

## Section 177 of the Highways Act 1980

### Restriction on construction of buildings over highways.

(1) No person shall—

(a) except in the exercise of statutory powers, construct a building over any part of a highway maintainable at the public expense (whether it is intended to span the highway or not), or alter a building so constructed, without a licence granted under this section by the highway authority for that highway or otherwise than in accordance with the terms and conditions of a licence so granted;

(b) use a building so constructed or altered in pursuance of a licence so granted otherwise than in accordance with the terms and conditions thereof:

and any person who contravenes any provision of this subsection is guilty of an offence and liable to a fine not exceeding [F1 level 5 on the standard scale]; and if the offence is continued after conviction, he is guilty of a further offence and liable to a fine not exceeding £50 for each day on which the offence is so continued.

(2) Subject to subsections (3) and (4) below, a licence under this section may contain such terms and conditions, including terms and conditions with respect to the construction (including the headway over the highway), maintenance, lighting and use of the building, as the highway authority think fit; and, any such term or condition is binding on the successor in title to every owner, and every lessee and occupier, of the building.

(3) No fine, rent or other sum of money is payable in respect of a licence granted under this section except—

(a) a reasonable sum in respect of legal or other expenses incurred in connection with the grant of the licence; and

(b) an annual charge of a reasonable amount for administering the licence;

and any sum payable by virtue of paragraph (a) above is recoverable from the applicant for the licence and any sum payable by virtue of paragraph (b) above is recoverable from the owner of the building.

(4) No such licence shall authorise any interference with the convenience of persons using the highway, or affect the rights of the owners of premises adjoining the highway, or the rights of [F2 statutory undertakers or the operator of [F3 an electronic communications code network]] [F4 or a driver information [F5 network]].

(5) Where a licence under this section makes provision for the execution of any works or the provision of any facilities which in the opinion of the highway authority require to be executed or provided by them in connection with the building or its construction or alteration, the authority may execute those works or, as the case may be, provide those facilities and may recover the expenses reasonably incurred by them in so doing from the licensee or from the owner of the building.

(6) A person aggrieved by the refusal of a highway authority to grant a licence under this section or by a term or condition of the licence may appeal to the Crown Court, except that no such appeal lies—

(a) if the land on which the highway in question is situated is owned by the highway authority, or

(b) against any term or condition which the highway authority declare to be necessary for the purpose of securing the safety of persons using the highway or of preventing interference with traffic thereon.

(7) Where a person has constructed or altered a building for the construction, or, as the case may be, alteration, of which a licence is required by this section without such a licence or otherwise than in accordance with the terms and conditions of the licence, the highway authority may by notice served on the licensee or the owner of the building require him to demolish the building within such time as may be specified in the notice or, as the case may be, to make such alterations therein and within such time as may be so specified.

(8) Where there has been a failure to comply with any terms or conditions of a licence under this section with respect to the maintenance or use of a building, the highway authority may by notice served on the licensee or the owner of the building require him to execute such works or take such steps as are necessary to secure compliance with those terms or conditions within such time as may be specified in the notice.

(9) If a person on whom a notice is served under subsection (7) or (8) above fails to comply with the notice within the time specified in it, the highway authority may demolish the building or, as the case may be, execute such works or take such steps as are necessary to comply with the notice and may recover the expenses reasonably incurred by them in so doing from that person.

(10) Where by virtue of subsection (9) above a highway authority demolish a building, they may dispose of the materials resulting from the demolition.

(11) In relation to any prohibition or restriction on the use of a building imposed by the Minister by virtue of any term or condition contained in a licence granted by him under this section, section 1(1)(c) of the **M1** Local Land Charges Act 1975 has effect as if the references to the date of the commencement of that Act were references to 1st November 1971.

**[F6(12) Paragraph 23 of the [F7 electronic communications code] (which provides a procedure for certain cases where works involve the alteration of [F8 electronic communications apparatus]) shall apply, for the purposes of works authorised or required by a licence under this section to be executed, to the licensee.]**

(13) This section does not apply to a building which constitutes a bridge within the meaning of section 176 above, but subject to that in this section “building” includes any structure and any part of a building.

(14) Where the land on which a highway is situated is owned by the highway authority, nothing in subsection (3) above is to be taken as affecting the rights of that authority as the owner of that land to sell or lease the air-space above the surface of that land or grant any rights in relation to it.

## Section 169 of the Highways Act 1980: Control of scaffolding on highways

(1) Subject to subsection (6) below no person shall, in connection with any building or demolition work or the alteration, repair, maintenance or cleaning of any building, erect or retain on or over a highway any scaffolding or other structure which obstructs the highway (hereafter in this section referred to as a “relevant structure”) unless he is authorised to do so by a licence in writing issued for the purposes of this section by the highway authority (hereafter in this section referred to as “a licence”) and complies with the terms of the licence; and a licence may contain such terms as the authority issuing it thinks fit.

(2) If a person applies to a highway authority for a licence in respect of any relevant structure and furnishes the authority with such particulars in connection with the structure as the authority reasonably demand, it is the duty of the authority to issue a licence to him in respect of the structure unless the authority consider—

(a) that the structure would cause unreasonable obstruction of a highway; or

(b) that a relevant structure erected otherwise than as proposed by the applicant would cause less obstruction of a highway than the structure proposed by him and could conveniently be used for the work in question.

(3) If on an application for a licence in connection with a highway the highway authority refuse to issue a licence or issue a licence containing terms to which the applicant objects, the applicant may appeal to a magistrates’ court against the refusal or terms; and on such an appeal the court may—

(a) in the case of an appeal against a refusal, direct the highway authority to issue a licence in pursuance of the application;

(b) in the case of an appeal against the terms of the licence, alter the terms.

(4) Subject to subsection (6) below, it is the duty of a person to whom a licence is issued by a highway authority in respect of a relevant structure—

(a) to ensure that the structure is adequately lit at all times between half an hour after sunset and half an hour before sunrise;

(b) to comply with any directions given to him in writing by the authority with respect to the erection and maintenance of traffic signs in connection with the structure; and

(c) to do such things in connection with the structure as any statutory undertakers reasonably request him to do for the purpose of protecting or giving access to any apparatus belonging to or used or maintained by the undertakers.

In this subsection and in section 171(2) below “statutory undertakers” means any of the following, namely, any body who are statutory undertakers within the meaning provided by section 329(1) below, **[F1**any universal service provider in connection with the provision of a universal postal service**]**, **F2** . . . **F3** . . . **[F4**any licensee

under a street works licence][F5]and the operator of [F6]an electronic communications code network][F7]or a driver information [F8]network][F8].

(5)A person who contravenes the provisions of subsection (1) above otherwise than by failing to comply with the terms of a licence or who fails without reasonable excuse to comply with the terms of a licence or to perform a duty imposed on him by subsection (4) above, is guilty of an offence and liable to a fine not exceeding [F9]level 5 on the standard scale].

(6)Nothing in the preceding provisions of this section applies to a relevant structure erected before 14th February 1977 or erected or retained by the British Railways Board, the British Waterways Board or [F10]Transport for London or any of its subsidiaries (within the meaning of the Greater London Authority Act 1999)[F10] in the exercise of powers conferred on the body in question by any enactment; and nothing in paragraph (a) or (b) of subsection (4) above applies to a relevant structure if no part of it is less than 18 inches in a horizontal direction from a carriageway of the relevant highway and no part of it over a footway of the relevant highway is less than 8 feet in a vertical direction above the footway.

(7)No civil or criminal proceedings lie in respect of any obstruction of a highway which is caused by a relevant structure if the structure is on or over the highway in accordance with a licence and the person to whom the licence is issued performs the duties imposed on him in respect of the structure by subsection (4) above; and a highway authority by whom a licence is issued do not incur any liability by reason of the issue of the licence.