



# The Law Commission

(LAW COM. No. 100)

## HIGHWAYS BILL

REPORT ON THE CONSOLIDATION OF THE HIGHWAYS ACTS  
1959 TO 1971 AND RELATED ENACTMENTS

*Presented to Parliament by the  
Lord High Chancellor, by Command  
of Her Majesty*

*February 1980*

L O N D O N

HER MAJESTY'S STATIONERY OFFICE

Cmd. 7828

£1.25

The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Commissioners are—

The Honourable Mr. Justice Kerr, *Chairman*.

Mr. Stephen M. Cretney.

Mr. Stephen Edell.

Mr. W. A. B. Forbes, Q.C.

Dr. Peter M. North.

The Secretary of the Law Commission is Mr. J. C. R. Fieldsend and its offices are at Conquest House, 37-38 John Street, Theobalds Road, London WC1N 2BQ.

**LAW COMMISSIONS ACT 1965**  
**Law Commission Report on the Highways Bill**  
**(Law Com. No. 100)**  
**Cmnd. 7828**  
**ISBN 0 10 178280 2**

**CORRECTION**

Page 14, last paragraph,  
Lines 12 and 21,  
Clause 101 should read 103.

*March 1980*

**LONDON: HER MAJESTY'S STATIONERY OFFICE**

**THE LAW COMMISSION**

**HIGHWAYS BILL**

**REPORT ON THE CONSOLIDATION OF THE HIGHWAYS ACTS  
1959 TO 1971 AND RELATED ENACTMENTS**

*To the Right Honourable the Lord Hailsham of St. Marylebone, C.H.,  
Lord High Chancellor of Great Britain.*

The Highways Bill which is the subject of this Report seeks to consolidate the Highways Acts 1959 to 1971 and other enactments relating to highways. In order to produce a satisfactory consolidation it is necessary to make a number of recommendations which are set out in the Appendix to this Report. Some of the amendments proposed in the recommendations could have been authorised under the Consolidation of Enactments (Procedure) Act 1949.

N.B. The departments concerned have been consulted in connection with the recommendations.

23 January 1980

**MICHAEL KERR**  
*Chairman of the Law Commission.*

## APPENDIX

### RECOMMENDATIONS

1. Section 10 of the Highways Act 1959 empowers the Minister of Transport (in Wales, the Secretary of State)—

- (a) to delegate to a county council his functions with respect to the maintenance and improvement of trunk roads, and
- (b) to enter into an agreement with a county council for the construction of a trunk road.

By virtue of subsection (5) the council may use their own plant and materials.

The county council may sub-delegate their functions under section 10 to a district council, by virtue of section 187(6) of the Local Government Act 1972. That subsection, however, failed to attract, for the benefit of a district council, section 10(5) of the 1959 Act.

We recommend that a district council should be given the same express power to use their own plant and materials as a county council. Effect is given to this recommendation in clause 6(7) of the Bill.

2. Under section 18 of the London Government Act 1963, which deals with the delegation of functions with respect to metropolitan roads, such functions can be delegated by the Greater London Council to the relevant London borough council or the Common Council. Section 18(1)(b) enabled the delegation to cover land acquired by the Greater London Council under section 214(5) and (6) of the Highways Act 1959. Those subsections were repealed and replaced by section 22 of the Land Compensation Act 1973 but the need to substitute a reference to section 22 in section 18(1)(b) of the 1963 Act was overlooked. This was clearly inadvertent. An appropriate amendment arising out of section 22 of the Land Compensation Act was made to section 10 of the Highways Act 1959 which contains provision for delegation of functions with respect to trunk roads corresponding to those for metropolitan roads in section 18 of the 1963 Act.

We recommend that the reference to section 214(5) and (6) of the 1959 Act contained in section 18 of the 1963 Act should now be construed as a reference to section 22 of the Land Compensation Act 1973. This would bring section 18(1) of the 1963 Act into line with section 10 of the 1959 Act. The same transitional provision in this connection will, however, be required as we later recommend in connection with section 10: see recommendation 23 below. Effect is given to the recommendation in clause 7(1) of the Bill and, as regards the transitional provision, in Schedule 23, paragraph 1.

3. Section 13(1) of the Highways Act 1959 confers powers to make supplementary orders in connection with special roads (the provision of which may be authorised by schemes under section 11 of the Act along routes prescribed by the schemes). Paragraph (a) of section 13(1) enables the special road authority to appropriate “as part of a special road” a highway which is comprised in the route of the special road and for which the special road

authority is the highway authority. This would suggest that appropriation is not possible where the highway in question would form the entire route of the special road. Section 14(2) of the Act, however, contemplates an order under section 13 whereby a highway “is appropriated *as, or as part of*, a special road”. The only relevant order under section 13 for this purpose would be one under section 13(1)(a). Accordingly, “as part of” in section 13(1)(a) conflicts with “as, or as part of” in section 14(2).

We recommend that this inconsistency between the two sections should be eliminated by bringing the wording of section 13(1)(a) into line with that of section 14(2). Effect is given to the recommendation in clause 18(1) of the Bill.

4. Section 16 of the Highways Act 1959 and section 63(1) of the Highways Act 1971 both apply the code in the Town and Country Planning Act 1971 dealing with the extinguishment of the rights of statutory undertakers as to their apparatus etc. They do not, however, apply it consistently. The provisions of the code and their application are shown in the following Table.

TABLE  
SECTIONS 230 TO 240 OF THE TOWN AND COUNTRY PLANNING  
ACT 1971

<i>No. of Section</i>	<i>Subject matter</i>	<i>Application</i>
230	Extinguishment of rights of way, and rights as to apparatus of statutory undertakers.	S. 16 <i>and</i> s. 63
231	Orders under s. 230.	S. 63
232	Notice for same purposes as s. 230 but given by statutory undertakers to developing authority.	S. 16 <i>and</i> s. 63
233	Extension or modification of functions of statutory undertakers.	S. 16
234	Procedure in relation to orders under s. 233.	S. 16
235	Relief of statutory undertakers from obligations rendered impracticable.	S. 16
236	Objections to orders under ss. 233 and 235.	S. 16
237(2) <i>and</i> (3)	Right to compensation in respect of certain decisions and orders.	S. 16 <i>and</i> s. 63
238	Measure of compensation to statutory undertakers.	S. 63
239	Exclusion of s. 238 at option of statutory undertakers.	—
240	Procedure for assessing compensation where s. 238 applies.	S. 63

Sections 16 and 63(1) are also inconsistent in the manner in which they apply the code. The former makes only one adaptation, namely, that references

to the acquiring authority are to be treated as references to the special road authority. The latter spells out a whole series of adaptations: see Schedule 10 to the Highways Act 1971. Similar adaptations are, however, equally needed for section 16.

In our view it is clear that all these inconsistencies are of form only, not substance. For example, the attraction of section 237(2) must by implication bring in its train the actual rules for assessing compensation (section 238) and the provision for its determination by the Lands Tribunal (section 240) since section 238 refers back to section 237(2) and section 240 refers back to section 238. It will be seen from the Table, however, that whereas section 63 brings in sections 238 and 240 expressly, section 16 leaves them to come in by implication.

We accordingly recommend—

- (a) that the whole code should be applied to both provisions; and
- (b) that both of them should make all the necessary adaptations.

Effect is given—

- (a) to paragraph (a) of the recommendation in clause 21(1), and
- (b) to paragraph (b) in clause 21(3) and Part I of Schedule 5.

5. We have a recommendation to make in relation to section 17 of the Highways Act 1959 and section 63(2) and (3) of the Highways Act 1971. Section 17 of the 1959 Act applies the provisions of section 16 of that Act to the sewers and sewage disposal works of sewerage authorities as they apply to the apparatus of statutory undertakers. Similarly section 63(2) of the Highways Act 1971 applies the provisions of section 63(1) of that Act to the sewers and sewage disposal works of sewerage authorities as they apply to statutory undertakers. In both cases the provisions applied themselves apply the statutory undertakers code under sections 230 etc. of the Town and Country Planning Act 1971. In that code there are a number of references to “the appropriate Minister”. The definition of that expression in section 224 of the Town and Country Planning Act 1971 is framed in relation to statutory undertakers. The expression accordingly requires adaptation for the purpose of the application to sewerage authorities. Section 17 of the Highways Act 1959 (since the repeal of subsection (2) by S.I. 1970/1681 Schedule 4) contains no adaptation for this purpose. Section 63(3) of the Highways Act 1971 does contain an adaptation but, for the reason that appears below, that adaptation is now defective. The sensible course would be to repair the defect in the adaptation in section 63(3) of the Highways Act 1971 and repair the omission in section 17 of the Highways Act 1959 by providing the same adaptation for that section.

As section 63(3) of the Highways Act 1971 stands, it provides for references to “the appropriate Minister” to be construed (a) in relation to a sewerage authority in England, as references to the Secretary of State for the Environment, and (b) in relation to a sewerage authority in Wales, as references to the Secretary of State for Wales. This does not fit the present situation regarding sewerage authorities. By section 14 of the Water Act 1973 all sewerage functions were transferred to the various water authorities, and references to sewerage authorities become references to water authorities (as to which, see recommendation

21A below). There is one "Welsh" water authority, namely the Welsh Water Authority, but that also has a small area of England under its jurisdiction. Furthermore, of the "English" water authorities one (the Severn-Trent Water Authority) has an area of Wales under its jurisdiction.

In the circumstances the notion of sewerage authorities "in England" and sewerage authorities "in Wales" is no longer applicable. The only rational course is to make the Secretary of State for Wales the appropriate Minister in relation to matters arising in Wales and the Secretary of State for the Environment the appropriate Minister in relation to matters arising in England.

We recommend that this course be adopted (both for section 63 of the Highways Act 1971 and for section 17 of the Highways Act 1959). Effect is given to this recommendation in clause 22(2) of the Bill.

6. Section 4(1) of the Highways (Miscellaneous Provisions) Act 1961 empowers a highway authority to defray expenditure incurred by a parish or community council in maintaining a footpath or bridleway which the parish or community council have power to maintain under section 46 of the Highways Act 1959. Subsection (2) of section 4 provides that in applying any enactment restricting the expenditure of such councils, the expenditure to be defrayed by a highway authority is to be disregarded.

The Local Government Act 1972, paragraph 99 of Schedule 21, added a new subsection to section 4 which gives district councils the like powers as highway authorities but failed to provide for the disregard in relation to parish and community councils.

We recommend that this should be corrected. Effect is given to the recommendation in clause 43(3) of the Bill.

7. Section 60(2) of the Highways Act 1959, before the Courts Act 1971, dealt with applications by a complainant to Quarter Sessions for an order for repair of a highway under section 59(3) but not with applications to a magistrates' court under section 59(7) for an order authorising the complainant to carry out the repairs if they had not been done within the time specified in the Quarter Sessions order. The Courts Act 1971 in transferring jurisdiction from Quarter Sessions to the Crown Court amended section 60 but the amendment was too wide since it caught applications to a magistrates' court as well as those to the Crown Court. It seems clear that this was inadvertent since the amendment requires notice to be given to the appropriate officer of the Crown Court.

We recommend that this be rectified. Effect is given to the recommendation in clause 56(3) of the Bill.

8. Section 113 of the Highways Act 1959 contains provisions relating to the making or confirmation of a public path extinguishment or diversion order. These provisions are supplementary to those in sections 110 and 111 of the 1959 Act which were amended by Schedule 3 to the Countryside Act 1968 so as to allow local authorities to confirm such orders themselves where the orders were unopposed. The Countryside Act failed to make a consequential amendment, however, in section 113(4) which, in terms, applied only where an order is confirmed by the Secretary of State. In consequence the



protection given to statutory undertakers by that subsection does not apply where a local authority confirm an unopposed order. This was clearly an oversight.

We recommend that section 113(4) be amended to correct this omission. Effect is given to the recommendation in clause 123(4) of the Bill.

9. Section 18(1) of the Highways Act 1959 enables a special road authority (a) to stop up private means of access to premises and (b) to provide new means of access. The Minister of Transport (in Wales, the Secretary of State) may not make an order stopping up the means of access under paragraph (a) of that subsection unless, inter alia, other means of access will be provided under an order made under paragraph (b). However, it is now possible to provide new means of access otherwise than under section 18(1)(b) of the 1959 Act—e.g. section 3(1)(b) of the 1971 Act. This ought to be recognised in section 18(1)(b) in the same way as it is recognised in the corresponding provision of the 1971 Act, namely section 3(2)(b). The failure to amend section 18(1)(b) of the 1959 Act so as to take account of the new powers for providing alternative access provided by the 1971 Act was clearly an oversight.

We recommend that this be cured. Effect is given to the recommendation in clause 127(3) of the Bill.

10. Section 4(1) of the Highways Act 1971 provides that various powers to stop up private means of access can be exercised in any way that seems appropriate to the authority concerned, notwithstanding anything in section 85(3) of the Highways Act 1959. This makes it clear that the restrictions on the erection of posts and fences in section 85(3) do not apply so as to preclude the erection of posts or fences for the purpose of stopping-up private means of access under various powers for that purpose conferred by the 1959 and 1971 Acts. Section 4(1), however, in listing the powers concerned leaves out the power to provide for the stopping-up of private means of access by an order under section 13 of the 1959 Act pursuant to section 18 of that Act. This omission makes no sense and appears to have been an oversight, as there can be no material distinction for this purpose between a stopping-up under those provisions and a stopping-up under the provisions specified in section 4(1) of the 1971 Act.

We recommend that this anomaly be cured by bringing this omitted case within the scope of section 4(1). Effect is given to this recommendation in clause 128(1) of the Bill.

11. We have two recommendations in connection with section 31 of the Transport (London) Act 1969.

A. Section 31 of the Transport (London) Act 1969 gives the Greater London Council certain powers in relation to obstructions caused by certain bodies, including the highway authority itself, having power to execute works in a highway. It excludes for this purpose “any highway in Greater London which is not a trunk road”. The exclusion is clearly designed to exclude highways for which the Minister of Transport is the highway authority since it would not be appropriate to give the Greater London Council powers over the

Crown. The exclusion, however, assumed that the Minister is the highway authority only for trunk roads. This is not so and the exclusion should therefore have been expressed to apply to any highway for which the Minister is the highway authority.

There is a parallel provision in section 139 of the Highways Act 1959 which does so relate and we recommend that section 31 be brought into line with section 139. Effect is given to the recommendation in clause 162(2) of the Bill.

**B.** We recommend that the definition of “undertakers” in section 31(4) of the Transport (London) Act 1969 be brought into line with the definition of that expression in section 139 of the Highways Act 1959. Section 31 of the 1969 Act and section 139 of the 1959 Act are parallel provisions and until section 139(3) of the 1959 Act was amended the definition of “undertakers” was in substance the same for both sections, namely (to cite the version in section 31(4) of the 1969 Act) “persons (other than persons acting on behalf of the Crown) having powers to break up or open highways in Greater London...” The words “other than persons acting on behalf of the Crown” were undoubtedly inserted in both definitions with the Post Office, and only the Post Office, in mind. They were in fact the only “undertakers” who did act on behalf of the Crown. The exclusion was plainly inserted because it would not have been appropriate to give local highway authorities powers against the Crown. As a result of the Post Office Act 1969, however, the Post Office ceased to be an organ of the Crown and became an independent statutory corporation. In consequence, the objection to their being bound by this section disappeared. This was recognised by the Post Office Act 1969, so far as the Highways Act 1959 was concerned, in Schedule 4, paragraph 65(2). It was there provided that the Post Office were to be undertakers for the purposes of sections 137 to 139 of the 1959 Act. In consequence of this the Highways Act 1971 repealed that part of the definition of “undertakers” in section 139 of the 1959 Act, which excluded persons acting on behalf of the Crown. This was in recognition of the fact that the exclusion had been inserted with only the Post Office in mind.

In all this, however, the definition in the parallel provision in section 31(4) of the Transport (London) Act 1969 appears to have been overlooked, no doubt because the Bill for that Act was passing through Parliament at the same time as the Bill for the Post Office Act. In the result, the definition in section 31(4) of the Transport (London) Act is now out of line with section 139(3) of the Highways Act 1959, and out of line with the changed status of the Post Office, in having a reference to “persons acting on behalf of the Crown”.

We recommend that this anomaly be cured by bringing the definition in section 31 of the Transport (London) Act into line with the amended definition in section 139 of the Highways Act 1959. Effect is given to this recommendation in clause 162(8) of the Bill.

12. Section 174(2) and (3) of the Highways Act 1959 were amended by the Local Government Act 1972, Schedule 21, paragraph 66, to take account of the new local authority arrangements. The amendments, however, failed to take account of the situation in Greater London. We recommend that the appropriate amendments be made. Effect is given to the recommendation in clause 207(4) and (5) of the Bill.

13. The same point arises here as in recommendation 12 above. Section 179(2) of the Highways Act 1959 was amended by the Local Government Act 1972, Schedule 21, paragraph 67, but the amendments failed to take account of the situation in Greater London and accordingly we recommend that the appropriate amendments be made. Effect is given to the recommendation in Clause 212 of the Bill.

14. Subsection (1) of section 197 of the Highways Act 1959 made certain matters arising under that Act concerning private street works registrable in the registers of local land charges. The subsection was consequentially amended by Schedule 1 to the Local Land Charges Act 1975 to take account of changes in the local land charges system made by that Act. As amended, the subsection provides that the matters in question "shall be local land charges", and this automatically attracts the provisions for registration in the 1975 Act. That Act overlooked, however, the need for a further consequential amendment to section 197 of the 1959 Act.

Subsection (3) of section 197 of the 1959 Act, as substituted by paragraph 72(2) of Schedule 21 to the Local Government Act 1972, provides for the relevant street works authority to give notice to the district council of matters covered by that section. (In this respect the subsection was defective even before the Local Land Charges Act 1975, since it took no account of the fact that in London the authority keeping a local land charges register would be not a district council but a London borough council or the Common Council of the City of London.) The Local Land Charges Act 1975, however, contains, in section 5(2), a general provision whereby if the registering authority are not "the originating authority", as defined in section 5(4), the originating authority are to apply for registration to the registering authority. As respects all but one of the matters made local land charges by section 197 of the 1959 Act the street works authority are the originating authority within the meaning of section 5(4) of the Local Land Charges Act. For these matters, therefore, section 197(3) in its present form is otiose. As regards the exception, however, namely the matters specified in paragraph (c) of section 197(2), the street works authority are not the originating authority within that definition. Without some adaptation, therefore, the Local Land Charges Act produces a result out of accord with section 197 of the 1959 Act. Under the latter the duty of giving notice to the registering authority (which under section 5 of the Local Land Charges Act translates into a duty to apply for registration) lies in every case on the street works authority. In order to retain the effect of section 197(3) under the Local Land Charges Act 1975, it is necessary to convert section 197(3) into a provision whereby in every case the street works authority are to be treated as the originating authority for the purposes of that Act.

We recommend that section 197(3) be amended in that sense. Such an amendment would incidentally cure the mistake, already noted, which exists in section 197(3) quite independently of the Local Land Charges Act 1975. Effect is given to this recommendation in clause 226(3) of the Bill.

15. Section 44 of the Highways Act 1971 and the other land acquisition powers in that Act are supplementary to the land acquisition powers in section 214 of the Highways Act 1959. Section 214 applies the definitions of "common", "open space" and "fuel or field garden allotment" which

appear in the Acquisition of Land (Authorisation Procedure) Act 1946. The 1971 Act, although it used those words, did not define them but provided that the Act should be construed as one with the 1959 Act. The definition in section 214 is, however, for the purposes of section 214 only. We think this was overlooked in 1971.

We recommend that the definition should be extended to the provisions of the 1971 Act and effect is given to the recommendation in clause 240(2) of the Bill.

16. Section 17(5) of the London Government Act 1963 provides, *inter alia*, that differences arising thereunder between the Greater London Council and a London borough council as to the use of a sewer are to be determined by the Secretary of State. This provision should have been amended by the Water Act 1973 to take account of the transfer of sewerage functions from local authorities to water authorities so as to make like provision for resolving disputes as to the use of sewers between the Greater London Council and a water authority. There is a parallel provision in section 227(2) of the 1959 Act which was so amended.

We recommend that this oversight should be corrected. Effect is given to the recommendation in clause 266(3)(c) of the Bill.

17. Section 235(1) of the Highways Act 1959 gives the Minister of Transport (in Wales, the Secretary of State) power to make advances to highway authorities for the purposes there specified (which include construction, maintenance and improvement of highways). Sections 8(1), 29 and 30(6) of the Highways Act 1971 extend the purposes for which advances may be made under section 235 of the 1959 Act. The wording of section 235(1) and of the sections in the 1971 Act, however, differs. The power in section 235(1) is in terms of a power to make advances "for any of the following purposes"; but the wording in each of the 1971 Act provisions is in terms of making advances under section 235 "in respect of expenses incurred . . . in connection with" specified purposes. This latter wording looks rather wider than the wording of section 235 itself. The effect of that section had, however, been widened by section 27(1) of the Local Government Act 1966, which declared that the purposes for which advances could be made under section 235 included preliminary surveys "and other purposes incidental or conducive" to the purposes set out in section 235.

We think that the wording of section 235(1) of the 1959 Act, read together with section 27(1) of the Local Government Act 1966, amounts to the same thing as the wording of the three sections in the 1971 Act. We accordingly think that in consolidating these provisions the same form could be adopted for all of them without changing the substance. Furthermore, unless the same form is adopted it is hardly possible to produce a satisfactory consolidation of these provisions. We accordingly recommend that in the consolidation the form of these provisions be harmonised so that the three 1971 Act sections are brought into line with section 235 of the 1959 Act as read with section 27(1) of the Local Government Act 1966. Effect is given to the recommendation in clause 274(1) and (2) of the Bill.

18. Section 19A of the Road Traffic and Roads Improvement Act 1960 was added to the 1960 Act by the London Government Act 1963. Section 19 of the 1960 Act gives the Minister of Transport power in Greater London to execute road improvements other than widening works where he is not the highway authority. Section 19A gives similar power to the Greater London Council where they are not the highway authority. There can be little doubt that section 19A was intended to be in the same form, mutatis mutandis, as section 19. In section 19A(1), however, the words excluding road widening (“ being works which the highway authority could execute and which do not involve the widening of a highway ”) which appear in section 19(1) were omitted. That this omission was an oversight is apparent not only from the side note to section 19A (which expressly refers to road works not involving road widening) but from the closing words of section 19A(1) (“ and for the purposes of this subsection it shall not be treated as widening the highway . . . ”) which make no sense except on the footing that the foregoing part of the subsection excludes works involving widening.

We recommend that this should be put right in the re-enactment of section 19A. Effect is given to the recommendation in clause 287(1) of the Bill.

19. We have a recommendation to make as respects the application of certain general provisions of the Highways Act 1959 to certain sections of the Public Health Act 1961 which are re-enacted in the Bill, namely, sections 43 (clause 67), 44 (clause 289), 46 (clause 168), 47 (clause 232(7)) and 49 (clause 302). At present, certain general provisions of the Public Health Act 1936 apply to those sections. These provisions are set out in section 1(4) of the 1961 Act and are similar to general provisions in the 1959 Act which apply to like sections in that Act. The 1936 general provisions, their 1959 equivalents and the equivalent provisions in the Bill are—

<i>1936</i>	<i>1959</i>	<i>Bill</i>
275	258	298 (power to execute works on behalf of another)
283	280	322 (notices)
284	281	323 (authentication of documents)
285	282	324 (service of notices)
288	262	305 (penalty for obstructing execution of Act)
304	278	321 (non-disqualification of judges as rate-payers)
*305	261	(protection of members and officers of councils)
341	287	329 (application to Crown land)
343	295	331 (interpretation)

\*The re-enactment of these provisions has been rendered unnecessary by section 39 of the Local Government (Miscellaneous Provisions) Act 1976.

As the two sets of provisions are in virtually the same terms (subject to the discrepancy between the penalties for obstruction mentioned below) it would serve no useful purpose for the consolidation to attract the 1936 Act provisions just for the purposes of the sections reproduced from the 1961 Act. The same effect in substance, subject to the point made below, is achieved by simply allowing the general provisions in Part XIV of the Bill to apply to those provisions in the Bill derived from the 1961 Act as they apply to all the other provisions of the Bill.

In one respect this recommendation produces a change of substance, but the change cures an anomaly in the existing legislation. Both section 262 of the 1959 Act and section 288 of the 1936 Act provide a penalty for a person obstructing the execution of the provisions of the Act. Until the coming into operation of the Criminal Justice Act 1967, the penalty provided by both sections was the same, namely, a £5 fine. The Criminal Justice Act 1967 increased the fine in section 288 to £10 for a first conviction and £20 for a subsequent conviction. Subsequently, the Criminal Law Act 1977 increased the penalty in section 262 to £25 (leaving the penalty for a continuing offence at £5). The result is that for a handful of highways provisions in the Consolidation Bill drawn from the 1961 Act, (namely, clauses 67, 168, 232(7), 289 and 302) the penalty for obstruction is £10 or £20 for a subsequent conviction, while for all the other provisions of the Bill it is £25 (or £5). The consequence of our recommendation would be to cure this anomaly because the penalty now provided by section 262 of the 1959 Act would apply in every case.

We, accordingly, recommend that—

- (a) the penalty for obstructing the execution of the provisions of the 1959 Act and of the 1961 Act reproduced in the Bill should be that provided by the 1959 Act,
- (b) the other general provisions of the 1959 Act should apply to the provisions in the Bill derived from the 1961 Act.

Effect is given to paragraph (b) in the Bill by allowing Part XIV to apply to all the provisions in the Bill. Paragraph (a) is not given effect to in the Bill (see clause 305) and would have to be implemented during the passage of the Bill through Parliament. Although we think that the discrepancy between the fines is an accidental anomaly we feel that the proper level of a fine is a matter for Parliament.

20. Section 286(2) of the Highways Act 1959 provides that orders made or confirmed by the Greater London Council under the Act may be revoked or varied.

Under section 137(3) of the Act (clause 159(6)), the Greater London Council have power to make an order confirming a scheme in respect of repair and improvement works. That subsection makes the confirmed scheme final and binding and confers a limited power to modify the scheme by a subsequent order. By expressly conferring a limited power to modify, section 137(3) clearly intended that section 286(2) (clause 328(3)) should not apply to orders confirming such schemes and section 286(2) should have excepted such orders from its provisions.

We recommend that the apparent conflict between section 137(3) and section 286(2) be resolved by expressly excepting section 137 confirming orders from the general power to revoke or vary provided by section 286(2). Effect is given to this recommendation in clause 328(4) of the Bill.

21. We have two recommendations in connection with the re-enactment of section 295(1) of the Highways Act 1959 which is clause 331(1) of the Bill.

**A.** Section 295(1) of the Highways Act 1959 defines sewerage authority by reference to section 90 of the Public Health Act 1936. That definition was repealed by the Water Act 1973 and section 14(2) of that Act requires references to sewerage authorities to be construed as references to water authorities. As water authorities now have a variety of functions and are for example statutory undertakers for the purposes of the 1959 Act, the references to sewerage authorities should not apply to water authorities in all their capacities.

We recommend that the definition of sewerage authority should mean a water authority only in their capacity as such. Effect is given to the recommendation in clause 331(1) of the Bill.

**B.** Section 295(1) of the 1959 Act defines "improvement" as the doing of any act under powers conferred by Part V of the Act (Improvement of Highways). The expression appears in one or two places in the 1959 Act, for example, in section 235 (clause 274 of the Bill) dealing with advances to highway authorities for various purposes.

Part V of the 1959 Act is re-enacted in Part V of the Bill and nearly all the material of this Part of the Bill is derived from Part V of the 1959 Act. Of the four provisions in Part V of the Bill not so derived, namely, clauses 63, 67, 99 (with which goes 100) and 103, no difficulty arises with regard to the definition of "improvement" in the case of clauses 63 and 99. The former is derived from a provision (section 2(2) of the Highways (Miscellaneous Provisions) Act 1961) which is expressly in terms of the power to improve under the 1959 Act: and the latter is derived from a provision (section 28 of the Local Government Act 1966) which provides expressly that for the purposes of the definition of "improvement" in the 1959 Act it is to be treated as included in Part V of the 1959 Act, see section 28(5). In the case of clauses 67 and 101, however, the provisions from which they are derived (section 43 of the Public Health Act 1961 and section 6 of the Highways (Miscellaneous Provisions) Act 1961 respectively) provide no authority for treating the exercise of the powers they confer as falling within the meaning of "improvement" in the 1959 Act. Yet in both cases the subject-matter of the clause falls naturally within the "Improvement of Highways" part of the Bill. Clause 67 confers a power to put guard rails in private streets, which corresponds to the power in clause 66(3) (derived from Part V of the 1959 Act, as amended by section 19(1) of the Highways Act 1971) to put guard rails on public footpaths. And clause 101 confers a power to fill in roadside ditches, if they are considered a danger to users of the road, which falls naturally in the group of clauses dealing with miscellaneous improvements, at the end of Part V of the Bill. It would be absurd if, notwithstanding that these two clauses fall naturally within Part V of the Bill, the term "improvement" had to be defined by the

Bill as meaning anything done in the exercise of any of the powers conferred by Part V of the Bill other than the powers conferred by these two clauses.

We accordingly recommend that no such exception be made in the definition: that is to say, that, as in the 1959 Act, the term "improvement" be defined as the doing of any act under powers conferred by Part V of the Bill. Effect is given to this recommendation in clause 331(1) of the Bill.

22. Section 51(2) of the 1971 Act deals with distance limits in relation to land required for the provision of new means of access to premises from a highway or proposed highway and contains a reference to, inter alia, section 214(3) of the Highways Act 1959. Section 214(3) does not apply to new means of access but only where land is acquired for the construction or improvement of a highway.

We recommend that the reference to section 214(3) be omitted. Effect is given to the recommendation in Part II paragraph 1 of Schedule 18 to the Bill which re-enacts section 51(2).

23. Section 10(1) of the Highways Act 1959 (as amended by section 22(8) of the Land Compensation Act 1973) allows delegation of powers of maintenance etc. in respect of land acquired under section 215 of that Act or section 22 of the Land Compensation Act 1973. Before the coming into operation of the 1973 Act, section 10(1) applied to land acquired under section 214(5) and (6) or section 215 of the 1959 Act. Section 22 replaced section 214(5) and (6) and amended the reference in section 10(1) accordingly but the 1973 Act failed to preserve the effect of section 10(1) in respect of land already acquired under section 214(5) or (6).

We recommend that this be corrected. Effect is given to the recommendation in paragraph 1 of Schedule 23 to the Bill. See also recommendation 2 above.

24. Paragraph 18 of Schedule 24 to the 1959 Act contains transitional provisions relating to section 132 of that Act, which contains a prohibition against putting up doors opening outwards into a street. Section 132 re-enacted sections 71 and 72 of the Towns Improvement Clauses Act 1847, which did not apply in rural districts unless expressly applied to them. Paragraph 18(1) of Schedule 24 to the 1959 Act simply ensures that where there had been a breach of sections 71 and 72 of the 1847 Act before the commencement of the 1959 Act, it could be treated as a breach of section 132 of the 1959 Act. Paragraph 18(2) of Schedule 24 provides that where an outward-opening door had been put up before sections 71 and 72 of the 1847 Act applied in the relevant area, a local authority could alter it. The implication was (though paragraph 18 was not clear in this respect) that in those cases paragraph 18(2) applied to the exclusion of the authority's powers under section 132(2) to (6) and (8).

As the 1959 Act was originally enacted, section 132, read with section 290, continued the existing position as regards the extent of application. That is to say, section 132 applied to (a) those areas where sections 71 and 72 of the 1847 Act had applied immediately before the coming into operation of the 1959 Act (i.e. all boroughs and urban districts, and all rural districts to which



those sections had been expressly applied) and (b) to any rural district to which section 132 was later applied by order under section 290. Consistently with this, section 132 contained, in subsection (7), a transitional provision corresponding to paragraph 18(2) of Schedule 24, to deal with cases where an outward-opening door was put up in a rural district to which at the time section 132 did not apply, and subsequently an order applied section 132 to the district.

This situation was changed by the Local Government Act 1972. The effect of the amendments made by paragraph 40 of Schedule 21 to that Act was that after the coming into force of that Act section 132 of the 1959 Act applied to the whole country. Furthermore, the 1972 Act contained no transitional provision dealing with cases where an outward-opening door had been put up in a district to which section 132 did not apply before the coming into force of the 1972 Act amendments. Consistently with this, Schedule 30 to the 1972 Act repealed the existing transitional provision in section 132(7). What it failed to do, however, was to repeal the corresponding transitional provision in paragraph 18(2) of Schedule 24. This must have been an oversight since it made no sense, in the light of the other provision as respects section 132, to leave paragraph 18(2) of Schedule 24 on foot.

We recommend that this anomaly be cured by not re-enacting paragraph 18 (2) in the Bill. The recommendation is reflected in Schedule 23 to the Bill.

ISBN 0 10 178280 2