STATUTORY INSTRUMENTS

1975 No. 684 (S. 110)

LOCAL GOVERNMENT, SCOTLAND

The Local Government (Road Traffic and Highways) (Transitional Provisions) (Scotland) Order 1975

Made - - - -	17*th April* 1975
Laid before Parliament	2*nd May* 1975
Coming into Operation	16*th May* 1975

In exercise of the powers conferred on me by section 215(1)(*a*) and (2) of the Local Government (Scotland) Act 1973**(a)**, and of all other powers enabling me in that behalf, I hereby make the following order:—

Citation and commencement:

1. This order may be cited as the Local Government (Road Traffic and Highways) (Transitional Provisions) (Scotland) Order 1975, and shall come into operation on 16th May 1975.

Interpretation

2.—(1) In this order, unless the context otherwise requires:—

"the Act of 1973" means the Local Government (Scotland) Act 1973;

"existing local authority" means a county council or a town council;

"highway" has the same meaning as in the Roads (Scotland) Act 1970**(b)**;

"new local authority" means a regional or islands council;

"parking place" and "road" have the same meaning as in the Road Traffic Regulation Act 1967**(c)**.

(2) Except where the context otherwise requires or where an expression defined in paragraph (1) above is used, any expression which is defined in the Roads (Scotland) Act 1970 and is used in this order shall have the same meaning in this order as in that Act.

(3) Any reference in this order to any enactment shall be construed as a reference to that enactment as amended by or under any other enactment.

(a) 1973 c. 65.
(b) 1970 c. 20.
(c) 1967 c. 76.

(4) The Interpretation Act 1889**(a)** shall apply for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

Road Traffic Orders and Schemes

3.—(1) Any provision which relates to a road, or parking place for vehicles, and which is contained in an order or scheme made by an existing local authority before 16th May 1975 under an enactment specified in paragraph (4) of this article, or which has effect as if contained in such an order or scheme, shall, subject to paragraph (2) below, have effect on and after 16th May 1975 as if contained in an order or scheme made under the enactment in question by the new local authority in whose area the road or parking place is situated and as if for references in the order or scheme to the existing local authority there were substituted, in relation to that road or parking place, references to that new local authority.

(2) In the case of a provision with respect to a road where on 16th May 1975 part of the width of the road is situated in one region and part in another region and where the order containing the provision is one to which section 82(2) of the Road Traffic Regulation Act 1967 would have been applicable if it had been made on or after that date, paragraph (1) above shall have effect as if for the reference in that paragraph to the council for the region in which the road is situated there were substituted a reference to the council for the region in which one part is situated acting with the consent of the council for the region in which the other part is situated, and accordingly on or after 16th May 1975 the provision in question may be varied or revoked by either council acting with the consent of the other.

(3) In a case where the circumstances mentioned in article 5 of this order occur in relation to a provision to which this article applies the provisions of this article shall have effect subject to the provisions of that article.

(4) The enactments referred to in paragraph (1) of this article are sections 1, 5, 9, 12, 15, 21, 26, 28, 31, 33, 35, 36, 37, 73, and 74 of the Road Traffic Regulation Act 1967 and section 31 of the Road Traffic Act 1972**(b)**.

Procedures begun but not completed before 16th May 1975.

4.—(1) Where before 16th May 1975 procedural steps have been taken by an existing local authority under any enactment in connection with the making, confirmation or approval of an order or scheme relating to a highway or parking place for vehicles, but all the procedural steps required in connection with that order or scheme have not been completed before that date, then the remaining steps required to be taken by the local authority in connection with that order or scheme may be taken on or after that date by the new local authority then having power under the enactment in question to make or submit the order or scheme, and any notice given or published, any order or scheme made, submitted or prepared in draft and any other document made or issued by the existing local authority in the course of the procedural steps taken before that date by that authority shall have effect on and after that date as if for the references therein to the existing local authority there were substituted references to the new local authority.

(a) 1889 c. 63. **(b)** 1972 c. 20.

(2) In the application of this article in relation to a highway in an area for which, immediately before 16th May 1975, the local planning authority are a joint planning committee constituted by an order made under section 1 of the Town and Country Planning (Scotland) Act 1972**(a)** the expression 'existing local authority' shall include that committee.

(3) In a case where the circumstances mentioned in article 5 of this order occur in relation to an order or scheme such as is referred to in this article the provisions of this article shall have effect subject to the provisions of that article.

Divided responsibility under instruments affecting highways.

5. Where provision as respects any length of highway is contained in an instrument made, submitted or published in draft, by an existing local authority before 16th May 1975 under any enactment and on and after that date part of that length is situated in the area of one new local authority and another part of that length is situated in the area of another new local authority, so that, if such provision had been made on or after that date as respects that length, separate instruments made, submitted or published in draft by each of those new local authorities would have been required, then—

(*a*) the instrument made, submitted or published in draft before 16th May 1975 by the existing local authority shall have effect on and after that date as such number of separate instruments as would then be required for that provision, each instrument relating to the part of that length of highway situated in the area of one new local authority and containing references to the appropriate new local authority instead of references to the existing local authority, and

(*b*) if the instrument is an order or scheme in relation to which some, but not all, of the necessary procedural steps have been taken before that date—

(i) any notice given or published and any other document made or issued in connection with the order or scheme before that date shall similarly have effect on and after that date as such number of separate notices and documents (each containing references to the approriate new local authority) as may be requisite;

(ii) any remaining procedural steps required to be taken by the local authority may be carried out separately by the several authorities concerned; and

(iii) the orders and schemes as made, confirmed or approved shall (so far as practicable) reflect the division into separate instruments.

General provisions relating to highways

6.—(1) Where under the provisions of any enactment or otherwise, at any time before 16th May 1975, any act has been done by, any notice or payment has been given or made to, or any right or duty has been conferred or imposed on, an existing local authority in relation to any highway, in their capacity as highway authority for the highway, then, on and after that date, that act shall be deemed to have been done by, that notice or payment shall be deemed to have been given or made to, and that right or duty shall be deemed to have been conferred or

(a) 1972 c. 52.

imposed on the new local authority in whose area the highway is situated and accordingly any document comprising or relating to the act, notice, payment, right or duty shall have effect on and after 16th May 1975 as if for any reference therein to the existing local authority concerned there were substituted a reference to the new local authority.

(2) Where under the provisions of any enactment, at any time before 16th May 1975, any act has been done by, any notice or payment has been given or made to, or any right or duty has been conferred or imposed on, an existing local authority, otherwise than as highway authority, in relation to any highway, then on and after that date that act shall be deemed to have been done by, that notice or payment shall be deemed to have been given or made to, and that right or duty shall be deemed to have been conferred or imposed on, the new local authority in whose area the highway is situated, according as the function in connection with which the act was done, the notice was given, the payment was made or the right or duty was conferred or imposed becomes exercisable on and after that date by that new local authority and accordingly any document comprising or relating to the act, notice, payment, right or duty shall have effect on and after 16th May 1975 as if for any reference therein to the existing local authority concerned there were substituted a reference to the new local authority.

(3) For the purposes of this article an objection made before 16th May 1975 by an existing local authority to a scheme or order which is proposed to be made by the Secretary of State under any enactment and which, if made, would affect a highway in that authority's area, shall be regarded as an act done in connection with a function which on and after 16th May 1975 becomes exercisable by the new local authority in whose area the highway in question is situated.

(4) In a case where the circumstances mentioned in article 5 of this order occur the provisions of this article shall have effect subject to the provisions of that article.

(5) In this article, except where the context otherwise requires—

(*a*) reference to any act done by an authority shall include a reference to any scheme, order, regulation, byelaw, agreement, requirement, application, apportionment or demand for payment made, resolution passed, charge conferred, authorisation granted, notice, direction, consent, approval, licence, permit or certificate given, building line or improvement line prescribed, or other thing done by that authority;

(*b*) reference to any notice given to an authority shall include a reference to any direction, consent or approval given to that authority; and

(*c*) reference to any right or duty conferred or imposed upon an authority shall include a reference to an obligation assumed by or a requirement made upon or a deposit or lodgement made with that authority, a transfer of a highway to that authority and a provision for that authority to become the highway authority for a highway.

(6) Insofar as a provision is made by articles 3, 4, 7 and 8 of this order for any matter, the provisions of this article shall not apply in relation to that matter.

Private Street works

7.—(1) The provisions of this article shall have effect in relation to streets being streets as respects which the new local authority in whose area they are

situated (in this article referred to as "the new street works authority") become on 16th May 1975 by virtue of the Act of 1973 the street works authority in place of the existing local authority (in this article referred to as "the existing street works authority") who immediately before that date were the street works authority therefor.

(2) Any notices given or proceedings or other action taken by or on behalf of the existing street works authority in terms of the Burgh Police (Scotland) Acts 1892**(a)** and 1903**(b)** and the Public Health (Scotland) Act 1897**(c)** in relation to a street shall not be affected by reason of the Act of 1973, and such proceedings or actions, and any works commenced under the said Acts may be continued and completed in accordance with the provisions of the said Acts by the new street works authority as if they had given the notices, taken the proceedings or action or commenced the works.

(3) Where, at 16th May 1975, any works under the said Acts have been commenced but not completed in a street the new street works authority shall be entitled to recover—

(*a*) such of the expenses incurred by the existing street works authority as that authority could have recovered under the said Acts; and

(*b*) such of the expenses incurred by themselves as the said authority could have recovered under the said Acts had they completed the works,

and the new street works authority shall have all such powers for the recovery of such expenses as they would have had if they had executed the whole of the works, and all the provisions of the said Acts shall apply accordingly.

(4) Where, at 16th May 1975, any works under the said Acts have been completed in a street the new street works authority shall have all such powers for the recovery of the expenses incurred in the execution of the works as they would have had if they had undertaken the works, and all the provisions of the said Acts shall apply accordingly.

(5) Where in relation to street works executed or proposed to be executed in any street the existing street works authority have given any notice or commenced any proceedings or taken any other action before 16th May 1975 but those works have not been completed or the expenses incurred by that authority in the execution of those works have not been fully recovered from the owners of the land liable therefor by that authority before that date, and on and after that date part of that street is situated in the area of one new street works authority and another part is situated in the area of another such authority, then, subject to any agreement made between the new street works authorities concerned, the provisions of paragraphs (2) to (4) of this article shall have effect so as to enable each such authority to take such action and exercise such rights as may be appropriate in relation to the part of the street and the land situated in the area of that authority, and the references in those paragraphs to the new street works authority shall be construed accordingly.

(6) Where before 16th May 1975 any sum has been paid to, or secured to the satisfaction of, the existing street works authority under any enactment in respect of the cost of street works in a street, but those works have not been completed, or the expenses incurred by the existing street works authority in executing

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(a) 1892 c. 55.
(b) 1903 c. 33.
(c) 1897 c. 38.

them have not been fully discharged by set-off or by recovery by that authority from the owners of the land liable therefor before that date, then in the application to that sum and those street works of the said enactments on and after that date—

(*a*) in a case where on and after 16th May 1975 the whole of the street in question is situated in the area of one new street works authority, that authority shall be the street works authority for the purposes of those enactments; and

(*b*) in a case where on and after 16th May 1975 part of the street is situated in the area of one new street works authority and part is situated in the area of another such authority, the authority in whose area any part is situated shall in relation to the land situated in the area of that authority be the street works authority for the purpose of those enactments.

(7) Where in the case mentioned in sub-paragraph (*b*) of paragraph (6) above the sum referred to in that paragraph has by virtue of the Local Authorities (Property Etc) (Scotland) Order 1975(**a**) become vested on 16th May 1975 in one only of the new street works authorities concerned, or in two or more of those authorities but not in proportions calculated by reference to the cost of the street works executed or to be executed in the area of each authority, there shall be such financial adjustment between all authorities concerned as shall ensure that each authority receives such portion of the said sum as is appropriate having regard to the street works executed or to be executed in that authority's area.

Adaptation of certain agreements between the Secretary of State and existing local authorities

8.—(1) Where immediately before 16th May 1975 there is in force an agreement of a description specified in column (2) of the Schedule to this order, which was made, or which has effect as if made, under a statutory provision specified in relation thereto in column (1) of that Schedule between the Secretary of State and an existing local authority specified in relation to such agreement in column (3) of the Schedule, then subject to paragraph (2) below, on and after 16th May 1975 that agreement shall have effect as an agreement between the Secretary of State and the new local authority specified therefor in column (4) of that Schedule and as if for references in such agreement to the existing local authority there were substituted references to the new local authority, and any rights or liabilities of the existing local authority under any such agreement which immediately before 16th May 1975 are subsisting against or, as the case may be, are enforceable by, the Secretary of State shall on and after that date be rights and liabilities of the new local authority.

(2) Where on and after 16th May 1975 the trunk road or the land to which an agreement of a description specified in item 1 or 2 of the said Schedule relates is situated in the area of more than one of the new local authorities mentioned in column (4) of that Schedule in relation to that item, then that agreement shall be regarded as so many separate agreements between the Secretary of State and each new local authority in whose area any length of the trunk road or any part of the land as the case may be, is then situated, each such agreement referring to the appropriate new local authority instead of to the existing local authority and relating to the length of trunk road or the part of the land situated in the area of that new local authority, and any rights or liabilities of the existing local authority under the agreement as it was in force immediately before 16th May 1975

(**a**) S.I. 1975/659 (1975 I, p. 2360).

shall be divided between the new local authorities concerned in a manner which has regard to the nature of such rights and liabilities and also to the length of trunk road or the part of the land situated in the area of each such authority.

(3) Where any action, measure or procedure has been begun before 16th May 1975 by an existing local authority in pursuance of any such agreement as is mentioned in paragraph (1) or (2) above but has not been completed by that date, that action, measure or procedure may be continued and completed by the new local authority who under paragraph (1) or, as the case may be, paragraph (2) above takes the place of the existing local authority under the agreement in relation to the action, measure or procedure in question, and any notice given or published and any other document made or issued by or to the existing local authority before 16th May 1975 for the purpose of, or in connection with, that action, measure or procedure shall have effect on and after that date as if for references therein to the existing local authority there were substituted references to the new local authority.

Saving for power of direction

9. The provisions of this order are without prejudice to any direction given in any particular case by the Secretary of State under section 215(4) of the Act of 1973 (which relates to cases where there are doubts as to which authority functions are transferred).

Local statutory provisions not to be extended

10. Nothing in this order shall operate to extend the area for which any local statutory provision is in force.

William Ross,
One of Her Majesty's
Principal Secretaries of State.

St. Andrew's House,
Edinburgh.
17th April 1975.

SCHEDULE

ADAPTATION OF AGREEMENTS BETWEEN SECRETARY OF STATE AND EXISTING LOCAL AUTHORITIES

(1) Statutory provision under which agreement made	(2) Description of agreement	(3) Existing local authority	(4) New local authority
(1) Trunk Roads Act 1936(a) Section 5(1) Trunk Roads Act 1946(b) Section 5(2)	Agreement for delegation of functions with respect to the maintenance and improvement of, and any other dealing with, a trunk road or any land acquired in connection with a trunk road.	Existing local authority	Council for the region in which the said trunk road or land is situated.
(2) Trunk Roads Act 1936 Section 6(1) Trunk Roads Act 1946 Section 5(2)	Agreement for the construction of a trunk road or for the carrying out of any work of improvement of, or other dealing with, a trunk road or any land acquired in connection with a trunk road.	Existing local authority	Council for the region in which the said trunk road or land is situated
(3) Local Government (Scotland) Act 1966(c) Section 31(1)	Agreement for delegation of functions with respect to the lighting of a trunk road for which the Secretary of State is highway authority.	Existing county council	Council for the region in which the said trunk road is situated.
(4) Local Government (Scotland) Act 1966 Section 31(4)	Agreement for the carrying out of any works in connection with a lighting system provided or to be provided by the Secretary of State on a trunk road for which the Secretary of State is highway authority.	Existing county council	Council for the region in which the said trunk road is situated.

(a) Edw. 8 & 1 Geo. 6. c. 5. (b) 1946 c. 30. (c) 1966 c. 51.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes transitional and other provisions consequential on the Local Government (Scotland) Act 1973 in connection with schemes, orders and other instruments made and things done relating to road traffic and highway matters; so that the new local authorities can enforce and otherwise deal with instruments made and things done by the existing local authorities.

Article 3 deals with schemes and orders under the Road Traffic Regulation Act 1967 or the Road Traffic Act 1972. Article 4 makes provision for procedures begun but not completed before 16th May 1975. Article 5 provides for divided responsibility under the instruments affecting highways. Article 6 contains general provisions with respect to highways. Article 7 deals with private street works. Article 8 adapts certain agreements made between the Secretary of State and existing local authorities.

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