



**Isle of Man**

*Ellan Vannin*

# **HIGHWAYS (AMENDMENT) BILL 2015**



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# HIGHWAYS (AMENDMENT) BILL 2015

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## Explanatory Memorandum

1. This Bill, which is promoted by the Department of Infrastructure (“the Department”), makes a series of amendments to the Highways Act 1986 and repeals the Highway Act 1927.
2. **Part 1** (*clauses 1 and 2*) gives the Bill its short title and provides for it to come into operation on one or more days appointed by the Department.
3. **Part 2** (as introduced by *clause 3*) makes amendments to the Highways Act 1986. *Clause 4* amends section 3 by firstly providing for the maintenance of cycle tracks by the Department at the public expense and by secondly providing that bridle-paths, cycle-paths, cycle tracks and footpaths may be maintained by a local authority whether wholly or partly at the authority’s or the Department’s expense.
4. *Clause 5* amends and clarifies section 4 with respect to securities to be provided in connection with the adoption by agreement of roads as highways maintainable at the public expense.
5. *Clause 6* inserts a new section 9A enabling the Department to improve the surroundings of a highway by developing or redeveloping any of its land.
6. *Clause 7* inserts a new section 16A empowering the Department to designate improvement lines for the widening of highways. The effect of such a line is to prohibit new building or permanent excavation without the Department’s consent. *Clause 18* inserts a new section 85A which gives power to the Department to acquire any land (including premises) that lies between an improvement line and the boundary of a highway. *Clause 29* inserts a new Schedule 1B making supplementary provision with respect to improvement lines.
7. *Clause 8* substitutes a new section 22 providing for the prevention of obstruction to view at corners. The principal change is to enable the Department to require the corners of a proposed building to be rounded or splayed off as specified in a notice served on the owner by the Department.
8. *Clause 9* substitutes a new section 32A containing amplified provision with respect to equipment that may be installed by the Department in highways for the detection of traffic or other offences. Whereas previously the power of installation was vested in the Department alone, it is now also exercisable by the Chief Constable.
9. *Clause 10* extends section 45 by making it an offence to erect a gate or stile across a footpath or bridle-path without lawful authority.

10. *Clause 11* inserts a new section 45A enabling the Department to remove structures or objects at the side of, over or within a highway that are causing an immediate danger, whether or not an offence may have been committed under section 45 (certain obstructions placed in highways without lawful authority).
11. *Clause 12* amends section 55A, which makes it an offence for a motor vehicle to wait on a highway and indicate that it is for sale. In proceedings for an offence there is removed the defence that the vehicle was not for sale in the course of a business carried on by the accused.
12. *Clause 13* inserts 4 new sections. Section 55B enables local authorities in certain circumstances to authorise the erection of gates, stiles or similar structures across footpaths or bridle-paths. Section 55C requires land owners to keep safe and in proper repair any gates, stiles or similar structures on their land so as to prevent any unreasonable interference with the rights of those using the footpaths or bridle-paths to which the gates, etc. relate. Section 55D empowers local authorities to erect decorative works with the approval of the Department. Section 55E makes it an offence, subject to certain exceptions, to mix or deposit cement, mortar, etc. on a highway.
13. *Clause 14* enables the Department to make regulations regulating the carrying out of works by statutory undertakers in, on, over or under highways. Such regulations will in due course replace Schedule 4, the repeal of which will be effected by *clause 32* when it is eventually brought into operation.
14. Consequent upon the repeal of the Highway Act 1927 by Part 3, *clause 15* re-enacts provision enabling the Department to make regulations for preventing the commission of nuisances on highways and the distribution of handbills, etc.
15. *Clause 16* amends section 73A by inserting new provision enabling the Department to improve access to any land from a highway in the event that it considers additional works to be needed. The Department's reasonable expenses may be recovered from the owner or occupier of the land. Notice of the proposed works must be served on the owner or occupier, and *clause 33* amends Schedule 5 so that he or she may appeal within 28 days to the High Bailiff.
16. *Clause 17* substitutes a new section 78, which deals with the provision of cafés, kiosks, etc. on highways. Where an application for the provision of such an amenity is for a trial period of 4 weeks or less, the timespan in which representations may be made in response to the public advertisement of the proposal is reduced from 28 to 7 days. If a local authority is the owner of the subsoil of a highway on which an amenity will be located, it is expressly authorised to charge rent for the use of it. To avoid duplication of consents under other legislation it is provided that such legislation does not apply to certain matters authorised or permitted by a licence authorising an amenity under this section. Given that a local authority exercises certain planning functions, the Department's consent is no longer required to the exercise of an authority's functions under this section.

17. Besides providing for the purpose described in paragraph 7 of this memorandum, *clause 18* enables the Department to acquire land for mitigating the adverse effects of a highway on its surroundings. It is also enabled to acquire land blighted by highway works.
18. *Clause 19* substitutes a new section 91A, which extends from footpaths to footways the Department's power by order to convert them into cycle tracks or bridle-paths. Schedule 2 to the Road Traffic Regulation Act 1985 is applied as to the procedure for making such orders.
19. *Clause 20* enables the Department to amend a definitive map or statement of rights of way if a footpath, cycle-path or bridle-path differs from that contained in the map or statement.
20. *Clauses 21 to 23* relate to what is now described as "the private street works code", namely the provisions of sections 94 to 98, dealing as they do with the making up of unadopted roads. None of those clauses contains substantive amendments of those provisions.
21. *Clause 24* inserts a series of new sections containing what is described as "the advance payments code". The code supplements the law with respect to the making up of private streets. Before a new building is erected adjoining a private street, sections 98A and 98C require that, subject to certain exemptions prescribed in section 98B, a sum likely to be required to meet the cost of the street works must be paid to the Department by the owner of the building land or a security given for it. It is for the Department to decide the form that a security should take. If in the event too much is given, sections 98C and 98D provide for refunds to be made to the owner for the time being. Once a payment has been made or a security given, section 98E provides that the liability of the owner for the time being is taken as having been discharged to the extent of the sum paid or secured. If not enough has been paid, the Department may recover the balance to the extent authorised by the private street works code. If, on completion of the street works, too much is found to have been given, the balance will be paid under that code to the owner for the time being. If an owner gives notice that he or she does not intend to proceed with the erection of the building in question, section 98F provides for the repayment of any sum paid or the release of any security given. Section 98G prescribes that certain matters are to be charges on land, whereas section 98H caters for interest to be paid on sums arising under section 98A. *Clause 25* substitutes a new section 99 containing interpretive provision for the purposes of the private street works code and the advance payments code. In view of the complexity of the codes it also inserts a new section 99A enabling the codes to be amended by regulations subject to Tynwald approval.
22. *Clause 26* amends section 106A so as to clarify the Department's powers with respect to the disposal of minerals.
23. *Clause 27* amends section 115 with respect to the fines for certain offences.

24. *Clause 28* amends section 119 by providing a new definition of “statutory undertaker”. The definition is now extended to persons authorised by statutory provision to operate a sewerage and sewer system. Two other new definitions are provided.
25. *Clauses 30 and 31* amend Schedule 4 (the road works code). The reference in the Schedule to what constitutes reinstatement or making good is amended so as to enable the Department to direct otherwise, preponderantly when it considers that lesser requirements will suffice. Provision is also made for the giving of directions by the Department as to the timing of undertakers’ works and for the issue by the Department of a code of practice.
26. Consequent upon clause 14, *clause 32* provides for the eventual repeal of Schedule 4.
27. **Part 3** (*clause 34*) repeals the Highway Act 1927.
28. For the most part the provisions of the Bill are cost-neutral, being either self-financing or being administered by existing personnel as part of their ongoing responsibilities with no corresponding increase in budgetary provision. However, clauses 6 to 8 and 18 do carry with them the prospect of additional expenditure by the Department, but such expenditure is not at present quantifiable as it will depend on largely unforeseeable circumstances arising in the future.
29. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



*Ellan Vannin*

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## HIGHWAYS (AMENDMENT) BILL 2015

1 **A BILL** to amend the Highways Act 1986 and to repeal the Highway Act, 1927.

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

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### PART 1 – INTRODUCTORY

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#### 1 Short title

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The short title of this Act is the Highways (Amendment) Act 2015.

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#### 2 Commencement

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(1) Except for Part 1, this Act comes into operation on a day or on days appointed by order of the Department of Infrastructure.

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(2) Different days may be appointed for different provisions and for different purposes.

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(3) An order under subsection (1) may include necessary or expedient transitional or saving provisions.

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### PART 2 - AMENDMENTS TO THE HIGHWAYS ACT 1986

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#### 3 Highways Act 1986 amended

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(1) This Part amends the *Highways Act 1986*.

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(2) Accordingly, a reference to a section or Schedule in this Part is a reference to a section of, or a Schedule to, that Act.

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#### 4 Section 3 amended – duty to maintain certain highways

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In section 3 –

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(a) for subsection (2)(ja) substitute –

1 “(ja) a bridle-path created by a public path order or an order  
2 under section 91A;”

3 (b) after subsection (2)(k) add —

4 “(l) any cycle track or cycle-path, whether coming into  
5 existence before or after the commencement of this Act;

6 (m) any highway not included in the foregoing that was,  
7 immediately before the commencement of this Act, a  
8 highway repairable by the Department or a local  
9 authority.”;

10 (c) omit subsection (3);

11 (d) in subsection (5) for “subsection (3)” substitute “subsection (4)”;  
12 and

13 (e) after subsection (5) insert —

14 “(6) Without prejudice to the duty of the Department under subsection  
15 (1), a local authority may, within its area, undertake the  
16 maintenance of a bridle-path, cycle-path, cycle track or footpath  
17 that is a highway maintainable by the Department and, if it does,  
18 the Department may provide that the whole or part of the  
19 expenditure incurred by the local authority in doing so is to be  
20 defrayed by the Department.”.

## 21 5 Section 4 amended — agreements for the adoption of roads

22 For section 4(3) substitute —

23 “(3) The Department may, to ensure that the other party to an  
24 agreement to be entered into under this section performs that  
25 party’s obligations under it, require the other party to provide  
26 security in a form and for an amount of money specified by the  
27 Department.”.

## 28 6 Section 9A inserted — incidental powers

29 Immediately after section 9 insert —

### 30 “9A Incidental powers

31 The Department may develop or redevelop any of its land to improve  
32 the surroundings of a highway in any manner that it thinks desirable by  
33 reason of its construction, improvement, existence or use.”.

## 34 7 Section 16A inserted - power to designate improvement lines for 35 widening highways

36 After section 16 insert —

**“16A Power to designate improvement lines for widening highways**

- (1) Subsection (2) applies if the Department is satisfied that a highway maintainable at the public expense —
- (a) is too narrow, is inconvenient, or is without a sufficiently regular boundary line; or
  - (b) should be widened.
- (2) The Department may designate —
- (a) in relation to either one side of the highway or both; or
  - (b) at or within a distance of 15 metres from a corner of the highway,
- a line to which the highway is to be widened (in this section and in Schedule 1B referred to as an “improvement line”).
- (3) The Department may at any time revoke the designation of an improvement line or any part of it.
- (4) Schedule 1B has effect in relation to the designation of an improvement line or the revocation of the designation of the whole or any part of an improvement line.
- (5) While an improvement line exists in respect of a highway, a person must not, without the consent of the Department —
- (a) erect or retain a new building; or
  - (b) make a permanent excavation below the level of the highway,
- nearer to the centre line of the highway than the improvement line.
- (6) The Department may give its consent under subsection (5) subject to such conditions as it considers appropriate, including a condition, in respect of the retention of a new building, that it must be demolished on the direction of the Department.
- (7) Subsection (5)(b) is without prejudice to any right a statutory undertaker has to make an excavation for the purpose of its undertaking.
- (8) A condition imposed on a consent given under subsection (5) in respect of land binds the owner of the land, each successor in title to the owner of the land and any lessee or occupier of the land.
- (9) If the Department designates an improvement line under this section, a person aggrieved by —
- (a) the decision to designate the line;
  - (b) the refusal of consent under subsection (5); or

(c) the period for which the consent is given or any conditions attached to it,

may appeal to High Bailiff.

(10) A person whose property is injuriously affected by the designation of an improvement line may recover from the Department compensation for the injury sustained.

(11) Any question arising as to the amount of that compensation is to be determined, if the parties so agree, by a single arbitrator appointed by them or, in default of agreement, by the High Bailiff.

(12) However, a person is not 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 Schedule 1B, except as regards 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.

(13) A person is guilty of an offence if the person contravenes —

(a) subsection (5); or

(b) a condition subject to which consent was given under that subsection.

(14) A person convicted of an offence under subsection (13) who continues to offend after conviction, is guilty of a further offence under that subsection and may be convicted of the offence in respect of any period of contravention after the previous conviction.

(15) Subsections (13) and (14) are without prejudice to any other proceedings that may be available against the person in respect of the contravention.

(16) In this section —

“building” includes any erection however, and with whatever material, it is constructed and any part of a building;

“new building” includes any addition to an existing building.”.

## 8 Section 22 repealed and replaced - prevention of obstruction to view at corners

For section 22 substitute —

### “22 Prevention of obstruction to view at corners

(1) This section applies if the Department considers that to prevent danger arising from an obstruction to the view of persons using a

- 1 highway maintainable at the public expense it is necessary to  
2 impose restrictions on land at or near —
- 3 (a) a corner or bend in the highway; or  
4 (b) a junction of the highway with a highway or road to which  
5 the public has access.
- 6 (2) The Department may serve a notice, together with a plan showing  
7 the land to which the notice relates —
- 8 (a) on the occupier of the land, requiring him or her to alter or  
9 remove a wall, other than a wall forming part of the  
10 structure of a permanent building, a bank, a fence, a  
11 hoarding, a paling, a tree, a shrub or any other vegetation  
12 on the land so that it conforms with the requirement  
13 specified in the notice; or
- 14 (b) on each owner, lessee and occupier of the land, restraining  
15 him or her either absolutely or subject to such conditions as  
16 may be specified in the notice from causing or permitting a  
17 building, a wall, a bank, a fence, a hoarding, a paling, a  
18 tree, a shrub or any other vegetation to be erected or  
19 planted on the land near the highway.
- 20 (3) If a building is to be erected on the land, the Department may  
21 serve a notice on the occupier of the land, together with a plan  
22 showing the land to which the notice relates, requiring the corner  
23 of the building to be rounded or splayed off as specified in the  
24 notice.
- 25 (4) A notice under subsection (2) or (3) may at any time be  
26 withdrawn by the Department.
- 27 (5) The Department must serve a copy of a notice under subsection  
28 (2)(a) or (3) on the owner of the land if the owner is not the  
29 occupier of the land.
- 30 (6) A notice under subsection (2)(b) does not prevent the repair of  
31 any building that was on the land before the service of the notice  
32 provided it is done in such a manner as not to create a new  
33 obstruction to the view of persons using the adjacent highways.
- 34 (7) A requirement of, or a restraint imposed by, a notice under  
35 subsection (2) or (3) comes into operation on the service of the  
36 notice and while the notice is in operation is binding on the  
37 owner, the successor in title to every owner and on every lessee  
38 and every occupier of the land to which the notice relates.
- 39 (8) A person aggrieved by a requirement of, or a restraint imposed  
40 by, a notice under subsection (2) or (3) may, within 14 days from  
41 the date of service of the notice, appeal to the High Bailiff.

- 1 (9) In determining an appeal under subsection (8) the High Bailiff  
2 may order that the requirement or restraint objected to is to have  
3 effect subject to such modifications, if any, as the High Bailiff may  
4 direct.
- 5 (10) A person upon whom a notice has been served under subsection  
6 (2) or (3) may do all such things as may be necessary for  
7 complying with the requirements of the notice despite anything in  
8 any conveyance, lease or other deed or instrument.
- 9 (11) Anything done by a person under subsection (10) is not a  
10 contravention of the *Town and Country Planning Act 1999* or the  
11 *Tree Preservation Act 1993*.
- 12 (12) A person upon whom a notice has been served under subsection  
13 (2) or (3) is guilty of an offence if he or she contravenes the  
14 provisions of the notice.
- 15 (13) A continuing contravention of the provisions of the notice after  
16 conviction for an offence under subsection (12) constitutes a new  
17 offence and may be punished accordingly.
- 18 (14) Subsections (12) and (13) do not prejudice any other proceedings  
19 that may be available against the person.
- 20 (15) A person upon whom a notice has been served under subsection  
21 (2) or (3) may recover from the Department compensation for any  
22 damages he or she suffers, and any expenses he or she reasonably  
23 incurs, as a result of the service of the notice or in carrying out a  
24 direction contained in the notice.
- 25 (16) Any question arising as to those damages or expenses is to be  
26 determined, if the parties so agree, by a single arbitrator  
27 appointed by them or, in default of agreement, by the High Bailiff.
- 28 (17) Despite any other provision of this section, the Department may  
29 not serve a notice under this section in respect of —
- 30 (a) a wall that forms part of an ancient monument to which a  
31 preservation order under section 11 of the *Manx Museum  
32 and National Trust Act 1959* relates;
- 33 (b) a wall that forms part of an ancient monument that is in  
34 the ownership or under the guardianship of the Manx  
35 Museum and National Trust; or
- 36 (c) a wall that belongs to the Department and forms part of or  
37 is necessary for the maintenance of a railway.
- 38 (18) In subsection (17) “ancient monument” has the same meaning as  
39 in the *Manx Museum and National Trust Act 1959*.”

1 **9 Section 32A repealed and replaced — equipment for detecting and**  
 2 **preventing offences**

3 For section 32A substitute —

4 **“32A Equipment for detecting and preventing offences**

- 5 (1) The Department or the Chief Constable may install and maintain  
 6 on, in, over or near a highway structures, apparatus and  
 7 equipment, including automatic number-plate recognition  
 8 equipment and systems, for the detection and prevention of traffic  
 9 and other offences.
- 10 (2) No act of the Department or of the Chief Constable, or of their  
 11 servants or agents, carried out in good faith under subsection (1)  
 12 is a contravention of the *Town and Country Planning Act 1999*.”

13 **10 Section 45 — removal of obstructions**

14 After section 45(1)(a) insert —

15 “(ab) erects a gate or stile across a footpath or bridle-path;”.

16 **11 New section 45A – Department may remove obstructions without**  
 17 **notice**

18 After section 45 insert —

19 **“45A Department may remove obstructions without notice**

- 20 (1) This section applies if the Department is satisfied that a structure  
 21 or object placed, fixed or displayed at the side of, over or within a  
 22 highway is causing an immediate danger to persons using the  
 23 highway.
- 24 (2) The Department may, without giving notice of its intention,  
 25 remove the structure or object.
- 26 (3) If the Department does so, it may recover the expenses reasonably  
 27 incurred by it in doing so from —
- 28 (a) the person having control or possession of the structure or  
 29 object;
- 30 (b) the person who placed, fixed or displayed the structure or  
 31 object; or
- 32 (c) the person on whose behalf the structure or object was  
 33 placed, fixed or displayed.
- 34 (4) Section 83(4) applies to anything removed under subsection (2) as  
 35 it applies to anything removed in carrying out works under  
 36 section 83(2)(b).

(5) The Department may remove a structure or object under subsection (2) despite the fact that no offence may have been committed under section 45.

(6) In this section —

“advertisement” has the same meaning as in the *Town and Country Planning Act 1999*;

“structure” includes a structure on wheels, a booth, a stall, a stand, a machine or other similar structure;

“object” includes a banner, a balloon, a decoration, advertisement or other similar object.”

## 12 Section 55A amended — vehicles for sale on highways

Omit section 55A(2).

## 13 Sections 55B to 55E inserted – gates and other works

Immediately after section 55A insert —

### “55B Approval of gate or stile on footpath or bridle-path

(1) If —

(a) a person owns, leases or occupies agricultural or forestry land or land used to breed or keep animals or land that is to be brought into use for any of those purposes; and

(b) a footpath or bridle-path crosses the land,

the person may, with the approval of the local authority, erect a gate, stile or similar structure on the path to allow the land to be effectively used for agriculture or forestry or for breeding or keeping animals.

(2) A local authority, when considering an application for approval under subsection (1), must consider any guidelines issued by the Department.

### 55C Duties of land owners for gates and stiles

(1) This section applies if —

(a) a person owns land;

(b) a footpath or bridle-path crosses the land; and

(c) there is a gate, stile or a similar structure on the footpath or bridle-path.

(2) The owner of the land must ensure that the gate, stile or structure is safe and to the standard of repair needed to prevent unreasonable interference with the rights of those using the path.



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- (3) If it appears to the local authority that the duty imposed by subsection (2) is not being complied with, it may, after giving to the owner reasonable notice of its intention, take all necessary steps for repairing and making good the stile, gate or structure.
- (4) Any cost and expenses reasonably incurred by the local authority in and in connection with the exercise of its functions under subsection (3) is a debt due to it from the owner of the land.

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#### **55D Power of local authorities to erect decorative works**

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- (1) With the Department's approval, a local authority may on or in a highway in its district erect a flagpole, pylon or other structure to display decorations.
- (2) The Department may give its approval subject to conditions.
- (3) The local authority must ensure that anything erected under subsection (1) is erected in a way that –
- (a) minimises the obstruction of the highway as much as reasonably possible;
  - (b) does not obscure or conflict with the highway's traffic signs; and
  - (c) interferes as little as is reasonably possible with the enjoyment of premises adjacent to the highway and with access to apparatus in, on, over or under the highway owned, used or maintained by statutory undertakers.

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- (4) The local authority must ensure that anything erected under subsection (1) –
- (a) is properly maintained; and
  - (b) is lit in so far as it is necessary to be so in order to obviate danger to users of the highway.

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- (5) The local authority must pay to the Department any reasonable expenses the Department incurs because of the decorative works.
- (6) If it appears to the Department that a condition imposed by virtue of subsection (2) is not being complied with, it may, after giving to the local authority reasonable notice of its intention, take all necessary steps to ensure compliance with the condition.
- (7) The Department may recover from the local authority any expenses it reasonably incurs in and in connection with the exercise of its powers under subsection (6).
- (8) A person who without lawful authority interferes with or removes anything erected under subsection (1) commits an offence.

**55E Offence: mixing or depositing of mortar, etc. on highway**

- (1) A person commits an offence if he or she mixes or deposits on a highway cement, mortar or any other substance that is likely to stick to the highway's surface or to solidify in a drain or sewer connected to the highway if it enters the drain or sewer.
- (2) However, subsection (1) does not apply if the mixing or depositing is —
- (a) in a receptacle or on a plate that prevents the substance from touching the highway and from entering a drain or sewer connected to the highway;
  - (b) by the Department or a local authority in order to maintain or alter the highway or a bridge over which, or a tunnel through which, the highway passes;
  - (c) by a body with functions under an enactment to maintain a bridge over which, or a tunnel through which, the highway passes or works or materials protecting the highway where the highway forms part of the approaches to the bridge or tunnel; or
  - (d) by a statutory undertaker in order to place, maintain or alter structures, apparatus or equipment in, on, over or under the highway.”.

**14 Section 56 repealed and replaced – regulation of undertakers' works**

For section 56 substitute —

**“56 Regulation of undertakers' works**

- (1) The Department may make regulations regulating the carrying out of undertakers' works in, on, over or under highways.
  - (2) The regulations may provide for ancillary, consequential or incidental matters.
  - (3) The regulations may provide that it is an offence not to comply with any specified provision of the regulations.
  - (4) In this section —
- “highway” includes any bridge over which the highway passes and any tunnel that it passes through;
- “undertakers' works”, means any of the following kinds of works carried out by or on behalf of a statutory undertaker —
- (a) placing or removing apparatus;
  - (b) inspecting, maintaining, adjusting, repairing, altering or reinstating apparatus;

- 1 (c) changing the position of or renewing apparatus;
- 2 (d) breaking up or opening of, or tunnelling or boring under,
- 3 any highway or breaking up or opening of any sewer,
- 4 drain or tunnel in or under any highway for any of the
- 5 purposes mentioned in paragraphs (a) to (c);
- 6 and any other works requisite for or incidental to those
- 7 purposes.”.

8 **15 Section 63A inserted – power to make regulations to prevent nuisances**

9 **on highways**

10 Immediately after section 63 insert –

11 **“63A Power to make regulations to prevent nuisances on highways**

- 12 (1) The Department may make regulations for the purpose of
- 13 preventing the commission of nuisances on highways or the
- 14 distribution of handbills, papers or other articles.
- 15 (2) A person who contravenes a provision of regulations made under
- 16 subsection (1) is guilty of an offence.”.

17 **16 Section 73A amended - new means of access from highways**

18 In section 73A –

- 19 (a) after subsection (2) insert –
- 20 “(2A) If a person has carried out works referred to in subsection (1)
- 21 (with or without the consent of the Department) and the
- 22 Department considers that additional works need to be executed
- 23 to ensure the access is properly and safely constructed, the
- 24 Department may serve on the person, or, if he or she is not the
- 25 current owner or occupier of the land in question, on the owner
- 26 and occupier, a notice stating that it proposes to execute the
- 27 additional works.
- 28 (2B) Schedule 5 has effect with respect to the making of objections to a
- 29 notice under subsection (2A) and to the date on which such a
- 30 notice becomes effective as it applies to notices under section 73.
- 31 (2C) Where a notice under subsection (2A) has become effective, the
- 32 Department may execute such works as are specified in the notice
- 33 and may recover the expenses reasonably incurred by it in so
- 34 doing from a person upon whom the notice was served.
- 35 (2D) A notice under subsection (2A) must, in addition to informing a
- 36 person upon whom it is served of the person’s right to appeal
- 37 against the notice, state the effect of subsection (2C).”;
- 38 and

- (b) in subsection (3), for “this section” where it first appears substitute “subsections (1) and (2)” and where it appears in paragraph (b) substitute “those subsections”.

## 17 Section 78 repealed and replaced — provision of cafes, kiosks, etc. in highways

For section 78 substitute —

### “78 Provision of cafes, kiosks, etc. in highways

- (1) A local authority may grant a licence (“licence”) to a person —
- (a) to provide on any part of a highway facilities for refreshment, and for that purpose to place there any necessary furniture; or
  - (b) to place on any part of a highway kiosks, showcases or other similar structures for the sale of articles, the display of articles for sale or the display of posters.
- (2) A local authority must not grant a licence that permits facilities to be provided, or any furniture or structure to be placed, in a highway so as —
- (a) to obstruct a carriageway forming part of the highway;
  - (b) to prevent access to any land or premises or any other highway from the highway;
  - (c) to prevent the passage of pedestrians along any footway forming part of the highway;
  - (d) to prevent the Department from carrying out any works of maintenance of the highway;
  - (e) to prevent a statutory undertaker from having access to its apparatus under, in, on, over, along or across the highway; or
  - (f) to interfere with any such apparatus.
- (3) Before granting a licence, a local authority must —
- (a) consult any statutory undertakers whose apparatus is under, in, on, over, along or across the part of the highway affected by the proposal; and
  - (b) publish in a manner likely to bring it to the attention of those affected by it a notice that gives particulars of the licence sought.
- (4) A notice published under subsection (3)(b) in respect of a proposed licence must state that objections or representations —
- (a) as to the grant of the licence; or

- 1 (b) as to any condition to be included in the licence,  
2 may be made in writing to the local authority within 28 days of  
3 the first publication of the notice or, if the licence applied for is for  
4 a period of 4 weeks or less, within 7 days of the first publication of  
5 the notice.
- 6 (5) A local authority must make a licence subject to conditions —  
7 (a) that ensure that the provisions specified in subsection (2)  
8 are not breached; and  
9 (b) if the licence authorises advertisements to be displayed,  
10 that regulate or restrict the advertisements that may be  
11 displayed,  
12 and may make the licence subject to such other conditions as the  
13 local authority considers appropriate.
- 14 (6) However, a local authority must not provide for a fine, rent or  
15 other sum of money payable in respect of a licence except —  
16 (a) a reasonable sum in respect of its legal or other expenses  
17 incurred in connection with the grant of the licence; and  
18 (b) an annual charge of a reasonable amount for its  
19 administration of the licence.
- 20 (7) If the local authority is the owner of the land on which a highway  
21 is situated, nothing in subsection (6) affects the rights of the  
22 authority as such, including the right to charge rent for anything  
23 placed in, on or over the land.
- 24 (8) A local authority may grant a licence subject to a condition  
25 prohibiting its assignment or to a condition permitting its  
26 assignment subject to such conditions as may be specified in the  
27 licence.
- 28 (9) A local authority may grant a licence to a person as owner of  
29 premises fronting the highway and his or her successors in title,  
30 being a licence that provides for it to be annexed to the premises  
31 and for any conditions of the licence to bind the owner for the  
32 time being of the premises.
- 33 (10) A local authority may not grant a licence for a period exceeding 3  
34 years.
- 35 (11) If a condition contained in a licence, is contravened, the local  
36 authority or any statutory undertaker affected may carry out any  
37 works necessary to remedy the contravention and may recover  
38 from the licensee any expenses reasonably incurred by it in so  
39 doing.
- 40 (12) In subsection (11) “licensee” means the person to whom the  
41 licence was granted and includes any person to whom the licence

is assigned pursuant to subsection (8) or the owner for the time being of premises to which the licence is annexed pursuant to subsection (9).

(13) Planning approval under the *Town and Country Planning Act 1999* is not required for, and sections 7 and 23 of that Act do not apply to, development authorised by a licence.

(14) Sections 22 and 35 of the *Town and Country Planning Act 1999* do not apply to the display of an advertisement authorised by a licence.

(15) The *Control of Advertising Act 1981* does not apply to anything authorised by a licence.

(16) Section 57 (selling liquor without licence) of the *Licensing Act 1995* does not apply to the sale or exposure for sale by retail of liquor within the meaning of that Act at a place the subject of a licence if the sale or exposure for sale is authorised by the licence.

(17) In this section “advertisement” and “development” have the same meanings as in the *Town and Country Planning Act 1999*.”

## 18 Sections 85A and 85B inserted – acquisition of land by the Department

After section 85 insert –

### ““85A Acquisition of land between improvement line and boundary of highway

(1) The Department may acquire, by agreement or compulsorily, land (including any premises) lying between an improvement line it has designated in respect of a highway under section 16A and the boundary of the highway.

(2) The Department may, at such time or times as it may determine, add to and make good as part of the highway land acquired under subsection (1).

(3) Until the land is so added, the occupier of the land from which it was severed and other persons with the occupier’s permission have, in respect of the land so acquired –

(a) the right to reasonable access across the land to and from the highway; and

(b) the same right to lay, alter, maintain and remove a sewer, drain, main, pipe or electric line in the land as they would have were the land part of the highway.

**85B Acquisition of land for mitigating adverse effects of highway**

- (1) The Department may acquire, by agreement or compulsorily, land to mitigate adverse effects that the existence or use of a highway constructed or improved by it or proposed to be constructed or improved by it has or may have on the highway's surroundings.
- (2) The Department may acquire by agreement land the enjoyment of which is seriously affected by —
- (a) the carrying out of works by the Department for the construction or improvement of a highway; or
  - (b) the use of a highway that it has constructed or improved.
- (3) For the purpose of assessing the compensation payable on the compulsory acquisition of land under subsection (1) the land is to be treated as if it were being acquired for the construction of the highway or, as the case may be, the improvement in question.”.

**19 Section 91A repealed and replaced - conversion of footways and footpaths into cycle tracks, cycle-paths or bridle-paths**

For section 91A substitute —

**“91A Conversion of footways and footpaths into cycle tracks, cycle-paths or bridle-paths**

- (1) The Department may by order designate a footpath or part of a footpath as a cycle-path, so that, on such date as the order takes effect, the footpath or part of the footpath to which the order relates becomes a highway over which the public have a right of way on pedal cycles and a right of way on foot.
- (2) The Department may by order designate a footway or part of a footway as a cycle track, so that, on such date as the order takes effect, the footway or part of the footway to which the order relates becomes a highway over which the public have a right of way on pedal cycles and a right of way on foot.
- (3) The Department may by order designate a footpath or part of a footpath as a bridle-path, so that, on such date as the order takes effect, the footpath or part of the footpath to which the order relates becomes a highway over which (subject to section 91B) the public have a right of way on horseback or leading a horse and a right of way on foot.
- (4) Schedule 2 to the *Road Traffic Regulation Act 1985* has effect as to the procedure for making orders under this section.”.

**20 Section 92 amended - definitive maps etc of rights of way**

After section 92(10) add —

“(11) If the Department is satisfied that all or part of a footpath, cycle-path or bridle-path or a highway over which the public has a right of way on foot is different from that contained in a definitive map or statement, the difference shall be taken to have been effected by a highway diversion order and subsection (4) shall apply as if the order had just come into operation.”.

**21 New cross heading - the private street works code**

Immediately before section 94 insert —

*“The private street works code”*

**22 Section 94 amended – making up unadopted roads**

In section 94(1), for “to do any works of making up with respect to such road (in this Part called “street works”)” substitute “to do street works in respect of the road”.

**23 Section 98 repealed and replaced - cost of street works in respect of churches etc. to be borne by Department**

For section 98 substitute —

**“98 Cost of street works in respect of churches etc. to be borne by Department**

(1) The section applies to property that is —

(a) land on which there is constructed a war memorial, a church, a chapel, or a place appropriated to public religious worship in respect of which no rates are payable; or

(b) land that is a churchyard or burial ground.

(2) The cost of any street works carried out in respect of property to which this section applies is to be borne by the Department.”.

**24 New Division of Part VII - the advance payments code**

After section 98 insert —

*“The advance payments code*

**98A Payments to be made by owners of new buildings in respect of**



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**street works.**

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(1) Except as provided by section 98B, this section applies if —

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(a) it is proposed to erect a building for which plans are required to be deposited with the building authority; and

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(b) the building will have a frontage on a road in which the Department will have power under the private street works code to execute street works.

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(2) A person must not undertake work to erect the building unless the owner of the land on which it is to be erected or a previous owner of the land has paid to the Department or secured to its satisfaction the payment to it of such sum as may be required under section 98C in respect of the cost of street works in the road.

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(3) If work is undertaken in contravention of subsection (2), the owner of the land on which the building is to be erected and, if he or she is a different person, the person undertaking the erection of the building is guilty of an offence.

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(4) A further contravention in respect of the same building constitutes a new offence and may be punished accordingly.

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(5) If the person undertaking the erection of the building is not the owner of the land on which it is to be erected, it is a defence for him, if charged with an offence under subsection (3) or (4), to prove that he or she had reasonable grounds for believing that the sum required under section 98C had been paid or secured in accordance with subsection (2).

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**98B Exemptions**

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(1) Section 98A does not apply —

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(a) if the owner of the land on which the building is to be erected will be exempt, by virtue of a provision in the private street works code, from liability for expenses incurred in respect of street works in the road in question;

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(b) if the building proposed to be erected will be situated in the curtilage of, and be appurtenant to, an existing building;

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(c) if the plans mentioned in section 98A(1)(a) were deposited before that section came into force.

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(2) Section 98A does not apply if an agreement has been made by a person with the Department under section 4 —

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(a) providing for the carrying out at the expense of the person of street works in the whole of the road or a part of it

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comprising the whole of the part on which the frontage of the building will be; and

(b) for securing that the road or the part of it, on completion of the works, will become a highway maintainable at the public expense.

(3) Section 98A does not apply if the Department, by notice served on the owner of the land on which the building is to be built, exempts the building from that section, being satisfied that the whole of the road or a part of it comprising the whole of the part on which the frontage of the building will be is not, and is not likely within a reasonable time to be —

(a) substantially built-up; or

(b) in so unsatisfactory a condition as to justify the use of powers under the private street works code to secure the carrying out of street works in the road or the part of it.

(4) Section 98A does not apply if the Department, by notice served on the owner of the land on which the building is to be built, exempts the building from that section, being satisfied that the road on which the building is to have a frontage is not, and is not likely within a reasonable time to become, joined to a highway maintainable at the public expense.

(5) Section 98A does not apply if —

(a) the whole road, being not less than 100 yards in length; or

(b) a part of it not less than 100 yards in length and comprising the whole of the part on which the frontage of the building will be,

was, when section 98A came into force, built-up to such an extent that the aggregate length of the frontages of the buildings on both sides of the road or part constituted at least one half of the aggregate length of all the frontages on both sides of the road or part.

(6) Section 98A does not apply if (in a case not falling within subsection (5)) the Department, by notice served on the owner of the land on which the building is to be built, exempts the building from this section, being satisfied that the whole of the road on which the building is to have a frontage was, when the section came into force, substantially built-up.

(7) Section 98A does not apply if the Department, by notice published in a manner likely to bring it to the attention of those affected by it, exempts the road or the relevant part of it from the section, being satisfied —

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- (a) that more than three-quarters of the aggregate length of all the frontages on both sides of the road, or of a part of the road not less than 100 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
- (b) that its powers under the private street works code are not likely to be exercised in relation to the road or to the part of it, as the case may be, within a reasonable time.

(8) If a sum has been paid or secured under section 98A in relation to a building proposed to be erected on it, and later —

- (a) a notice is served under subsection (3), (4) or (6) exempting the building from section 98A; or
- (b) a notice is published under subsection (7) exempting from section 98A the road or the part of it on which the building will have a frontage,

the Department must pay the sum to the owner of the land or must release the security, as the case may be.

(9) If a sum was paid under section 98A, and after the payment but before the service or publishing of the notice mentioned in subsection (3), (4) (6) or (7), the land in respect of which it was paid was divided into 2 or more parts each having a frontage on the road in question, the sum to be paid under subsection (8) must for the purposes of the subsection be apportioned between the owners of the land according to their respective frontages.

### 98C Determination of payments

- (1) This section applies if section 98A applies.
- (2) The building authority, if it is not the Department, must, within one week of passing plans mentioned in section 98A(1)(a), inform the Department accordingly.
- (3) The Department may, within 6 weeks from the passing of the plans, serve a notice on the owner of the land in respect of which the plans were deposited requiring the payment or the securing under section 98A of a sum specified in the notice.
- (4) The sum to be specified in the notice must be such sum as in the opinion of the Department would be recoverable under the private street works code in respect of the frontage of the proposed building on the road in question if the Department were then to carry out the street works in respect of that road in accordance with that code.

- 1 (5) If after the service of the notice the Department is of the  
2 opinion —
- 3 (a) that the sum specified in the notice exceeds the sum that  
4 would be recoverable as mentioned in subsection (4) if it  
5 were then to carry out the street works in accordance with  
6 that code; or
- 7 (b) that no sum would be so recoverable,
- 8 the Department may, by a further notice served on the person  
9 who is for the time being the owner of the land on which the  
10 building is to be or has been erected substitute a smaller sum for  
11 the sum specified in the notice served under subsection (3) or, as  
12 the case may be, intimate that no sum falls to be paid or secured.
- 13 (6) Subsection (5) does not apply if a sum has been paid or secured in  
14 compliance with a notice served under subsection (3) and the  
15 Department has the power to make a refund or release under  
16 section 98D(1).
- 17 (7) If a notice (not being a notice intimating that no sum falls to be  
18 paid or secured) is served under this section, the owner of the  
19 land on which the building is to be or has been erected may  
20 appeal to the High Bailiff, who may substitute a smaller sum for  
21 the sum specified in the notice.
- 22 (8) If a sum has been paid or secured in compliance with a notice  
23 served under subsection (3) and a notice is subsequently served  
24 under subsection (5) substituting a smaller sum for the sum  
25 specified in the first-mentioned notice or intimating that no sum  
26 falls to be paid or secured, the Department must —
- 27 (a) if the sum was paid, pay the amount of the excess or, as the  
28 case may be, the whole sum to the person who is the owner  
29 of the land on which the building is to be or has been  
30 erected ;
- 31 (b) if the sum was secured and the person whose property is  
32 security for the payment of it is the owner of the land,  
33 release the security to the extent of the excess or, as the  
34 case may be, the whole security; or
- 35 (c) if the sum was secured and the person whose property is  
36 security for the payment of it is not the owner of the land,  
37 pay to the owner of the land an amount equal to the excess  
38 or, as the case may be, the whole sum, and may realise the  
39 security to recover the amount so paid.
- 40 (9) If land in respect of which a sum has been paid or secured in  
41 compliance with a notice under subsection (3) is subsequently  
42 divided into 2 or more parts so that 2 or more owners would, if  
43 street works were carried out, incur liability in respect of the

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works, the sum is to be treated as apportioned between them according to their respective frontages and, if the sum was secured and the security is the property of one only of those owners, the Department —

- (a) is required under subsection (8)(b) to release the security only to the extent of the amount apportioned to that owner, and
- (b) may realise the security for the purpose of recovering the amount or amounts paid to the other owner or owners under subsection (8)(c).

- (10) If a security is realised for the purpose of recovering an amount paid by the Department under subsection (8)(c), and the sum produced by realising the security exceeds the amount so paid, the amount of the excess must be held by the Department and dealt with under the advance payments code as if it had been an amount paid under section 98A on the date on which the security was realised.

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#### **98D Refunds, etc. if work done otherwise than at expense of the Department**

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- (1) If —

- (a) a sum has been paid or secured under section 98A by the owner of land in respect of the cost of street works to be carried out in the road on which that land has a frontage, and
- (b) street works are subsequently carried out in the road in respect of that frontage to the satisfaction of but otherwise than at the expense of the Department,

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the Department may refund to the person at whose expense the works were carried out the whole or the proportion of that sum, or, as the case may be, release the whole or the part of the security, which in its opinion represents the amount by which the liability of the owner of the land in respect of street works has been met or reduced as a result of the carrying out of the street works in question.

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- (2) If the person at whose expense the works were carried out is not the owner of the land, a payment or release may not be made under subsection (1) unless the owner of the land has been notified of the proposal to make the payment or release and has been afforded an opportunity of making representations to the Department in relation to it.
- (3) If land that has a frontage on a road, and in respect of which a sum has been paid or secured under section 98A, is subsequently

divided into 2 or more parts each having a frontage on that road, the sum is to be treated as apportioned between the owners of the land according to their respective frontages, and subsection (1) has effect accordingly.

(4) If —

- (a) a sum has been paid or secured under section 98A in respect of the cost of street works to be carried out in the road on which that land has a frontage, and
- (b) later the Department enters into an agreement with a person under section 4, a condition of which provides 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 sum or a part of it 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.

#### **98E Sums paid or secured to be in discharge of further liability for street works**

(1) If a sum has been paid or secured under section 98A by the owner of land in respect of the cost of street works to be carried out in the road on which that land has a frontage, the liability of that owner and any subsequent owner of that land in respect of the carrying out of street works in the road under the private street works code ("the street works liability") is, as respects that frontage, to be taken as having been discharged to the extent of the sum so paid or secured.

(2) If that sum is found to exceed the total street works liability in respect of the frontage or there is no such liability because the street works were not carried out, the Department must —

- (a) if the sum was paid, pay the amount of the excess or, as the case may be, the whole sum to the person who is the owner of the land;
- (b) if the sum was secured and the person whose property is security for the payment of it is the owner of the land, 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 of it is not the owner of the land, pay to the owner of the land an amount equal to the excess or, as the case may be, the whole sum, and may realise the security to recover the amount so paid.

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- (3) If land in respect of which a sum has been paid or secured under section 98A is subsequently divided into 2 or more parts so that 2 or more owners incur or would incur the street works liability, the sum is to 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 Department —
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- (a) is required under subsection (2)(b) to release the security only to the extent to which the amount apportioned to that owner exceeds his or her street works liability or, as the case may be, to the extent of the whole of that amount; and
- (b) may realise the security to recover the amount or amounts paid to the other owner or owners under subsection (2)(c).
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- (4) If a refund, release or payment has been made under section 98C(8) or under section 98D, the foregoing provisions of this section have effect as if for references in them to a sum paid or secured there were substituted references to a sum remaining paid or secured.

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**98F Determination to cease to have effect when building not proceeded with**

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- (1) If —
- (a) plans for the erection of a building fronting on a road have been passed;
- (b) the amount to be paid or secured under section 98A has been determined under section 98C; and
- (c) before any work has been done in or for the purpose of erecting the building the owner gives notice to the building authority of his or her intention not to proceed with the building,
- the determination and any payment made or security given in accordance with it are of no effect for the purposes of this Part.
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- (2) Subsection (1) does not have effect if there have already been carried out or commenced in the road under the private street works code street works for which the owner of the land on which the building was to be erected is liable.
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- (3) If by virtue of subsection (1) a determination is of no effect and a sum was paid or security was given, the Department must —
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- (a) if a sum was paid, pay it to the person who is for the time being the owner of the land;

- 1 (b) if the sum was secured and the person whose property is  
 2 security for the payment of it is the owner of the land,  
 3 release the security;
- 4 (c) if the sum was secured and the person whose property is  
 5 security for the payment of it is not the owner of the land,  
 6 pay to the owner of the land an amount equal to the sum,  
 7 and may realise the security to recover the amount so paid.

8 (4) If land in respect of which a sum has been paid or secured as  
 9 mentioned in subsection (3) is subsequently divided into 2 or  
 10 more parts so that 2 or more owners would, if street works were  
 11 carried out, incur liability in respect of the works, the sum is to be  
 12 treated as apportioned between those owners according to their  
 13 respective frontages and, if the sum was secured and the security  
 14 is the property of one only of those owners, the Department —

- 15 (a) is required under subsection (3)(b) to release the security  
 16 only to the extent of the amount apportioned to that  
 17 owner; and
- 18 (b) may realise the security to recover the amount or amounts  
 19 paid to the other owner or owners under subsection (3)(c).

20 (5) If a refund, release or payment has been made under section  
 21 98C(8) or under section 98D, subsections (3) and (4) have effect as  
 22 if for references in them to a sum paid and security given there  
 23 were substituted references respectively to any sum remaining  
 24 paid and any remaining security.

25 (6) If —

- 26 (a) a person notifies the building authority in accordance with  
 27 subsection (1)(c) of his or her intention not to proceed with  
 28 the building and as a result a determination is of no effect,  
 29 and
- 30 (b) subsequently notice is given to the building authority by  
 31 the owner of the land that he or she intends to proceed  
 32 with the building in accordance with the plans as  
 33 originally deposited,

34 the notice to be served under section 98C(3) by the Department  
 35 shall, in lieu of being served as required by that section, be served  
 36 on him or her within one month from the date of the service of the  
 37 notice of his or her intention to proceed with the building, and  
 38 section 98C has effect accordingly.

39 (7) If this section applies, the building authority, if it is not the  
 40 Department, must within one week inform the Department of the  
 41 happening of any of the following events —

- 42 (a) the giving of any notice by an owner of his or her intention  
 43 not to proceed with a building; and



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3

- (b) the giving of any notice by an owner of his or her intention to proceed with a building in accordance with plans as originally deposited.

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#### **98G Certain matters to be charges on land**

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- (1) The matters specified in subsection (2) are charges on land and the Department must register them as such in respect of the relevant land.

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- (2) The matters are —

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- (a) notices served by the Department under section 98C(3) or (5);

11

- (b) determinations by the High Bailiff under section 98C(7);

12

- (c) payments made and securities given under section 98A;

13

- (d) notices served under section 98B(3), (4), or (6) exempting a building from section 98A;

14

- (e) a notice published under section 98B(7) exempting a road or a part of a road from section 98A; and

15

16

- (f) refunds made and releases of securities granted under section 98C, 98D, 98E or 98F .

17

18

19

#### **98H Interest on sums paid under advance payments code**

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- (1) A sum paid by the owner of land to the Department under section 98A, in so far as it continues to be held by the Department, carries simple interest at 2% above the base rate of the Bank of England from the date of payment until such time as the sum or a part of it remaining so held —

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- (a) falls to be set off against the owner's street works liability; or

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27

- (b) falls to be refunded in full under the provisions of the advance payments code,

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and the interest must be held by the Department until that time and dealt with under those provisions as if it formed part of the said sum.

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- (2) Subsection (1) does not apply to any sum in so far as it is repaid under any such agreement as is referred to in section 98D(4).”.

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34

### **25 Section 99 repealed and replaced - interpretation of Part VII**

35

For section 99 substitute —

*“Interpretation and amendment of Part VII*

**99 Interpretation of Part VII**

(1) In this Part "**the private street works code**" means sections 94 to 98 and "**the advance payments code**" means sections 98A to 98H.

(2) In this Part —

**“building authority”**, in respect of any place, means the building authority for that place for the purposes of the *Building Control Act 1991*;

**“industrial premises”** means premises used or designed for use for the carrying on of any process for or incidental to any of the following purposes, that is to say —

- (a) the making of an article or of part of an article; or
- (b) the altering, repairing, ornamenting, finishing, cleaning, washing, freezing, packing or canning, or adapting for sale, or breaking up or demolition, of an article; or
- (c) without prejudice to the preceding paragraphs, the getting, dressing or preparation for sale of minerals or the extraction or preparation for sale of oil or brine,

or for the carrying on of scientific research;

**“made up”** means sewered, levelled, paved, metalled, channelled or made good;

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

**“road”** means a highway or any street, road, lane, path, square, court, alley or passage, whether a thoroughfare or not, not being a highway, and includes any part of a road;

**“street works”** means works for the sewerage, levelling, paving, metalling, flagging, channelling or the making good or making up of a road, and includes the provision of proper means for lighting a road.

(3) Where, were it not for section 3(2)(k), a footpath would not be a highway maintainable at the public expense, it is not to be treated as a highway maintainable at the public expense for the purpose of this Part.

(4) In this Part "**road**" for the purpose of the application of the advance payments code includes any land shown as a proposed road on plans required to be deposited in respect of a building as mentioned in section 98A(1)(a).

- 1 (5) For the purposes of this Part the frontage of a building or  
 2 proposed building on a road is to be taken to be the frontage that  
 3 the building itself and any land occupied, or, as the case may be,  
 4 proposed to be occupied, with the building for the purposes of it  
 5 has or will have on the road.
- 6 (6) In ascertaining the owner for the purposes of this Part, joint  
 7 owners are to be treated as one owner.

### 8 **99A Amendment of Part VII**

- 9 (1) The Department may make regulations amending any provision  
 10 of this Part.
- 11 (2) Any such regulations shall not have effect unless approved by  
 12 Tynwald.
- 13 (3) In subsection (1) “amending” includes modifying, repealing and  
 14 adding to.”

## 15 **26 Section 106A amended - power to work minerals**

16 For section 106A(1) substitute –

- 17 “(1) The Department may, for the purpose of any of its functions  
 18 under this Act –
- 19 (a) work and get minerals and dispose of any minerals so  
 20 worked or got by sale or otherwise, and
- 21 (b) carry on any activity ancillary to the working or getting of  
 22 minerals or their disposal, including the disposal of  
 23 surplus minerals by sale or otherwise to any person.”

## 24 **27 Section 115 amended – provisions as to offences**

25 For section 115(2) and (2A) substitute –

- 26 “(2) A person who commits an offence under this Act shall be liable on  
 27 summary conviction –
- 28 (a) in the case of an offence under section 16A(12), to a fine of  
 29 £50,000;
- 30 (b) in the case of an offence under section 56 to a fine of such  
 31 amount (which is not to exceed £50,000) as is prescribed by  
 32 regulations made under that section;
- 33 (c) in the case of an offence under section 69, 102(9) or 106(3),  
 34 to a fine not exceeding £5,000; and
- 35 (d) in any other case, to a fine not exceeding £2,500.
- 36 (2A) If a person who has been convicted of an offence under section  
 37 79(3) or 93(5) continues to fail to comply with that section after the

conviction the person shall be guilty of a further offence under the section and may be convicted for the offence in respect of any period of failure after the previous conviction.

(2B) The Department may by order amend subsection (2) so as to vary the amount of any fine or maximum fine there specified but such order shall not have effect unless approved by Tynwald.”

## 28 Section 119 amended – interpretation

In section 119 –

(a) for the definition “**apparatus**” substitute –

““**apparatus**” includes a main, sewer, drain, pipe, syphon, wire, cable, line or telecommunication apparatus, together with any connected apparatus or other connected works and any structure constructed for lodging the apparatus;”;

(b) after the definition “**the Local Government Board**” insert –

““**main**” means apparatus through or by means of which a supply or service is or is intended to be afforded, for the general supply or for the general purposes of a system or service;”;

(c) for the definition “**statutory undertakers**” substitute –

““**statutory undertaker**” means a person authorised by a statutory provision –

(a) to carry on a railway, tramway or lighthouse undertaking;

(b) to undertake the supply of gas, water, electricity or heating;

(c) to operate a sewerage and sewer system; or

(d) to operate a telecommunications code system (within the meaning of the *Telecommunications Act 1984*);

and “**statutory undertaking**” shall be construed accordingly;”;

(d) omit the definition “**undertakers’ works**”.

## 29 Schedule 1B inserted – improvement lines

After Schedule 1A insert –

“**SCHEDULE 1B**

**IMPROVEMENT LINES**

Section 16A(4)

1. Before an improvement line is designated by the Department it must consult the local authority in whose district the highway in relation to which the line is to be designated is situated.
2. A line that the Department proposes to designate must be shown on a plan to be signed by the Minister.
3. The plan must be deposited at the offices of the Department or at such place as the Department 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 Department must give notice to each interested person of the proposal to designate the line, of the times and place at which the plan may be inspected, and of the effect of section 16A and of paragraph 5.
5. The Department must consider any objection to the proposed line made within 6 weeks from the date on which the notices were given and may then designate the line.
6. Not later than 6 weeks after the date on which the Department designates the line it must prepare a plan, duly sealed and authenticated, on which the line must be shown and must give notice of the designation of the line and of the time and place at which the plan may be inspected to each interested person.
7. If the Department revokes the line or a part of it, it must—
  - (a) give notice of the revocation to each interested person and to the local authority in whose district the land to which the line relates is situated; and
  - (b) indicate on the plan prepared in accordance with paragraph 6 the extent to which the line has been revoked.
8. When the Department gives notice to interested persons in accordance with paragraph 4, 6 or 7 it must also publish in a newspaper circulating in the Island a notice setting out the information contained in those notices.
9. If for any reason an interested person fails to receive notice in accordance with paragraph 4, 6 or 7, the interested person is to be taken to have received the notice on the publication of the notice under paragraph 8.
10. In this Schedule “**interested person**”, in respect of land that may be, is or may have been affected by an improvement line, means each owner, lessee or occupier of the land who may be reasonably ascertained by the Department.””.

1 **30 Schedule 4 amended – the road works code**

2 In paragraph 2(10) of Schedule 4 for “In this paragraph a reference to  
3 reinstatement and making good in the context of a highway or bridge includes  
4 –“ substitute “In this paragraph a reference to reinstatement and making good  
5 in the context of a highway or bridge includes, unless the Department otherwise  
6 directs –”.

7 **31 Schedule 4 further amended**

8 In Schedule 4 –

9 (a) after paragraph 2 insert –

10 *“Directions as to timing of works*

11 2A. (1) If it appears to the Department –

12 (a) that proposed road works are likely to cause serious  
13 disruption to traffic, and

14 (b) that the disruption would be avoided or reduced if the  
15 works were to be carried out only at certain times,

16 the Department may give the undertakers such directions as may  
17 be appropriate as to the times when the works may or may not be  
18 carried out.

19 (2) If the undertakers execute works in contravention of a direction  
20 under sub-paragraph (1), they shall be guilty of an offence.

21 (3) Nothing in this paragraph applies to emergency works.”; and

22 (b) after paragraph 9 insert –

23 *“Code of practice*

24 10. (1) The Department may, after consultation with any undertakers  
25 appearing to it to be affected, issue or approve for the purposes of  
26 this paragraph a code of practice giving practical guidance as  
27 to –

28 (a) the carrying out by undertakers of road works; and

29 (b) the arrangements to be made by undertakers for  
30 controlling traffic on a highway or bridge during the  
31 carrying out of road works.

32 (2) A code of practice issued or approved under sub-paragraph (1)  
33 must be laid before Tynwald.

34 (3) A failure on the part of undertakers to observe a provision of a  
35 code of practice issued or approved under sub-paragraph (1) does  
36 not of itself render them liable to any proceedings, but in any  
37 proceedings before a court or arbitrator –

- 1 (a) any such code is admissible in evidence, and  
2 (b) any provision of the code that appears to the court or  
3 arbitrator to be relevant to a question arising in the  
4 proceedings must be taken into account in determining the  
5 question.”  
6

7 **32 Schedule 4 repealed**

8 Schedule 4 is repealed.

9 **33 Schedule 5 amended – provisions with respect to notices under sections**  
10 **73 and 73A**

11 In Schedule 5 –

- 12 (a) in the heading for “Section 73” substitute “Sections 73 and 73A”;  
13 (b) in paragraph 1 after “section 73(1) or (3)” insert “or section 73A(2)  
14 or (2A)”;  
15 (c) in paragraph 1(a) for “section 73(1) or (3)” substitute “that  
16 provision”;  
17 (d) in paragraph 1(e) after “verge” insert “or habitually uses the  
18 means of access”;  
19 (e) in paragraph 1(f) after “section 73(2)” insert “or section 73A(3)”.

20 **PART 3 – HIGHWAY ACT, 1927 REPEALED**

21 **34 Highway Act, 1927 repealed**

22 The *Highway Act, 1927* is repealed.

IN THE KEYS

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**HIGHWAYS (AMENDMENT) BILL 2015**

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**A BILL** to amend the  
Highways Act 1986 and to  
repeal the Highway Act, 1927.

Approved by the Council of Ministers  
for introduction in the House of Keys.

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MR GAWNE

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JUNE 2015