes to give such a certificate, he shall—  
(a) give public notice of his intention to do so,  
(b) afford an opportunity to all persons interested to make representations and objections, and  
(c) cause a public local inquiry to be held if it appears to him to be expedient to do so, having regard to representations or objections made,

and before deciding whether to give the certificate he shall consider any representations and objections made and, if an inquiry has been held, the report of the person who held the inquiry.

(3) As soon as may be after giving a certificate, the Secretary of State shall publish in the Edinburgh Gazette, and in such other manner as he thinks best for informing persons affected, a notice stating that the certificate has been given.

14E. In this Part of this Schedule “proposed order” includes an order made by a local roads authority and submitted to the Secretary of State.”.

(2) In paragraph 18 of that Schedule, for the words “5 or 11” there shall be substituted the words “5, 11 or 14B”.

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- (3) In paragraph 19 of that Schedule—
- (a) in sub-paragraph (a), after “1” insert “or 14A”;
  - (b) in sub-paragraph (b), after “above” there shall be inserted the words “or held under paragraph 14B above”; and
  - (c) in sub-paragraph (c), for the words “and 13” there shall be substituted the words “, 13 and 14C”.
- 97 At the end of Schedule 2 to the Roads (Scotland) Act 1984 (validity and date of operation of certain orders and schemes), the following paragraph shall be inserted—
- “(6) The provisions of paragraphs 2 to 4 above apply in relation to a certificate under paragraph 14D(1) of Schedule 1 to this Act as in relation to a scheme or order to which this Schedule applies, subject to the following modifications—
- (a) the reference in paragraph 2 above to the notice required by paragraph 1 above shall be construed as a reference to the notice required by paragraph 14D(3) of that Schedule, and
  - (b) in paragraph 4 above for the words “made or confirmed” there shall be substituted the word “given” and the words from “and shall become operative” to the end shall be omitted.”.