

Malawi

## Public Roads Act

Chapter 69:02

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# Malawi

## Public Roads Act

### Chapter 69:02

Commenced on 1 September 1962

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Forth Revised Edition of the Laws of Malawi (L.R.O. 1/2015), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

#### An Act to Consolidate and amend the Law relating to Public Roads and matters connected therewith

#### 1. Short title

This Act may be cited as the Public Roads Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**agricultural officer**" means the senior officer of the Government responsible for agricultural advisory services in any District, and includes any other person declared by the Minister for the time being responsible for agriculture by notice published in the *Gazette* to be an agricultural officer;

"**alternative land**" in relation to customary land means land which, in accordance with customary law, can be made available to an occupier who suffers disturbance;

"**bicycle**" shall include a tricycle;

"**carriageway**" means that part of a road designed and constructed to be used for vehicular traffic or used or reasonably usable for the time being for that purpose, but shall not include a cycle track;

"**compensation board**" means a compensation board constituted under section 47;

"**Deeds Registrar**" means the Deeds Registrar appointed under the Deeds Registration Act;

*[Cap. 58:02]*

"**Controller of Roads**" includes any person to whom the Controller of Roads may delegate his powers under this Act, or a person who is acting with the authority of the Controller of Roads.

*[6 of 1989]*

"**existing road**" means a road over which the public exercised a right of way prior to the coming into force of this Act whether or not such road had been declared a public road under the Public Roads Ordinance, 1950 (now repealed) and includes all land declared to be a public road under such Ordinance;

"**footpath**" means a portion of a road exclusive of the carriageway set aside for use solely by pedestrians;

"**highway authority**" means the authority responsible for the construction, care and maintenance of any road or class of road in accordance with this Act;

"**improved land**" means land whereon there is any improvement;

"**improvement**" means any work on land which has increased the value of such land in comparison with land in a similar area covered with natural vegetation and includes clearing land for agricultural purposes, the erection, alteration or enlargement of buildings, the installation of electricity supply, the construction or improvement of a wall, road, bridge or permanent fence, planting a live hedge, contouring of land, land drainage and works of reclamation and irrigation, the making and improvement

of water courses, the provision of water supply for agricultural or domestic purposes, the installation of fixed machinery, laying out and cultivating gardens, nurseries and orchards and the application to land of purchased manure (including artificial manure) to the extent to which such work has so increased the value of the land;

"**occupier**" in relation to land means any person lawfully occupying such land;

"**owner**" in relation to private land means a person (other than a mortgagee not in possession) entitled, with or without the consent of any other person to dispose of an interest in the land, and in relation to public or customary land means the Minister responsible for Land;

"**public road**" means any road of a class described in section 3;

"**road**" means a highway and includes any bridge, causeway, culvert, dam, ditch, drain, embankment, fence, ferry, ford, pontoon, guide post, mile post or other works in the line of such road, and includes an existing road and works in a road reserve constructed or maintained under section 18, but does not include any such works outside the limits of a road reserve;

"**road reserve**" means any land reserved for use as a road under sections 10, 11, 17 or 28;

"**storm water**" means all flow of water directly due to rainfall, before such water joins a stream;

"**stream**" means a watercourse of natural origin wherein water flows either continuously or intermittently, whether or not such watercourse is dry during any period of the year and whether or not its conformation has been changed by artificial means, and includes swamps or marshes, whether forming the source or found upon the course of, or feeding such watercourse;

"**structure**" includes—

- (a) any building, pole, powerline, petrol pump, machinery, wall, plantation, fence or hedge and any other object which could in like manner cause an obstruction;
- (b) any external alteration or addition to a structure;

"**surface rights**" in relation to land in respect of which compensation is claimed means the rights of the claimant to any interest in the crops, structures and other improvements on the land and, in the case of agricultural land which is used by a highway authority for a temporary purpose or for taking materials and use of which is resumed by the owner or occupier or some person claiming through or under him, includes the difference between the value, for agricultural purposes, of the surface soil before such soil was affected by works or things authorized by this Act and the value for such purpose of the surface soil as it is when use is so resumed;

"**undertaker**" means the authority, body or person by whom a statutory power to execute undertakers' works is exercisable in the capacity in which that power is vested in them;

"**undertakers' works**" means works (including works executed or to be executed on behalf of the Government) for any purposes other than road purposes, being works of any of the following kinds, that is to say—

- (a) placing apparatus, inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, or changing the position of apparatus or removing it;
- (b) breaking up or opening a road, for the purposes of works mentioned in paragraph (a), and tunnelling or boring under a road for those purposes, breaking up or opening a sewer, drain or tunnel for those purposes, and other works requisite for or incidental to those purposes, and shall include laying any pipeline, wire or cable on, over or under any road;

"**valuation date**" in relation to the assessment of compensation for any property or interest therein means the date at which the value of the property or interest therein is to be assessed;

"works" includes any pipe, tube, tunnel, permanent excavation, quarry, irrigation works, borehole or well, and any addition or alteration to such works.

[6 of 1989]

## Part I – Roads and road reserves

### 3. Classification and vesting of roads

- (1) The public roads of Malawi shall be classified as follows—
    - (a) main roads, being the inter-territorial roads defined as such under any law for the time being in force in Malawi, and the territorial main roads defined in section 4;
    - (b) secondary roads, as defined in section 5;
    - (c) tertiary roads as defined in section 5A;
    - (d) district roads, as defined in section 6;
    - (e) branch roads, as defined in section 7;
    - [6 of 1989]
    - (f) estate roads, as defined in section 8.
  - (2) The Minister may, by declaration published in the *Gazette*, designate any road to be a public road in accordance with the provisions and classifications of this Act. Upon designation as a public road, such road shall vest in the President as public land
  - (3) All public roads shall be subject to such restrictions of user as may be prescribed.
- [6 of 1989]

### 4. Main roads

- (1) Main roads shall be the roads so designated by the Minister by notice published in the *Gazette*.
- (2) In respect of all designated main roads in any area, including any City, Municipality or Township, the Controller of Roads shall be the highway authority, and all expenses incurred in the planning, designing, construction, care and maintenance of such roads shall be borne by the Government except as provided by the terms of any agreement entered into by the Government with any other government or organization.
- [6 of 1989]
- (3) Subject to section 9, in respect of designated main roads or portions thereof in any City, Municipality or Township, the highway authority shall be the Controller of Roads:  
  
Provided that any new construction, major improvements and maintenance activities affecting these roads shall be communicated to the City Council, Municipal Council or Town Council concerned.
- [6 of 1989]

### 5. Secondary roads

- (1) Secondary roads shall be those so designated by the Minister by notice published in the *Gazette*.

- (2) The highway authority in respect of all designated secondary roads in any area, including any City, Municipality or Township, shall be the Controller of Roads, or such other person as the Minister may, by notice published in the *Gazette*, appoint, and all expenses incurred in planning, designing, construction, care and maintenance of such secondary roads shall be borne by the Government.

[6 of 1989]

- (3) Subject to [section 9](#), in respect of designated secondary roads or portions thereof in any City, Municipality or Township, the highway authority shall be the Controller of Roads:

Provided that any new construction, major improvements and maintenance activities affecting these roads shall be communicated to the City Council, Municipal Council or Town Council concerned.

[6 of 1989]

### 5A. Tertiary roads

- (1) Tertiary roads shall be those designated by the Minister by notice published in the *Gazette*.
- (2) The highway authority in respect of all designated tertiary roads in any area, including any City, Municipality or Township, shall be the Controller of Roads or such other person as the Minister may, by notice published in the *Gazette*, appoint, and all expenses incurred in planning, designing, construction, care and maintenance of such tertiary roads shall be borne by the Government.
- (3) Subject to [section 9](#), in respect of designated tertiary roads or portions thereof in any City, Municipality or Township, the highway authority shall be the Controller of Roads:

Provided that any new construction, major improvements and maintenance activities affecting these roads shall be communicated to the City Council, Municipal Council or Town Council concerned.

[6 of 1989]

### 6. District roads

- (1) District roads shall be those roads in any area including any City, Municipal or Township so designated by the Minister, by notice published in the *Gazette*, after consultation with the District Council concerned.
- (2) In respect of district roads the highway authority shall be the District Council of the District in which the road is situated or such other person as the Minister may appoint by notice published in the *Gazette*.
- (3) The expenses of planning, designing, construction, care and maintenance of district roads shall be borne by the highway authority.
- (4) A highway authority shall be eligible to receive from the Government such grant towards the cost of construction, care and maintenance of district roads for which it is the highway authority, as the Minister may from time to time determine.

[6 of 1989]

### 7. Branch roads

- (1) Branch roads shall be those roads in any area including any City, Municipality or Township so designated by the Minister by notice published in the *Gazette*.

- (2) The Minister shall have power to designate branch roads on his own motion or after application duly made under section 13.
- (3) The Minister shall have power by notice published in the *Gazette* to appoint a highway authority in respect of all or any branch roads.
- (4) It shall be competent for the Minister in designating any branch road to order whether and in what proportion the cost of construction, care and maintenance of the road shall be borne by the owners of property served by the road or persons who obtain benefit from the existence of the road or how otherwise such cost shall be borne. Where such costs or any part of them are ordered to be borne by any person other than the highway authority concerned the costs shall be paid by such person to the highway authority in accordance with such regulations as may be made by the Minister and may be recovered by the highway authority as a civil debt.
- (5) Any order made under subsection (4) may be varied by the Minister by a subsequent order.

[6 of 1989]

## 8. Estate roads

- (1) Estate roads shall be roads in any area including any City, Municipality or Township area provided for the purpose of internal access in any area being developed, whether by Government or otherwise, for building plots, farms, or other purposes, which are designated by the Minister as such by notice published in the *Gazette*.
- (2) The Minister may at any time, by notice published in the *Gazette*, appoint a highway authority in respect of an estate road subject to such regulations, if any, as may be made under subsection (3).
- (3) The Minister may, after consulting the Minister for the time being responsible for Town and Country Planning, make regulations for the designation, provision, planning, designing, construction, care and maintenance of estate roads in any area which is in course of development other than a Planning Area declared under the Town and Country Planning Act.

[26 of 1988]

[Cap. 23:03]

- (4) The cost of construction, care and maintenance of estate roads shall be borne by the person responsible for the development:

Provided that the Minister may order that, in any case, such costs or any part thereof shall be borne by the owners or occupiers of the land in the area being developed in such proportions as may be specified in the order and any such costs or proportion thereof shall be recoverable by the highway authority from the person or persons liable as a civil debt.

[6 of 1989]

[26 of 1988]

## 9. Highway authorities in urban areas

- (1) In respect of any public road other than a designated road in any City, Municipality or Township, the City Council or Municipal Council or Town Council shall be the highway authority and shall be responsible for the planning, designing, construction, care and maintenance of the road—
  - (a) in respect of main roads, the cost of construction, care and maintenance shall be borne in accordance with section 4 (3);

- (b) in respect of secondary roads, the Municipal Council or Town Council shall be eligible to receive from the Government such grant towards the costs of construction, care and maintenance thereof as the Minister may from time to time determine.
- (2) A City Council, Municipal Council or Town Council shall not exercise any of the powers conferred on a highway authority by section 11 (1) (a) or (c), section 17 (2), section 18, section 30 or section 33 (2).
- (3) Nothing in this Act shall be construed as taking away any powers conferred by any other law on a City Council, Municipal Council, Town Council or District Council in respect of the construction, care and maintenance of roads within its area of jurisdiction.

[6 of 1989]

## 10. Width of road reserves and effect of reservation

- (1) The Minister shall have power to declare by notice published in the *Gazette* the width (not exceeding 60 metres) of any road reserve or class or classes of road reserve outside any City, Municipality or Township or any Planning Area declared under the Town and Country Planning Act. Except as otherwise declared, the reserve width shall be—
  - (a) for a main road, 60 metres;
  - (b) for a secondary road, 36 metres;
  - (c) for a district road, 36 metres;
  - (d) for branch roads and estate roads, 18 metres.
- (2) The centre line of the reserve width for a road shall in every case lie down the centre line of the carriageway of the road unless the Minister shall in any case otherwise direct by notice published in the *Gazette*.
- (3) Where any existing road is designated as a public road under section 3 the land included within the boundaries of the width described in the preceding subsections of this section which was not previously a road shall be reserved for use as a road and become a road reserve but no compensation shall be payable in respect of such reservation. Subject to subsection (4) a highway authority may at any time enter upon land comprised in any road reserve for the purpose of exercising any powers conferred on it by this Act.
- (4) If a highway authority shall desire to carry out any works on land in a road reserve in a manner likely to cause damage to any structure on such land it shall give one month's prior notice to the owner or occupier thereof of its intention:

Provided that in any case in which the structure consists of a building the length of notice required shall be three months.
- (5) The owner or occupier of land in a road reserve who suffers damage as a result of works carried out on such land by a highway authority shall be entitled to compensation in respect of such damage in accordance with Part II. The time for making a claim to the highway authority under this subsection shall be within three months after suffering the damage, or such extended time as the highway authority may allow.
- (6) No person shall do any of the following acts or things on land in a road reserve without the consent in writing of the highway authority—
  - (a) erect or alter any structure;
  - (b) plant any tree or bush; or

- (c) prepare for cultivation any land which was not, when the land became road reserve, prepared for cultivation:

Provided that notwithstanding such consent, neither the person doing such act or thing nor any person who may acquire any interest in the land in question shall be entitled to compensation for the value of what has been done if later the land is required for road use:

Provided further that in respect of paragraph (a) the highway authority shall consult with and have regard to the views of the Commissioner for Town and Country Planning before granting such consent.

*[26 of 1988]*

*[G.N. 18/1982]*

*[Cap. 23:01]*

*[6 of 1989]*

## 11. Care, maintenance and construction of roads

- (1) Subject to section 9, a highway authority shall have power—
- (a) for the purposes and subject to this Act, to enter upon any land and there to carry out any works and exercise any powers in relation to any public road for which it is responsible or proposed public road to be concerned therewith;
  - (b) to restrict the use of any public road or part thereof for which it is responsible and to use for such purpose traffic signs or other notices in accordance with this Act, or any other law. Without prejudice to the generality of the foregoing, such restrictions may prohibit the entry of a vehicle on a cycle track or footpath, control the use of bicycles or the movement of animals on any carriageway or footpath or forbid any person to proceed on foot along any part of any road;
  - (c) subject to the special or general directions of the Minister and subject to payment of compensation in accordance with Part II, to widen or divert any public road within the limits of a road reserve and to require the removal of any tree or structure on a road reserve and, if the owner of any such tree or structure fails to remove the same after being required to do so, power to remove the obstruction.
- (2) Every highway authority shall have jurisdiction to the extent provided in this Act over those public roads for which it is appointed to be the highway authority and shall be liable to undertake the construction, alteration, care and maintenance of such roads:
- Provided that if any highway authority shall fail to maintain any part of any public road for the maintenance of which it is responsible the Minister may, after giving reasonable notice to such highway authority, arrange for the works which he considers necessary for making good such failure, to be carried out in such manner as he shall direct.
- (3) Except as otherwise provided in this Act, liability to undertake the construction, alteration, care and maintenance of a public road includes liability to pay all the costs incurred in such construction, alteration, care and maintenance.
- (4) If any road is widened or diverted under subsection (1) (c) the land occupied by the widened or diverted road shall vest in the President as public land and shall be deemed to have been declared public land; and thereupon the land bordering the road on each side within a distance from the centre line of the portion of the road which has a new alignment of half the designated width of the road reserve, shall become road reserve without declaration or other formality. The highway authority shall prepare and register such plans, if any, relating to the widening or deviation as may be prescribed in rules made under section 25 (4).

- (5) Land which ceases to be part of a public road as a result of work effected in accordance with subsection 1 (c) shall vest in the owner of the adjoining land upon the terms and conditions upon which he holds such land without formal transfer, unless such land was, immediately before becoming a public road, customary land.

## 12. Control points of access, structures, etc.

- (1) The Minister shall have power to make regulations to control the number, location and design of points of access to all main and secondary roads, and to require the owners of buildings and property to provide service roads to give access to such buildings or property, and to prohibit the erection of any buildings with direct frontage on to any road or road reserve.
- (2) Any powers conferred on the Controller of Roads or on any other person by regulations made under subsection (1) may only be exercised after consultation with the Commissioner for Town and Country Planning.

*[26 of 1988]*

## 13. Opening of branch roads

- (1) Occupiers of land adjoining or served by or contributing to the cost of construction, care and maintenance of any road or proposed road outside a Municipality or Township may apply to the Minister, through a highway authority responsible for the public road referred to in subsection (1) (a) (i) to have such road designated a branch road. In such case the following provisions shall be observed and shall be applicable—
  - (a) every application must be in writing and shall specify—
    - (i) the point on a public road from which the branch road is required;
    - (ii) the land through or over which it is proposed that a road shall be designated and the names of the owners or occupiers thereof;
    - (iii) the proposed terminal point of the road;
    - (iv) how the expenses of construction, care and maintenance are proposed to be defrayed;
  - (b) notice shall be given by the applicants in one newspaper published or circulating in the District in which the road in question is situate or proposed.
- (2) The notice prescribed in subsection (1) shall contain adequate details of the application and call upon any person objecting thereto to lodge at the office of the highway authority within three months after the date of the publication of such notice his objections thereto in writing.

## 14. Report and recommendations to be submitted to Minister

- (1) The highway authority, on receiving any such application, may require the applicants to deposit such sum of money as may appear to be necessary for the purpose of defraying the expenses of causing the road or proposed road to be inspected by a competent person or persons and a report thereon made for submission to the Minister.
- (2) After considering any such application and any objection thereto under [section 13](#), and on making such further inquiries as it may deem fit, the highway authority shall make a report and recommendations on the matter to the Minister.
- (3) If upon the consideration of any such report and recommendations it shall appear to the Minister that the application is one which shall be approved, he may, by notice published in the *Gazette*,

designate such a road to be a branch road and he may, in any event, determine whether the whole or any part of the expense incurred in connexion with the application, including obtaining the report and, if the application is approved, causing the road to be designated, should be paid and borne by the applicants, and how the deposit shall be disposed of.

#### **15. Branch roads maybe designated secondary or district roads**

- (1) The occupiers of any land which abuts upon a branch road outside a Municipality or Township or persons who contribute to the cost of maintenance of such a branch road may apply in writing to the Minister, through the highway authority concerned, to have such branch road designated a secondary or district road.
- (2) Notice shall be given by the applicants, in one newspaper published or circulating in the District through which such road runs, that such application has been or will be made.
- (3) Such notice shall describe the proposal and shall call upon any person objecting thereto to lodge at the office of the highway authority concerned, within three months after the date of the publication of such notice, his objections thereto in writing.

#### **16. Consideration and determination of application**

- (1) The highway authority, on receiving any such application, may require the applicants to deposit such sum of money as may be necessary for the purpose of defraying the expense of causing the proposed road to be inspected by a competent person or persons and a report thereon made for submission to the Minister, and of the designation of the road if approved.
- (2) After considering any such application and any objection thereto made under section 15, and after making such further inquiries as it may deem fit, the highway authority shall make a report and recommendations on the matter to the Minister.
- (3) If after consideration of any such report and recommendations it shall appear to the Minister that the application is one which should be approved, he may, by notice published in the *Gazette*, designate such road a secondary or district road, and may, in any event, determine whether the whole or any part of the expenses incurred in connexion with the application including obtaining the report and, if the application is approved, in causing the road to be designated, should be borne by the applicants, and how the deposit shall be disposed of.

#### **17. Alterations to roads**

- (1) The Minister may at any time, by notice published in the *Gazette*, alter the classification of any public road or any part thereof and the width of any road reserve and sections 4, 5, 6, 7, 8 and 10 shall thereupon apply to such road or part thereof or road reserve according to the terms of such notice.
- (2) In any case in which a highway authority proposes to divert the permanent alignment of a road beyond the limits of a road reserve, sections 22 to 28 inclusive shall, subject to section 9, apply to such proposal.
- (3) In any case in which a highway authority desires to cease to be responsible for the construction, care and maintenance of any road or any part thereof, or in which, as a result of the deviation of the permanent alignment of any road, a highway authority desires to close any road for which it is responsible or any part thereof, or in any other case whatsoever in which it appears to the Minister desirable, for any reason, that any road shall cease to be a public road, the highway authority responsible for such road may cause an advertisement to be published in the *Gazette* and in one newspaper, circulating in the area concerned, giving particulars of the proposal and clearly describing the road sought to be affected.

- (4) The notice prescribed in subsection (3) shall call upon any person objecting to the proposal to lodge at the office of the highway authority concerned, within one month after the date of publication of such notice, his objections thereto in writing. A copy of the notice shall also be posted, for general information, at some conspicuous place outside the office of the District Council of the District in which the road is situated.
- (5) The highway authority shall consider and notify the Minister of any such objections and shall make recommendations to him.
- (6) After considering any such objections and the recommendations of the highway authority the Minister may, after registration of such plans, if any, as are required under section 25 (4) to be registered, by notice published in the same manner, declare that the proposal, of which notice has been so given, is to be carried out.
- (7) In any case in which the proposal is that after the publication of the notice referred to in subsection (6) the road or part thereof may continue to be used as a private road, the Minister may by such notice declare that such road or part thereof shall cease to be a public road and thereupon the road or part thereof, unless immediately prior to becoming a public road it was customary land, shall vest as a private road in the owners (who may, if the Minister thinks fit, be described in such notice) of the land adjoining the road or part thereof and, if it was customary land, shall be dealt with in accordance with the Land Act and, in either case, the highway authority shall cease to be responsible for the construction, care and maintenance thereof.

*[Cap. 57:01]*

- (8) In any case in which the proposal is that the public shall cease, after the publication of the notice referred to in subsection (6), to have the right to use the road or part thereof the Minister may, by such notice, declare that the road or part thereof shall be closed to use by the public, and thereupon the road or part thereof shall cease to be a public road and the land on which it was constructed may be disposed of or dealt with in any manner in which public land may properly be disposed of or dealt with.

## **18. Storm water from roads**

- (1) A highway authority may construct and keep open and clean ditches, drains, culverts and other works for the draining, protection, preservation, improvement, repair, construction or diversion of any road in, through, under or over land adjoining or near a road or road reserve and compensation shall be paid by the highway authority to the owner or occupier of improved land in respect of destruction of or damage to surface rights thereof by such works in accordance with Part II. The valuation date shall be the date of entry on to the land and any claim for compensation shall be made within three months after the act, matter or thing has been done in respect of which compensation is claimed.
- (2) Storm water flowing from any road or from any such ditch, drain, culvert or other work as is mentioned in subsection (1) may, subject to subsections (3) and (4), be discharged by the highway authority on to any land adjoining or near a road or road reserve.
- (3) Prior to carrying out any work which is liable to discharge storm water on to land adjoining or near a road or road reserve the highway authority responsible for the construction shall consult the owner of the land likely to be affected and, so far as possible, agree a suitable place for the discharge of the water. If no agreement can be reached the matter shall be referred to an agricultural officer who shall advise on a suitable place, and the highway authority shall act according to that advice.
- (4) If the storm water is not caused to discharge into a stream or other proper outlet the highway authority shall pay to the owner or occupier of the land on to which the water is discharged, compensation in respect of the cost of the works reasonably necessary to be done by such owner or occupier to prevent any damage likely to be caused by such storm water. The highway authority

shall not be liable otherwise in respect of the consequences of such discharge. If no agreement can be reached as to what works are reasonably necessary to be done by the owner or occupier the matter shall be referred to an agricultural officer for advice and the owner and occupier of the land and the highway authority shall act according to that advice.

## 19. Storm water from land adjoining

- (1) If any owner or occupier of land adjoining or near any public road has constructed drains or contour ridges for the purpose of improving or protecting his property, he shall not cause or permit storm water to discharge from such drains or contour ridges on to any public road or into any existing road drain beside or under any public road without the permission of the highway authority concerned.
- (2) In the event of any application for a permit under subsection (1), the highway authority concerned shall not grant permission unless the applicant agrees to pay the expenses of any additional drain or enlargement or alteration of any existing road drain which is considered necessary by such highway authority.
- (3) In the event of the permission being refused or of any dispute as to the necessity for such additional drain or enlargement or alteration of drains arising, the matter shall be referred to the Minister for decision after consultation with the Minister charged with responsibility for Agriculture.
- (4) Any person failing to comply with this section shall be guilty of an offence.

## 20. Powers of highway authority to control traffic

- (1) Subject to this section, where a highway authority is satisfied that, by reason of works of repair or construction being required or being in progress on or near a public road for the maintenance of which it is responsible, such public road should be prohibited to traffic or to traffic of a particular classification or description, or the use of such road should be restricted in any way, such highway authority may, by order, prohibit or restrict the use of such road, or any part thereof in such manner as may be specified in the order, and shall in such order direct the attention of such traffic as may be affected by such order to any alternative route which may be available.
- (2) A highway authority shall, not less than fourteen days before making an order under subsection (1), cause notice of its intention to make such order to be published in the *Gazette* and shall also, at least seven days before the date upon which such order comes into force, cause it to be published in like manner. Every such notice shall contain a statement of the effects of the order and a description of the alternative route or routes, if any, available for traffic:  
  
Provided that in any case where the highway authority concerned is satisfied that, owing to the likelihood of danger to the public or serious damage to the road, it is necessary to prohibit or restrict the use of such road forthwith, it may make any order under subsection (1) without publication under this subsection.
- (3) So long as any order made under this section is in force all reasonable steps shall be taken by the highway authority to keep posted, in a conspicuous manner, at each end of the part of the road to which the order relates and at the points at which it is necessary for vehicles to diverge from such road, a notice stating the effect of the order and describing the alternative route or routes, if any, available for traffic and the diversion shall so far as reasonably possible, at all times be clearly indicated to traffic using it by means of suitable traffic signs.
- (4) In addition to the powers conferred upon it by subsections (1) and (2), a highway authority may at any time by means of suitable barriers close or restrict the use of all or any part of any road within its jurisdiction for the purposes of repair or reconstruction:

Provided that—

- (a) subject to section 23, wherever possible a deviation for the passage of traffic shall be provided within or adjacent to the road reserve concerned;
- (b) all reasonable steps shall be taken to display adequate traffic signs in accordance with the Road Traffic Act giving reasonable warning to traffic using the road of any such closure or restriction.

*[Cap. 69:01]*

- (5) Any person who uses or permits the movement or use of any animal or vehicle on any part of any road in contravention of any order issued by a highway authority under this section shall be guilty of an offence.

## 21. Liability of highway authorities and their staff

- (1) No matter or thing done or omitted to be done and no contract entered into by a highway authority and no matter or thing done or omitted to be done by any officer or servant or other person acting under the direction of such authority shall, if the matter or thing was done or omitted to be done or the contract was entered into *bona fide* in pursuance of the duties of the authority in respect of any road, subject any servant or agent of the highway authority to any action, liability, claim or demand whatsoever and any expense incurred by any such servant or agent shall, in connexion with any such action, claim or demand, be paid by the authority out of its funds.
- (2) Nothing in subsection (1) shall be deemed to debar a suit where any act or omission has been occasioned by such negligence on the part of the authority, its officers or servants as would create liability under any other law:

Provided that the liability of a highway authority under any law in respect of any injury, damage or loss which may accrue to any person or property through the failure of any public road to sustain any vehicle shall be limited to liability for physical damage to such person or property caused by such failure.

- (a) for a main road, 60 metres;
- (b) for a secondary road, 36 metres;
- (c) for a tertiary road, 36 metres;
- (d) for a district road, 36 metres; and
- (e) for branch roads and estate roads, 18 metres.

*[6 of 1989]*

- (2) The centre line of the reserve width for a road shall in every case lie down the centre line of the carriageway of the road unless the Minister shall in any case otherwise direct by notice published in the *Gazette*.

*[Please note: numbering as in original.]*

## 22. Power of highway, authority to enter upon land for investigation

- (1) For the purpose of carrying out investigations in connexion with surveying or setting out the line or course of any proposed road a highway authority shall have power to authorize in writing any member or officer of the authority or other person to enter upon any land with such assistants, workmen, apparatus, instruments, vehicles and tools as may be considered necessary by the person so authorized.

- (2) No entry shall be made upon any land in accordance with subsection (1) unless prior notice has been given to the owner or occupier of the land concerned, nor during the hours of darkness.
- (3) Compensation shall be paid by the highway authority to the owner and occupier of the land for any damage to or destruction of surface rights on the land caused by the persons entering on such land in pursuance of the powers conferred by this section. Such compensation shall be assessed in accordance with Part II. No other compensation shall be payable in respect of any entry made pursuant to this section. The valuation date shall be the date when notice of intention to enter was given. The time for making any such claim shall be within three months from the date when the damage or destruction was caused.

### 23. Temporary deviations

- (1) For the purpose of facilitating the construction, repair or maintenance of any public road a highway authority may, after giving prior notice of its intention to the owner or occupier of the land, enter upon any land and construct and maintain thereon temporary deviations of the road:  
Provided that—
  - (a) no such deviation shall be constructed on improved land without the approval of the Minister or the concurrence of the owner or occupier of the land;
  - (b) compensation shall be paid by the highway authority to the owner and occupier of improved land affected for any damage to or destruction of surface rights on such land caused by any entry and acts authorized under the provisions of this section. Such compensation shall be assessed in accordance with Part II; but no other compensation shall be payable in respect of such entry or acts. The valuation date shall be the date when notice of intention to enter was given. The time for making a claim for such compensation shall be within three months from the date when the damage or destruction was caused.
- (2) Where a highway authority has exercised any power under this section, it shall, when the deviation is no longer required for the purpose for which it was constructed make good the land affected thereby to the extent necessary to prevent soil erosion.

### 24. Power to control land for proposed roads

- (1) If, during any investigation which is being made by a highway authority for the purpose of determining the line or course of any proposed road, the Minister has reason to believe that any person is doing or intending to do any act or thing likely or calculated to interfere with the proposed road, he may, in writing, request such person to cease or refrain from doing such act or thing.
- (2) If any such person fails or refuses to comply with a request made under subsection (1), the Minister may, by notice published in the *Gazette*, declare such land as he considers proper in relation to the proposed road to be controlled for road purposes. Such notice shall specify the owners or occupiers of the land and shall describe the area or areas so controlled.
- (3) Publication of a notice in accordance with subsection (2) shall have the effect of prohibiting any activity whatsoever on the land controlled other than activity which the Minister or the highway authority may, after consulting the Minister for the time being responsible for the administration of the Town and Country Planning Act, authorize in writing. In giving such authority the Minister or highway authority may impose any conditions.
- (4) A control effected under the provisions of this section shall lapse after the expiration of twelve months except to the extent that it is continued as to any part of the land affected by a reservation effected under [section 25](#).

- (5) As soon as possible after publication of a notice under subsection (2) the highway authority carrying out the investigation shall lodge with the Deeds Registrar two copies of a plan or plans showing the boundaries of the land affected by the notice.
- (6) No person shall be entitled as of right to any compensation in respect of any loss or damage suffered by reason of the exercise by the Minister of any of the powers conferred upon him by this section.

[26 of 1988]

## 25. Reservation of and

- (1) As soon as the course of any proposed road has been demarcated, the Minister may, by notice published in the *Gazette* and in a newspaper circulating in the District concerned, reserve a strip of land not exceeding 60 metres wide along such course and shall notify such reservation in writing by registered post or by delivery to the individual owners or occupiers of the land so reserved. Every such notice shall include a list of the properties affected by the reservation and shall specify the office at which plans showing the reserved strip of land may be inspected.
- (2) Publication of a notice under this section shall have the effect of—
  - (a) reserving the strip of land described in such notice for road purposes and authorizing the construction of a road thereon;
  - (b) prohibiting upon the land so reserved any activity which would, if the land were road reserve, be contrary to section 10, 19 or 36:  

Provided that the Minister may permit such limited use of the land as he may determine, subject to such conditions as he may impose in granting that permission;
  - (c) cancelling any control effected under section 24 of land not included in such notice.
- (3) As soon as possible after any land has been reserved under this section, the highway authority shall, subject to subsection (4), lodge with the Commissioner for Surveys and the Deeds Registrar one copy of plans showing the course of the proposed road.
- (4) The Minister, after consultation with the Minister responsible for Lands and Surveys, may make rules regarding the scale and nature of such plans and any other plans referred to in this Act and the registration and inspection thereof. Such rules may include provisions dispensing with the necessity for plans in approved cases relating to the widening or deviation of a road under section 11, to the deviation of the permanent alignment of a road under section 17, or to the variations mentioned in subsection (6).
- (5) The registration of such reservation shall not debar the owner of any land affected from transferring or otherwise dealing with such land, but the assessment of compensation shall not be affected or influenced in any way by such dealing.
- (6) In any case in which, during construction of the proposed road, any variation in the position of the road is found necessary or desirable fresh plans shall, before designation of the road under section 28, be prepared and lodged in accordance with subsection (3) showing the true position of the road as completed, and compensation shall be adjusted according to the loss or damage actually suffered.

[G.N. 18/1982]

## 26. Withdrawal or modification of control or reservation

The Minister may at any time withdraw or modify any control or reservation made under section 24 or section 25 by giving notice in the *Gazette* and by notifying the Deeds Registrar and, if plans have been

lodged with him, the Commissioner for Surveys and any owner or occupier of land affected of such withdrawal or modification.

## 27. Unauthorized acts on controlled or reserved land

Where on any land controlled or reserved under section 10, 24, 25 or 26, any person does any act calculated to impede the purposes for which the land has been controlled or reserved or which he has not been authorized by the Minister or highway authority to do, the Minister or highway authority may, by notice in writing, direct such person, at his own expense and within such period as shall be specified in such notice, to restore such land to the condition in which it was immediately before such unauthorized act, and if such person fails to comply with such direction within the period specified, he shall be guilty of an offence, and the Minister or the highway authority may cause to be carried out such work as may be necessary to restore the land and may recover from such person as a civil debt any expense incurred in such work.

## 28. Designation of new road and compensation

- (1) After completion of the construction of a road and registration of plans under sections 22 to 26 inclusive, the Minister shall, by notice published in the *Gazette*, designate such road as a public road in accordance with the classification specified in section 3 and thereupon the road shall vest in the President as public land and the land on each side of the road to the extent specified in such notice, not exceeding a total width of 60 metres, shall be road reserve.
- (2) Compensation shall be payable to the owner and occupier of the land affected which shall be assessed in accordance with Part If. The valuation date shall be the date of the notice published under section 25.
- (3) Each owner and occupier desiring compensation shall, within three months after publication of a notice under section 25, lodge with the highway authority notice of his intention to make a claim for compensation in respect of the loss or damage which he anticipates will result to him therefrom. Compensation shall be assessed according to the loss or damage actually sustained by the claimant and shall be payable as soon after the loss or damage is sustained as the amount of compensation can be assessed.
- (4) In assessing compensation under this section account shall be taken of any compensation paid under section 22.

[G.N. 18/1982]

## 29. Power to take materials for roadworks

- (1) A highway authority, or any person duly authorized by it, shall at all times have the power to enter upon any land (except within the boundaries of the area of a City, Municipality or Township or of the area of land comprised in any Mineral Right, non-exclusive prospecting licence, claim, permit, or other authority, subsisting under the Mines and Minerals Act) and to take therefrom any material (including water, other than water from an artificial dam, well or borehole save with the consent of the owner) necessary for the construction, maintenance or repair of roads or proposed roads for which the highway authority is responsible and for providing in connexion therewith labour camps, access roads and space for stock-piling, and no compensation shall be payable except as provided in this section.

[Cap. 61:01]

- (2) Whenever a highway authority considers it necessary to exercise the powers conferred by subsection (1) it shall be lawful, after prior consultation with the owner or occupier, for it to select any place or places which it may deem suitable from which to take material:

Provided that the owner or occupier of the land shall, if he so desires, be entitled to select another place or other places on his land for the said purpose, and if such other place or places shall be found by the highway authority to be reasonably accessible and suitable as regards quantity and quality of materials the materials shall be taken from the place or places selected by the owner or occupier.

- (3) A highway authority shall not be entitled to take possession of materials on which any person other than its servants has expended any labour, or to take the stones or other material from any house, wall or other structure.
- (4) The rights conferred on a highway authority by this section shall be exercisable from time to time and the compensation provided for in this section shall be payable from time to time in respect of each occasion on which such rights are exercised, to the extent of any fresh loss or damage suffered by the owner or occupier on each occasion.
- (5) Whenever land is entered for any purpose in accordance with the powers conferred by this section, compensation shall be paid by the highway authority to the owner and occupier of the land in respect of surface rights in accordance with Part II; the valuation date in any such case shall be the date when the owner or occupier of the land suffered the loss or damage which gave rise to the claim. The time for making a claim for such compensation shall be within six months after any loss or damage is suffered:

Provided that in any case in which the land affected by the exercise of powers conferred by this section is—

- (a) unimproved land, and
  - (b) is not customary land, and
  - (c) exceeds in area one *per centum* of the area of the total estate of the person who was the owner thereof on the date of entry,
- compensation shall be paid to the owner for the value of any area so affected, in excess of the one *per centum* referred to in paragraph (c) to the extent to which the land so affected has been rendered less valuable for agricultural purposes:

Provided also that in no case shall compensation be paid in respect of the value of the materials taken.

- (6) A highway authority shall have the right when constructing access roads to the sites of quarries, excavations or other places from which material is to be obtained of making openings in fences where necessary:

Provided that such openings shall be effectively closed by the highway authority against the straying of livestock during the operations and the fences properly restored on the completion of the work.

- (7) Any quarry or other excavation made in exercise of the powers conferred by this section which may be a source of danger shall on the completion of the work be securely fenced off, filled in or otherwise made safe against danger to life and limb of persons or animals.
- (8) It shall be incumbent on any highway authority, making any quarry or other excavation in accordance with the powers conferred by this section, to ensure that in any case where such quarry or other excavation, if left unfilled, is likely to be a source of danger to health by becoming a breeding ground for mosquitoes or other water-borne parasites, such quarry or other excavation is filled in to the extent necessary to prevent such danger.
- (9) Any owner aggrieved by the decision of a highway authority under this section may appeal to the Minister. The Minister may make rules regulating the procedure on such appeals:

Provided that if the circumstances are such that in the opinion of the highway authority any delay in exercising any right under this section would be unreasonable the highway authority concerned may take the materials forthwith, and the Minister may make such subsequent order in the matter as he deems fit.

*[1 of 1981]*

### **30. Highway authorities and employees may park, vehicles, erect huts, etc., on private land**

A highway authority and persons employed by it in the construction or repair of any road or proposed road shall have the right, provided that before exercising such right under this section it or they shall have given reasonable notice to and have consulted with the owner or occupier of any land which will be affected—

- (a) to park vehicles and to erect tents, huts or other temporary buildings on any site convenient to it or them, subject to the following conditions—
  - (i) no tents, huts or other temporary buildings shall be erected within 180 metres of any dwelling house without the consent of the occupier of the dwelling house; and
  - (ii) if the owner or occupier of such land objects to any site chosen for the erection of tents, huts or other temporary buildings, the matter shall be referred to the Minister who may make such order thereon as he may deem just and reasonable;

- (b) to place and store plant and equipment on land outside the road reserve where there is insufficient room on the road reserve;

- (c) to take and otherwise make provision for water necessary for the proper execution of the work and for animals and labourers:

Provided that it shall not be taken from any artificial dam, furrow or well or borehole save with the consent of the owner;

- (d) to cut down and remove trees or bushes on land forming part of a road reserve where necessary in the construction or repair of public roads, provided that such trees when cut down shall belong to the owner of the land upon which the said trees were cut.

*[G.N. 18/1982]*

### **31. Contractors may exercise, rights granted to highway authority**

The rights granted to and the obligations of a highway authority under sections 18, 23, 29 and 30 may be exercised by a contractor under the supervision or direction of the highway authority engaged in the construction or repair of public roads or proposed roads and on behalf of any highway authority:

Provided that in the case of any damage done by a contractor any compensation payable under this Act shall be paid by the highway authority concerned.

### **32. Power to undertake ancillary works**

- (1) A highway authority may, for the purpose of protecting traffic on any road from danger or of making the crossing of any road less dangerous to pedestrians, erect, light, maintain, alter and remove places of refuge in such road, and construct, light, maintain, alter, remove and close subways or over bridges for the use of foot passengers.

- (2) A highway authority shall have power to construct and maintain works in the carriageway—

- (a) along any length of road for separating a part of the road which is to be used by traffic moving in one direction from a part of the road which is to be used (whether at all time or at particular times only) by traffic moving in another direction;
  - (b) at cross roads or other road junctions for regulating the movement of traffic; and
  - (c) for providing places of refuge for the protection of pedestrians crossing the road.
- (3) The powers conferred by subsection (2) shall include power to light any such works as aforesaid, to pave, grass or otherwise cover them or any part of them, to erect pillars, walls, rails or other fences on, around or across them or any part of them and to plant on them trees, shrubs and other vegetation either for ornament or in the interests of safety.
  - (4) The power conferred by this section to construct any works shall include power to alter or remove them.

*[6 of 1989]*

### **33. Provision of footpaths, cycle tracks, etc.**

- (1) A highway authority shall have the power to provide on public land, wherever it shall deem it necessary or desirable for the safety or accommodation of pedestrians, proper and sufficient footpaths by the side of roads under its control and to provide on public land, wherever it shall deem necessary for the safety or accommodation of ridden horses, driven livestock, agricultural machinery, pedal cyclists or other special types of traffic, grass or other margins or tracks by the side of roads under its control, and to control the manner of user of such paths, margins and tracks by different classes of the public.
- (2) If there is a proposal that any footpath, margin or track is to be provided under subsection (1) on land which is not public land, then section 11 (1) (c) and section 11 (4) shall apply to such proposal as though the road was being widened.

*[6 of 1989]*

### **34. Ferries and pontoons**

- (1) A highway authority shall have power to construct and operate any ferry or pontoon to facilitate the crossing of any river or stream.
- (2) Any ferry or pontoon operated under subsection (1) shall be operated in accordance with any other law for the time being in force.
- (3) A highway authority shall have power to construct bridges over rivers and streams and over or under any railway line or inland waterway:

Provided that nothing in this subsection shall detract from the rights, powers, duties and responsibilities conferred upon any railway company by the Railways Act.

*[Cap. 69:03]*

### **35. Provision of cattle grids**

The Minister shall have power to make regulations controlling the construction of cattle grids on any road and providing for the recovery by the highway authority of the cost incurred in constructing and maintaining any cattle grid.

### 36. Prevention of damage, etc, to roads

- (1) Except in so far as may be necessary in any emergency in order to enable him to use the road in a lawful manner, no person shall, otherwise than in accordance with this Act—
  - (a) encroach on any public road or road reserve by making, erecting or altering any structure, ditch or other obstacle or by planting trees or otherwise:

Provided that nothing in this paragraph shall be construed to apply to a barrier of a pattern and in a position approved by the highway authority and duly erected in accordance with any law in force for the control of traffic for the purposes of examination in connexion with immigration or customs or for the control of human, animal or plant pests or diseases;
  - (b) leave or place or negligently allow to fall on any public road any timber, stones or other material so as to obstruct the same or endanger persons using the road, or deposit rubbish, debris or other material on any public road;
  - (c) intentionally or negligently damage in any way any part of any public road or gather, heap up or take away any gravel, crushed stone, sand, soil or other material from any public road;
  - (d) fill in or obstruct any ditch or drain made to carry water off a public road, whether on the road, the road reserve or elsewhere, or, by making dams, ditches drains or other works, cause the flooding of or damage to any public road;
  - (e) cause or allow any timber, sledge, plough or other heavy material or thing, not being wholly raised above the ground on wheels, to be moved along or across a public road;
  - (f) obstruct the free passage on a public road by exposing goods or merchandise of any description thereon;
  - (g) cause or permit or suffer to be caused any damage to any public road as a result of failure to comply with any law limiting the type, weight or dimensions of vehicles or the load carried thereon:

Provided that the highway authority may authorize under such conditions as it may impose the doing of an act otherwise prohibited under this section.
- (2) Any person contravening any of the provisions of subsection (1) shall be guilty of an offence.
- (3) Any cost of repair or other work incurred by a highway authority as a result of anything done or omitted in contravention of section 10 (1) or (6) may be recovered by the highway authority as a civil debt from the person who did or omitted such thing or caused it to be done or omitted.
- (4) A highway authority may, by notice in writing, direct any person who encroaches on any road or road reserve by making, erecting or planting any structure, ditch, tree or other obstacle contrary to subsection (1) to remove or fill in the same within the time to be stated in such notice.
- (5) If any person fails to comply with a direction given under subsection (4) the highway authority may cause the obstacle specified in the notice to be removed or filled in.
- (6) The cost of removing or filling in any obstacle under subsection (5) may be recovered by the highway authority as a civil debt from the person failing to comply with the notice.

### 37. Regulation of undertakers' works

- (1) In respect of any public road or road reserve an undertaker shall not execute any undertakers' works except in accordance with such regulations as may be made in accordance with the next succeeding subsection.

- (2) The Minister may make regulations—
- (a) requiring the prior submission of sufficient details of proposed undertakers' works to the highway authorities concerned for consideration;
  - (b) requiring a highway authority to signify to the undertakers its approval or disapproval of the proposals within a specified time and to give reasons for any such disapproval:  
  
Provided that in any case where the undertakers and the highway authority are unable to agree the details of the proposed works the undertakers may refer the matter to the Minister for decision;
  - (c) requiring undertakers to give notice of their intention to commence works approved or the subject of a decision of the Minister and prescribing the form and manner in which such notice shall be served and the effect thereof;
  - (d) governing the execution by undertakers of works being emergency works as defined in such regulations.
- (3) If any undertaker executes any works in contravention of this section he shall be liable to a fine of K1,000.  
*[6 of 1989]*
- (4) If any highway authority concerned objects to any works carried out or alleged or proposed to be carried out by any undertaker in respect of any road or road reserve specified under this section or to any emergency works and is unable to reach agreement with the undertakers to meet the objections the highway authority may refer the matter to the Minister for decision.  
*[6 of 1989]*

### **38. Execution of undertakers' works**

- (1) An undertaker shall execute works within roads or road reserves in accordance with such proposals and details thereof as may have been agreed under the preceding section or in accordance with any decision of the Minister made thereunder, and with all such despatch as is reasonably practicable.
- (2) An undertaker shall execute any items of works of an incidental nature and restore the road to a proper state of repair with all reasonable despatch after completion of any part of the works to the reasonable satisfaction of the highway authority:  
  
Provided that the highway authority by agreement with the undertaker may itself undertake the reinstatement of the upper levels of the road at the undertaker's expense.
- (3) If an undertaker fails to carry out reinstatement in accordance with his obligations under this section he shall be liable to a fine of K100 in respect of each day of such failure.  
*[6 of 1989]*
- (4) The undertaker shall be liable to pay to the highway authority the cost of remedying any subsidence or deterioration of reinstatement work carried out by the undertaker if such subsidence or deterioration takes place within six months of the completion of such reinstatement and if such deterioration is shown to have been attributable to defective workmanship or the use of defective materials:  
  
Provided that the highway authority concerned shall have given reasonable notice to the undertaker before remedying the subsidence or deterioration.  
*[6 of 1989]*

### 39. Undertakers to provide warning and safety precautions

- (1) An undertaker or a contractor employed by an undertaker who is executing works shall secure at his expense that the following requirements are observed during and in connexion with the execution of the works and of any restoration or other repair to any road occasioned thereby—
  - (a) that, so long as the road or road reserve is open or broken up (except in a place to which the public have no right of access and are not permitted to have access), such works are adequately fenced and guarded and all reasonable steps are taken to keep the works lighted in such a manner as to give adequate warning to the public during the hours of darkness;
  - (b) that traffic signs (within the meaning of the Road Traffic Act) are so placed, and where so directed, operated and lighted in accordance with any directions in that behalf which may be given by the Minister;
  - (c) that no greater width or length of road than is reasonably necessary is open or broken up at any one time;
  - (d) that there is no greater obstruction to traffic on any road or interference with the normal use of such road than is reasonably necessary;
  - (e) that any spoil or other material not required for the execution of the works or of any consequent restoration or repair to the road is carried away as soon as it is reasonably practicable; and
  - (f) that any other requirement imposed in accordance with any regulations made by the Minister is complied with.
- (2) If any undertaker or any contractor employed by an undertaker fails to satisfy an obligation to which he is subject by virtue of subsection (1) he shall be liable to a fine of K100 for each day of such failure.  
*[6 of 1989]*
- (3) If an undertaker fails to satisfy an obligation to which he is subject by virtue of subsection (1) as regards any requirement mentioned in paragraph (a), (b) or (e) thereof, the highway authority may do anything necessary for securing observance of that requirement and the undertaker shall pay to the authority an amount equal to any cost reasonably incurred by it in so doing.  
*[6 of 1989]*

### 40. Works at railway crossings

- (1) An undertaker executing works on a road at any railway level crossing shall comply with any reasonable requirements as to the arrangements for executing the works, as to hours of work, or as to any other such matters which are imposed upon him by the authority having the management of the railway, for securing the safety of persons employed in connexion with the works and for ensuring that interference with traffic on the railway caused by the execution of such works is reduced so far as is practicable.
- (2) If any undertaker fails to comply with an obligation to which he is subject by virtue of the preceding subsection he shall be guilty of an offence.

### 41. Removal of apparatus

Where there is placed in or on a road or road reserve apparatus required only in connexion with building operations or other work on land adjacent to such road, if the apparatus is not removed on completion of such building or other work, the highway authority may give the undertaker notice requiring him to

remove it and if it is not removed within eight days from the giving of such a notice, the authority may remove it and the undertaker shall pay to the authority an amount equal to the cost reasonably incurred in such removal and in any restoration or repair to the road occasioned by the presence or removal of the apparatus concerned.

#### **42. Powers enjoyed by electricity undertakings**

The powers conferred by any other law upon any authorized electricity undertaking in relation to roads or streets which require to be exercised with the consent or approval, or subject to the requirements or superintendence of the authority responsible for the road or street shall in so far as they relate to the doing of work in or over any road, street, road reserve or street margin be exercised in accordance with the preceding sections of this Act.

#### **43. Limitation of time in which works may be executed**

- (1) Subject to this section, a statutory power of undertakers to break up or open a road, being a power conferred for any purposes other than road purposes or purposes of a railway undertaking, shall not be exercisable on or under any road during the twelve months following either—
  - (a) the end of any period during which the use by vehicles of the carriageway of such road has been prohibited or the width thereof available for vehicular traffic has been reduced to less than two-thirds of its normal width for the purposes of execution of works for road purposes; or
  - (b) the completion of a resurfacing extending to one-third or more of the width of the carriageway of such road.
- (2) Subsection (1) shall not apply unless the following conditions are satisfied—
  - (a) the highway authority has given to the undertaker concerned at least three months before the date on which the works for road purposes or resurfacing, as the case may be, were substantially begun, a notice stating that the works for such purposes were intended to be carried out and specifying the date of their commencement; and
  - (b) the works for road purposes or resurfacing, as the case may be, were substantially begun on, or within one month from the date so specified or, if any undertakers' works were in progress in the road on that date, within one month from the completion of such undertakers works or in either case within such extended period as may have been agreed between the highway authority and the undertaker concerned.
- (3) Nothing in this section shall apply to any breaking up or opening of a road in any of the following cases—
  - (a) for the carrying out of any emergency works;
  - (b) in relation to any part of a road other than a carriageway, in the case of works relating only to the installation, maintenance, repair or removal of a service pipe or service line or overhead telegraph line or overhead electric cable;
  - (c) in the case of any works carried out by an undertaker, where the execution of such works is in fulfilment of an obligation imposed upon the undertaker by provisions of this Act and could not reasonably be effected without breaking up or opening the road as the case may be; and
  - (d) in the case of any breaking up or opening of a road executed with the consent of the highway authority concerned.
- (4) If any undertaker or any contractor employed by an undertaker breaks up or opens a road in contravention of this section—

- (a) he shall pay to the highway authority concerned an amount equal to any cost reasonably incurred by such highway authority in restoring or repairing the road concerned;
- (b) without prejudice to his liability under the preceding paragraph he shall be guilty of an offence.

## Part II – Compensation

### 44. Assessment of compensation generally and for surface rights

- (1) Whenever, under this Act, the owner or occupier of land or both of them shall be entitled to compensation in respect of the exercise of powers conferred by this Act in relation to land or surface rights thereon, then all persons having any interest in the land or surface rights affected by the exercise of the powers shall be entitled to such compensation as is provided for in this Act according to the extent and nature of their respective interests.
- (2) In any case in which such compensation is limited to compensation in respect of surface rights, if the land on which such surface rights exist is—
  - (a) customary land, the amount of compensation shall be assessed in accordance with section [45](#) (1) (a) notwithstanding that the land does not become public land;
  - (b) private land, the amount of compensation shall be based on the loss or damage suffered by the claimant arising from the damage to or destruction of his interest in the surface rights on such land valued at the valuation date and shall include—
    - (i) the damage, if any, sustained by the person interested at the valuation date by reason of the severance of such land from his other land or other injurious matter affecting his other property movable or immovable by reason of the exercise of the powers conferred by this Act;
    - (ii) if, in consequence of the matters giving rise to the claim, the claimant is compelled to change his residence or place of business the reasonable expenses, if any, incidental to such change, but shall not include any sum in respect of improvements on land in a road reserve effected since the land became road reserve.

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### 45. Compensation for land which becomes public land

- (1) Wherever it is provided in this Act that the owner or occupier of land or both of them shall be entitled to compensation in respect of land which becomes public land, the following provisions shall apply—
  - (a) in the case of customary land, subject to subsection (2), the occupier shall be entitled to reasonable compensation in respect of disturbance. The amount of such compensation shall be assessed after consultation with the Chief, if any, of the area in which the land is situated and be based on the loss suffered by the claimant arising from damage to or destruction of his interest in the surface rights on such land under the relevant customary law but may include compensation for other disturbance—
    - (i) where he has to move his residence or place of business;
    - (ii) where no alternative land can be made available to him and the land remaining available to him for agricultural purposes is not, in the opinion of an agricultural officer, an economic unit;

- (iii) where alternative land is made available to him and the making of the alternative land equally as fit for cultivation as the land of which he has been deprived is likely to involve a loss in terms of money, materials or work:

Provided that in assessing compensation under this paragraph the total compensation for disturbance shall in no case exceed the total of—

- (i) what would have been the value of the land in its improved condition at the valuation date less its value at such date in an unimproved condition if it had been freehold land;
  - (ii) the damage, if any, sustained by the occupier by reason of severing such land from other land occupied by him;
  - (iii) the reasonable expenses, if any, incidental to a change of residence or place of business if, in consequence of the matters giving rise to the claim, he is compelled to effect such change;
- (b) in the case of private land, the persons interested in such land shall, according to their respective interests therein, be entitled to compensation which shall, subject to subsection (2) be assessed in accordance with section 46.
- (2) In the case of land which before it became public land was road reserve subsection (1) shall apply with the following variations—
- (a) no compensation shall be paid in respect of improvements effected since the land became road reserve;
  - (b) compensation shall be limited to compensation in respect of damage to or destruction of surface rights and shall be payable only when such damage or destruction takes place. In such case the valuation date shall in the absence of other express provision in this Act, be the date when the damage or destruction takes place.

#### **46. Matters to be taken into consideration in assessing compensation for alienated land**

- (1) In assessing the amount of compensation under section 45 (1) (b) the following matters and no others shall be taken into consideration—
- (a) the market value of the land or interest therein of the claimant at the valuation date;
  - (b) the damage, if any, sustained by the person interested, at the valuation date, by reason of the severance of such land from his other land or other injurious affecting of his other property moveable or immoveable by reason of the exercise of the powers conferred by this Act;
  - (c) if, in consequence of the matters giving rise to the claim, the claimant is compelled to change his residence or place of business the reasonable expenses, if any, incidental to such change;
  - (d) any increase in the value of the other land or other benefit of the person interested at the valuation date likely to accrue from the construction of the road;
  - (e) the relief obtained by the claimant as a result of the taking of the land from the necessity of carrying out in whole or in part any order or direction against the land taken made under any law for the time being in force relating to the use and protection of land when the work required by the order or direction has not been commenced or completed at the valuation date.
- (2) For the purpose of subsection (1) (a)—

- (a) if the market value has been increased by means of any improvement made by the claimant or his predecessor in interest within two years before the valuation date such increase shall be disregarded unless it be proved that the improvement was made in good faith and not in contemplation of the construction of the road;
- (b) the following matters shall be disregarded—
  - (i) any enhancement of the market value due to the proposal to construct or extend the road;
  - (ii) any increased value thereof due to use of the land or any premises thereon which is contrary to law or could be restrained by a court;
  - (iii) any damage sustained by the claimant which, if caused by a private person, would not be a good cause of action;
  - (iv) the special suitability or adaptability of the land for road purposes;
  - (v) the degree of urgency which has led to the taking of the land; and
  - (vi) any disinclination of the claimant to part with his interest in the land.
- (3) For the purpose of subsection (1) (d) the increase in value of the other land and the other benefit likely to accrue shall, where the land forms part of an estate—
  - (a) not less than 160 hectares and not more than 400 hectares in extent, be deemed equal in value to two *per centum* of the total area of the estate;
  - (b) exceeding 400 hectares in extent, be deemed equal in value to four *per centum* of the total area of the estate:

Provided that—

- (i) where the land taken is improved land this subsection shall not operate to deprive the person interested of compensation in respect of damage to or destruction of surface rights existing at the valuation date on the land taken; and
- (ii) where the land taken forms part of an estate less than 160 hectares in extent it shall not, in the absence of evidence, be assumed that there is any increase in the value or other benefit to be taken into consideration.

[G.N. 18/1982]

#### 47. Claims for compensation

- (1) Any person desiring to claim compensation shall make a claim in writing to the highway authority liable to pay such compensation within the time prescribed for making claims and shall give particulars of the amount claimed and the basis of the claim:

Provided that—

- (a) in the case of customary land, the claim may be made orally to the Chief for the area, who shall forward the claim to the officer responsible for land matters within the District and such officer shall in turn forward the claim to the relevant highway authority; and
- (b) a compensation board may in any proper case extend the time for making a claim even though no claim is made before the prescribed time for making it has expired.

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- (2) On receipt of a claim the highway authority responsible shall agree to pay the claim or forthwith make a written offer to the claimant in settlement thereof.

- (3) In every case, if compensation is not agreed within two months after the date of the claim the assessment of compensation may be referred by the highway authority or the claimant to a compensation board.
- (4) A compensation board shall consist of a Resident Magistrate and two assessors appointed by the Minister, and the board shall determine the amount of compensation by a majority decision.  
*[6 of 1989]*
- (5) The compensation board under subsection (4) shall have jurisdiction in respect of all claims for compensation under this Act, irrespective of the amount thereof, and shall, in case the compensation relates to disturbance of the occupier of any customary land, consult the Chief of such land and the board shall proceed to assess the amount of compensation after giving the claimant and the highway authority an opportunity of being heard, and the compensation board may award a reasonable amount of compensation and costs as may be necessary in the circumstances of the claim.

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#### **48. Procedure before compensation boards**

The Minister may, with the concurrence of the Chief Justice, make rules regulating the procedure to be followed before any compensation board and for constituting the board.

#### **49. Appeal to High Court**

- (1) Where the amount of compensation awarded by a compensation board exceeds the sum of K2,000, but not otherwise, the claimant or the highway authority may appeal to the High Court by way of petition lodged within one month from the date of the award by the compensation board or in accordance with rules made by the Chief Justice.
- (2) The Chief Justice may make such rules as he considers proper relating to the conduct and hearing of such appeals, including the appointment and remuneration of assessors and regulating the costs of the appeal.

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#### **50. No further appeal**

There shall be no further appeal from the decision of the High Court given under section 49.

### **Part III – Supplementary and transitional**

#### **51. How notices to be served**

- (1) Whenever under any of the provisions of this Act, any notice is required to be served upon or given to the owner or occupier of land then, in respect of customary land, such requirement shall be deemed to have been satisfied by service of the notice on the Chief for the area in which the land concerned is situate.
- (2) Whenever a notice is served upon a Chief under subsection (1) that Chief shall inform the occupier of the land concerned of the purport and effect of the notice.
- (3) Whenever under any of the provisions of this Act any notice is required to be served upon or given to the owner or occupier of private land, service of the notice shall, where practicable, be made on the person therein named.

- (4) When such person cannot, after reasonable inquiry, be found the service may be made on any adult member of his family residing with him and if no such adult member can be found the notice may be served by fixing a copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business or by fixing a copy on the notice board of the District Council of the District in which the land in question is situate and on some conspicuous part of such land.
- (5) When it is uncertain who is the owner of any land notice shall be given to every person who claims to be interested in such land.
- (6)
  - (a) Every occupier of private land who is served with a notice under this Act relating to land of which he is not the owner, shall, forthwith after receipt of the notice, inform the owner of the land of the purport and effect of the notice or shall give a copy of the notice to such owner.
  - (b) The duty of the occupier of land under paragraph (a) shall also apply in respect of every notice affixed on a conspicuous part of such land under subsection (4).
- (7) In any case in which the name of the owner or occupier of any land is not known, and cannot after reasonable inquiry be ascertained, it shall be sufficient to address any notice to the owner or occupier by that description giving also an adequate description of the land in question.
- (8) Where the owner of any land is not in Malawi a notice sent by post to such person at his last known address shall be deemed to have been duly served on such person on the date when it would ordinarily be delivered in due course of post:

Provided that where prior notice to the owner of land is required to be given before a power of entry under this Act is exercised, such requirement shall be deemed to be satisfied by giving notice to the occupier of the land.
- (9) Wherever in this Act it is provided that the owner or occupier of land shall be consulted and such person cannot be found, it shall be sufficient to serve a notice on such person informing him of the matter in respect of which consultation is required.

## 52. Obstruction of officers

Any person who wilfully resists, obstructs, hinders or molests, and any person who incites, assists or procures another person to resist, obstruct, hinder or molest any person acting in the discharge of any duty or the performance of any act which he is authorized or required to perform by this Act shall be guilty of an offence.

## 53. General penalty for offences

Any person guilty of an offence against this Act or any regulation or rule made thereunder for which no special penalty is provided by this Act or by any regulation or rule made thereunder shall be liable to a fine of K500 and to imprisonment for three months.

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## 54. Rules

- (1) The Minister may by order made rules generally for carrying into effect any of the purposes or provisions of this Act, except where express provision is made that such rules be made by some other person.

- (2) In particular and without prejudice to the generality of the foregoing power, such rules may authorize any highway authority to demand and receive tolls from any person using any bridge, ferry, or pontoon maintained by such highway authority and may provide for exemptions from payment of such tolls.
- (3) In particular and without prejudice to the generality of the foregoing power the Minister may make rules providing for the division of all public roads into classes, other than those provided for in section 3, and for restricting the use of each such class of road, including prescribing maximum gross weights for vehicles and trailers using each such class of road.

## 55. Transitional

All roads declared to be public roads under the Public Roads Ordinance, 1950 (now repealed) shall, until designated under this Act, be under the control of the Chief Roads Controller who may make such arrangements regarding the care and maintenance thereof as, subject to any special or general directions of the Minister, he shall think proper.

*[25 of 1950]*

## 56. Saving

All proclamations, directions and rules made or issued under the Public Roads Ordinance, 1950 (now repealed) shall be deemed, in so far as they are not inconsistent with this Act, to have been made or issued under this Act and remain in force until other provision shall be made under this Act, or any other Act.

*[25 of 1950]*