



TRINIDAD AND TOBAGO
Act No. 3 of 1970

[L.S]

AN ACT to consolidate with amendments certain enactments relating to highways, streets and bridges in Trinidad and Tobago.

[Assented to 16th April, 1970]

BE IT ENACTED by the Queen's Most Excellent Majesty, Enactment
by and with the advice and consent of the Senate and
House of Representatives of Trinidad and Tobago, and
by the authority of the same, as follows :—

1. (1) This Act may be cited as the Highways Act, 1970. Short title and commencement
(2) This Act shall come into operation on such date as the Governor-General may appoint by proclamation published in the *Gazette*. 3/10/73
6/16/73.

PRELIMINARY

INTERPRETATION

Meaning of
"highway"
and other
provisions
as to inter-
pretation.

2. (1) "Highway" means the whole or part of any road, thoroughfare, street, trail, trace or way maintainable at the public expense and dedicated to the public use whether by way of express or implied grant, or by proclamation of the Governor-General or by a declaration made by a local authority or by the Minister in accordance with the provision in that behalf in Part IX, and includes bridges, culverts, footways, sidewalks and the adjoining reserves accessory to a highway.

(2) Where a highway passes over a bridge, that bridge shall be taken for the purposes of this Act to be a part of the highway.

(3) In this Act, "highway maintainable at the public expense" and any other expression defined by reference to a highway shall be construed in accordance with the foregoing provisions of this section.

(4) In this Act—

"adjoining" includes abutting on, and "adjoins" shall be construed accordingly;

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food), the use of land as grazing land, and "agricultural" shall be construed accordingly;

"apparatus" includes equipment, machinery, material and any structure constructed for the lodging therein of apparatus;

"approach", in relation to a bridge, means the surface of highway giving access thereto, together with any embankment, retaining wall or other work or substance supporting or protecting the surface;

"bridge" does not include a culvert, but, save as aforesaid, means a bridge or viaduct which is

part of a highway, and includes the abutments and any other part of a bridge but not the highway carried thereby;

“carriageway” means a way constituting or contained in a highway, being a way (other than a cycle track) over which the public have a right of way for the passage of vehicles;

“Chief Executive Officer” means in respect of—

(a) a Municipal Council, the Town Clerk;
and

(b) a County Council, the Chief Executive Officer;

“contravention” in relation to a condition, restriction or requirement, includes failure to comply with that condition, restriction or requirement, and “contravene” shall be construed accordingly;

“council” means—

(a) in relation to a municipality, the municipal council therefor;

(b) in relation to a county, the county council therefor;

“county” includes Tobago, but does not include any area within a municipality;

“culvert” means a structure with a span less than twelve feet long for carrying a watercourse below ground level under a carriageway or cycle track or footpath or footway;

“cycle track” means a way constituting or contained in a highway, being a way over which the public have the following, but no other rights of way, that is to say, a right of way on pedal cycles with or without a right of way on foot;

“electricity undertakers” means persons authorized by any enactment to carry on an undertaking for the supply of electricity or for the supply of natural gas as an adjunct to the supply of electricity;

“engineer” means—

(a) in relation to the council for the City of Port-of-Spain, the City Engineer or any subordinate engineer designated for a specific purpose;

- (b) in relation to the council for the borough of San Fernando, the Borough Engineer or any subordinate engineer designated for a specific purpose;
- (c) in the case of the council for the borough of Arima, the Town Superintendent or any subordinate officer designated for specific purposes relating to highways;
- (d) in relation to a county council, the Chief Technical Officer (Works) or any other engineer designated by the Minister of Works;

“footpath” means a highway not being a footway over which the public have a right of way on foot only;

“footway” means a way contained in a highway which also contains a carriageway, being a way over which the public have a right of way on foot only;

“gas undertakers” means persons authorized by any enactment to carry on an undertaking for the supply of gas or for the supply of electricity as an adjunct to the supply of gas;

“harbour undertakers” means persons authorized by any enactment to carry on a harbour undertaking;

“highway authority” means an authority responsible for the maintenance of a highway;

“highway maintainable at the public expense” means a highway which by virtue of section 17 or of any other enactment (whether contained in this Act or not) is a highway maintainable at the public expense;

“hours of darkness” means the time between sunset and sunrise;

“improvement” means the doing of any act under powers conferred by Part V (except section 32);

“land” includes any interest or right in, over or under land;

“lease” includes an underlease, and an agreement for a lease or underlease, but does not include an option to take a lease or a mortgage, and “lessee” shall be construed accordingly;

“local authority” means a municipal council or a county council;

“local highway authority” means a highway authority other than the Minister;

“made-up carriageway” means a carriageway, or a part thereof, which has been metalled or in any other way provided with a surface suitable for the passage of vehicles;

“magistrate’s court” means a magistrate sitting as a court of summary jurisdiction;

“maintenance” means the preservation and keeping in repair of a highway; and includes the making, cleaning and keeping open of ditches, gutters, drains and water-courses necessary for the maintenance of a highway and “maintain” and “maintainable” shall be construed accordingly;

“the Minister” means the Minister to whom responsibility for public works is assigned;

“municipal council” means the council of any of the following corporations, that is to say—

- (a) the Mayor, Aldermen and Citizens of the City of Port-of-Spain;
- (b) the Mayor, Aldermen and Burgesses of San Fernando;
- (c) the Mayor, Aldermen and Burgesses of Arima;

“owner”, in relation to any premises, means a person other than a mortgagee not in possession, who, whether in his own right or as trustee or agent for any other person, is entitled to the whole or any part of the rents and profits of the premises;

“pier undertakers” means persons authorized by any enactment to carry on a pier undertaking;

“premises” includes land and buildings;

“proposed highway” means land on which, in accordance with plans made or approved by the Minister, a highway authority is for the time being constructing or intending to construct a highway shown in the plans;

“public path creation agreement” means an agreement made under section 10;

“public path diversion order” has the meaning assigned to it by section 41;

“public path extinguishment order” has the meaning assigned to it by section 40;

“reconstruction”, in relation to a bridge, includes the construction of a new bridge and approaches thereto in substitution for the existing bridge and the approaches thereto;

“statutory undertakers” means persons authorized by any enactment to carry on any of the following undertakings, that is to say—

(a) dock, harbour, pier, or lighthouse undertaking, or

(b) an undertaking for the supply of electricity, gas, water, sewerage or telephone services,

and “statutory undertaking” shall be construed accordingly;

“street” includes the whole or any part of any highway and any road, lane, footpath, square, court, alley, or passage, whether a thoroughfare or not;

“telephone undertakers” means persons authorized by any enactment to carry on a telephone system and to provide telephone services;

“traffic” includes pedestrians and animals;

“traffic sign” has the meaning assigned to it under the Motor Vehicles and Road Traffic Ordinance;

“water and sewerage undertakers” means persons authorized by any enactment to carry on an undertaking for the supply of water or the provision of sewerage services.

(5) Any reference in this Act to property of dock undertakers, harbour undertakers or pier undertakers shall, where the undertakers are the Port Authority, be taken as a reference to property of the Authority held or used by it wholly or mainly for the purposes of so much of its undertaking as consists of the carrying on of a dock undertaking, a harbour undertaking, or a pier undertaking.

PART I

HIGHWAYS

3. (1) On the coming into operation of this Act, the Minister shall, by Order, published in the *Gazette*, classify the highways in Trinidad and Tobago in accordance with the classification set out as follows:—

Classification
of highways.

- (a) main roads;
- (b) special roads;
- (c) secondary roads;
- (d) local roads;
- (e) streets;
- (f) development roads,

and the Minister may by Order published in the *Gazette* add to or remove a highway from a class.

(2) In this Act—

Definitions

“development road” means—

- (a) a highway that is a trace, trail or Crown trace constructed for the purpose of agricultural or other development; and
- (b) is classified as such by Order made under this section.

“local road” means a highway that is not classified as a main road, special road, secondary road, street or development road;

“main road” means a highway that—

- (a) in the opinion of the Minister is of prime importance by reason of being a main channel of communication throughout Trinidad and Tobago; and
- (b) is classified as such by Order made under this section;

“secondary road” means a highway that—

- (a) in the opinion of the Minister is of secondary importance to a main road; and
- (b) is classified as such by Order made under this section;

“special road” means a main road constructed or to be constructed that—

- (a) in the opinion of the Minister is to be reserved for the use of traffic of a class prescribed by Order; and
- (b) is classified as such by Order made under this section;

“street” means a highway that is classified as such by Order made under this section;

Minister to
keep highway
system in
review

4. (i) The Minister shall keep under review the highway system in Trinidad and Tobago, and, if he is satisfied that it is expedient for the purpose of extending, improving or reorganizing that system that any highway, or any highway proposed to be constructed should be reclassified, he may, by Order, published in the *Gazette* direct that such highway or proposed highway shall be so re-classified as from such date as may be specified in that behalf in the Order, and the Order shall have effect accordingly.

(2) If an Order made under section 3 classifying a highway proposed to be constructed is revoked or varied by a subsequent order made at any time before the date on which the highway is opened for through traffic, the revoking or varying order shall not be deemed for the purposes of section 7 to be an order directing that

the road shall cease to be a road for which the Minister is the highway authority unless the Minister specifically so directs.

(3) Where a main road intersects a highway that is not a main road, the continuation of the main road across the highway so intersected is the main road.

5. (1) The Minister may by an Order made under this section in relation to a highway that is a main road make provision for any of the following purposes, that is to say—

(a) for stopping up, diverting, improving, raising, lowering or otherwise altering a highway that crosses or enters the route of the main road or is or will be otherwise affected by the construction or improvement of the main road;

(b) for constructing a new highway for purposes connected with any such alteration as aforesaid or for any other purpose connected with the main road or its construction, and for closing after such period as may be specified in the order any new highway so constructed for temporary purposes;

(c) for transferring to such highway authority as may be specified in the order, as from such date as may be so specified, a highway constructed by the Minister in pursuance of the order or any previous order made under this section;

(d) for any other purpose incidental to the purposes aforesaid.

(2) An Order authorizing the stopping up of a highway shall not be made under this section unless the Minister is satisfied that another reasonably convenient route is available or will be provided before the highway is stopped up.

(3) An Order under this section has no effect unless it is published in the *Gazette*.

Powers of
Minister as
respect
highways
crossing or
joining
main roads

PART II

HIGHWAY AUTHORITIES

Highway
authorities

6. (1) The Minister is the highway authority for highways classified by Order under section 3 as main roads, special roads, secondary roads and any other highway constructed by him and dedicated by him to the public use by notice published in the *Gazette* and classified as a main road, special road or a secondary road.

(2) A municipal council is the highway authority for all highways in the municipality classified by Order under section 3 as streets, whether highways maintainable at the public expense, or not, not being highways for which under subsection (1) the Minister is the highway authority.

(3) The county council is the highway authority for all highways within the county classified by Order under section 3 as local roads, streets and development roads whether highways maintainable at the public expense or not, not being highways for which the Minister or a municipal council is the highway authority.

(4) Subsections (2) and (3) are subject as respects any highway, to any provision of this Act, or of any Order made under this or any other Act, by virtue of which a council other than the council specified in either of those subsections as the highway authority for that highway is the highway authority therefor.

Highway
authority for
road which
ceases to be a
main road

7. Where by virtue of subsection (1) of section 4 and an Order made under section 3, a road ceases to be a road for which the Minister is the highway authority then, as from the date specified in that behalf in the Order, the highway authority, for that road is—

- (a) where the road is situated in a municipality, the municipal council;
- (b) where the road is situated in a county, the county council.

Local highway
authority may
be highway
authority for
certain high-
ways constructed
by Minister

8. The Minister may by Order published in the *Gazette* transfer to a local highway authority any highway constructed by him within the area of that local authority and the Order has effect as from such date as may be specified in the Order.

PART III

CREATION OF HIGHWAYS

9. (1) The Minister may construct new highways whenever he deems it expedient so to do. Construction of new highways

(2) A local highway authority may with the approval of the Minister construct new highways.

(3) Where a new highway to be constructed by a local highway authority will connect with or intersect or enter the route of a highway for which the Minister is the highway authority, such connection with, or intersection or entry shall not be made unless the manner in which it is to be made has been approved by the Minister.

10. (1) A local highway authority may with the approval of the Minister enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a footpath over land in its area. Creation of footpath by agreement

(2) An agreement made under subsection (1) (in this Act referred to as a "public path creation agreement") shall be on such terms as to payment or otherwise as may be specified in the agreement, and may, if it is so agreed, provide for the dedication of the footpath subject to limitations or conditions affecting the public right of way thereover.

(3) Where a public path creation agreement has been made, it shall be the duty of the authority which is a party to such agreement to take all necessary steps for securing that the footpath is dedicated in accordance therewith, and for this purpose a notice to that effect signed by the Chief Executive Officer of the authority and the person dedicating the footpath and published in the *Gazette* is evidence of the dedication.

11. (1) Where it appears to a local authority that there is need for a footpath over land within the area of such authority and the authority is satisfied that, having regard— Compulsory powers for creation of footpaths

(a) to the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons residents in the area; and

(b) to the effect which the creation of the path would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 13,

it is expedient that the path or way should be created, the authority may, by order (in this Act referred to as a "public path creation order") made by it and submitted to and confirmed by the Minister, create a footpath over the land.

(2) A right of way created by a public path creation order may be either unconditional or subject to such limitations or conditions as may be specified in the order.

(3) A public path creation order shall be in such form as may be prescribed by regulations made by the Minister, and shall contain a map, and description of the land over which a footpath is thereby created.

First
Schedule

(4) The First Schedule to this Act has effect in relation to the making, confirmation and validity of public path creation orders.

Exercise of
powers by
Minister

12. (1) Where it appears to the Minister in a particular case that there is need for a footpath over land in any area and he is satisfied as to the matters set out in paragraphs (a) and (b) of subsection (1) of section 11, the Minister may, after consultation with the appropriate authority, direct such authority to make and submit to him a public path creation order creating the footpath or may himself make the order.

(2) In this section, "the appropriate authority" in relation to the making of a public path creation order, means the authority upon whom power to make the order is conferred by section 11.

Compensation
for loss
caused by
public path
creation order

13. (1) Subject to the following provisions of this section, if, on a claim made in accordance with this section, it is shown that the value of the interest of a person in land has depreciated, or that a person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of a public path creation order made under section 11 or 12, the authority by whom the order was made shall pay to the person compensation equal to the amount of the depreciation or damage.

(2) A claim for compensation under this section shall be made within such time and in such manner as may be prescribed by regulations made by the Minister, and shall be made to the authority by whom the order was made.

(3) For the purposes of the application of this section to an order made by the Minister under section 12, references in this section to the authority by whom the order was made shall be construed as references to the Minister.

(4) Nothing in this section shall confer on any person, in respect of a footpath created by a public path creation order, a right to compensation for depreciation of the value of an interest in land, or for disturbance in his enjoyment of land, not being land over which the path was created or land held therewith, unless the creation of the path would have been actionable at his suit if it had been effected otherwise than in the exercise of statutory powers.

(5) In this section, "interest", in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an interest in land or by virtue of a licence or agreement.

14. (1) Where a way over any land, not being a way of such a character that use thereof by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way shall be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

Dedication
of way as
highway
presumed after
public use for
twenty years

(2) The period of twenty years referred to in subsection (1) shall be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) or otherwise.

(3) Where the owner of the land over which any such way as aforesaid passes—

(a) has erected in such manner as to be visible to persons using the way, a notice inconsistent with dedication of the way as a highway, and

(b) has maintained the notice after the date on which it was erected, the notice shall, in the absence of proof of a contrary intention, be sufficient evidence to negative the intention to dedicate the way as a highway.

(4) Where a notice erected as mentioned in subsection (3) is subsequently torn down or defaced, a notice given by the owner of the land to the council of the municipality, or, as the case may be, to the council of the county, in which the way is situated that the way is not dedicated as a highway shall, in the absence of proof of a contrary intention, be sufficient evidence to negative the intention of the owner of the land to dedicate the way as a highway.

(5) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land has, notwithstanding the existence of the tenancy, the right to place and maintain such a notice as is mentioned in subsection (3), so, however, that no injury is done thereby to the business or occupation of the tenant.

(6) An owner of land may at any time deposit with the municipal council or, as the case may be, with the county council in which that land is situated—

(a) a map of that land on a scale of not less than 1: 10,000 feet, and

(b) a statement indicating what ways (if any) over that land he admits to have been dedicated as highways,

and, in any case in which such a deposit has been made, statutory declarations made by that owner or by his successors in title and lodged by him or them with such councils as aforesaid at any time within six years from the date of the deposit or within six years from the date on which any previous declaration was last lodged under this section, to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, shall, in the absence of proof of a contrary intention, be sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

(7) For the purposes of the foregoing provisions of this section "owner", in relation to any land, means a person who is for the time being entitled to dispose of the fee simple in the land.

(8) Nothing in this section shall authorize any corporation or other body or person in possession of land for public or statutory purposes to dedicate a way over that land as a highway if the existence of a highway would be incompatible with those purposes.

(9) Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less period than twenty years, or being presumed or proved under any circumstances under which it might have been presumed or proved immediately before the commencement of this Act.

(10) Nothing in this section shall affect the operation of the Three Chains (Tobago) Ordinance.

Ch. 29. No. 9

15. The person entitled to the remainder or reversion immediately expectant upon the determination of a tenancy for life, or *pour autre vie*, in land has the like remedies by action for trespass or an injunction to prevent the acquisition by the public of a right of way over that land as if he were in possession thereof.

Protection of rights of reversions

16. Without prejudice to the foregoing provisions of this Part a street which is not a highway and land to which section 105 applies may become a highway maintainable at the public expense by virtue of a declaration made by a local authority or by the Minister in accordance with the provisions in that behalf contained in Part IX.

Conversion of private street into highway

PART IV

MAINTENANCE OF HIGHWAYS

Highways maintainable at public expense

17. (1) For the avoidance of doubt it is hereby declared that after the commencement of this Act, no duty with respect to the maintenance of highways lies on the inhabitants at large of any area.

Highways maintainable at public expense

(2) The following highways are for the purposes of this Act highways maintainable at the public expense, that is to say—

- (a) a highway which immediately before the commencement of this Act was repairable by the Minister or a local authority;

- (b) a highway constructed by a highway authority after the commencement of this Act, otherwise than on behalf of some other person not being a highway authority;
- (c) a highway, being a street that by virtue of the exercise of the power under section 16 by a local authority or the Minister, becomes a highway; and
- (d) a highway, being a footpath, created after the commencement of this Act in consequence of a public path creation order or a public path diversion order or dedicated after the said commencement in pursuance of a public path creation agreement.

(3) On the commencement of this Act the Minister shall cause to be made and published in the *Gazette*, a list of the highways specified in paragraph (a) of subsection (2) and shall thereafter keep corrected up to date and shall publish a list of all the highways specified in the said subsection.

(4) Every local authority shall cause to be made, and shall keep corrected up to date, a list of the local roads, streets and development roads within the area of the authority which are highways maintainable at the public expense; and every list made under this subsection shall be kept deposited at the offices of the authority by whom it was made and may be inspected by any person free of charge at all reasonable hours.

(5) For the purposes of this section, a road shall be deemed to have been repairable by a local authority if in purported exercise of a power under a law in force immediately before the commencement of this Act, it was placed under the control of the authority.

Methods whereby highways may become maintainable at public expense

Power of highway authorities to adopt highway by agreement

18. (1) Subject to the following provisions of this section, a local highway authority may with the approval of the Minister agree with any person to undertake the maintenance of—

- (a) a private street which that person, being a person having the necessary power in that behalf, is willing 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.

(2) 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 or road to which the agreement relates, and other relevant matters as the authority making the agreement think fit.

Maintenance of highway maintainable at public expense

19. (1) The authority which is for the time being the highway authority for a highway maintainable at the public expense is, subject to subsection (2), under a duty to maintain that highway.

Duty to maintain highways maintainable at public expense

(2) An order made by the Minister under section 3 directing that a highway proposed to be constructed by him shall be classified as a main road may direct that—

(a) a part of a highway maintainable at the public expense by some other highway authority being a part which crosses the route of the highway to be so constructed; or

(b) any highway so maintainable which becomes a main road by virtue of the order,

shall, notwithstanding anything in the provisions of subsection (1), be maintained by that authority until such date, not being later than the date on which the new route is opened for the purposes of through traffic, as may be specified in a notice given by the Minister to that authority.

20. (1) For the purpose of repairing highways maintainable at the public expense, a highway authority may, with respect to the getting of materials search for, dig, get and carry away gravel, sand, stone and other materials in and from any land (including the bed of any river flowing through such land), except that the authority shall not in the exercise of its powers under this subsection—

Power to get materials for repair of publicly maintainable highways

- (a) divert or interrupt the course of any river, or dig or get materials out of any river within one hundred yards above or below a bridge, dam or weir;
 - (b) remove such quantity of stones or other materials from any sea beach as to cause damage by erosion inundation or increased danger of encroachment by the sea;
 - (c) exercise its powers under this section in any cultivated land or in the immediate neighbourhood of any dwelling house, agricultural buildings, works or factories.
- (2) A highway authority shall not exercise the powers under this section—
- (a) unless it serves not less than seven days notice on the owner of the land and has within twenty-one days of the date of such service obtained his consent thereto; or
 - (b) without an order of a magistrate authorizing it so to do in cases where the owner of the land does not consent thereto.
- (3) An authority which exercises any of the powers conferred by this section shall pay compensation for the value of materials obtained by the authority and compensation to persons interested in any land for any damage done thereto by the carriage of such materials obtained by the authority.
- (4) A local highway authority shall not exercise the powers under this section outside of the area in which such authority operates.

Recovery by highway authorities of expenses due to extraordinary traffic of highways

21. (1) Where, in the case of a highway maintainable at the public expense, it appears to the highway authority, that extraordinary expenses have been incurred by it in maintaining the highway by reason of the damage caused by excessive weight passing along the highway, or other extraordinary traffic thereon, such authority may recover from any person by or in consequence of whose order the traffic has been conducted the amount of such expenses as may be proved to the satisfaction of the court having cognizance of the case to have been incurred by the highway authority by reason of the damage arising from such extraordinary traffic.

(2) Notwithstanding anything contained in the Motor Vehicles and Road Traffic Ordinance, and any regulations made thereunder respecting the maximum permitted weight

for a vehicle a person who intends to bring onto the highway excessive weight or other extraordinary traffic which is likely to cause damage to such highway shall, before so doing, obtain the permission of the highway authority at whose expense the highway is maintainable, and subject to entering into an agreement with the highway authority for the payment to the authority of a sum by way of a composition of liability in respect of such weight or traffic, the authority may permit such person to bring such traffic thereon.

(3) Notwithstanding subsection (1) where a sum has been agreed on under subsection (2), the person is liable to pay the agreed sum to the highway authority and if he does so he shall not be liable to proceedings for the recovery of expenses under subsection (1).

(4) The sums recoverable under this section shall be recoverable in the High Court, or, if the claim does not exceed two thousand five hundred dollars in the Petty Civil Court in the district where the highway or any part thereof is situated; but proceedings for the recovery of any such sums shall be commenced within twelve months after the time at which the damage has been done or where there is an agreement within two years of the entering into such agreement.

PART V

IMPROVEMENT OF HIGHWAYS

General Power of Improvement

22. (1) The provisions of this Part have effect for the purpose of empowering or requiring highway authorities to improve highways. General power
of improvement

(2) The Minister may by order transfer to a local authority any highway constructed by him within the area of that local authority and such order shall have effect from such date as may be specified in the order.

(3) A highway authority may alter or remove any works executed by it under this Part.

Dual carriage-
ways and
roundabouts

Dual carriageways, roundabouts and cycle tracks

23. (1) A highway authority may, in relation to a highway maintainable by it at the public expense, being a highway which consists of or contains a made-up carriageway, construct and maintain works in that carriageway—

- (a) along any length of the highway, for separating a part of the carriageway which is to be used by traffic moving in one direction from any part of the carriageway which is to be used (whether at all times or not) only by traffic moving in any other direction;
- (b) at cross roads or other junctions, for regulating the movement of traffic.

(2) The powers conferred by subsection (1) shall include power to pave, grass or otherwise cover such works as aforesaid or any part of them, to erect pillars, walls, rails or fences on, around or across them or any part of them, to plant on such works trees, shrubs and other vegetation either for ornament or in the interests of safety and to cause such works to be lighted.

(3) A highway authority may alter or remove any works constructed by it under this section.

Cycle tracks
and foot-
ways

24. (1) Without prejudice to section 9, a highway authority may, in or by the side of a highway maintainable by it at the public expense, being a highway which consists of or contains a made-up carriageway—

- (a) construct a cycle track as part of such highway;
- (b) provide a proper and sufficient footway as part of such highway in any case where it considers this necessary or desirable for the safety or accommodation of pedestrians.

(2) Without prejudice to the powers of the Minister under this Act to improve main roads by the construction of cycle tracks and footways for use in connection therewith, or to provide such tracks or ways as part of any main road which he is authorized to construct, the power to make orders under section 4 may be exercised in relation to any cycle track or footpath proposed to be constructed on land separated by intervening land from the main road in connection with which it is to be used.

(3) A highway authority may also light any cycle track or footway provided by it under this section.

(4) The powers conferred by this section to provide any works shall include power to alter or remove them.

25. A highway authority shall pay compensation to any person who has sustained damage by reason of the execution by it of works under sections 23 and 24. Compensation

Widths

26. (1) A highway authority may widen any highway for which it is the authority and may for that purpose agree with a person having power in that behalf for the dedication of adjoining land as part of the highway. Widening of highways

(2) A local highway authority has the like power to enter into a public path creation agreement under section 10, or to make a public path creation order under section 11, for the purpose of securing the widening of an existing footpath as it has for the purpose of securing the creation of a footpath and references in those sections to the dedication or creation of a footpath shall be construed accordingly.

27. (1) Where in the opinion of a highway authority— Power to prescribe improvement line for widening streets

(a) a highway, being a highway maintainable by it at the public expense is narrow or inconvenient, or without any sufficiently regular boundary line; or

(b) it is necessary or desirable that such a highway should be widened,

the authority may prescribe in relation to any or both sides of such highway, or at or within a distance of fifteen yards from any corner of the highway, a line to which the highway is to be widened (in this section referred to as an "improvement line").

(2) Where an improvement line prescribed under this section in relation to any highway is in force, then, subject to subsection (3), no new building shall be erected and no permanent excavation below the level of the highway shall be made, nearer to the centre line of the highway than the improvement line, except with the consent of the authority who prescribed the line; but the prohibition imposed by this subsection does not affect any right of statutory undertakers to make an excavation for the purpose of laying, altering, maintaining or renewing any main pipe, electric line, cable, duct, or other work or apparatus.

(3) Where an authority has prescribed an improvement line under this section, a person aggrieved by the

decision to prescribe the line or by the refusal of consent under subsection (2) or by any condition attached thereto may appeal to a magistrate's court.

(4) A person who contravenes the provisions of this section is, without prejudice to any other proceedings which may be available against him, guilty of an offence and liable in respect thereof to a fine not exceeding two hundred and fifty dollars, and, if the offence in respect of which he was convicted is continued after the conviction, he is guilty of a further offence and liable in respect thereof to a fine not exceeding twenty-five dollars for each day on which the offence is so continued.

(5) Where in the opinion of a highway authority an improvement line prescribed by it under this section, or any part of such a line, is no longer necessary or desirable, it may revoke the line or that part thereof.

Second
Schedule

(6) The Second Schedule has effect in relation to the prescription of an improvement line under this section and to the revocation of such a line or any part thereof.

(7) Any person whose property is injuriously affected by the prescribing of an improvement line under this section shall, subject to subsection (8), be entitled to recover from the authority who prescribed the line compensation for the injury sustained.

(8) No person is entitled to compensation on account of any building erected, contract made, or other thing done, after the date on which a plan showing the improvement line was deposited in accordance with the provisions of paragraph 3 of the Second Schedule, not being work done for the purpose of finishing a building the erection of which had begun before that date, or of carrying out a contract made before that date.

(9) Nothing in this section applies to or affects, without the consent of the undertakers concerned—

- (a) any property belonging to the Port Authority or the Public Transport Corporation;
- (b) any land or property owned and used by the following undertakers for the following purposes, that is to say, by gas undertakers for the manufacture or storage of gas, by electricity undertakers for the generation of electricity, or by water undertakers as a pumping station or reservoir for water.

Any question arising under this subsection whether the withholding of a consent is unreasonable shall be determined by the Minister.

(10) In this section "building" includes any erection of whatsoever material and in whatsoever manner constructed and any part of a building, and "new building" includes any addition to an existing building.

28. Where a highway maintainable at the public expense comprises footways and a carriageway, the highway authority therefor may vary the relative widths of the carriageway and of any footway.

Variation of widths of carriageways and footways

Levels

29. A highway authority may, in relation to a highway maintainable by it at the public expense—

Alteration of levels

- (a) execute works for raising, lowering or otherwise altering the level of the highway as it thinks fit;
- (b) construct a bridge to carry a highway maintainable at the public expense;
- (c) execute works for cutting off the corners of the highway.

30. (1) Where, in the case of a highway maintainable at the public expense, the authority for such highway deems it necessary for the prevention of danger arising from obstruction to the view of persons using the highway to impose restrictions with respect to any land at or near any corner or bend in the highway or any junction of the highway with a road to which the public has access, the authority may, subject to the provisions of this section, serve a notice, together with a plan showing the land to which the notice relates, on the owner or occupier of the land, directing him to alter any wall (not being a wall forming part of the structure of a permanent edifice), fence, hoarding, paling, tree, shrub or other vegetation thereon so as to cause it to conform with any requirements specified in the notice.

Prevention of obstruction to view at corners

A notice under this subsection may at any time be withdrawn by the authority by whom it was given.

(2) A person on whom a notice has been served under subsection (1) may, within fourteen days from the date of the receipt thereof by him, give notice to the authority by whom that notice was served objecting to any requirement specified therein and stating reasons for

his objections, and thereupon the question whether the notice is to be withdrawn as respects any requirement objected to shall be determined by a magistrate's court.

(3) In determining a question under subsection (2) the court may order that the requirement objected to shall have effect subject to such modifications, if any, as it may direct.

(4) A person on whom a notice is served under subsection (1) has power, notwithstanding anything in any conveyance, or in any lease or other agreement, to do all such things as may be necessary for complying with the requirements of the notice.

(5) Subject to the provisions of this section, a person on whom a notice has been served under subsection (1) and who contravenes the provisions of the notice, is, without prejudice to any other proceedings which may be available against him, guilty of an offence and liable in respect thereof to a fine not exceeding two hundred and fifty dollars; and, if the offence in respect of which he was convicted is continued after the conviction, he is guilty of a further offence and liable in respect thereof to a fine not exceeding twenty-five dollars for each day on which the offence is so continued.

(6) A person who—

(a) sustains loss in direct consequence of any requirement of a notice served under subsection (1), or

(b) proves that his property is injuriously affected by restrictions imposed by a notice served thereunder,

is, if he makes a claim within six months from the date of service of the notice, or the determination of any objection under subsection (2), as the case may be entitled to recover from the authority by whom the notice was served compensation for the injury sustained.

(7) A person on whom a notice is served under subsection (1) is entitled to recover from the authority by whom the notice was served any expenses reasonably incurred by him in carrying out any directions contained in the notice and if any question arises as to whether any expenses were reasonably incurred by any person in carrying out any directions contained in a notice served under subsection (1), it shall be determined by a Petty Civil court.

(8) Any two or more authorities on whom powers are conferred by this section may by agreement exercise those powers jointly, and the agreement may provide for the apportionment of any expenses incurred thereunder.

(9) In this section—

“building” includes any erection of whatsoever material and in whatsoever manner constructed, and any part of a building;

“wall” includes any partition of whatsoever material constructed and any bank.

Trees, shrubs and verges

31. (1) Subject to the provisions of this section, a highway authority may, in a highway maintainable by it at the public expense, plant trees and shrubs and lay out grass verges, and may erect and maintain guards or fences and otherwise do anything expedient for the maintenance or protection of trees, shrubs and grass verges planted or laid out by it under this subsection and may remove any grass verge and any guard, fence or other thing provided under this subsection.

Powers of highway and local authorities to plant trees, lay out grass verges, &c.

(2) Subject to the following provisions of this section, a highway authority may exercise the like powers as are conferred by subsection (1) on any land acquired in exercise of powers conferred on it by subsection (1) of section 115, notwithstanding that the land does not form part of a highway.

(3) A local authority, if it is not the highway authority for a highway maintainable at the public expense in its area, may, with the consent of the Minister and of the highway authority therefor, exercise with respect to that highway any of the powers conferred by subsection (1) on the highway authority.

(4) No tree, shrub, grass verge, guard or fence shall be planted, laid out or erected under this section, or, if planted, laid out or erected thereunder, allowed to remain, in such a situation as to hinder the reasonable use of the highway by any person entitled to the use thereof, or so as to be a nuisance or injurious to the owner or occupier of premises adjacent to the highway.

(5) If damage is caused to the property of any person by anything done in exercise of the powers conferred by this section, that person is, unless his negligence

caused the damage, entitled to recover compensation therefor from the authority by whom the powers were exercised; except that if that person's negligence contributed to the damage, compensation shall be reduced accordingly.

(6) Any two or more highway authorities on whom powers are conferred by this section may by agreement exercise those powers jointly, and the agreement may provide for the apportionment of any expenses incurred thereunder in such proportions as the Minister may determine.

Lighting

Power of
Minister to
light main
roads

32. (1) If the Minister considers that a main road or a special road should be lighted or better lighted, he may enter into and carry into effect agreements with a person having power in that behalf for the supply for that purpose of electricity and may provide such lamps, lampposts and other materials and apparatus as he thinks necessary for the purpose.

(2) A local highway authority may also with the approval of the Minister enter into and carry into effect agreements with a person having power in that behalf for the supply for that purpose of electricity and may provide such lamps, lamp-posts and other materials and apparatus for the purpose of lighting any highway for which it is the authority that it considers should be lighted or better lighted.

Fences and Boundaries

Power to
fence
highways

33. (1) Subject to the provisions of this section, a highway authority may erect and maintain fences or posts for the purpose of preventing access to—

- (a) a highway maintainable by it at the public expense;
- (b) land on which in accordance with plans made or approved by the Minister it is for the time being constructing or intending to construct a highway shown in the plans which is to be a highway so maintainable; or
- (c) land on which in pursuance of an order under section 4, it is for the time being constructing or intending to construct a highway,

and may also alter or remove a fence or post erected by it under this section.

(2) The powers conferred by this section shall not be exercised so as to—

- (a) interfere with a fence or gate required for the purpose of agriculture; or
- (b) obstruct a public right of way; or
- (c) obstruct any means of access the construction, formation or laying out of which was not in contravention of the requirements of any enactment.

(3) The powers conferred by this section may with the consent of the Minister be exercised as respects a highway being a main road or special road by the county council or the council of the municipality in which that highway is situated.

34. A highway authority may erect and maintain, in a highway, for which it is the authority, posts or stones to mark the boundary of the highway and may alter or remove any post or stone so erected by it.

Provision
of highway
boundary
posts

Reconstruction, Improvement, &c., of Bridges

35. (1) Without prejudice to any powers vested in it under this Part, a highway authority may with the approval of the Minister reconstruct a bridge, being a highway maintainable by it at the public expense, either on the same site or on a new site within such distance of the first-mentioned site as may be necessary and may also with the like approval execute works for the conversion of the highway into a metalled highway.

Reconstruction
of bridges and
metalling of
highways

(2) For the purposes of this section, the highway carried by a bridge, and the approaches to the bridge, shall be deemed to be part of the bridge.

(3) In this section “approaches” in relation to a bridge, means approaches for the maintenance of which the highway authority is responsible and which connect the bridge with a highway maintainable at the public expense.

Miscellaneous Improvements

36. (1) The Minister or a local highway authority may, for the purpose of draining it or of otherwise preventing surface water from flowing on to a highway for which it

Drainage of
highways

is the highway authority, do all or any of the following, that is to say—

- (a) construct or lay, in the highway or in land adjoining or lying near to the highway, such ditches, gutters, drains, watercourses, bridges, culverts, tunnels or pipes as it considers necessary;
- (b) erect barriers in the highway or in such land as aforesaid to divert surface water into or through any existing ditch, gutter, drain, watercourse, bridge, culvert, tunnel or pipe;
- (c) scour, cleanse and keep open all ditches, gutters, drains or watercourses situated in the highway, or in such land as aforesaid.

(2) If the owner or occupier of any land suffers damage by reason of the exercise by a highway authority of its powers under subsection (1), the authority shall pay him compensation therefor.

(3) If a person, without the consent of the highway authority, alters, obstructs or interferes with a ditch, gutter, drain, watercourse, bridge, culvert, tunnel, pipe or barrier which has been constructed, laid or erected by the authority in exercise of its powers under subsection (1), or which is under its control, the authority may carry out any work or repair or reinstatement necessitated by his action and may recover the expenses reasonably incurred by it in so doing from him, and, without prejudice to its right to exercise that power, that person is guilty of an offence and liable in respect thereof to a fine not exceeding three times the amount of those expenses.

(4) Without prejudice to his powers under the foregoing provisions of this section, the Minister may, for the purpose of the drainage of a main road, exercise any powers exercisable by a local authority under the Public Health Ordinance for the purposes of the drainage of highways within the area of that authority.

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(5) In this section "owner", in relation to any land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple in the land, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the land under a lease the unexpired term whereof exceeds three years.

37. (1) A highway authority may provide in connection with any highway for which it is the highway authority, being a highway which is subject to flooding to any considerable depth, graduated posts or stones in any case where it considers the provision thereof necessary or desirable for the purpose of indicating the depth of water covering the highway and may alter or remove any post or stone provided by it under this section.

Provision of posts to indicate depth of flood water

(2) A highway authority may also in relation to a highway maintainable by it at the public expense, treat the highway for mitigating the nuisance of dust.

PART VI

STOPPING UP AND DIVERSION OF HIGHWAYS

38. If it appears to the Minister either on the application of a local authority or otherwise, that a highway has become unnecessary, he may by Order published in the *Gazette* declare that the highway shall cease to be a highway and upon the Order having effect the way shall cease to be a highway and may be permanently stopped up or closed.

Permanent stopping up of highways

39. (1) Whenever—

- (a) a highway has become dangerous; or
- (b) any works or repairs are being carried out on a highway,

the highway authority may order—

- (c) that vehicular traffic on the highway shall cease; or
- (d) that the highway be closed,

during such period as the highway authority may deem requisite for ensuring the public safety or for the proper execution of any such works or repairs.

Power to close roads temporarily

(2) Notice of every order under this section shall be publicly displayed in or near the highway to which it relates, and, except in an emergency, published in the *Gazette*.

(3) While a highway is so closed the highway authority shall provide and keep in repair an alternative route for traffic and for property owners who cannot obtain access to their property by reason of the closing of such

way, and any expenditure incurred in providing such alternative route shall be treated as part of the cost of the work or repairs.

(4) An order under this section may in the case of a local highway authority be made by—

- (a) where the authority is a municipal council, the Mayor;
- (b) where the authority is a County Council, the Chairman.

Stopping up
of footpaths

40. (1) Where it appears to a local highway authority that it is expedient that a footpath in its area (not being a main road or a special road) should be stopped up on the ground that it is not needed for public use, the authority may by order (in this Act referred to as a "public path extinguishment order") made by it and submitted to and confirmed by the Minister extinguish the public right of way over the path or way.

(2) The Minister shall not confirm a public path extinguishment order unless he is satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him that the path would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects lands served by the path, account being taken of the provisions as to compensation contained in section 12 as applied by subsection (2) of section 43.

(3) A public path extinguishment order shall be in such form as may be prescribed by the Minister, and shall contain a map and a description of the land over which the public right of way is thereby extinguished.

First Schedule

(4) The First Schedule has effect in relation to the making, confirmation and validity of public path extinguishment orders.

(5) Where in accordance with regulations made under paragraph 3 of the First Schedule proceedings preliminary to the confirmation of a public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order or of a public path diversion order made under section 41 then, in considering—

- (a) under subsection (1) whether the path or way

to which the public path extinguishment order relates is needed for public use, or

- (b) under subsection (2) to what extent, if any, that path or way would apart from the order be likely to be used by the public,

the local authority or the Minister, as the case may be, may have regard to the extent to which the public path creation order or the public path diversion order would provide an alternative path or way.

(6) For the purposes of subsections (1) and (2), any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.

41. (1) Where an owner, lessee or occupier of land ^{Diversion of footpaths} crossed by a footpath (not being a main road), satisfies the local authority in whose area the land is situated that for securing the efficient use of the land or of other land held therewith or providing a shorter or more commodious path or way it is expedient that the line of the path across his land, or part of that line, should be diverted (whether on to other land of his or on to land of another owner, lessee or occupier), the authority may by order (in this Act referred to as a "public path diversion order") made by it and submitted to and confirmed by the Minister—

- (a) create, as from such date as may be specified in the order, any such new footpath as appears to the authority requisite for effecting the diversion, and

- (b) extinguish, as from such date as may be so specified in accordance with the provisions of subsection (2), the public right of way over so much of the path or way as appears to the authority requisite as aforesaid,

but that order shall not—

- (c) alter a point of termination of the path or way if that point is not on a highway, or

- (d) alter a point of termination of the path or way, being a point on a highway, otherwise than to another point on the same highway or a highway connected therewith, being a point substantially as convenient to the public.

(2) Where it appears to the authority that work required to be done to provide necessary facilities for the convenient exercise of any such new public right of way as is mentioned in paragraph (a) of subsection (1), the date specified under paragraph (b) of that subsection shall be later than the date specified under paragraph (a) thereof by such time as appears to the authority requisite for enabling the work to be carried out.

(3) A right of way created by a public path diversion order may either be unconditional or may (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) be subject to such limitations or conditions as may be specified in the order.

(4) Before determining to make a public path diversion order on the representation of an owner, lessee or occupier, the authority may require him to enter into an agreement with it to defray, or to make such contribution as may be specified in the agreement towards—

(a) any compensation which may become payable under section 13 as applied by subsection (1) of section 43; or

(b) any expenses which it may incur in bringing the new site of the path or way into a fit condition for use by the public.

(5) The Minister shall not confirm a public path diversion order unless he is satisfied that the diversion to be effected thereby is expedient as mentioned in subsection (1), and further that the path will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—

(a) the diversion would have on public enjoyment of the path or way as a whole,

(b) the coming into operation of the order would have as respects other land served by the existing public right of way, and

(c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held therewith,

so, however, that for the purposes of paragraphs (b) and (c) the Minister shall take into account the provisions as to compensation referred to in paragraph (a) of subsection (4).

(6) A public path diversion order shall be in such form as may be prescribed by the Minister, and shall contain a map showing the existing site of so much of the line of the path as is to be diverted by the order and the new site to which it is to be diverted, and indicating whether a new right of way is created by the order over the whole of the new site or whether some part thereof is already comprised in a footpath and, in the latter case, defining the part thereof so comprised.

(7) The First Schedule has effect as to the making, First Schedule confirmation, and validity of public path diversion orders.

42. (1) Where it appears to the Minister as respects a Exercise of powers of making public path extinguishment, and diversion orders footpath that it is expedient as mentioned in subsection (1) of section 40 that the path should be stopped up, or where an owner, lessee or occupier of land crossed by a footpath satisfies the Minister that a diversion thereof is expedient as mentioned in subsection (1) of section 41, then if—

- (a) the appropriate authority has not made and submitted to him a public path extinguishment order or a public path diversion order, as the case may be, and
- (b) the Minister is satisfied that, if such an order were made and submitted to him, he would have power to confirm the order in accordance with the provisions in that behalf of sections 40 and 41,

the Minister after consultation with the said authority, may direct the authority to make and submit to him a public path extinguishment order or a public path diversion order, as the case may be, or may himself make the order.

(2) A local authority proposing to make a public path diversion order such that the authority who will be the highway authority for a part of the path after the diversion will be a different body from the authority who before the diversion is the highway authority for it shall, before making the order, notify the first mentioned authority.

(3) In this section “the appropriate authority”, in relation to the making of a public path extinguishment order or a public path diversion order, means the authority upon whom power to make the order (whether the power is

exercisable with the consent of any other authority or not) is conferred by or under the relevant provisions of subsection (1) and of sections 40 and 41.

Supplementary provisions as to public path extinguishment and diversion orders

43. (1) Section 13 applies in relation to public path extinguishment orders and public path diversion orders as it applies in relation to public path creation orders as if the references therein to section 12 were references to subsection (1) of section 42.

(2) The Minister shall not make or confirm a public path extinguishment order or a public path diversion order which extinguishes a right of way over land under, in, upon, over, along or across which there is any apparatus belonging to or used by any statutory undertakers for the purpose of their undertaking unless the undertakers have consented to the making or confirmation of the order, as the case may be; and any such consent may be given subject to the condition that there are included in the order such provisions for the protection of the undertakers as they may reasonably require, and any question arising under this subsection whether the withholding of a consent is unreasonable or whether any requirement is reasonable shall be determined by the Minister.

Power to make temporary diversion where highway about to be repaired or widened

44. (1) A highway authority which is about to repair or widen a highway, may, subject to the provisions of this section, construct on adjoining land a temporary highway for use while the work is in progress.

(2) Where any damage is sustained by the owner or occupier of any land in consequence of the construction of a highway on that land in exercise of a power conferred by this section the owner or occupier of the land may recover compensation in respect of that damage from the authority or other person by whom the highway was constructed.

(3) Nothing in this section authorizes interference with land which is part of the site of a house, or is a garden, lawn, yard, court, park, paddock, plantation, planted walk or avenue to a house, or is enclosed land set apart for building or as a nursery for trees.

Saving

45. The provisions of any enactment contained in this Part are without prejudice to any power conferred by an other enactment (whether contained in this Part or not) to stop up or divert a highway, and shall not otherwise affect the operation of any enactment not contained in this Part relating to the extinguishment, suspension, diversion or variation of public rights of way.

PART VII

LAWFUL AND UNLAWFUL INTERFERENCE WITH HIGHWAYS
AND STREETS*Protection of public rights*

46. (1) The Minister may assert and protect the rights of the public to the use and enjoyment of any highway for which he is the highway authority including any roadside waste which forms part of such highway. Protection of public rights

(2) A local highway authority may assert and protect the rights of the public to the use and enjoyment of any highway in its area, including any roadside waste which forms part of such highway, and to prevent, as far as possible, the stopping up or obstruction of those highways, and the duty imposed by this subsection shall extend to a highway in the area of an adjoining authority if, in the opinion of the first-mentioned authority the stopping up or obstruction of that highway would be prejudicial to the exercise of public rights in its area.

(3) Without prejudice to subsection (1) or (2), it shall be the duty of a local highway authority to prevent any unlawful encroachment on any roadside waste comprised in a highway within its area.

(4) A local highway authority may, in the performance of its functions under subsection (2) or (3), institute or defend in the name of the authority any legal proceedings and generally take such steps as it may deem expedient.

(5) Any proceedings or steps taken by a local highway authority in relation to an alleged right of way shall not be treated as unauthorized by reason only that the alleged right is found not to exist.

Damage to highways, streets, &c.

47. A person who, without lawful authority or excuse— Penalty for damaging highways, &c.
- (a) makes a ditch or excavation in a highway which consists of or contains a carriageway, or
 - (b) removes any soil or turf from any part of a highway, except for the purpose of improving the highway and with the consent of the highway authority for the highway, or

- (c) deposits anything whatsoever on a highway so as to damage the highway, or
- (d) in any other manner wilfully damages a highway, any part of an embankment supporting a highway, any part of a bank which flanks a highway, or any retaining wall or flank wall belonging to a highway, or
- (e) wilfully damages a post, rail, wall or fence erected on or by the side of a highway, or a tree, hedge, shrub or grass, planted or laid out in a highway, or
- (f) pulls down, damages or obliterates a milestone or direction post so placed on or near a highway,

is guilty of an offence and liable in respect thereof to a fine not exceeding two hundred and fifty dollars.

Damage to
footways of
streets by
excavations

48. If the footway of a highway, being a highway maintainable at the public expense, is damaged by or in consequence of any excavation or other work on land adjoining the highway, the highway authority for the highway may make good the damage and recover the expenses reasonably incurred by it in so doing from the owner of the land in question or the person causing or responsible for the damage.

Ploughing of
footpath

49. (1) Where a footpath crosses agricultural land or land which is being brought into use for agriculture, then, if—

- (a) it is proposed in accordance with the rules of good husbandry to plough the land, and
- (b) it is convenient, in so ploughing the land, to plough the path or way together with the rest of the land,

the public right of way is subject to the condition that the occupier has the right, subject to the following provisions of this section, to plough the path or way as well as the rest of the land.

(2) Before ploughing a footpath in the exercise of the right conferred by subsection (1), the occupier shall give to the highway authority for the path not less than fourteen days notice of his intention to plough it.

(3) Where a footpath is ploughed in the exercise of the said right the occupier of the land shall as soon as may be after the ploughing is completed make good the surface of the path so as to make it reasonably convenient for the exercise of the public right of way.

(4) A person who fails to comply with the foregoing provisions of this section is guilty of an offence and liable in respect thereof—

(a) in the case of a failure to comply with the provisions of subsection (2), to a fine not exceeding fifty dollars;

(b) in the case of a failure to comply with the provisions of subsection (3), to a fine not exceeding two hundred and fifty dollars,

and where a person is convicted of the offence of failing to comply with the provisions of subsection (3), and the offence in respect of which he was convicted is continued after the conviction, he is guilty of a further offence and liable in respect thereof to a fine not exceeding twenty-five dollars for each day on which the offence is so continued.

(5) It is the duty of a highway authority to enforce the provisions of subsections (2) to (4) as respects any footpath for which it is the highway authority.

(6) Nothing in the provisions of this section prejudices any limitation or condition having effect apart from those provisions.

Obstruction of Highways

50. (1) A person, who without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway is guilty of an offence and liable in respect thereof to a fine not exceeding one hundred dollars.

(2) A constable may arrest without warrant any person whom he sees committing an offence against this section.

51. A person, who without lawful authority or excuse, erects a building or fence, or plants a hedge in a highway which consists of or comprises a carriageway is guilty of an offence and liable in respect thereof to a fine not exceeding two hundred and fifty dollars.

Power to
remove
structures from
highways

52. (1) Where a structure has been erected or set up on a highway otherwise than under a provision of this Act or some other enactment, the highway authority for the highway may by notice require the person having control or possession of the structure to remove it within such time as may be specified in the notice.

(2) Where a local highway authority serves a notice under this section, the person on whom the notice is served may, within seven days from the date of service of the notice, appeal to the Minister, and, if it is shown to the satisfaction of the Minister that the removal of the structure within the time specified in the notice would cause undue hardship to any person, the Minister may extend the time by such period as he thinks just.

(3) If a structure in respect of which a notice has been served under this section is not removed within the time specified in the notice, or, in a case where the Minister has under subsection (2) extended the time so specified, within the time as so extended, the highway authority may remove the structure and recover the expenses reasonably incurred by it in so doing from the person having control or possession of the structure, but the power of the highway authority under this subsection shall not be exercised until the expiration of twenty-one days from the date of service of the notice, or, if an appeal has been made to the Minister against the notice, until after the appeal has been determined.

(4) In this section "structure" includes any machine, pump, post or other object of such a nature as to be capable of causing obstruction, and a structure may be treated for the purposes of this section as having been erected or set up notwithstanding that it is on wheels.

Power to
authorize
erection,
creation of
stiles, &c.,
in footpath

53. (1) Where the owner, lessee or occupier of agricultural land, or of land which is being brought into use for agriculture, represents to the highway authority for a footpath which crosses the land, that, for securing that the use, or any particular use, of the land for agriculture shall be efficiently carried on, it is expedient that stiles, gates or other works for preventing the ingress or egress of animals should be erected on the path, the highway authority may, subject to such conditions as it may impose for maintenance and for enabling the right of way to be exercised without undue inconvenience to the public, authorize the erection of the stiles, gates or other works.

(2) If, on a representation duly made under subsection (1), the highway authority refuses to grant an authorization thereunder, or grant such an authorization subject to conditions, the person who makes the representation may appeal to the Minister against a refusal or the imposition of the conditions, as the case may be; and if the Minister, after giving to the appellant and to the highway authority an opportunity of being heard by a person appointed by him for the purpose and considering the report of that person determines to allow the appeal, he shall—

- (a) if the appeal was against a refusal, authorize the erection of the stiles, gates or other works in question, subject to such conditions as he may impose for maintenance and for enabling the right of way to be exercised without undue inconvenience to the public;
- (b) if the appeal was against the imposition of conditions, direct that the authorization granted by the highway authority shall, as may be specified in the direction, have effect either unconditionally or subject to such modified conditions as may be so specified.

(3) Where in the case of a footpath an authorization is granted by the highway authority under subsection (1) or by the Minister under subsection (2), the public right of way shall be deemed to be subject to a condition that the stiles, gates or works may be erected and maintained in accordance with the authorization and so long as the conditions attached thereto are complied with.

(4) For the purposes of section 52, any stile, gate or works erected in pursuance of an authorization under subsection (1) or subsection (2), shall be deemed to be erected under this section only if the provisions of the authorization and any conditions attached thereto are complied with.

(5) Nothing in the provisions of this section prejudices any limitation or condition having effect apart from those provisions.

54. (1) A person who, without lawful authority or excuse—
- (a) deposits anything whatsoever on a highway, or
- Penalty for
depositing things
or pitching
booths, &c.,
on highway

- (b) deposits on a made-up carriageway, or on any highway which consists of or contains a made-up carriageway within fifteen feet from the centre of that carriageway, any dung, compost or other material for dressing land, or any rubbish, or
- (c) allows any oil or corrosive matter or any filth, dirt, lime, or other offensive matter or thing to run or flow on to a highway from any adjoining premises, or
- (d) plays at football, cricket, or any other game on a highway, or
- (e) pitches a booth, stall or stand on a highway, is guilty of an offence and liable in respect thereof to a fine not exceeding one hundred dollars.

(2) If anything is so deposited on a highway as to constitute a nuisance, the authority for the highway may by notice require the person who deposited it there to remove it forthwith and, if he fails to comply with the notice, the authority may remove the thing in question and dispose of it and, after payment out of any proceeds arising therefrom of the expenses incurred in the removal and disposal, may apply the balance, if any, of the proceeds to the maintenance of highways maintainable by it at the public expense, but if the thing in question is not of sufficient value to defray the expenses of removing it, the authority may recover summarily as a civil debt from the person who deposited it on the highway the expenses, or the balance of the expenses, reasonably incurred by the authority in removing it.

(3) If an obstruction arises in a highway from the falling down of banks on the side of the highway or from any other cause, the authority for the highway may by notice require the owner of the premises of which such bank forms part, to remove the obstruction forthwith and if he fails to comply with the notice the Authority shall cause the obstruction to be removed and may recover from the owner the expenses reasonably incurred by it in so doing.

(4) The authority for a highway may, by notice to the owner or occupier of any land adjoining a highway maintainable by it at the public expense, or to the owner of the premises adjacent to a highway, require him, within fourteen days from the date of service of the notice—

- (a) to execute such works as will prevent soil or refuse or oil or other offensive or dangerous

matter from that land from falling, or being washed or carried, on to the highway or into any sewer, drain or gully in it in such quantities as to obstruct the highway or choke the sewer, drain, or gully.

(b) to construct or erect and thereafter to maintain such channels, gutters or downpipes on such premises as may be necessary to prevent water from the roof or any part of the premises falling upon persons or vehicles using the highway, or so far as is reasonably practicable, surface water from the premises flowing on to, or over, the footway or any other part of the highway.

(5) A person aggrieved by a requirement of an authority under subsection (2), (3) or (4) may appeal to a magistrate's court.

(6) Subject to any order made on appeal, a person on whom a notice is served under subsection (4) who fails to comply with a requirement of the notice within the period specified in the said subsection is guilty of an offence and liable in respect thereof to a fine not exceeding two hundred and fifty dollars, and, if the offence in respect of which he was convicted is continued after the conviction, he is guilty of a further offence and liable in respect thereof to a fine not exceeding twenty-five dollars for each day on which the offence is so continued.

55. (1) No door, gate or bar on any premises, which opens on to a highway shall be so put as to open outwards but, in the case of a door, gate or bar which is put up in a public building, the council of the municipality or county in which the building is situated may if it is situated that no danger or inconvenience will be caused thereto consent to its being put up. Doors, &c., not to be put up in highways so as to open outwards

(2) Where a door, gate or bar is put up on any premises in contravention of subsection (1), the council of the municipality or council in which the premises are situated may, by notice to the occupier thereof, require him to alter, so as not to open outwards, the door, gate or bar.

(3) A notice under subsection (2) may, at the option of the local authority, be served on the owner of the premises in question instead of on the occupier or may be served on both the owner and the occupier of those premises.

(4) Any person on whom a notice under subsection (2) is served who fails to comply, within eight days from

the date of service of the notice on him, with a requirement of the notice is guilty of an offence and liable in respect thereof to a fine not exceeding fifty dollars.

(5) Where a local authority has served a notice under subsection (2) on any person and he is guilty of an offence by reason of his failure to comply with a requirement of the notice within the time specified in subsection (4), then, whether or not proceedings are taken against him in respect of the offence, the authority may do the work required by the notice and may recover the expenses reasonably incurred by it in so doing from the owner or occupier of the premises to which the notice relates if, in either case, he is a person on whom the notice was served.

Third Schedule

(6) The Third Schedule applies in relation to any sum paid by an occupier of premises in complying with a requirement of a local authority under subsection (2) or, where the requirement was not complied with, in reimbursing the authority for expenses reasonably incurred by it under subsection (5); except where the requirement was made in connection with a door, gate or bar put up by that occupier.

Lopping of
vegetation
over-hanging
highways and
certain other
roads and paths

56. (1) Where a hedge, tree or shrub overhangs a highway or any other road or footpath to which the public has access so as to endanger or obstruct the passage of vehicles or pedestrians, or to obstruct or interfere with the view of drivers of vehicles or the light from a public lamp, the appropriate authority may, by notice either to the owner of the hedge, tree or shrub or to the occupier of the land on which it is growing, require him within seven days from the date of service of the notice so to lop or cut it as to remove the cause of the danger, obstruction or interference.

(2) A person aggrieved by a requirement made under subsection (1) may appeal to the Minister.

(3) Subject to any decision made by the Minister on appeal, if a person on whom a notice is served under subsection (1) fails to comply with it within the period specified in that subsection, the appropriate authority may carry out the work required by the notice and recover summarily as a civil debt from the person in default the expenses reasonably incurred by it in so doing.

(4) In this section "the appropriate authority" means in relation to a highway the highway authority therefor, and "hedge, tree or shrub" includes vegetation of any description.

57. If it appears to a constable authorized for the purposes that, in the exercise of a statutory power to break up or open a highway, any undertakers, by the deposit of excavated matter or other material or by means of the erection of barriers, or otherwise, have created an obstruction in the highway to a greater extent or for a longer period than is reasonably necessary, he shall report the matter to the highway authority for the highway and that authority shall cause an inspection to be made, and, if on the inspection it appears to it that the allegation is well founded, it may by notice require the undertakers to take such steps as may be necessary to mitigate or discontinue the obstruction, and, if the undertakers fail to do so within twenty-four hours of the receipt of the notice, the highway authority may take the necessary steps and may recover summarily as a civil debt any expenses reasonably incurred by it in connection therewith from the undertakers; except that where the highway in question is not one for which the Minister is the highway authority, the undertakers may within the said twenty-four hours represent to the Minister that the obstruction to which the notice relates is not greater, or has not been continued for a longer period, than is reasonably necessary, and shall send to the highway authority by whom the notice was given a copy of the representation so made, and in that case the authority shall not take any such steps as aforesaid without the consent of the Minister.

Powers of highway authority where obstruction of highway traffic is greater than necessary, &c.

58. (1) Where on land adjoining a highway there is a fence made with barbed wire, or having barbed wire in or on it, and the wire is a nuisance to the highway, the appropriate authority may by notice served on the occupier of the land require him to abate the nuisance within such time, not being less than fourteen days nor more than three months from the date of service of the notice, as may be specified therein.

Power to require removal of barbed wire

(2) If at the expiration of the time so specified the occupier has failed to comply with the notice, a magistrate's court, on complaint made by the appropriate authority, may if satisfied that the wire is a nuisance to the highway, may order the occupier to abate the nuisance, and, if he fails to comply with the order within such time as may be specified therein the authority may do whatever may be necessary in execution of the order and recover from him summarily as a civil debt the expenses reasonably incurred by it in so doing.

(3) For the purposes of this section "barbed wire" means wire with spikes or jagged projections, and barbed wire shall be deemed to be a nuisance to a highway if it is likely to be injurious to persons or animals lawfully using the highway.

Dangerous land
adjoining highway

59. (1) If, in or on any land adjoining a highway, there is an unfenced or inadequately fenced source of danger to persons using the highway, the authority for that highway may, by notice to the owner or occupier of that land, require him within such time as may be specified therein to execute such works of repair, protection, removal or enclosure as will obviate the danger.

(2) A person aggrieved by a requirement of the highway authority under subsection (1) may appeal to a magistrate's court.

(3) Subject to any order made on appeal, if a person on whom a notice is served under this section fails to comply with the notice within the time specified therein, the highway authority by whom the notice was served may execute such works as are necessary to comply with the notice and may recover the expenses reasonably incurred by it in so doing from that person.

Building and
other structures
dangerous to
persons in
highway

60. (1) If it appears to a local authority that a building or wall situated in its area is in such a condition, or that a building so situated is used to carry such loads, as to be dangerous to persons in a highway, the authority may make a complaint to a magistrate's court and the court may—

- (a) where the danger arises from the condition of the building or wall, make an order requiring the owner thereof to execute such works as will obviate the danger; and
- (b) where the danger arises from overloading of the building make an order prohibiting or restricting the use thereof until such works as will obviate the danger have been executed to the satisfaction of the court.

(2) If the person against whom an order is made under paragraph (a) of subsection (1) fails to comply with the order within the time therein specified, the local authority may execute the order in such manner as it thinks fit and may recover the expenses reasonably incurred by it in so doing from that person, and, without prejudice

to the right of the authority to exercise those powers, that person is guilty of an offence and liable in respect thereof to a fine not exceeding five hundred dollars.

(3) If, in a case where a local authority has power to make a complaint under subsection (1) the authority is satisfied that immediate action should be taken for the protection of persons in the highway, the authority may shore up or fence off the building or wall and may recover from the owner thereof the expenses reasonably incurred by it in so doing.

(4) In this section—

“building” includes any erection of whatsoever material and in whatsoever manner constructed and any part of a building;

“wall” includes a fence or hoarding.

Precautions to be taken in doing works in highways or streets or on adjacent premises

61. (1) No person shall, without the consent of the highway authority for a highway maintainable by it at the public expense, deposit building materials, rubbish or other things on the highway or make a temporary excavation therein.

Regulation of
deposit of
building
materials and
making of
excavations in
highway

(2) Where a person with such consent places any building materials, rubbish or other thing in a street or makes an excavation therein, he shall cause the obstruction or excavation to be properly fenced and, during the hours of darkness, to be properly lighted and, if required so to do by the authority shall remove the obstruction, and in any case shall not allow the obstruction to remain in the street for a longer time than is specified in the permission given to him.

(3) A person who contravenes the provisions of subsection (2) is guilty of an offence and liable in respect thereof to a fine not exceeding five hundred dollars, and, if the offence in respect of which he was convicted is continued after the conviction, he is guilty of a further offence and liable in respect thereof to a fine not exceeding fifty dollars for each day on which the offence is so continued.

(4) Where an offence under this section has been committed in relation to a highway, the authority for such highway, may remove the obstruction and recover summarily as a civil debt from the person convicted of the offence the expenses reasonably incurred by it in so doing.

Hoardings to be set up during building, &c.

62. (1) A person proposing to erect, take down, alter or repair a building situate on a highway, shall, before beginning the work, erect a close boarded hoarding or fence to the satisfaction of the local authority in whose area the highway is situated so as to separate the building from the highway but the obligation to erect a hoarding or fence imposed by this subsection may be dispensed with if the local authority so consents.

(2) Where a person has, in compliance with subsection (1), erected such a hoarding or fence as is therein referred to, he shall—

- (a) if the authority so require, make a convenient covered platform and handrail to serve as a footway for pedestrians outside the hoarding or fence;
- (b) maintain the hoarding or fence and any such platform and handrail as aforesaid in good condition to the satisfaction of the authority during such time as the authority may require;
- (c) if the authority so require, sufficiently light the hoarding or fence and any such platform and handrail during the hours of darkness;
- (d) remove the hoarding or fence and any such platform and handrail when required by the authority;
- (e) not use for any purpose a hoarding or similar structure that is in, or adjoins, a highway unless it is securely fixed to the satisfaction of the local authority for the area in which the highway is situated.

(3) A person who contravenes the provisions of this section, is guilty of an offence and liable in respect thereof to a fine not exceeding five hundred dollars, and, if the offence in respect of which he was convicted is continued after the conviction, he is guilty of a further offence and liable in respect thereof to a fine not exceeding fifty dollars for each day on which the offence was so continued.

Precautions to be taken by authorities executing works in highways

63. (1) Where any authority for the purpose of the construction, laying down or maintenance of any underground cable, or any sewer or drain, or for the purpose of

the construction or maintenance of any highway vested in it is carrying out works on such highway, it shall—

- (a) erect such barriers for preventing danger to traffic, and for regulating traffic, as may be necessary;
- (b) cause the works to be properly guarded and lighted during the hours of darkness;
- (c) where the nature of the works so requires, cause any building adjoining the highway to be shored up or otherwise protected; and
- (d) ensure that no greater width or length of any highway than is reasonably necessary is opened or broken up at any one time.

(2) A person who, without lawful authority or excuse takes down, alters or removes any barrier erected, or extinguishes any light placed, in pursuance of subsection (1), is guilty of an offence and liable in respect thereof to a fine not exceeding one hundred dollars.

Miscellaneous

64. (1) Subject to this section, before any statutory Works not to be begun until after notice to highway authority undertaker begins in any highway any work which involves the breaking up, opening, tunnelling or boring of that highway, the undertaker shall notwithstanding any enactment to the contrary give not less than seven days' notice in writing to the authority for the highway stating his intention to execute such works.

(2) If, after a notice under subsection (1) has been given to an authority, the execution of the works is not substantially begun before the expiration of two months from the date on which the notice was given to the authority that notice shall be treated as invalid and the requirement of subsection (1) shall be complied with as if that notice had not been given.

(3) Subsection (1) does not apply to works the execution of which is necessary in order to put an end to, or to prevent the arising of, circumstances existing or imminent which are calculated to cause—

- (a) danger to persons or property; or
- (b) interruption of a supply or service afforded by the undertaker.

(4) If any statutory undertaker begins the execution of works in contravention of subsection (1) he is guilty of an offence and liable to a fine not exceeding two hundred and fifty dollars.

Requirement as to execution of works involving breaking up of highways, and as to reinstatement

65. (1) Undertakers executing any work which involves the breaking up or opening of any highway or tunnelling or boring under it, shall carry on and complete the works with all reasonable dispatch, and shall reinstate and make good the street after completion of the works, and shall—

- (a) begin the reinstatement and making good as soon after completion of any part of the works as is reasonably practicable without hindering the execution of other parts of those works or of other works to be undertaken immediately thereafter;
- (b) reinstate it to the satisfaction of the highway authority therefor.

(2) An undertaker who fails to carry out reinstatement and making good in accordance with subsection (1) is guilty of an offence and liable to a fine not exceeding five hundred dollars, and if the failure is continued after the conviction, the undertaker is guilty of a further offence and liable in respect thereof to a fine not exceeding fifty dollars for each day on which the offence is so continued.

(3) Where the work of reinstatement and making good of a highway has been completed, and within six months from the completion thereof the area reinstated and made good subsides, or deteriorates otherwise than by subsidence or in addition thereto, then the cost of executing works needed for remedying the subsidence or deterioration reasonably incurred by the highway authority shall be paid to the authority by the undertakers and in default of payment may be recovered summarily as a civil debt.

(4) Nothing in this section precludes a highway authority from agreeing with an undertaker to undertake the reinstatement and making good of any highway which the undertaker is required by this section to reinstate and make good; and where such agreement is entered into, subsections (1), (2) and (3) do not apply.

Carriage crossings over footways

66. (1) Where the occupier of any premises adjoining or having access to a highway maintainable at the public expense habitually takes or permits vehicles to be taken across a grass verge or kerbed footway in the highway to those premises, the appropriate authority may give notice to the occupier of the premises—

- (a) that it proposes to construct across the verge or footway a carriageway crossing formed of such

materials and in such manner as may be specified in the notice; or

- (b) in the case of a footway, that it proposes to strengthen or adapt it in such manner as may be so specified; or
- (c) imposing such reasonable conditions on the use of the verge or footway as a crossing as aforesaid as may be so specified.

This subsection does not apply in relation to any premises used exclusively for agricultural purposes.

(2) A person aggrieved by a notice of an authority under subsection (1) may appeal to a magistrate's court.

(3) Subject to any order made on appeal, an authority by whom a notice for the purposes of paragraph (a) or paragraph (b) of subsection (1) has been given may execute such works as are specified in the notice and may recover summarily as a civil debt from the owner or occupier of the premises in question the expenses reasonably incurred by it in so doing or it may allow the owner or occupier of the premises at his request to execute the works.

(4) If a person knowingly uses a grass verge or a footway as a crossing as aforesaid in contravention of any condition imposed under paragraph (c) of subsection (1) or knowingly permits it to be so used, he is guilty of an offence and liable in respect thereof to a fine not exceeding one hundred dollars.

(5) Any person may request the appropriate authority to carry out such works as he may specify in the request for the purpose of forming a carriage crossing across a grass verge or a footway in a highway maintainable at the public expense, or for strengthening or adapting a footway in any such highway for use as a carriage crossing, and the authority may approve the request, with or without modification, or may propose alternative works or reject the request.

(6) An authority to whom a request under subsection (5) is made shall notify the person making the request of its decision and if it approves, with or without modification, the works proposed in the request, or proposed alternative works, it shall supply the person with an estimate of the cost of the works as approved or proposed by it, and he may, on depositing with the authority the amount of the estimate, require it to execute the said works.

(7) As soon as practicable after such a deposit has been made with an authority the authority shall execute the works as approved or proposed by it and—

(a) if the sum deposited exceeds by any amount the actual cost of the works, the authority shall return that amount to the person by whom the deposit was made; but

(b) if the sum deposited is less by any amount than the actual cost of the works, the authority may recover from that person a further sum equal to that amount.

(8) Nothing in this section imposes on any person, other than a highway authority, any obligation to maintain a carriage crossing or footway.

(9) In this section “the appropriate authority” means, the local authority for the area in which the highway is situated; but the local authority shall not exercise a power conferred by subsection (1) or subsection (5) in relation to a highway for which it is not the highway authority without the consent of the Minister.

Power to
instal
refuse or
storage
bins in highways

67. (1) Subject to the provisions of this section, the appropriate authority may provide and maintain in a highway orderly bins or other receptacles of such dimensions and in such positions as the authority may determine for the collection and temporary deposit of refuse and waste paper, and for the storage of sand, grit or other materials.

(2) Nothing in this section shall be taken as empowering an authority to hinder the reasonable use of a highway by the public or any person entitled to use it or as empowering an authority to create a nuisance to the owner or occupier of premises adjacent to the highway.

(3) In this section “the appropriate authority” means either the highway authority for the highway or the local authority in whose area it is situated acting with the consent of the highway authority therefor.

68. (1) No person shall erect, maintain or display any sign, signboard or advertising device within such distance as may be prescribed from any highway unless—

Control of
advertising
hoarding

(a) the design and specifications therefor have been previously approved by the Minister, and

(b) the erection, maintenance or display is completed in accordance with the design and specifications approved by the Minister.

(2) A person who is the owner or occupier of any land upon which any sign, signboard or advertising device is erected, maintained or displayed in contravention of this Act or any regulations made thereunder shall immediately upon receipt of a notice in writing signed by the Minister requiring him to do so, remove any such sign, signboard or advertising device.

(3) If the sign, signboard or advertising device is not removed from the land in accordance with the notice within seven days after the receipt of the notice, the owner or occupier of the land is guilty of an offence in respect of each sign, signboard and advertising device not so removed, and is liable in respect of each offence to a fine not exceeding twenty-five dollars and in default of payment to imprisonment for a term of not more than thirty days.

(4) A person who causes or procures any sign, signboard or advertising device to be erected, maintained or displayed within such distance as may be prescribed from any highway, is guilty of an offence in respect of each sign, signboard or advertising device so erected, maintained or displayed, and is liable in respect of each offence to a fine not exceeding twenty-five dollars and in default of payment to imprisonment for a term of not more than thirty days.

PART VIII

NEW STREETS

New street bye-laws

69. (1) A local authority may, and if required by the Minister shall, make bye-laws for regulating all or any of the following matters, that is to say, the level, width and construction of new streets in its area and the provision for the drainage of such streets; but no bye-law made under this subsection shall regulate the level, width or construction of a new street in so far as it is to be carried by a bridge or is to form the approaches thereto.

Power of
local authority
to make new
street bye-laws

(2) If a local authority, when required by the Minister to make bye-laws under subsection (1), does not within three months of the date of such requirement make in accordance with the requirement bye-laws satisfactory to him, the Minister may himself make the bye-laws.

(3) Bye-laws for regulating matters that may be regulated under this section are hereafter in this Part referred to as "new street bye-laws".

(4) New street bye-laws may include provision for—

- (a) the giving of notices and the deposit of plans;
- (b) the inspection of work, and the taking by the local authority of samples of the materials to be used in the execution of works.

(5) New street bye-laws made by a local authority require the approval of the Minister and any bye-laws made by the Minister under this section shall have effect as if they had been made by the local authority and approved by him.

(6) Bye-laws made under this section have no effect unless published in the *Gazette*.

(7) Regulations for the laying out and construction of new streets contained in the Seventh Schedule to the Port-of-Spain Corporation Ordinance, the Fifth Schedule to the San Fernando Corporation Ordinance and the Fifth Schedule to the Arima Corporation Ordinance shall be deemed to be bye-laws made under this section and shall continue in force until amended or revoked by new streets bye-laws made hereunder.

Ch. 39. No. 1
Ch. 39. No. 7
Ch. 39. No. 11

Continuation of existing street to be a new street

70. A continuation of an existing street may be deemed to be a new street for the purpose of the application thereto of new street bye-laws.

Power to define the centre line and outer lines, defining minimum width, of new street into which existing highway will be converted

71. (1) Where it appears to the appropriate authority that an existing highway will be converted into a new street as a consequence of building operations which have been or are likely to be, undertaken in the vicinity, the authority may, and if required by the Minister shall, by order prescribe the centre line of the new street and outer lines defining the minimum width of the new street, which shall be not less than the minimum width required by the provisions of new street bye-laws in force in the area of the

appropriate authority regulating the width of a new street intended to be the principal means of access to any building and of a length equal to the length of the highway to which the order relates.

(2) If a local authority when required by the Minister to make an order under subsection (1), does not within three months of the date of such requirement make in accordance with the requirement an order satisfactory to him, the Minister may himself make the order.

(3) An order made by a local authority under this section requires the approval of the Minister and an order made by the Minister under this section has effect as if it had been made by the appropriate local authority and approved by him.

(4) An order made under this section has no effect unless it is published in the *Gazette*.

(5) A person aggrieved by an order under this section may appeal to a magistrate's court.

(6) Where an order under this section has effect, no person shall erect a new building on the land situated between the outer lines prescribed by the order (hereafter in this section referred to as "the prescribed land").

(7) If, where an order under this section has effect, work for the erection of a new building is commenced on land adjoining the prescribed land, then, on the commencement of that work—

(a) the appropriate portion of the prescribed land shall become part of the existing highway; and

(b) the owner of that portion shall remove any boundary, fence or other obstruction situated thereon and bring the level thereof into conformity with that of the existing highway,

except that where the existing highway is a highway maintainable at the public expense, land which in accordance with this subsection becomes part thereof shall not, by virtue of this subsection, become a highway maintainable at the public expense.

For the purposes of this subsection the appropriate portion of the prescribed land is the portion thereof which is situated between the centre line prescribed by the order and the land on which the building is to be erected or which is to be occupied therewith, other than land so situated which forms part of the existing highway.

(8) In this section—

“the appropriate authority” means in relation to a highway the local authority in whose area the highway is situated;

“building” includes a wall.

Power of local authority with consent of Minister to relax requirements of bye-laws

72. (1) Where a local authority considers that the operation of a new street bye-law in force in its area would be unreasonable in relation to a particular case, it may, with the consent of the Minister relax the requirements of the bye-law or dispense with compliance therewith.

(2) The authority shall give notice of any such proposed relaxation or dispensation in such manner and to such persons, if any, as the Minister may direct, and the Minister shall not give his consent before the expiration of one month from the date of the giving of the notice and, before giving his consent, shall take into consideration any objection which may have been received by him.

Passing of plans deposited under bye-laws

Passing or rejection of plans, &c.

73. (1) Where plans of any proposed work are, in accordance with new street bye-laws, deposited with a local authority, then, subject to the provisions of section 72, and section 75, the authority shall within a reasonable time approve the plans unless they either are defective or show that the proposed work would contravene any of those bye-laws, and, if the plans are defective or show that the proposed work would contravene any of those bye-laws, it shall reject the plans.

(2) The authority shall within the appropriate period from the deposit of the plans give notice to the person by whom or on whose behalf they were deposited whether or not they are approved, and—

(a) a notice of rejection shall specify the defects on account of which, or the bye-law for non-conformity with which the plans have been rejected; and

(b) a notice that plans have been approved shall state that the approval of the plans operates as an approval thereof only for the purposes of the requirements of the bye-laws.

(3) Any question arising under this section between a local authority and the person by whom or on whose behalf plans are deposited whether the plans are defective,

or whether the proposed work would contravene any of the bye-laws, may, on the application of that person made within fourteen days of the rejection of such plans, be determined by a magistrate's court; but no such application shall be entertained unless it is made before the proposed work is begun.

74. (1) Where plans of any proposed work have in accordance with new street bye-laws, been deposited with a local authority, and either the plans have been passed by the authority or notice of rejection of the plans has not been given within the appropriate period from the deposit thereof, and the work to which the plans relate has not been substantially begun within three years from the date of the deposit of the plans, the local authority may, after the expiration of that time, by notice to the person by whom or on whose behalf the plans were deposited, or other the owner for the time being of the land to which the plans relate, declare that the deposit of the plans shall be of no effect, and when such a notice is given, this Part and the bye-laws made thereunder shall as respects the proposed work have effect as if no plans had been deposited.

Deposit of plans to be of no effect after certain interval

(2) A local authority shall attach a notice of the provisions of subsection (1) to every notice of the passing of plans of proposed work deposited in accordance with new street bye-laws.

Requirements and Prohibitions as to New Streets

75. (1) Where, in pursuance of a new street bye-law requiring plans to be deposited with it, application is made to a local authority to pass plans of a new street, and that new street will, in the opinion of the authority, form—

Imposition of requirements as to width of new streets in certain cases

(a) a main thoroughfare or a continuation of a main thoroughfare, or means of communication between main thoroughfares in its area, or

(b) a continuation of a main approach, or means of communication between main approaches, to its area,

the authority—

(c) may, as a condition of passing the plans, require that the new street shall be formed of such width as it may determine, and

(d) if it makes a requirement under paragraph (c), shall, as such a condition, determine how much of the width of the street is to be laid out as a carriageway and how much as a footway or footways.

(2) If a local authority require under subsection (1) a new street to be formed of a width which exceeds the normal maximum width by an amount greater than twenty feet, it shall pay compensation for any loss or injury which may be sustained by reason of the requirement.

(3) Nothing in this section empowers a local authority to require any person to defray any greater expenses in the execution of any street works than would have been payable if the street had been of no greater width than the normal maximum width, and the additional expense incurred in the execution of the street works by reason of the street being of such greater width shall be certified by the engineer of the authority, or, in the case of dispute, shall be determined by a magistrate's court, and shall be borne by the local authority.

(4) In this section "the normal maximum width" means the maximum width of which, apart from this section, the street could have been required to be formed under any bye-law or enactment with respect to the width of new streets which is in force in the area of the local authority.

(5) A person aggrieved by a condition imposed under this section may appeal to a magistrate's court.

Power of local authority to vary position or direction, and to fix beginning and end of new street

76. (1) A local authority may, as a condition of passing of plans of a new street deposited with it in pursuance of a new street bye-law, require the intended position, direction, termination or level of the new street to be varied in such manner as may be specified by the authority, being a variation necessary for the purpose of securing—

- (a) more direct, easier or more convenient means of communication with any other street or intended street; or
- (b) an adequate opening at one or each of the ends of the new street; or
- (c) compliance with any law in force in its area for the regulations of streets or buildings.

(2) A person who lays out or constructs a new street in contravention of a requirement under this section is guilty of an offence and liable in respect thereof to a fine not exceeding five hundred dollars, and, if the offence in respect of which he was convicted is continued after the conviction, he is guilty of a further offence and liable in respect thereof to a fine not exceeding twenty-five dollars for each day on which the offence is so continued.

(3) A local authority shall pay compensation to any person for any loss or injury sustained by him by reason of the exercise by it of its powers under this section.

(4) A local authority shall not make a requirement under this section in a case in which it is shown to its satisfaction that compliance with the requirement would entail the purchase of additional land by the owner of the land on which the new street is intended to be laid out, or the execution of works elsewhere than on the last mentioned land or land held therewith on which building operations associated with the new street are intended to be undertaken.

(5) A person aggrieved by a condition under this section may appeal to a magistrate's court.

77. (1) No person shall, except in the exercise of statutory powers, construct a bridge to carry a new street unless the bridge and the approaches thereto are of such width and gradients as are approved by the engineer of the local authority in whose area the new street is, or is to be situated, and are constructed in accordance with plans so approved.

Construction of
bridge carrying
new street

(2) A person who contravenes the provisions of this section is guilty of an offence and liable in respect thereof to a fine not exceeding five hundred dollars, and the local authority may remove, alter or pull down any work done in contravention of those provisions and may recover the expenses reasonably incurred by it in so doing from him.

78. (1) Where—

(a) an owner of land adjoining one side of an existing highway proposes to lay out on that land a new street along the line of the highway; and

Power to allow
widening of
existing street
on one side only
to less than
prescribed width

(b) buildings have been or are intended to be erected on that side only,

the local authority for the area in which the highway is situate may make such an order as the following in any case in which it is empowered to require the owner to widen the existing highway to the width prescribed for a new street by a bye-law with respect to the width of new streets, that is to say, instead of requiring the existing highway to be widened to the width so prescribed, it may by order permit the owner to widen the highway on the said side only to such less width as may be specified in the order, being a width such that the distance between the centre line of the existing highway and the boundary, after the widening, of the highway on the said side shall not be less than one-half of the said prescribed width.

(2) An order under this section has no effect unless it is published in the *Gazette*.

(3) Not less than twenty-one days before making an order under this section, the local authority shall send notice of the intended order to such owner as aforesaid, and, unless he is the same person, to the owner of land adjoining the highway on the side thereof opposite the land to which the order will relate.

(4) If, where an order under this section has effect, building is begun on the said land on that opposite side, the owner of that land shall widen the existing highway on that opposite side where it adjoins that land so that the distance between—

(a) the boundary, after widening, of the highway on that opposite side, and

(b) the boundary, after widening under the said order, of the highway on the side to which the order relates,

shall be the said prescribed width.

(5) A person who fails to comply with the provisions of subsection (4), is guilty of an offence and liable in respect thereof to a fine not exceeding five hundred dollars, and, if the offence in respect of which he was convicted is continued after the conviction, he is guilty of a further offence and liable in respect thereof to a fine not exceeding twenty-five dollars for each day on which the offence is so continued.

(6) Nothing in subsection (4) imposes on a person an obligation to pull down a building erected before the date of an order under this section relating to the land in question.

(7) A person aggrieved by an order under this section, or by the refusal to make an order thereunder, may appeal to a magistrate's court.

79. (1) If any work to which new street bye-laws are applicable contravenes any of those bye-laws, the local authority, without prejudice to its right, if any, to take proceedings for a fine, may by notice require any person by whom, or on whose behalf the work was executed either to remove the work or, if he so elects, to effect such alterations therein as may be necessary to make it comply with the bye-laws.

Power to
require removal
or alteration
of work not in
conformity with
bye-laws

(2) If, in any case in which new street bye-laws require plans of a new street to be deposited with the local authority, the local authority is of the opinion that a new street in its area forms or will form such a way as is referred to in paragraph (a) or paragraph (b) of subsection (1) of section 75, and any work to which those bye-laws are applicable is executed without plans having been passed, the authority may, without prejudice to its right, if any, to take proceedings for a fine, by notice to any person by whom or on whose behalf the work was executed either—

(a) require him to remove the work, or

(b) require him either to remove the work, or, if he so elects, to comply with any other condition specified in the notice, being a condition which it could have imposed under the said section 75 as a condition of the passing of plans deposited in accordance with the bye-laws.

For the purposes of this subsection plans shall be deemed to have been passed if notice of their rejection was not given within the appropriate period from the deposit thereof.

(3) If any work to which new street bye-laws are applicable is executed otherwise than in accordance with any condition imposed under section 75, the local authority for the area may, without prejudice to its right to take proceedings for a fine, by notice to any person by whom or on whose behalf the work was executed either—

(a) require him to remove the work, or

(b) require him either to remove the work, or, if he so elects, to comply with any other condition specified in the notice, being a condition which

it could have imposed under the said section 75 as a condition of the passing of plans deposited in accordance with the bye-laws.

(4) A person aggrieved by a requirement of an authority under the foregoing provisions of this section may appeal to a magistrate's court.

(5) Subject to any order made on appeal, if a person to whom a notice has been given under subsection (1), (2) or (3) fails to comply with the notice before the expiration of fourteen days from the date of the service of the notice on him, or such longer period as a magistrate's court may on his application allow, the authority by whom the notice was given may remove the work in question, or effect such alterations therein as it deems necessary, and may recover the expense reasonably incurred by it in so doing from him.

(6) No such notice as is mentioned in subsection (1), (2) or (3) shall be given after the expiration of twelve months from the date of the completion of the work in question, and it is not open to an authority to give a notice under subsection (1) in a case where plans have been deposited, if—

(a) either the plans were approved by the local authority, or notice of its rejection was not given within the appropriate period from the deposit thereof, and

(b) the work has been executed in accordance with the plans and any condition imposed under subsection (1) of section 75.

(7) Nothing in this section affects the right of a local authority, or of the Attorney General, or of any other person, to apply for an injunction for the removal or alteration of any work on the ground that it contravenes any bye-law, but if—

(a) the work is one in respect of which plans were deposited and either the plans were approved by the local authority or notice of its rejection was not given within the appropriate period from the deposit thereof; and

(b) the work has been executed in accordance with the plans,

the court on granting an injunction has power to order the local authority to pay to the owner of the work such compensation as the court thinks just, but before making

any such order the court shall, in accordance with rules of court, cause the local authority, if not a party to the proceedings, to be joined as a party thereto.

80. Where in a case falling within section 75 a local authority has imposed a condition on the passing of plans deposited in pursuance of new street bye-laws, a person who executes work proposed in the plans otherwise than in accordance with that condition is guilty of an offence and liable to a fine not exceeding two hundred and fifty dollars.

Fine for executing work otherwise than in accordance with conditions

81. Where a local authority has approved plans for a new street subject to conditions imposed or authorized by new street bye-laws in force in the area of that authority, those conditions may be enforced at any time by the authority against the owner for the time being of the land to which the conditions relate.

Enforcement of conditions imposed by or under bye-laws against owner

In this section "owner" in relation to any land means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple in the land, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the land under a lease the unexpired term whereof exceeds three years.

Supplemental provisions

82. Where new street bye-laws require plans deposited in pursuance of the bye-laws to be deposited in duplicate, the local authority may retain one copy of any plans so deposited, whether the plans are approved or not.

Right of local authority to retain deposited plans

83. In this Part—

Interpretation of Part VIII

- (a) references to plans include references to sections, specifications, and written particulars, and
- (b) "the appropriate period" in relation to the passing or rejection of plans means one month, but new street bye-laws for the area of an authority whose meetings are normally held not more frequently than once a month may provide that, in the case of plans deposited less than three clear days before a meeting of the authority, the appropriate period shall be six weeks.

PART IX

MAKING UP OF PRIVATE STREETS

The Private Streets Code

Street works in
private streets

84. (1) Where a private street within the area of a local authority is not, to the satisfaction of the authority, seweraged, levelled, paved, metalled, drained, channelled, made good, and lighted, the authority may from time to time resolve with respect to the street to execute street works and, subject to the provisions of this section and sections 85, 86, 87, 88, 89, 90, 91, 92, 93 (in this Part these sections are hereinafter referred to as "the private streets code"), or to subsection (2) of section 107, the expenses incurred by the authority in executing those works or such lesser proportion of such expenses as the Minister may determine, shall be apportioned between the premises fronting the street; except that where the authority so resolves with respect to a part only of the street (not being a part extending for the whole of the length of the street), the said expenses shall be apportioned only between the premises fronting the length of the street which constitute or comprises that part.

(2) Where the Minister determines under subsection (1) that a lesser proportion of the expenses incurred shall be apportioned between the premises fronting the street the Minister of Finance shall provide out of the public funds that proportion of the expenses not so apportioned.

(3) When an authority has passed a resolution under subsection (1), the engineer of the authority shall prepare—

- (a) a specification of the street works referred to in the resolution, with any necessary plans and sections;
- (b) an estimate of the probable expenses of the works, which may include, in addition to the estimated actual cost, a charge not exceeding five dollars per cent, in respect of surveys, superintendence, and notices; and

- (c) a provisional apportionment apportioning the estimated expenses between the premises liable to be charged therewith under the code,

and the specification, plans, sections, estimate, and provisional apportionment shall comprise the particulars specified in paragraphs 1 to 4 of the Fourth Schedule and shall be submitted to the authority which may by a further resolution approve them with or without modification, or addition as it thinks fit. Fourth Schedule

The resolution of the authority approving the said documents is hereafter in this Part referred to as "the resolution of approval".

(4) After the resolution of approval has been passed a notice containing the particulars specified in paragraph 5 of the said Fourth Schedule shall—

- (a) be published once in each of two successive weeks in a local newspaper having daily circulation in Trinidad and Tobago;
- (b) be posted in a prominent position in or near to the street to which the resolution relates once at least in each of three successive weeks; and
- (c) within seven days from the date of the first publication under paragraph (a), be served on the owner of the premises shown in the provisional apportionment as liable to be charged,

and, during one month from the said date, a copy of the resolution of approval, and the approved documents or copies thereof certified by the engineer, shall be kept deposited at the offices of the authority and open to inspection free of charge at all reasonable hours.

(5) Where a notice is served on an owner of premises under paragraph (c) of subsection (4), it shall be accompanied by a statement of the sum apportioned on those premises by the provisional apportionment.

85. A local authority may include in street works to be executed under the private streets code with respect to a street any works which it thinks necessary for bringing the street, as regards sewerage, drainage level, or other matters, into conformity with any other streets, whether maintainable at the public expense or not. Incidental works

Provisional
apportionment
of expenses

86. In a provisional apportionment of expenses of street works the apportionment of expenses between the premises liable to be charged therewith, shall subject to the provisions of this section, be made according to the frontage of the respective premises.

(2) The local authority may, if it think just, resolve that in settling the apportionment regard shall be had to the following considerations, that is to say—

- (a) the greater or less degree of benefit to be derived by any premises from the street works;
- (b) the amount and value of any work already done by the owners of any premises.

(3) The local authority may, if it think just, include in the apportionment any premises which do not front the street, but have access thereto through a court passage or otherwise, and which will, in the opinion of the local authority be benefited by the works, and may fix by reference to the degree of benefit to be derived by those premises, the amount to be apportioned thereon.

Objections to
proposed works

87. (1) Within one month of the date of the first publication of a notice under paragraph (a) of subsection (4) of section 84, an owner of premises shown in a provisional apportionment of expenses as liable to be charged with any part of the expenses of executing street works with respect to a private street or a part of a private street may, by notice to the local authority, object to its proposals on any of the following grounds, that is to say—

- (a) that the alleged private street is not a private street or, as the case may be, that the alleged part of a private street is not a part of a private street;
- (b) that the proposed works are insufficient or unreasonable;
- (c) that the estimated expenses of the proposed works are excessive;
- (d) that any premises ought to be excluded from or inserted in the provisional apportionment;
- (e) that the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection or where the provisional apportionment is made with regard to other considerations than frontage, in respect of the degree of benefits to be derived by any premises or of the amount or value of any work already done by the owners of premises.

(2) Where premises are owned jointly by two or more persons a notice under subsection (1) may be given on behalf of those persons by one of their number, if he is authorized in writing by a majority of them to do so.

88. (1) If an objection is made under section 87 within the period limited thereby, and is not withdrawn, the local authority may, after the expiration of that period, apply to a magistrate's court to appoint a time for hearing and determining all objections so made within that period, and shall serve on the objectors notice of the time and place so appointed. Hearing and determination of objections

(2) At the hearing the court shall hear and determine the objections in the same manner as nearly as may be as if the authority were proceeding summarily against the objectors for an offence punishable on summary conviction; and the court may quash in whole or in part or may amend the resolution of approval, specification, plans, sections, estimate, and provisional apportionment, or any of them, on the application either of an objector or of the authority, and may also, if it thinks fit, adjourn the hearing and direct further notices to be given.

(3) The cost of any proceedings before a magistrate's court in relation to objections under the private streets code shall be in the discretion of the court, and the court shall have power, if it thinks fit, to direct that the whole or a part of any costs ordered to be paid by an objector or objectors shall be paid in the first instance by the authority, and charged as part of the expenses of the works on the premises of the objector or, as the case may be, on the premises of the objectors in such proportions as may appear just.

89. (1) Subject to the provisions of this section, the local authority may from time to time amend the specification, plans, sections, estimate, and provisional apportionment for any street works proposed under section 84. Power to amend specification, apportionment, &c.

(2) If the local authority proposes to amend the estimate so as to increase the amount thereof, then, before the amendment is made, a notice containing the particulars specified in paragraph (6) of the Fourth Schedule shall— Fourth Schedule

(a) be published once in each of two successive weeks in a local newspaper circulating in Trinidad and Tobago; and

- (b) be posted in a prominent position in or near to the street to which the resolution of approval relates once at least in each of three successive weeks; and
- (c) within seven days from the date of the first publication under paragraph (a) of this subsection, be served on the owners of the premises shown in the provisional apportionment as liable to be charged,

and, during one month from the said date, a document certified by the engineer of the authority giving details of the amendment of the estimate and of the consequential amendment of the provisional apportionment shall be kept deposited at the offices of the authority and open to inspection free of charge at all reasonable hours.

(3) Where a notice is served on an owner of premises under paragraph (c) of subsection (2), it shall be accompanied by a statement of the sum apportioned on those premises by the provisional apportionment as proposed to be amended.

(4) Within one month of the date of the first publication of a notice under paragraph (a) of subsection (2), objections may be made and, if made, shall be heard and determined in like manner, and subject to the like provisions with respect to the persons entitled to be heard and otherwise, as objections under section 87.

Final apportionment and objections thereto

90. (1) When any street works to be executed under the private streets code have been completed, and the expenses thereof ascertained, the engineer of the local authority shall make a final apportionment by dividing the expenses in the same proportions as those in which the estimated expenses were divided in the original or amended provisional apportionment, as the case may be, and notice of the final apportionment shall be served on the owners of the premises affected thereby.

(2) Within one month of the date on which the said notice is served on him, the owner of any premises shown in the apportionment as liable to be charged may, by notice to the authority, object to the apportionment on the following grounds, or any of them, that is to say—

- (a) that there has been an unreasonable departure from the specification, plans and sections;

- (b) that the actual expenses have without sufficient reason exceeded the estimated expenses by more than fifteen per cent;
- (c) that the final apportionment has not been made in accordance with this section.

Objections under this section shall be determined in the like manner, and subject to the like provisions with respect to the persons entitled to be heard and otherwise, as objections to the provisional apportionment.

(3) The final apportionment shall, subject to any amendment made therein by a court on the hearing of objections thereto under this section, be conclusive for all purposes.

91. (1) A local authority may from time to time recover from the owner for the time being of any premises in respect of which any sum is due for expenses of street works the whole or any portion of that sum together with interest from the date of the final apportionment. Recovery of expenses

(2) The sum apportioned on any premises by the final apportionment, or, as the case may be, by that apportionment as amended by a court, together with interest at the rate of five per cent per annum from the date of the final apportionment is, until recovered, a charge on the premises and on all estates and interests therein; and, a local authority has for the purpose of enforcing the charge the same powers and remedies under the Conveyancing and Law of Property Ordinance, and otherwise, as if it were a mortgage by deed having powers of sale and lease and of appointing a receiver. Charge on premises
Ch. 27. No. 12

(3) The authority shall keep a register of the charges under this Act, and of the payments made in satisfaction thereof, and such register shall be open to inspection by all persons at all reasonable times on payment of a sum not exceeding twenty-five cents for each property or name searched for. Register of charges

(4) A local authority may by order declare the expenses apportioned on any premises by a final apportionment made by its engineer, or, as the case may be, by that apportionment as amended by a court, to be payable by annual instalments within a period not exceeding thirty years, together with interest from the date of the final

apportionment, and any such instalment and interest, or any part thereof, may be recovered from the owner or occupier for the time being of the premises. The Third Schedule applies in relation to any sum paid by an occupier of premises under this subsection.

Exemption for
place of public
religious worship

92. (1) The Minister or other the owner of a place of public religious worship is not liable to expenses of street works under the private streets code as the owner of that place, or of a churchyard or burial ground attached thereto, and the proportion of expenses in respect of which an exemption is allowed under this section shall be borne by the local authority.

- (2) No such expenses as aforesaid shall be deemed—
- (a) to be a charge on such a place, or churchyard or burial ground; or
 - (b) to subject such a place, or churchyard or burial ground, to distress, execution or other legal process.

Objections only to
be made as pro-
vided by code

93. No objection which could be made under any provision of the private streets code shall be made in any proceeding or manner otherwise than as provided by that code.

Minister may
determine
proportion of
expenses to
be borne by
owner of
premises

94. Where the final apportionment has been determined in accordance with section 90 or 145 as the case may be, the Minister, if satisfied on representations made by an owner of any premises or land affected thereby on any of the following grounds—

- (a) that the owner has previously contributed to the expenses incurred in executing such works; or
- (b) that a reasonable amount for the development of such street was included in the purchase price of the land or the premises; or
- (c) that the premises or land affected thereby is in an area where there are circumstances including the level of development of that area, which would make it inequitable for the owner to bear the proportion of the final apportionment, apportioned to his land or premises,

may abate the proportion of the expenses apportioned to such owner in the final apportionment and shall direct the local authority that the sum apportioned on the premises or land and specified in the final apportionment shall be of such lesser proportion as he may determine and on such direction section 91 shall have effect as if the reference therein to the sum apportioned were a reference to the sum as determined by the Minister under this section.

95. (1) Subject to the provisions of section 93, a person aggrieved by a decision of a local authority in a case where the authority is empowered under section 91 to recover any expenses incurred by it may appeal to the Minister within twenty-one days from the date on which a demand for the payment of the expenses or any part thereof, was first served on such person and the Minister may make such decision as to him seems equitable, and the decision shall be final and binding on all parties.

Right of appeal to Minister where local authority exercises power under section 91

(2) A person appealing under subsection (1) shall in his appeal state the grounds thereof, and shall serve a copy of his appeal on the local authority; and any proceedings commenced for the recovery of any such expenses as aforesaid by the authority shall, on the service on the authority of the copy of the appeal, be stayed.

(3) The Minister may, if he thinks fit, by his decision direct the authority to pay to the person so proceeded against such sum as he may consider to be a just compensation for the loss or damage sustained by that person by reason of the proceedings.

General

96. A local authority may include in street works to be done in relation to a street under the private streets code a variation of the relative widths of the carriageway and of the footway or footways of the street; but no greater charge shall be imposed on a person by reason of any such variation than could have been imposed in respect of a carriage or footway of the width prescribed for a new street by an enactment with respect to the width of new streets which applied to the street when it was laid out; and any sum in excess of that charge shall be borne by the authority.

Power to vary width of carriageway and footpath on making up a private street

Widening of highway comprised in private street

97. Where, in the course of the execution of street works under the private streets code in a private street which consists of or comprises a highway, the local authority widens the highway under the powers conferred by Part V, the widening does not relieve any person of liability for expenses of the street works, and the amount of that liability shall not be greater or less than it would have been if the highway had not been widened.

After execution of street works private streets may become highways maintainable at public expense

98. (1) When any street works have been executed in a private street the local authority may, by notice published in a daily newspaper and the *Gazette* declare the street to be a highway, which for the purposes of this Act is a highway maintainable at the public expense, and on the expiration of the period of twenty-eight days from the date of publication of the notice, the street shall become such a highway, but the street shall not become a highway by virtue of this subsection, if during the said period, the owner or owners thereof or the majority in number of such owners give notice of objection to the local authority.

(2) Where the local authority does not declare the street to which subsection (1) applies to be a highway maintainable at the public expense, the provisions of section 90 and section 91 apply.

(3) Where street works have been executed in a part only of a street (not being a part extending for the whole of the length of the street), subsection (1) has effect as if for references therein to the street there were substituted references to the length of the street which constitutes or comprises that part.

Power of majority of frontagers to require execution of street works under private streets code

99. (1) Where a majority in number of the owners of land having a frontage on a built-up private street, or as many of those owners as have between them more than half the aggregate length of all the frontages on both sides of the street, by notice request the local authority in whose area the street is situate to exercise its powers under the private streets code so as to secure the execution of works in that street in accordance with the code the authority shall proceed to exercise its powers accordingly.

(2) A local authority to whom a request is made under subsection (1) may as a condition precedent to the exercise by it of its powers under the private streets code serve a notice on all the frontagers on that part of the street

in respect of which the request was made requiring them to pay a sum specified in the notice and unless that sum is paid within one month from the date of the notice the authority may determine not to carry out the street works.

(3) For the purposes of subsection (1), a street shall be deemed to be built-up if the aggregate length of the frontages of the buildings on both sides of that street constitutes at least one-half of the aggregate length of all the frontages on both sides of that street.

100. (1) A majority in the number of tenants occupying land having a frontage on a private street which is not sewered, levelled, paved, metalled, drained, channelled, made good or lighted, may request the local authority in whose area the land is situate to exercise its powers under the private streets code so as to secure the execution of works in that street in accordance with the code.

Power of majority of tenants to require execution of street works

(2) Where a request is made under subsection (1) the authority may on consideration of such request resolve under subsection (1) of section 84 to execute street works in respect of that street and all the provisions of the private streets code shall thereupon apply and references therein to the expressions "premises" and "owner of the premises" shall where the owner of the land is not the owner of the "premises" be construed as references to "land" and "owner of land" respectively.

101. (1) Subject to this section, the sum to be specified in the notice under subsection (1) of section 99 shall be such a sum as, in the opinion of the authority, would be recoverable under the private streets code in respect of the premises owned by the persons making the request if street works were then carried out in pursuance of that request or in respect of premises occupied by the persons making the request.

Sum recoverable in accordance with private streets code

(2) Where a sum has been paid under this section by the owner of premises in respect of the cost of street works to be carried out in the private street on which the premises have a frontage, the liability of that owner or any subsequent owner of that land in respect of the carrying out of street works in that street under the private streets code shall be deemed to be discharged to the extent of the sum so paid, and if on the final apportionment of the expenses in respect of those works the said sum is found to exceed the total liability in respect of the premises or

there is no liability because the street was not made up at the expense of the local authority, the authority shall refund the amount of the excess or, as the case may be, the whole sum to the person who is for the time being owner of the land; and where the premises in respect of which a sum has been so paid is subsequently divided into two or more parts so that two or more owners incur or would incur the liability aforesaid, the sum shall be treated as apportioned between those owners according to the assessed value as defined in subsection (2) of section 86.

Minister may
require local
authority to
construct,
repair, streets

102. (1) Where a local highway authority fails to comply with the provisions of section 99 or 100 or where it appears to the Minister that there are in the area of the authority, streets that are not in a reasonable or satisfactory condition, the Minister may by notice require the authority to undertake such work as he may specify as necessary and justified in the interest of the residents in the area and the Minister may having regard to the moneys available to such authority state the period within which such work shall be undertaken.

(2) Where no reasonable or satisfactory means of access is provided for persons or vehicles to any premises, agricultural lands or buildings of which such persons are tenants, the majority in number of such tenants may, by notice, request the local authority in whose area the premises, lands or buildings are situate to undertake the work of providing a street as a means of access thereto.

(3) In the event of the local authority not undertaking the work as required in subsection (1) and within the period specified in the notice thereunder or failing to comply with the request of the persons referred to in subsection (2) within a reasonable time, the Minister may make an order declaring the authority to be in default and may make an order transferring to himself the functions of the local authority under this section.

(4) Where under subsection (3) the Minister has by order transferred to himself the functions of the local authority, any expenses incurred by him in discharging the functions shall be paid in the first instance out of monies provided by Parliament, but the amount of those expenses as certified by the Minister or such lesser amount as the Minister may determine shall on demand be paid to him by the local authority in default and may be deducted from payments to be made in future to the local authority.

(5) The provisions of—sections 84 to 91, 99, 103 and 104 shall apply in respect of any works required to be undertaken for the purposes of subsection (2).

103. (1) A local authority shall pay compensation to any person who has suffered damage, other than inconvenience, by reason of the execution of street works by the authority under the private streets code.

Compensation for damage caused by execution of street works

(2) For the avoidance of doubt, it is hereby declared that a person does not suffer damage within the meaning of subsection (1) by reason of his having to pay a portion of the expenses of the street works.

104. (1) In a case where a part only of a private street is within the area of a local authority, such authority may, with the consent of the local authority in whose area any other part of the street is situated, resolve to treat that other part for the purposes of this Part as if it were within its own area; and where the authority so resolve, then, without prejudice to the operation of any enactment not contained in this Part, this Part applies in relation to that other part of the street as if it, together with the premises fronting it, were within the area of the authority passing the resolution; but a local authority shall not resolve under this subsection to treat a part of a street as if it were within its own area if that part comprises a length of the street wholly outside that area.

Provisions as to private street in area of more than one local authority

(2) In a case where a private street is within the area of a local authority but premises fronting the street are wholly or partly outside that area, then, without prejudice to the operation of an enactment not contained in this Part, this Part applies in relation to that street as if those premises were wholly within the area of that authority.

(3) In subsection (2) a reference to a street includes a reference to a length of the street but does not include a reference to any other part thereof.

(4) A resolution passed by a local authority under subsection (1) has no effect unless it is published in the *Gazette*.

105. (1) The provisions of this section shall apply in relation to land defined by a development plan under the Town and Country Planning Ordinance, 1960—

Power to treat as private street land designated for purposes of this section by development plan

(a) as the site of a proposed road, or

(b) as land required for the widening of an existing road which is of less than bye-law width, and designated by the plan as land to which this section applies.

(2) Where any land is so defined and designated as aforesaid, the local authority may at any time by order declare the land (together with any land forming part of any such existing road as aforesaid) to be a private street, and thereupon the land shall be deemed to have been dedicated to the use of the public as a highway and to be a private street for the purposes of this Part: but no such order shall be made by the local authority in relation to land which has not been acquired by it at the date of the order (other than land forming part of any such existing road as aforesaid) except with the consent of all persons interested in the land.

(3) In relation to land which is deemed to be a private street by virtue of a declaration under subsection (2), the provisions of the private streets code shall apply subject to such exceptions, adaptations and modifications as may be prescribed by regulations made by the Minister of Housing.

(4) Regulations made for the purposes of subsection (3) shall make provision for securing—

(a) that the amount of the expenses incurred in the execution of street works charged under the said code on the owners of adjoining land shall not exceed the amount which would, at the date of the commencement of the works, have been the cost of the execution of street works in the course of the construction, widening or improvement if it had been carried out so as to comply with the provisions of any bye-laws, regulations or other enactments in force in the area, and, as respects matters for which no provision is made, so as to comply with such requirements as would have been imposed by the local authority at the date of the commencement of the works as a condition of declaring the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense;

(b) that as soon as the street has been made up or widened by or to the satisfaction of the local

authority it shall become a highway maintainable at the public expense;

- (c) that no expenses incurred in the execution of street works shall be recoverable against agricultural land or buildings until the land or buildings cease to be agricultural land or buildings; and
- (d) that no expenses incurred in the execution of street works for the purpose of making a new street shall be recoverable in respect of any land (whether the site of a building or not) unless and until access is provided for and used by persons or vehicles from that land to the new street.

(5) Regulations made for the purposes of subsection (3) may provide—

- (a) for the inclusion in the expenses recoverable as aforesaid in respect of street works carried out by the local authority of any expenses incurred by a local authority after the date on which the land is defined and designated as mentioned in subsection (1) and before it is declared to be a private street under subsection (2) in the construction of sewers in or under the land; and
- (b) for authorising the local authority to enter on any land adjoining the street for the purpose of executing street works on land comprised in the street.

(6) A highway constructed by a local authority on land deemed to be a private street by virtue of a declaration under subsection (2) shall not by virtue only of paragraph (b) of subsection (2) of section 17 be for the purposes of this Act a highway maintainable at the public expense.

106. (1) Where a local authority is empowered by section 91 or 99 to recover any sum from the owner of any premises, and the authority is unable by the exercise of its powers (other than powers conferred by this section) to recover that sum, then if—

- (a) the said premises were previously transferred by a person (hereafter in this section referred to as "the transferor") who at the time of the transfer was the owner of other premises adjoining those premises; and
- (b) a magistrate's court is satisfied that the transfer

Evasion of private street works expenses by owners

was intended for the purpose of evading the payment of expenses of street works,

the court may make an order under this section.

(2) An order under this section shall provide that, to such extent as the court making the order may determine, the local authority may recover the said sum, and, where that sum is payable under an order made under subsection (4) of section 91 or subsection (2) of section 132, any further sums which may fall due under that order, from the transferor.

(3) In this section "transfer" includes any disposal of land whether by way of sale, lease, exchange, gift, or otherwise.

Liability on
certain persons
for construction
repairs, &c.,
of streets

107. (1) Where the majority in number of owners of building lots in a building area in an area of land to which subsection (2) applies by notice request the local authority in whose area the building area is situate to exercise its powers under the private streets code so as to secure the execution of such street works, including the construction of a street, in that area as the authority require under that code, the authority may proceed to exercise its powers accordingly.

(2) Where the request made under subsection (1) is in respect of an area of land which a person has within ten years prior to the commencement of this Act—

(a) laid out in building lots or laid out and sold in building lots (in this section referred to as a "building area") and has not complied with the provisions of the Public Health Ordinance or any other enactment respecting the laying out of land in lots for building and other purposes, or of any building bye-laws, general building bye-laws or any regulations respecting the laying out and construction of streets; or

(b) sold such building lots for a price which included a reasonable amount for street development, and has not provided such streets or any properly constructed streets,

the local authority shall serve notice on that person requiring him to pay a sum specified in the notice within one month of the date of the notice and on the refusal or neglect of such person to pay such sum the authority shall

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proceed to execute the street works within that building area and recover the expenses from such person.

(3) The sum to be specified in the notice under subsection (2) shall be such sum as, in the opinion of the authority would represent the expenses to be incurred in executing such street works and where the person to be served with the notice are the persons mentioned in subsection (4) the estimated expenses shall be equally apportioned between such persons.

(4) Where the person to whom subsection (2) relates is a company which has ceased to carry on business or has been wound up, then notwithstanding the Companies Ordinance, the notice shall be served on all of the directors or past directors, as the case may be, who have been directors of the company within the period specified in that subsection or where the person is a company which is being wound up, the notice shall be served on the liquidator. Ch. 31. No. 1

(5) In this section, "company" has the meaning assigned to it by the Companies Ordinance. Ch. 31. No. 1.

(6) This section shall have effect for a period of ten years after the commencement of this Act.

108. (1) A local authority may with the approval of the Minister at any time resolve to bear the whole or a portion of the expenses of any street works in its area under the private streets code, and where an authority so resolves the liabilities of the owners of premises in respect of those expenses or of a person to whom section 107 refers shall be treated as discharged, or as proportionately reduced, accordingly. Contribution by local authority to expenses of street works

(2) Without prejudice to its powers under subsection (1), a local authority may with the approval of the Minister at any time resolve to bear the whole or a portion of the expenses of any street works in its area under the private street code being expenses which would otherwise be apportioned on, or to the owner of, any premises of which only the rear or a flank fronts the street, and where an authority so resolves the liability of the owner of those premises in respect of those expenses shall be treated as discharged or reduced accordingly.

Payment to be made by owners of new buildings in respect of street works

109. (1) Subject to the provisions of this section, where—

- (a) it is proposed to erect a building for which plans are required in accordance with building bye-laws, to be deposited with the local authority, and
- (b) the building will have a frontage on a private street in which the local authority has power under the private streets code to require works to be executed or to execute works,

no work shall be done in or for the purpose of erecting the building unless the owner of the land on which it is to be erected or a previous owner thereof has made to the local authority the payment to it of such sum as may be required under section 110 in respect of the cost of street works in that street.

(2) If work is done in contravention of subsection (1), the owner of the land on which the building is to be erected and, if he is a different person, the person undertaking the erection of the building shall be guilty of an offence and shall be liable in respect thereof to a fine not exceeding five hundred dollars, and any further contravention in respect of the same building shall constitute a new offence and may be punished accordingly: but where the person undertaking the erection of the building, not being the owner of the land on which it is to be erected, is charged with an offence under this subsection, it shall be a defence for him to prove that he had reasonable grounds for believing that the said sum had been paid or secured by the owner of the land in accordance with subsection (1).

Proceedings under this subsection shall not be taken by any person other than the local authority.

(3) This section shall not apply—

- (a) in a case where the owner of the land on which the building is to be erected will be exempt under any provision of this Part from liability to expenses incurred in respect of street works in the private street in question;
- (b) in a case where the building proposed to be erected will be situated in the curtilage of, and be appurtenant to, an existing building;
- (c) in a case where the plans for the building were approved by the local authority under the

Public Health Ordinance, the Port-of-Spain Corporation Ordinance, the San Fernando Corporation Ordinance, the Arima Corporation Ordinance or the Town and Country Planning Ordinance, 1960 before the date of the commencement of this Act;

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- (d) in a case where an agreement has been made by any person with the local authority under section 18 providing for the carrying out at the expense of that person of street works in the whole of the street or part of the street comprising the whole of the part on which the frontage of the building will be, and for securing that street or the part thereof, on completion of the works, will become a highway maintainable at the public expense;
- (e) in a case where the local authority, being satisfied that the whole of the street or such part thereof as aforesaid is not, and is not likely within a reasonable time to be, substantially built-up or in so unsatisfactory a condition as to justify the use of its powers under this Part for securing the carrying out of street works in the street or part thereof, by notice exempt the building from this section;
- (f) in a case where the local authority, being satisfied that the street is not, and is not likely within a reasonable time to become, joined to a highway maintainable at the public expense, by notice exempt the building from this section;
- (g) in a case where the whole street, being less than one hundred yards in length, or a part of the street not less than one hundred yards in length and comprising the whole of the part on which the frontage of the building will be, was on the date of the commencement of this Act, built-up to such an extent that the aggregate length of the frontages of the buildings on both sides of the street or part constituted at least one half of the aggregate length of all the frontages on both sides of the street;
- (h) in a case (not falling within paragraph (f)) where the local authority, being satisfied that the whole of the street was on the commencement

of this Act substantially built-up, by notice exempt the building from this section;

- (i) in a case where the building is proposed to be erected on land belonging to, or in the possession of a municipal or county council or any statutory authority in whom responsibility for the provision of transport or housing is vested;
- (j) in a case where the building is proposed to be erected by a trading or industrial estate company, and the cost thereof is to be defrayed wholly or mainly by Government—

- (i) that more than three-quarters of the aggregate length of all the frontages on both sides of the street, or of a part of the street not less than one hundred yards in length and comprising the whole of the part on which the frontage of the building will be, consists or is at some future time likely to consist, of the frontages of industrial premises, and

- (ii) that its powers under the private streets code are not likely to be exercised in relation to the street, or to that part thereof, as the case may be, within a reasonable time,

by resolution exempt the street, or that part thereof, from this section.

(4) Where a sum has been paid or secured under this section by the owner of land in relation to a building proposed to be erected thereon, and thereafter a notice is served under subsection (3) exempting the building from this section, or a resolution is passed under paragraph (k) of that subsection exempting the street or part of a street on which the building will have a frontage from this section, the local authority shall refund that sum to the person who is for the time being owner of the land or shall release the security, as the case may be.

Where the said sum was paid and after the payment thereof but before the service of the said notice or the passing of the said resolution, as the case may be, the land in respect of which it was paid was divided into two or more parts each having a frontage on the private street in

question, the sum shall be treated for the purposes of this subsection as apportioned between the owners thereof according to their respective frontages.

110. (1) In a case to which section 107 applies, the local authority shall, within one month from the passing of the plans of the building deposited in accordance with building bye-laws, serve a notice on the person by or on whose behalf the plans were deposited requiring the payment or the securing under the last foregoing section of a sum specified in the notice.

Determination of liability for, and amounts of, payments

(2) Subject to the provisions of this section, the sum to be specified in a notice under subsection (1) shall be such sum as, in the opinion of the local authority, would be recoverable under the private streets code in respect of the frontage of the proposed building on the private street if the authority were then to carry out such street works in the street as it would require under that code before declaring the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense.

In this subsection a reference to a street shall not include a reference to a part of a street, except to a part which the local authority thinks fit to treat as constituting a separate street for the purposes of this subsection and which comprises the whole of the part on which the frontage of the building will be.

(3) If, at any time after the service of a notice under subsection (1), the local authority is of opinion that the sum specified in the notice exceeds such sum as in its opinion would be recoverable as mentioned in subsection (2) if it were then to carry out such street works as are so mentioned, or is of opinion that no sum would be so recoverable, it may, by a further notice served on the person who is for the time being owner of the land on which the building is to be, or has been, erected, substitute a smaller sum for the sum specified in the notice served under the said subsection (1) or, as the case may be, intimate that no sum falls to be paid or secured:

Provided that this subsection shall not apply where a sum has been paid or secured in compliance with a notice served under the said subsection (1) and the case is one in which the authority has power to make a refund or release under subsection (1) of section 111.

(4) Where, under any enactment, the erection of buildings on land having a frontage on a new street is prohibited until works for the construction or sewerage of the street have been carried out in accordance with bye-laws, the amount of the sum to be specified in a notice served under this section shall be calculated as if those works had been carried out.

(5) Where a notice has been served on any person under this section (other than a notice intimating that no sum falls to be paid or secured) that person or, if he is a different person, the owner of the land on which the building is to be, or has been, erected, may, not later than one month from the date of the service of the notice, appeal to the Minister who may substitute a smaller sum for the sum specified by the local authority.

On appeal under this subsection, the Minister shall give the appellant an opportunity of being heard before a person appointed by the said Minister.

(6) Where a sum has been paid or secured in compliance with a notice served under subsection (1) and a notice is subsequently served under subsection (3) thereof substituting a smaller sum for the sum specified in the first-mentioned notice or intimating that no sum falls to be paid or secured, the local authority—

- (a) if the sum was paid, shall refund the amount of the excess or, as the case may be, the whole sum to the person who is for the time being owner of the land on which the building is to be, or has been, erected;
- (b) if the sum was secured and the person whose property is security for the payment thereof is for the time being owner of that land, shall release the security to the extent of the excess or, as the case may be, the whole security;
- (c) if the sum was secured and the person whose property is security for the payment thereof is not for the time being owner of that land, shall pay to that owner an amount equal to the excess or, as the case may be, the whole sum, and shall be entitled to realize the security for the purpose of recovering the amount so paid.

Where any land in respect of which a sum has been so paid or secured is subsequently divided into two or more

parts so that two or more owners would, if street works were carried out, incur liability in respect thereof, the sum shall be treated as apportioned between those owners according to their respective frontages and, if the sum was secured and the security is the property of one only of those owners, the local authority shall only be required under paragraph (b) hereof to release the security to the extent of the amount apportioned to that owner and shall be entitled to realize the security for the purpose of recovering the amount or amounts paid to the other owner or owners under paragraph (c) hereof.

(7) Where a security is realized for the purpose of recovering an amount paid by a local authority under paragraph (c) of subsection (6) and the sum produced by realizing the security exceeds the amount so paid, the amount of the excess shall be held by the authority and dealt with under sections 109 to 114 as if it had been an amount paid under section 109 on the date on which the security was realised.

111. (1) Where a sum has been paid or secured under section 109 by the owner of the land in respect of the cost of street works to be carried out in the private street on which that land has a frontage, and any street works are subsequently carried out in the private street in respect of that frontage to the satisfaction of but otherwise than at the expense of the local authority, the authority may refund to the person at whose expense the works are carried out the whole or such part of the security, as in its opinion represents the amount by which the liability of the owner of that land in respect of street works has been reduced as a result of the carrying out of the said street works: but where the person at whose expense the works are carried out is not the person who is for the time being owner of that land no refund or release shall be made under this subsection unless the owner has been notified of the proposal to make the refund or release and has been afforded an opportunity of making representations to the local authority in relation thereto.

Refunds, &c.,
where work done
otherwise than at
expense of local
authority

(2) Where any land having a frontage on a private street, being land in respect of which a sum has been paid or secured under section 109, is subsequently divided into two or more parts each having a frontage on that private street, the sum shall be treated as apportioned between the owners

thereof according to their respective frontages and subsection (1) shall have effect accordingly.

(3) Where a sum has been paid or secured under section 109 by the owner of land in respect of the cost of street works to be carried out in the private street on which that land has a frontage and thereafter the local authority enters into an agreement with any person under section 18 providing for the carrying out at the expense of that person of street works in respect of that frontage, that agreement may also provide for the refund of the said sum or a part thereof either without interest or with interest at such rate as may be specified in the agreement, or for the release of the whole or a part of the security as the case may be.

Sums paid or secured to be in discharge of further liability for street works

112. Where a sum has been paid or secured under section 109 by the owner of land in respect of cost of street works to be carried out in the private street on which that land has a frontage, the liability of that owner or any subsequent owner of that land in respect of the carrying out of street works in that street under the private streets code shall, as respects that frontage, be deemed to be discharged to the extent of the sum so paid or secured, and if, when the street is declared to be a highway which for the purposes of this Act is a highway maintainable at the public expense, the said sum is found to exceed the total liability aforesaid in respect of that frontage or there is no liability because the street was not made up at the expense of the local authority, the local authority—

- (a) if the sum was paid, shall refund the amount of the excess or, as the case may be, the whole sum to the person who is for the time being owner of the land;
- (b) if the sum was secured and the person whose property is security for the payment thereof is for the time being owner of the land, shall release the security to the extent of the excess or, as the case may be, the whole security;
- (c) if the sum was secured and the person whose property is security for the payment thereof is not for the time being owner of the land, shall pay to that owner an amount equal to the excess or, as the case may be, the whole sum, and shall be entitled to realize the security for the purpose of recovering the amount so paid.

Where land in respect of which a sum has been so paid or secured is subsequently divided into two or more parts so that two or more owners incur or would incur the liability aforesaid, the sum shall be treated as apportioned between those owners according to their respective frontages, and, if the sum was secured and the security is the property of one only of those owners, the local authority shall only be required under paragraph (b) hereof to release the security to the extent to which the amount apportioned to that owner exceeds his liability aforesaid, or, as the case may be, to the extent of the whole of that amount, and shall be entitled to realize the security for the purpose of recovering the amount or amounts paid to the owner or owners under paragraph (c) hereof.

(2) Where any refund, release or payment has been made under subsection (6) of section 110, or under section 111 subsection (1) shall have effect as if for references therein to a sum paid or secured there were substituted references to any sum remaining paid or secured.

113. (1) Where, on the occasion of the deposit of plans for the erection of a building, the amount to be paid or secured under section 109 has been determined under section 110 and subsequently—

Determination to
cease to have
effect when plans
are not proceeded
with

- (a) the local authority declare under any enactment that the deposit of the plans shall be of no effect, or
- (b) before any work has been done in or for the purpose of erecting the building, the owner gives notice to the local authority of his intention not to proceed with the building,

the said determination and any payment made or security given in accordance therewith shall, unless there have already been carried out or commenced in the street under the private streets code street works in respect of which the owner of the land on which the building was to be erected is liable, be of no effect for the purposes of this Part.

(2) Where by virtue of subsection (1) a determination is of no effect and a sum has been paid or security given in accordance therewith, the local authority—

- (a) if the sum was paid, shall refund it to the person who is for the time being owner of the land;
- (b) if the sum was secured and the person whose property is security for the payment thereof

is for the time being owner of the land, shall release the security;

- (c) if the sum was secured and the person whose property is security for the payment thereof is not for the time being owner of the land, shall pay to that owner an amount equal to the said sum, and shall be entitled to realize the security for the purpose of recovering the amount so paid.

Where land in respect of which a sum has been so paid or secured is subsequently divided into two or more parts so that two or more owners would, if street works were carried out, incur liability in respect thereof, the sum shall be treated as apportioned between those owners according to their respective frontages and, if the sum was secured and the security is the property of one only of those owners, the local authority shall only be required under paragraph (b) hereof to release the security to the extent of the amount apportioned to that owner and shall be entitled to realize the security for the purpose of recovering the amount or amounts paid to the other owner or owners under paragraph (c) hereof.

(3) Where any refund, release or payment has been made under subsection (6) of section 110 or under section 111 thereof, subsection (2) shall have effect as if for references therein to a sum paid and security given there were substituted references to any sum remaining paid and any remaining security respectively.

(4) Where a person notifies the local authority in accordance with paragraph (b) of subsection (1) of his intention not to proceed with the building and by reason thereof a determination is of no effect, and subsequently notice is given to the local authority by the owner of the land that he intends to proceed with the building in accordance with the plans as originally deposited, the notice to be served under subsection (1) of section 111 by the local authority shall, in lieu of being served as required by that subsection, be served on him within one month from the date of the service of the notice of his intention to proceed with the building, and the said section 111 shall have effect accordingly.

Interest on sums
paid under
sections 109 to 113

114. Any sum paid by the owner of land to a local authority under section 109 shall, in so far as it continues

to be held by the authority, carry simple interest at a rate to be furnished by the Minister of Finance from the date of payment until such time as the sum or a part thereof remaining so held—

(a) falls to be set off under section 112 against the liability of the owner of the land in respect of the carrying out of street works; or

(b) falls to be refunded in full under section 111; and the interest shall be held by the authority until that time and dealt with under those provisions as if it formed part of the said sum: but this subsection shall not apply to any sum in so far as it is repaid under an agreement such as is referred to in subsection (3) of section 111.

115. (1) Where street works have been executed by a local authority in any private street therein, which is capable of being used by the owners of all the premises in such area, the Minister may notwithstanding the powers of such local authority under subsection (1) of section 98, declare any such street to be a highway which for the purposes of this Act, is a highway maintainable at the public expense.

Minister may declare certain private streets dedicated to the public use

(2) The Minister may by publication in a daily newspaper and in the *Gazette* give notice of his intention to dedicate any private street referred to in subsection (1) to the public use and on the expiration of twenty-eight (28) days from the date of publication of the notice, such street shall be a highway to which the provisions of this Act other than this Part apply unless within that period the owner or owners of the street or the majority in number of the owners give notice of objection thereto.

116. (1) In this Part “private street” means a street not being a highway maintainable at the public expense and—

Interpretation of Part IX

(a) includes any land which is deemed to be a private street by virtue of a declaration made under section 105; and

(b) for the purpose of the application of sections 109 to 114 in relation to any building, includes—

(i) any land shown as a proposed street on plans deposited either before or after the commencement of this Act, with respect to that building either under building

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- bye-laws or on an application for planning permission under the Town and Country Planning Ordinance, 1960, and
- (ii) any land which, if work for the erection of that building had been commenced, would have become part of an existing highway by virtue of subsection (7) of section 71:

Provided that the fact that a part of a street is a highway maintainable at the public expense shall not prevent any other part thereof from being taken for the purposes of this Part to be a part of a private street, and shall not prevent the street from being taken for the purposes of the private street code to be a private street.

Ch. 12. No. 4

(2) In this Part—
“building bye-laws” and “general building bye-laws” have the meanings respectively assigned to them under section 63L of the Public Health Ordinance;

“fronting” includes adjoining, and “front” shall be construed accordingly;

“paving, metalling and flagging” includes all methods of making a carriageway or footway;

“street works” means any works for the sewerage, levelling, paving, metalling, draining, channeling and making good of a street, and includes the provision of proper means for lighting a street.

(3) For the purposes of section 99 and sections 109 to 114, the frontage of a building on a proposed building or a street shall be deemed to be the frontage that the building itself and any land occupied or as the case may be, proposed to be occupied with the building and for the purposes thereof has or will have on the street.

(4) In ascertaining a majority in number of owners for the purposes of any provision of this Part, joint owners shall be treated as one owner.

Minister jointly
and severally
responsible
with local
authority

117. (1) The Minister is jointly and severally responsible with the local authority for the administration of the provisions of this Part and any reference therein to the local authority shall be made and construed so as to include a reference to the Minister.

(2) For the purposes of the exercise of any power and the performance of any duty under the provisions referred to in subsection (1) when the Minister exercises any power or performs any duty with reference to those provisions in conflict or at variance with the exercise or performance of that power or duty by the local authority, the exercise or performance of the power or duty by the Minister shall prevail.

PART X

ACQUISITION, VESTING AND TRANSFER OF LAND, ETC.

Acquisition of Land

118. (1) The Minister may acquire by agreement, or subject, to subsection (3), compulsorily, land required for the construction of a main road, and any highway authority may acquire by agreement, or, subject to the said subsection (3), compulsorily, land required for the construction of a highway which is to be a highway maintainable at the public expense, other than a main road.

Acquisition of land for construction, improvement, &c., of highway

(2) A highway authority may acquire by agreement, or, subject to subsection (3), compulsorily, land required for the improvement of a highway, being an improvement which it is authorised by this Act to carry out in relation to the highway.

(3) A highway authority shall not be enabled by virtue of either subsection (1) or subsection (2) to acquire otherwise than by agreement land lying more than two hundred yards from the middle of a highway or proposed highway, and a highway authority shall not, in exercise of the power conferred by subsection (1), acquire otherwise than by agreement land required for the construction of a highway unless plans for the construction of the highway have been made or approved by the Minister.

119. Where the boundaries of any highway will be altered in consequence of any improvement proposed to be made under this Act in relation to the highway, then, for the purposes of section 118, the middle of that highway shall be the middle of it as proposed to be improved.

Provisions as to middle of highway of which boundaries are to be altered

Acquisition of land between improvement line and boundary of street

120. (1) Where a highway authority has prescribed an improvement line in relation to any street under section 27, it may acquire by agreement or compulsorily any land not occupied by buildings, lying between the improvement line and the boundary of the street.

(2) Any land acquired under this section shall, at such time or times as the highway authority may determine, be added to and made good as part of the street by the authority, and until it is so added the occupier of the land from which it is severed, and other persons with his permission, are entitled to reasonable access across the land so acquired to and from the street, and have the same rights in regard to the laying, altering, maintaining and removal of drains, mains, pipes or electric lines in that land as if it were already part of the street.

(3) Subsection (8) of section 27 has effect in relation to this section as it has effect in relation to that section.

General provisions as to acquisition of land

Ch. 27. No. 10

121. (1) Any power to acquire land compulsorily conferred by section 118 or section 120, on a local highway authority is exercisable in any particular case on its being authorised so to do by the Minister, and section 51 of the Land Acquisition Ordinance has effect in relation thereto.

Ch. 27. No. 10

(2) The power vested in the Minister by section 108 to acquire land compulsorily is a power vested in the Crown and exercisable in accordance with the Land Acquisition Ordinance.

(3) In assessing the compensation payable in respect of the compulsory acquisition of land by a highway authority under powers conferred by section 118—

(a) there shall be taken into account the extent to which the remaining contiguous lands belonging to the same person may be benefited by the purpose for which the land is authorised to be acquired;

(b) without prejudice to the generality of paragraph (a) there shall, in the case of land authorised to be acquired for widening a highway, be set off against the value of the land to be acquired, any increase in the value of other land belonging to the same person which will accrue to him by reason of the creation of a frontage to the highways as widened; and

- (c) shall take into account, and embody in its award, any undertaking given by the highway authority as to the use to which the land, or any part of it, will be put,

and the Land Acquisition Ordinance shall, in its application to a compulsory acquisition by a highway authority under the said section, have effect subject to the provisions of this subsection. Ch. 27. No. 10

(4) In assessing the compensation payable in respect of the compulsory acquisition by a highway authority under section 120 of land lying between an improvement line and the boundary of a street, there shall be taken into account any benefit accruing to the vendor by reason of the improvement of the street except in so far as it may have been previously taken into account in the assessment of compensation payable under subsection (6) of section 27, and the Land Acquisition Ordinance shall, in its application to a compulsory acquisition by a highway authority under the said section 120, have effect subject to the provisions of this subsection.

Vesting of Highways, &c.

122. Subject to the provisions of this section, every highway maintainable at the public expense and the subsoil of such highway is vested in the Crown. Vesting of highways maintainable at public expense

PART XI

FINANCIAL PROVISIONS

- 123.** (1) The Minister may make advances to a highway authority for any of the following purposes, that is to say— Advances in respect of the construction and improvement of highways, &c.
- (a) the construction of a highway which is to be a highway maintainable at the public expense, or the construction of a highway under the power of section 11;
 - (b) the maintenance of a highway;
 - (c) the improvement of a highway; and
 - (d) the acquisition of land which the Minister is satisfied has been or is to be acquired with a view to the construction of a new highway or the improvement of an existing highway.

(2) It is hereby declared that the power of the Minister to make advances to himself in his capacity of highway authority for any purpose specified in subsection (1) is a power conferred on him to expend money for that purpose.

(3) The Minister may make advances under this section either by way of grant or by way of loan, or partly in one way and partly in the other, and on such terms and subject to such conditions as he thinks fit.

(4) The Minister, in deciding whether to make an advance under this section in respect of a work, the execution of which will require the employment of labour on a considerable scale, shall have regard to the general state and prospects of employment.

Expenses to be paid out of moneys provided by Parliament

124. (1) There shall be paid out of moneys provided by Parliament any expenses incurred by the Minister.

(2) Any sums received by the Minister under this Act shall be paid into the Consolidated Fund.

Borrowing power

125. A local authority may, with the approval of the Minister of Finance, borrow money for the purposes of this Act.

PART XII

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Miscellaneous Powers of Highway Authorities and Local Authorities

Powers of entry for purposes connected with provision of main roads

126. (1) A person duly authorised in writing by a highway authority may enter on any land—

- (a) for the purpose of surveying it in connection with the making of an order under section 4 or section 5; or
- (b) where an order under the said section 4 or section 5 so provides, for purposes connected with the carrying out of any works in pursuance of the order, or with the removal of any temporary works so carried out.

(2) A person authorised under this section to enter upon any land shall, if so required, produce evidence of

his authority before entering; and a person shall not under this section demand admission as of right to any land which is occupied unless at least three days' notice of the intended entry has been given to the occupier.

(3) A person who wilfully obstructs a person acting in the exercise of his powers under this section is guilty of an offence and liable in respect thereof to a fine not exceeding one hundred dollars.

(4) Where, in the exercise of a power of entering land conferred by this section (including the carrying out or removal of any such works as aforesaid), any damage has been caused to land or to chattels any person interested in the land or chattels may recover compensation in respect of that damage from the authority by whom or on whose behalf the power was exercised; and where in consequence of the exercise of such a power any person is disturbed in his enjoyment of any land or chattels, he may recover from that authority compensation in respect of the disturbance.

(5) Any power conferred by this section to survey land shall be construed as including power to search and bore for the purpose of ascertaining the nature of the sub-soil or the presence of minerals therein; except that a person shall not carry out any works authorised by this subsection unless notice of his intention so to do has been included in the notice required by subsection (2), and, if the land in question is held by any statutory undertakers and they object to the proposed works on the ground that the carrying out thereof would be seriously detrimental to the carrying on of their undertaking, the works shall not be carried out except with the authority of the Minister of Public Utilities.

127. (1) A person duly authorised in writing by the Minister or other authority having power under this Act to make a public path creation order, a public path extinguishment order, or a public path diversion order, may enter upon any land for the purpose of surveying it in connection with the making of the order.

Powers of entry for purposes connected with certain orders relating to footpaths

(2) For the purpose of surveying land, or of estimating its value, in connection with a claim for compensation payable by an authority in respect of that or any other land under section 12, or under that section as applied by subsection (1) of section 43, a person duly authorised

in writing by the authority from whom the compensation is claimed may enter upon the land.

(3) A person authorised under this section to enter upon any land shall, if so required, produce evidence of his authority before entering; and a person shall not under this section demand admission as of right to any land which is occupied unless at least three days' notice in writing of the intended entry has been given to the occupier.

(4) A person who wilfully obstructs a person acting in the exercise of his powers under this section is guilty of an offence and liable in respect thereof to a fine not exceeding one hundred dollars.

Entry, &c., of
premises by
highway authority
or local authority
for certain
purposes

128. (1) If, in the discharge of functions conferred or imposed on an authority by a provision of this Act to which this section applies, it becomes necessary for an authorised officer of the authority to enter, examine or lay open any premises for the purpose of surveying, making plans, executing, maintaining or examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries, and the owner or occupier of the premises refuses to permit the premises to be entered, examined, or laid open for any such purpose as aforesaid, the authority, after giving notice to the owner or occupier of its intention to do so, may make a complaint to a magistrate's court for an order authorising the authority by any authorised officer to enter, examine and lay open the premises for any such purpose.

(2) If on the hearing of the complaint no sufficient cause is shown against the making of the order for which the complaint is made, the court may make the order, and thereupon any authorised officer of the complainant authority may, at all reasonable times between the hours of eight in the morning and five in the afternoon, enter, examine, or lay open the premises described in the order for such of the purposes mentioned in subsection (1) as are specified in the order; but, except in a case of emergency, no entry shall be made on any premises, and no works shall be begun therein, under this subsection unless at least three days' notice of the intended entry, and of the object thereof, has been given to the occupier of the premises.

(3) Where, in the course of an entry on or examination or laying open of premises authorised by an order

under this section, damage has been caused to land or to chattels, any person interested in the land or chattels may recover compensation in respect of that damage from the authority on whose complaint the order was made; and where by reason of any such entry, examination, or laying open, any person is disturbed in his enjoyment of land or chattels, he may recover from that authority compensation in respect of the disturbance.

(4) This section applies to the provisions of this Act which are specified in the Eighth Schedule.

Eighth Schedule

129. (1) A local authority may remove, appropriate, use, sell, or otherwise dispose of all old materials existing in any street other than a highway maintainable at the public expense at the time of the execution by the authority of any works in the street, unless those materials are removed by the owners of premises in the street, within three days from the date of service of a notice from the authority requiring the owners of those premises to remove the materials.

Power to dispose of certain materials

(2) Where the authority removes, appropriates, or uses, sells, or otherwise disposes of any materials in a street under subsection (1), it shall, on demand, pay or allow to the owner of any premises in the street such proportion of the reasonable value of the materials as is attributable to those premises, and the amount thereof shall be settled in case of dispute by a magistrate's court.

(3) The authority may sell any materials which have been removed by it from any premises in the execution of powers conferred on it by subsection (2) of section 60 and which are not within three days from the date of its removal claimed by the owner and taken away by him.

(4) Where the authority sells any materials under subsection (3), it shall pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by it from him.

130. A highway authority may by agreement with any person execute at his expense any work which it has under this Act (except under Part IX thereof) required him to execute, or any work in connection with a highway which he is otherwise under an obligation or is entitled to execute, and for that purpose it shall have all such rights as he would have.

Power of certain authorities to execute certain works on behalf of other person

Power to require information as to ownership of land

131. (1) A highway authority may, for the purpose of enabling it to discharge or exercise any of its functions under this Act, require the occupier of any premises and any person who, either directly or indirectly, receives rent in respect of any premises, to state in writing the nature of his own interest therein and the name and address of any other person known to him as having an interest, therein, whether as freeholder, mortgagee, lessee, or otherwise.

(2) A person who, having been required in pursuance of this section to give any information, fails to give that information, or knowingly makes any mis-statement in respect thereof, is guilty of an offence and liable in respect thereof to a fine not exceeding twenty-five dollars.

Protection of Members and Officers of Local Authorities

Protection of members and officers of local authorities from personal liability

132. (1) No act or thing done by any member of a local highway authority, or by any officer of the authority or other person acting under the direction of such authority, shall, if the act or thing was done *bona fide* for the purpose of carrying a provision of this Act to which this section applies into effect, subject him personally to any liability, action, claim, or demand whatsoever.

(2) Any expenses incurred by any such members, officer or person as is mentioned in subsection (1) for the purpose of carrying a provision of this Act to which this section applies into effect shall be paid by the local highway authority.

(3) Nothing in this section shall be construed to exempt any member of a local highway authority from liability to be surcharged with the amount of payment which may be disallowed by the auditor in the accounts of the authority, and which that member authorized or joined in authorizing.

Eighth Schedule

(4) This section applies to section 128 and the provisions of this Act specified in the Eighth Schedule.

Obstruction of persons executing Act

Penalty for obstructing execution of Act

133. A person who wilfully obstructs any person acting in the execution of this Act or of a bye-law or order made thereunder is, in any case for which no other provision

is made by this Act, guilty of an offence and liable in respect thereof to a fine not exceeding two hundred and fifty dollars, and, if the offence in respect of which he was convicted is continued after the conviction, he is guilty of a further offence and liable in respect thereof to a fine not exceeding twenty-five dollars for each day on which the offence is so continued.

134. If on a complaint made by the owner of any premises, it appears to a magistrate's court that the occupier of these premises prevents the owner from executing any work which he is by this Act required to execute, the court may order the occupier to permit the execution of the work.

Power to require occupier to permit works to be executed by owner

Recovery of Expenses

135. (1) Where a local authority has incurred expenses for the repayment of which the owner of the premises in respect of which the expenses were incurred is liable—

Recovery of expenses

- (a) under any of the provisions of this Act which are specified in the Fifth Schedule thereto; or Fifth Schedule
- (b) by agreement with the authority,

those expenses together with interest from the date of service of a demand for the expenses, may be recovered by the authority from the owner for the time being of the premises, and, as from the date of the completion of the works, the expenses and interest accrued due thereon shall, until recovered, be a charge on the premises and on all estates and interests therein.

(2) A local authority may by order declare any expenses recoverable by it under this section to be payable by annual instalments within a period not exceeding thirty years, together with interest; and any such instalment and interest, or any part thereof, may be recovered from the owner or occupier for the time being of the premises in respect of which the expenses were incurred.

(3) A person aggrieved by an order of a local authority under subsection (2) or by the refusal of a local authority to make such an order, may appeal to a magistrate's court; but this subsection does not apply in a case where an appeal lies to the Minister under section 95.

(4) The Third Schedule applies in relation to any sum paid by an occupier of premises under the foregoing provisions of this section.

Third Schedule

(5) Where the local authority has incurred expenses for the repayment of which the persons, other than the liquidator, mentioned in subsection (4) of section 107 are liable, those expenses together with interest from the date of service of demand for the expenses may be recovered by the authority from such persons and, as from the date of completion of the works, the expenses and interest accrued due thereon shall, until recovered be a first charge on any lands or buildings whether situate in the area of the authority or elsewhere and on all estates and interest therein, of such persons.

(6) The rate of interest chargeable under the foregoing provisions of this section shall be such rate of interest as the Minister may by order fix, and different rates of interest may be fixed in different cases.

(7) Any sum which a highway authority is entitled to recover under this section or any other provisions of this Act, and with respect to the mode of recovery of which provisions is not made by any other section of this Act, may be recovered either summarily as a civil debt or in any court of competent jurisdiction.

Matters to be taken into account in determining compensation under section 75

136. In determining the amount of compensation payable under section 75, there shall be taken into account any benefit accruing to the claimant by reason of the widening of a street under the said section 75.

Disputes as to compensation to be determined by arbitration or Petty Civil court

137. (1) Any dispute arising on a claim for compensation under this Act, shall be determined, if the parties so agree, by arbitration, or, in default of agreement, by a Petty Civil court.

(2) A Petty Civil court has jurisdiction to deal with any dispute which by virtue of subsection (1) is to be determined by such a court notwithstanding that, by reason of the amount of the claim or otherwise, the case would not, but for this provision, be within the jurisdiction of that court.

Compensation in respect of depreciation in value of interest in land subject to mortgage

138. Where an interest in land is subject to a mortgage—

- (a) any compensation which is payable under this Act in respect of the depreciation in value of that interest shall be calculated as if the interest were not subject to the mortgage;
- (b) a claim for the payment of any such compensation may be made by any mortgagee of the

interest under a mortgage made before the happening of the event giving rise to the compensation, but without prejudice to the making of a claim by any other person;

- (c) a mortgagee shall not be entitled to claim any such compensation in respect of his interest as such; and
- (d) any such compensation payable in respect of the interest subject to the mortgage shall be paid to the mortgagee or, where there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

139. All offences under this Act or under bye-laws made thereunder shall be punishable on summary conviction. Summary proceedings for offences

140. Where by virtue of any provision of this Act or of bye-laws made thereunder, a person convicted of an offence is, if the offence in respect of which he was convicted is continued after the conviction, guilty of a further offence and liable in respect thereof to a fine for each day on which the offence is so continued, the court before whom the person is convicted of the original offence may fix a reasonable period from the date of conviction for compliance by the defendant with any directions given by the court and, where a court has fixed such a period, the defendant is not liable in respect of the further offence to a fine for any day before the expiration of that period. Continuing offences

141. (1) Proceedings for an offence under any provision of this Act to which this section applies or under bye-laws made under any such provision, shall not, without the written consent of the Attorney General, be taken by any person other than a person aggrieved, or a highway authority having an interest in the enforcement of the provision or bye-laws in question. Restriction on institution of proceedings

(2) This section applies to the provisions of this Act which are specified in the Eighth Schedule. Eight Schedule

142. Where two or more sums are claimed from any person as being due under this Act, a complaint, summons or warrant issued for the purposes of this Act, or of any bye-laws made thereunder, in respect of that person may contain in the body thereof, or in a schedule thereto, a statement of all or any of the sums so claimed. Inclusion of several sums in one complaint, &c.

Notice to
be given of
right of
appeal

143. Where an appeal lies under this Act to a magistrate's court against a requirement, order, refusal or other decision of a highway authority, the notice given by the authority to the person concerned of the making of the requirement or order or of the refusal or other decision against which such an appeal lies shall state the right of appeal to that court, and the time within which such an appeal may be brought.

Appeals and
applications
to magistrates'
courts

144. (1) Where any provision of this Act provides—
(a) for an appeal to a magistrate's court against a requirement, order, refusal or other decision of a highway authority or a council; or
(b) for any other matter to be determined by, or an application in respect of any matter to be made to, a magistrate's court,

the procedure shall be by way of complaint for an order.

(2) The time within which an appeal such as is mentioned in paragraph (a) of subsection (1) may be brought, shall be twenty-one days from the date on which notice of the decision of the highway authority was served on the person wishing to appeal, and for the purposes of this subsection the making of the complaint shall be deemed to be the bringing of the appeal.

Appeals to
Court of
Appeal from
decisions of
magistrates'
courts

145. Where a person aggrieved by an order, determination or other decision of a magistrate's court under this Act is not by any other enactment authorised to appeal to the Court of Appeal he may appeal to that Court.

Effect of
decision of
court upon
an appeal

146. Where on an appeal under this Act a court varies or reverses a decision of a highway authority it shall be the duty of the authority to give effect to the order of the court.

Notices, &c.

Notices, &c.,
to be in
writing; forms
of certain
documents.

147. (1) All notices, consents, approvals, orders, demands and other documents authorised or required by or under this Act to be given, made or issued by or on behalf of a highway authority, and all notices, consents, requests and applications authorised or required by or under this Act to be given or made to a highway authority, shall be in writing in the prescribed form.

(2) If forms are prescribed under this section, those forms or forms to the like effect shall be used in all cases in which those forms are applicable.

(3) Any notice, consent, approval, order, demand, licence, certificate or other document required or authorised by or under this Act to be given to or served on any person, may be given or served either—

- (a) by delivering it to that person; or
- (b) by leaving it at his proper address; or
- (c) by registered post.

148. (1) Any notice, consent, approval, order, demand or other document which a council (whether as a highway authority or in any other capacity) is authorised or required by or under this Act to give, make or issue may be signed on behalf of the council by—

Authentication
of documents.
&c.

- (a) in the case of a municipal council, the Town Clerk;
- (b) in the case of a county council, the Chief Executive Officer.

(2) Any document purporting to bear the signature of a person authorised by subsection (1), shall for the purposes of this Act, and of any bye-laws, regulations and orders made thereunder, be deemed, until the contrary is proved, to have been duly given, made or issued by the council.

In this subsection "signature" includes a facsimile of a signature by whatever process reproduced.

149. (1) The Minister may make regulations for the purpose of carrying out the provisions of this Act.

Regulations

(2) Such regulations may contain provisions for imposing on any person contravening the regulations, a fine recoverable on summary conviction of two hundred and fifty dollars in respect of such offence.

(3) Regulations made under this section shall be subject to negative resolution of the Senate and the House of Representatives.

150. Nothing in this Act with respect to the duty of a highway authority to maintain highways maintainable at the public expense shall be construed as affecting any exemption from liability for non-repair available under the common law to a highway authority immediately before the commencement of this Act.

Saving for
highway
authority
in respect of
liability for
condition of
highway

151. No provision of this Act relating to obstruction of or other interference with highways shall be taken to affect any right of a highway authority or other person under any enactment not contained in this Act, or under any rule of law, to remove an obstruction from a highway or otherwise

Saving for
rights and
liabilities
as to inter-
ference with
highways

abate a nuisance or other interference with a highway, or to affect the liability of any person under such an enactment or rule to proceedings (whether civil or criminal) in respect of any such obstruction or other interference.

Saving for
obligation
to obtain
Planning
permission

152. Nothing in this Act shall be taken to authorise the carrying out of any development of land for which planning permission is required and which is not authorized by any such permission granted.

Act binds Crown

153. This Act binds the Crown.

Transitional
provisions
and Repeals

154. (1) The transitional provisions set out in the Sixth Schedule have effect for the purposes of this Act.

Sixth Schedule

(2) Subject to the provisions of the said Sixth Schedule, the enactments specified in the first column of the Seventh Schedule are repealed or amended to the extent specified in the second column thereof.

Seventh
Schedule

(3) The mention of particular matters in the Sixth Schedule shall not be taken as affecting the general application of section 28 of the Interpretation Act, 1962.

Act No. 2 of
1962

Governor-
General
may modify
inconsistent,
&c., enactments
by Order

155. (1) Where at the commencement of this Act, there is in force any enactment respecting municipalities or county councils or public health and containing provisions which are either inconsistent with the provisions of this Act or redundant having regard to the provisions of this Act, the Governor-General may by Order make such alterations whether by amendment or repeal in such enactment as may be necessary for the purpose of bringing its provisions into conformity with the provisions of this Act or for the purpose of removing redundant provisions, as the case may be. Any order made hereunder shall be subject to negative resolution of the Senate and the House of Representatives.

(2) The power of modification by order provided for in subsection (1) shall be exercisable during a period not exceeding one year from the commencement of this Act.

FIRST SCHEDULE

(Sections 10, 40, 41)

PROVISIONS AS TO MAKING, CONFIRMATION AND VALIDITY OF
CERTAIN ORDERS RELATING TO FOOTPATHS

PART I

PROCEDURE FOR MAKING AND CONFIRMING CERTAIN ORDERS
RELATING TO FOOTPATHS

1. (1) Before a public path creation order, a public path extinguishment order or a public path diversion order is submitted to the Minister for confirmation, the authority by whom the order was made shall give notice in the prescribed form—

- (a) stating the general effect of the order and that it has been made and is about to be submitted for confirmation;
- (b) naming a place in the area in which the land to which the order relates is situated where a copy of the order and of the map referred to therein may be inspected free of charge at all reasonable hours; and
- (c) specifying the time (not being less than twenty-eight days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the order may be made.

(2) Before the Minister makes a public path creation order, a public path creation extinguishment order or a public path diversion order, he shall prepare a draft of the order and shall give notice—

- (a) stating that he proposes to make the order and the general effect thereof;
- (b) naming a place in the area in which the land to which the draft order relates is situated where a copy of the draft order and of the map referred to therein may be inspected free of charge at all reasonable hours; and
- (c) specifying the time (not being less than twenty-eight days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the draft order may be made.

(3) The notices to be given under subparagraph (1) or (2) shall be given—

- (a) in the case of a public path creation order, by publication in the *Gazette*, and in at least one daily newspaper circulating in Trinidad and Tobago;
- (b) in the case of a public path extinguishment order or a public path diversion order, by publication and the service of notices as mentioned in head (a) of this subparagraph and also—
 - (i) by serving such a notice as is therein mentioned on the council of every county or municipality, being a county or municipality which includes any of the land to which the order relates, and

- (ii) by causing a copy of the notice to be displayed in a prominent position at the ends of so much of any footpath as is to be stopped up or diverted by virtue of the order.

2. (1) If no representations or objections are duly made, or if any so made are withdrawn, the Minister may, if he thinks fit, confirm or make the order as the case may be, with or without modifications.

(2) If any representations or objection duly made is not withdrawn, the said Minister shall, before confirming or making the order, as the case may be, afford to any person by whom any representation or any objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by him for the purpose, and after considering the report of the person appointed to hear representations or objections, may confirm or make the order, as the case may be, with or without modifications.

(3) Notwithstanding anything in the foregoing provisions of this paragraph, the said Minister shall not confirm or make an order so as to affect land not affected by the order as submitted to him or the draft order prepared by him, as the case may be, except after—

- (a) giving such notice as appears to him requisite of his proposal so to modify the order, specifying the time (not being less than twenty-eight days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the proposal may be made;
- (b) affording to any person by whom any representation or objection has been duly made and not withdrawn, an opportunity of being heard by a person appointed by him or the purpose; and
- (c) considering the report of the person appointed to hear representations or objections, as the case may be.

3. (1) The Minister may, subject to the provisions of this Part of this Schedule, by regulations make such provisions as to the procedure on the submission and confirmation of orders to which this Schedule applies as appears to him to be expedient.

(2) Provision may be made by regulations of the said Minister for enabling proceedings preliminary to the confirmation of a public path extinguishment order to be taken concurrently with proceedings preliminary to the confirmation of a public path creation order or a public path diversion order.

(3) In this Part of this Schedule "prescribed" means prescribed by regulations made by the Minister.

PART II

VALIDITY OF CERTAIN ORDERS RELATING TO FOOTPATHS

4. An order to which this Schedule applies has no effect unless it is published in the *Gazette*.

SECOND SCHEDULE

(Section 27).

IMPROVEMENT LINES

1. (1) Before a line is prescribed by the Minister or by a County Council, the Minister, or as the case may be, that council shall consult the Director of Town and Country Planning.

(2) A line which a highway authority proposes to prescribe shall be shown on a plan to be signed, if the authority is a council, by the clerk to the council.

(3) The plan shall be deposited at the offices of the authority or, if the Minister is the authority, at such place as he may direct, and may be inspected by any person free of charge at all reasonable hours during a period of one month from the day on which it is so deposited.

(4) As soon as the plan has been so deposited the authority shall give notice of the proposal to prescribe the line and of the times and place at which the plan may be inspected, and of the effect of section 27 of this Act, and of the next following paragraph to every owner, lessee or occupier of land affected.

(5) The authority shall consider any objection to the proposed line made within six weeks from the date on which the notices aforesaid were given and may then prescribe the line.

(6) Not later than six weeks after the date on which the authority prescribes the line it shall prepare a plan, duly sealed, and authenticated, on which the line shall be shown and shall give notice of the prescribing of the line and of the times and place at which the said plan may be inspected to every owner, lessee or occupier of land affected.

(7) If the authority revoke the line—

(a) it shall give notice of the revocation to every owner, lessee or occupier of the land affected; and

(b) it shall indicate on the plan prepared in accordance with the last foregoing paragraph the extent to which the line has been revoked.

(8) Where a local highway authority prescribes a line or revokes a line or any part thereof, it shall do so by resolution.

THIRD SCHEDULE

(Sections 55, 91, 136)

DEDUCTIONS FROM RENTS

1. An occupier of premises (other than a person holding under a lease) by whom any sum in relation to which this Schedule applies is paid under this Act, is entitled to deduct that sum from the rent payable by him in respect of the premises or to recover from his landlord that sum as a debt by action in any competent court.

2. In this Schedule "lease" means a lease, the original term of which was for a period of not less than five years.

FOURTH SCHEDULE

(Sections 84, 91)

PARTICULARS TO BE STATED IN SPECIFICATIONS, NOTICES, ETC.,
UNDER THE PRIVATE STREETS CODE

1. The specifications shall describe generally the works and things to be done, and, in the case of structural works, shall specify so far as may be practicable, the foundation, form, material and dimensions thereof.

2. The plans and sections shall show the constructional character of the works, the connections (if any) with existing streets, sewers or other works, and the lines and levels of the works, subject to such limits of deviation (if any) as may be indicated on the plans and sections respectively.

3. The estimate shall show the particulars of the probable cost of the whole works, including any additional charge in respect of surveys, superintendence and notices.

4. The provisional apportionment shall state the amounts charged on the respective premises and the names of the respective owners, or reputed owners, and shall also state the percentage of the assessed value of the premises prescribed by the Minister and the other considerations (if any) on which the apportionment is based.

5. The notice under section 84 shall contain the following particulars, that is to say—

- (a) a statement that the local authority has resolved to execute street works in the private street in question;
- (b) the address of the offices of the authority at which a copy of the resolution of approval, and the approved documents or copies thereof certified by the surveyor, may be inspected, and the times at which, and the period during which, they may be inspected; and
- (c) a statement that an owner of premises liable to be charged with any part of the expenses of executing the street works may object to the proposal to execute the works, giving the period during which such objection may be made.

6. The notice under section 89 shall contain the following particulars, that is to say—

- (a) a statement that the street works authority proposes to amend the estimate so as to increase the amount thereof, specifying the former amount and the amount to which it is to be increased;
- (b) the address of the offices of the authority at which a document certified by the surveyor giving details of the proposed amendment and of the proposed consequential amendment of the provisional apportionment may be inspected, and the times at which, and the period during which, it may be inspected; and
- (c) a statement that an owner of premises liable to be charged with any part of the expenses of executing the street works may object to the proposed amendments, giving the period during which such objection may be made.

FIFTH SCHEDULE

(Section 135)

PROVISIONS OF THIS ACT UNDER WHICH OWNERS OF PREMISES ARE LIABLE FOR CERTAIN EXPENSES RECOVERABLE IN ACCORDANCE WITH SECTION 132 THEREOF

Sections 55, 59 and 60 contained in Part VII.

SIXTH SCHEDULE

(Section 158)

TRANSITIONAL PROVISIONS

PART I

PROVISIONS RELATING TO PART VII OF ACT

Lawful and unlawful interference with Highways and Streets

1. Section 54 applies in relation to things done before the commencement of this Act as it applies in relation to things done thereafter.

2. (1) Where anything was done before the commencement of this Act, which, if it had been done thereafter, would have contravened subsection (1) of section 55 the provision of subsections (2) to (7) of that section have effect in relation thereto as if this Act had commenced immediately before the doing thereof.

3. Subsections (2) to (5) of section 61 shall apply in relation to things done before the commencement of this Act as they apply in relation to things done thereafter.

PART II

PROVISIONS RELATING TO PART VII OF ACT

New Streets

4. The powers conferred on a local authority by subsection (1) of section 74 may be exercised in any case where—

(a) plans of any proposed work were, in accordance with new street bye-laws, deposited before the commencement of this Act with that authority, and either the plans have been approved by the authority or notice of rejection of the plans has not been given within the appropriate period (as defined for the purposes of Part VII of this Act) from the deposit thereof, and

(b) the works to which the plans relate have not been begun within three years from the date of the deposit of the plans, and the said subsection (1) has effect accordingly.

SEVENTH SCHEDULE

(Section 155)

<i>Ordinances</i>	<i>Extent of Amendment or Repeal</i>
The Roads Ordinance, Ch. 16. No. 1	The whole Ordinance is repealed.
The Port-of-Spain Corporation Ordinance, Ch. 39. No. 1	Sections 136, 137, 147, 148, 149, 150, 155, 156 (1), 156 (2), 157, 159, and the Seventh Schedule are repealed.
The San Fernando Corporation Ordinance, Ch. 39. No. 7	Sections 140, 141, 154, 155 (1), 156, 160, 161, and the Fifth Schedule are repealed.
The Arima Corporation Ordinance, Ch. 39. No. 11	Sections 130, 131, 144, 145 (1), 146, 150, 151 and the Fifth Schedule are repealed.
✓ The Public Health Ordinance, Ch. 12. No. 4	(a) Sections 23 to 34, 51, 52 and 54 (1) (b) and (c) are repealed; (b) Section 53 of the Ordinance is repealed and replaced as follows: "Street improvement 53. For the purpose of defraying all or any part of the expenses incurred or paid or to be incurred or paid by a local authority in exercising the powers contained in sections 26 and 27 of the Highways Act, 1970, the local authority may, with the approval or by direction of the Board, levy a rate within the prescribed area or any part thereof affected by such improvements, to be called the "Streets Improvement Rate", in the same manner as is provided for the levying of a General Health Rate by section 171 of this Ordinance."; (c) Section 63L is amended by substituting for para- graph (x) of subsection (1) thereof the following— "(x) "highway authority" has the meaning assigned to it by section 6 of the High- ways Act, 1970;"
The County Councils Act, 1967. Act No. 22/1967	Section 25 is amended (a) by deleting paragraph (a) (ii) thereof; (b) by substituting the words "Highways Act, 1970" for the words "Roads Ordinance" occurring in paragraph (b) thereof.
Water and Sewerage Act, 1965. Act No. 16/1965	The Fourth Schedule is amended— (a) by deleting the words "the Chief Technical Office (Works) and in any other case" occurring in the definition of "highway authority" in paragraph (1) thereof; (b) by substituting the word "seven" for the word "fourteen" occurring in line one in sub-paragraph (1) and in line four of sub-paragraph (2) (b) of para- graph 18 thereof.

EIGHTH SCHEDULE

(Sections 128, 132, 141)

PROVISIONS OF THIS ACT TO WHICH SECTIONS 128, 132, 141,
THEREOF APPLY

1. Provisions contained in Part IV.
Subsection (3) of section 16 and subsection (1) of section 18.
2. Provisions contained in Part V.
Subsection (1) of section 24 and subsection (3) of section 31.
3. Provisions contained in Part VII.
Sections 48, 54, 55, 56, 57 to 63, 65 and 67
4. Provisions contained in Part VIII.
Sections 69 to 81.
5. Provisions contained in Part IX.
The private streets code and sections 95, 99, 100, 102, 107.
6. Provisions contained in Part X.
Section 121.
7. Provisions contained in Part XII.
Sections 126, 127, 128 and 141.

Passed in the House of Representatives this 16th day of
January, 1970.

G. R. LATOUR
Clerk of the House

Passed in the Senate this 27th day of January, 1970.

J. E. CARTER
Clerk of the Senate

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