



Exeter City Council Act 1987

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ELIZABETH II



1987 CHAPTER xi

An Act to re-enact with amendments certain local enactments in force within the city of Exeter; to confer further powers on the Council of the City of Exeter; to make provision with regard to public safety, public health, environmental amenity within the city, the amenity of and control over the river Exe and its estuary; the local government and improvement of the city; and for other purposes. [9th April 1987]

WHEREAS—

(1) By virtue of the Local Government Act 1972 (hereinafter 1972 c. 70. referred to as "the Act of 1972") the city of Exeter was constituted on 1st April 1974 comprising the former county borough of Exeter and in the former administrative county of Devon, the Devon County Buildings Area:

(2) Numerous local enactments were in force in the said former county borough and by section 262 of the Act of 1972 it was provided that, subject to certain modifications, certain local statutory provisions should continue to apply to the area, things or persons to which or to whom they applied before that date:

(3) It was further provided by the said section 262 that certain local statutory provisions should cease to have effect at the end of 1984; but the Non-metropolitan and Welsh Counties (Local Statutory Provisions) Order 1983 and the Non-metropolitan and Welsh Counties (Local Statutory Provisions) Order 1986 made pursuant to the Act of 1972 have subsequently provided that such local statutory provisions in certain areas including the city of Exeter shall cease to have effect at the end of 1987:

S.I. 1983/619.
S.I. 1986/2106.

(4) It is expedient that certain of the said enactments should be re-enacted with amendments:

(5) It is expedient that the other provisions contained in this Act should be enacted:

(6) The purposes of this Act cannot be effected without the authority of Parliament:

(7) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Act of 1972 have been observed:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

PRELIMINARY

Citation and commencement.

1.—(1) This Act may be cited as the Exeter City Council Act 1987.

(2) This Act shall come into operation on the expiry of a period of 3 months beginning with the date on which it is passed.

Interpretation.

1936 c. 49.

1961 c. 64.

1971 c. 78.

1972 c. 70.

1976 c. 57.

1982 c. 30.

2.—(1) In this Act unless the context otherwise requires—
 “the Act of 1936” means the Public Health Act 1936;
 “the Act of 1961” means the Public Health Act 1961;
 “the Act of 1971” means the Town and Country Planning Act 1971;
 “the Act of 1972” means the Local Government Act 1972;
 “the Act of 1976” means the Local Government (Miscellaneous Provisions) Act 1976;
 “the Act of 1982” means the Local Government (Miscellaneous Provisions) Act 1982;

- “the Act of 1984” means the Road Traffic Regulation Act 1984; PART I
—cont.
1984 c. 27.
- “appointed day” has the meaning given to it by section 3 (Appointed day) of this Act;
- “the city” means the city of Exeter;
- “contravention” includes a failure to comply and “contravene” shall be construed accordingly;
- “the Council” means the Exeter City Council;
- “the county council” means the county council of Devon;
- “daily fine” means a fine for each day on which an offence is continued after conviction thereof;
- “owner” has the meaning given to it by section 343 of the Act of 1936;
- “statutory undertakers” means British Gas plc or any public gas supplier within the meaning of Part I of the Gas Act 1986, the Central Electricity Generating Board, the South Western Electricity Board or any supplier authorised under the Energy Act 1983 and the South West Water Authority, or any one of them; 1986 c. 44.
1983 c. 25.
- “telecommunications operator” means a person to whom a licence has been granted under section 7 of the Telecommunications Act 1984 and to whom the telecommunications code, as defined in that Act, is applied by that licence. 1984 c. 12.

(2) Any reference in this Act to a proper officer shall in relation to any purpose be construed as a reference to an officer appointed by the Council for that purpose.

(3) Any reference in this Act to a Part not otherwise identified is a reference to that Part of this Act.

3.—(1) In this Act “the appointed day”, in relation to any provision, means such day (not earlier than 3 months from the passing of this Act) as may be fixed for the purposes of that provision in accordance with subsection (2) below by resolution of the Council. Appointed
day.

(2) The Council shall publish in a newspaper circulating in the city notice—

- (a) of the passing of any such resolution and of the day fixed thereby; and
- (b) of the general effect of the provision for the purposes of which the day has been fixed;

PART I
—cont.

and the day so fixed shall not be earlier than the expiration of 28 days from the date of the publication of the notice.

(3) A photostatic or other reproduction certified by the proper officer to be a true reproduction of a page, or part of a page, of any newspaper being a page, or part of a page, bearing the date of its publication and containing the notice mentioned in subsection (2) above shall be evidence of the publication of the notice and of the date of its publication.

PART II

CITY WALLS

Interpretation
of Part.

4. In this Part—

“the city walls” means the ancient walls of the city (together with all abutments thereto) the situations whereof are shown on the “City Wall Plan”; and

“the City Wall Plan” means the plan showing the city walls to which this Part applies marked “City Wall Plan” and prepared in quintuplicate and deposited in the following offices:—

(a) the office of the Clerk of the Parliaments, House of Lords;

(b) the Private Bill Office of the House of Commons;

(c) the Department of the Environment;

(d) the office of the County Solicitor of the county council; and

(e) the office of the City Solicitor of the Council.

City walls to
continue
vested in
Council.

5.—(1) Those parts of the city walls shown red on the City Wall Plan shall continue vested in the Council.

(2) For the avoidance of doubt it is declared that those parts of the city walls shown blue on the City Wall Plan are vested in the Council and they shall continue so vested.

Council may
repair all of
city walls.

6.—(1) If in the opinion of the Council any part of the city walls not owned by the Council is in a dangerous condition or by reason of its dilapidated condition is injurious to the amenity of the neighbourhood of the city walls the Council may execute such works as may be necessary to remedy that condition:

Provided that the powers of this subsection shall not be exercised unless the consent of the Secretary of State has been granted for the proposed works under sections 3 and 4 of the Ancient Monuments and Archaeological Areas Act 1979. 1979 c. 46.

PART II
—cont.

(2) Before executing any such works the Council shall serve a notice of their intention to do so on either the owner or occupier of the relevant part of the city walls unless after reasonable inquiry it has been found impossible to identify or locate either of them before the time at which it is, in the opinion of the Council, desirable to execute the works.

(3) Any such notice shall specify the works proposed and draw attention to the right of the Council under subsection (4) below to recover from the recipient the expenses of executing the works and to the recipient's right of appeal under subsection (5) below.

(4) Where the Council have served a notice under subsection (2) above they may recover the expenses of executing the works from the person upon whom the notice has been served.

(5) Where a person is given notice under subsection (2) above he may appeal to a magistrates' court before the expiry of the period specified in the notice on any of the following grounds that are appropriate in the circumstances of the particular case:—

- (a) that the notice or requirement is not justified by the terms of this section;
- (b) that there has been some informality, defect or error in, or in connection with, the notice;
- (c) that the works are unreasonable in character or extent, or are unnecessary;
- (d) that the notice might lawfully have been served on the occupier of the premises in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served.

(6) If and in so far as an appeal under this section is based on the ground of some informality, defect or error in or in connection with the notice, the court shall dismiss the appeal, if it is satisfied that the informality, defect or error was not a material one.

(7) The appellant shall, where the grounds upon which the appeal is brought include a ground specified in subsection (5) (d) above, serve a copy of his notice of appeal on the other person referred to in that subsection.

PART II
—cont.
Maintenance
of city walls.

7.—(1) A proper officer authorised in writing may at any reasonable time enter upon any land and take with him such vehicles, apparatus and equipment as is necessary for the purpose of—

- (a) surveying the city walls or determining whether, and if so in what manner, any works in relation to the city walls ought to be carried out;
- (b) carrying out works in relation to the city walls.

(2) Subsections (3) to (6) of section 15 of the Act of 1976 (relating to powers of local authorities to survey land) shall apply with necessary modifications with respect to the exercise of the powers of subsection (1) above as they apply to the powers of subsection (1) of that section and as if—

- (a) in subsection (3) the reference to a person authorised to enter on land in pursuance of subsection (1) of that section were a reference to a person authorised to enter under subsection (1) above; and
- (b) in subsection (5) the reference to such a proposal of a local authority as is mentioned in subsection (1) (a) of that section included reference to the proposed doing of anything authorised by subsection (1) above.

(3) In exercising the powers of subsection (1) above or subsections (3) to (6) of section 15 of the Act of 1976 as those subsections have effect in accordance with subsection (2) above in relation to any land used by the British Railways Board for the purposes of their undertaking, the Council and all persons authorised by them to exercise the said powers shall comply with all reasonable conditions imposed by that board.

(4) Without prejudice to section 39 (Penalty for obstruction) of this Act as it has effect in relation to the exercise by a proper officer of his powers under subsection (1) above and under section 15 (3) (b) of the Act of 1976 as applied by subsection (2) above, if a person—

- (a) while another person is on any land in pursuance of the said section 15 (3) (b) as so applied intentionally obstructs him in doing things connected with the survey in question; or
- (b) removes or otherwise interferes with apparatus left on or in land in pursuance of the said section 15 (3) (b) as so applied;

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) If a person who has entered on any land in pursuance of this section discloses to another person information obtained by him there about a manufacturing process or trade secret, then, unless the disclosure is made in the course of performing his duty in connection with the purposes for which he was authorised to enter on the land, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or both.

PART II
—cont.

8.—(1) No person shall unless with the consent of the Council under this section and in accordance with any terms and conditions they may impose, place or erect any structure within 2 metres of the city walls. Restraints on buildings, etc., adjoining city walls.

(2) (a) Where any person causes or permits any materials or refuse to be placed on or within 2 metres of the city walls the Council may, if it appears to them that the materials or refuse are causing or are likely to cause damage to, or prevent or interfere with the inspection of, the city walls, serve on that person a notice requiring him to remove the materials or refuse within such reasonable period as may be specified in the notice.

(b) The provisions of section 290 of the Act of 1936 with respect to appeals against notices requiring the execution of works shall apply in relation to any notice under this subsection as if this subsection were contained in that Act.

(3) Nothing in subsection (1) above shall apply to any structure being development in respect of which application for planning permission under the Act of 1971 has been made to the Council and in respect of which such permission has been expressly granted by the Council provided that the structure has been placed or erected in accordance with any terms and conditions imposed with that permission.

(4) If without reasonable excuse any person contravenes subsection (1) above or a notice under subsection (2) above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) In exercise of the powers under subsection (1) above the Council shall not unreasonably withhold consent to, or impose unreasonable terms and conditions on, the placing or erection of any structure and any question whether consent is unreasonably withheld or terms and conditions unreasonably imposed shall be determined by arbitration.

(6) In the application of the foregoing provisions of this section to any works carried out by the British Railways Board

PART II
— cont.

in the exercise of their statutory functions nothing in those provisions shall apply to works with respect to railway bridges or with respect to the maintenance or renewal of the railway and the facilities and equipment used for or in connection with its operation.

(7) No consent shall be required under this section in respect of any cable of the South Western Electricity Board placed under, and in accordance with any terms and condition attached to, any consent granted before the passing of this Act.

PART III
MUSEUMSPromotion of
research.

9. Section 142 (2) of the Act of 1972 has effect in its application to the Council as if at the end were added—

- “(e) arrange for the publication of works of historical, scientific, cultural or literary interest related to Devon;
- (f) publish works of scholarship relating to any archaeological, historical or scientific research carried out by any officer of the Council.”

Arts advisory
service.

10. The Council may—

- (a) provide a service for giving advice to any person on any work of art or specimen including the identification thereof but not including the valuation thereof;
- (b) demand and recover reasonable charges for giving such advice, such charges to include any expenses incurred by the Council;
- (c) make regulations for the management of such service; and
- (d) undertake investigations and research for the improvement of knowledge in relation to works of art and specimens brought to them for advice under paragraph (a) above.

Disposal of
unsuitable
specimens and
works of art.

11.—(1) The Council may lend, exchange or otherwise part with possession (but not ownership) of any specimen, work of art or book vested in them which in their opinion is not required for exhibition or use in any museum, art gallery or other building of the Council.

(2) The Council may make arrangements by way of loan, exchange or gift with any person being the owner of any museum or art gallery for the transfer to that person of any specimen, work of art or book vested in the Council which in their opinion is more suitable for exhibition or use in the museum or art gallery of that person than in a museum, art gallery or other building of the Council.

(3) The Council may dispose of any object which is in an unsatisfactory condition for museum purposes or is, in the opinion of the Council after taking expert advice, of no significant scientific, historical or artistic value.

PART III
—cont.

(4) Where any object has become vested in the Council by virtue of a gift or bequest—

- (a) the Council shall, if reasonably practicable, consult with the donor or with the personal representatives or trustees of the donor before exercising the powers of this section; and
- (b) the powers conferred by this section shall not, during a period of 35 years commencing on the date on which it became vested, be exercisable as respects that object in any manner inconsistent with any condition attached to the gift or bequest except with the consent of the donor or the personal representative or trustees of the donor.

(5) Any moneys received by the Council in the exercise of the powers of this section shall be applied by them in the purchase of specimens, works of art or books for exhibition or use as mentioned in subsection (1) above.

PART IV

PUBLIC HEALTH

12. In its application to the city section 76 of the Building Act 1984 (defective premises) shall have effect as if after subsection (5) there were inserted the following subsection:—

Temporary
repair of
defective
premises.
1984 c. 55.

“(5A) Without prejudice to any action or proceeding which the local authority may take under the foregoing provisions of this section or under any other enactment, where in relation to any premises to which this section applies the proper officer appointed for the purposes of this section (hereinafter referred to as ‘the proper officer’) certifies that temporary repairs are immediately necessary to avoid danger to health the local authority may enter upon the premises and execute such repairs and the local authority shall be entitled to recover the expenses incurred by them in so doing from any person on whom notice could be served under subsection (1) above:

Provided that—

- (a) where the name and address of the person concerned are known to or can reasonably be ascertained by the proper officer he shall—
 - (i) as soon as reasonably practicable forward to the person concerned a copy of the certificate

PART IV
—cont.

which shall specify the nature and extent of the temporary repairs which the local authority propose to execute; and

- (ii) inform the person concerned after such repairs have been executed;
- (b) in any proceedings to recover such expenses—
 - (i) the court shall inquire whether the proper officer was justified in concluding that the execution of temporary repairs was immediately necessary to avoid danger to health or that unreasonable delay would have been occasioned by following the procedure prescribed by subsections (1) to (3) above and if the court determines that the proper officer was not justified in either of the conclusions mentioned in this sub-paragraph the local authority shall not recover the expenses or any part of them;
 - (ii) the provisions of subsection (5) above shall apply;
- (c) before entry on any operational railway of the British Railways Board not less than twenty-four hours' notice of intended entry shall, except in case of emergency, be given to that board and any person entering on any such railway in pursuance of that notice or in any such emergency shall comply with the reasonable requirements of the British Railways Board for the protection of their undertaking."

Power to
remedy
stopped-up
drains, etc.

13. In its application within the city, section 17 (3) of the Act of 1961 as substituted by section 27 of the Act of 1982 (which empowers a local authority to require stopped-up drains etc. to be remedied) shall have effect as if for "forty-eight hours" there were substituted "twenty-four hours".

Urgent repair
of private
sewers.

14.—(1) The Council may take immediate action to repair or unstop a private sewer in the city if—

- (a) the sewer is by reason of its defective condition or repair injurious or likely to become injurious to public health; and
- (b) the injury or threatened injury to public health is of such a nature as to require immediate remedy.

(2) The Council may recover the expenses reasonably incurred in the exercise of their power under subsection (1) above from the person responsible for the maintenance of the sewer:

Provided that where more than one person is responsible the Council may recover from the owners for the time being of the premises served by that length of sewer in such proportions as the Council deem it fair to fix, having regard to all the circumstances of the case including the benefit derived from each owner from the relevant length of sewer, the distance for which it is laid in land belonging to each owner, the point at which any work was necessary and the responsibility for any act or default which rendered the work necessary.

PART IV
—cont.

(3) Any question arising under this section as to whether the Council were on the facts of the matter justified in taking action under subsection (1) above or as to the amount or the reasonableness of the expenses incurred by them, or as to the fairness of any division or apportionment of expenses made by them may be determined by a magistrates' court either in proceedings taken by the Council for the recovery of expenses incurred by them, or on the application of any person required by the Council to bear any of their expenses.

15.—(1) If, upon a complaint by the Council under this section, a magistrates' court is satisfied that any gas, vapour or fumes from a chimney of a building in the city is injurious or likely to be injurious to health or is a nuisance, the court may make an order requiring the owner of the chimney within such time as may be specified in the order—

Power to order
alteration of
chimneys.

- (a) to cause it to be raised to a height so specified; or
- (b) to cause such other means for remedying the cause of complaint to be adopted as the court thinks fit.

(2) The court shall not make an order under this section unless it is satisfied that the work to be done in pursuance of the order need not involve an expenditure exceeding—

- (a) in the case of a single private dwelling-house £500; and
- (b) in any other case £1,500;

or, in any case, such greater sum as may be specified in an order made by the Secretary of State by statutory instrument under this section.

(3) Any person who without reasonable excuse fails to comply with an order made under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale and to a daily fine not exceeding £40.

(4) Unless—

- (a) the Secretary of State has granted scheduled monument consent under section 3 or 4 of the Ancient Monuments and Archaeological Areas Act 1979; or
- (b) the Secretary of State has, or, in respect of an application by a person other than themselves, the Council have granted listed building consent under section 55 of the Act of 1971;

1979 c. 46.

PART IV
—cont.

for the alteration of any chimney in a scheduled monument or listed building no complaint shall be made to a magistrates' court under this section in respect of any chimney in such monument or building.

1961 c. 34.
1906 c. 14.
1974 c. 37.

(5) This section does not apply to premises which are subject to the Factories Act 1961 or the Alkali, &c. Works Regulation Act 1906 or to any class of premises prescribed for the purposes of section 1 (1) (d) of the Health and Safety at Work etc. Act 1974.

(6) In this section "chimney" includes structures, openings and ducts of any kind from which any gas, vapour or fumes may be emitted whether or not as the product of combustion and reference to a chimney of a building includes reference to a chimney of a building which serves the whole or a part of a building but is structurally separate therefrom.

Dust, etc.,
from building
operations.

16.—(1) This section applies in the city to—

(a) any building operation including any work of demolition; or

(b) the cleansing of any building or structure;

which is either carried out in the open air or carried out in such circumstances that dust from the operation is emitted into the open air:

1984 c. 55.

Provided that it shall not apply to any work of demolition in respect of which a notice may be served under section 81 of the Building Act 1984.

(2) Except as provided in subsection (6) below, the Council may give notice to any person carrying out, or controlling the carrying out of, an operation to which this section applies requiring him, within such time as is specified in the notice, to take such reasonably practicable steps as are so specified to reduce the emission of dust from the operation.

(3) In considering what steps are reasonably practicable for the purposes of subsection (2) above, the Council shall have regard, amongst other matters, to the requirements of safety and safe working conditions, any relevant provisions of any code of practice approved under section 16 of the Health and Safety at Work etc. Act 1974 and to the financial implications.

(4) Any person aggrieved by a notice under subsection (2) above may appeal to the county court and the judge may make such order, either confirming or quashing or varying the notice, as he thinks fit but shall not so vary the notice that it is more onerous than the notice given by the Council.

(5) (a) Subject to any order made on appeal under subsection (4) above, any person who fails to comply with a notice under subsection (2) above shall be guilty of an offence

and liable on summary conviction to a fine not exceeding level 4 on the standard scale and to a daily fine not exceeding £100.

PART IV
—cont.

(b) In any proceedings under this subsection it shall be a defence to show that the quantity of dust emitted into the open air was not materially greater than would have been emitted if the notice had been complied with.

(6) (a) If, before the carrying out of any operation to which this section applies, the person who intends to carry it out applies to the Council for their consent to the operation giving particulars of—

- (i) the operation and the method by which it is to be carried out; and
- (ii) the steps proposed to be taken to reduce the emission of dust from the operation;

and the Council consider that, on the carrying out of the operation in accordance with the application, they would not serve a notice under subsection (2) above in respect of that operation, the Council may give their consent to the operation for the purposes of this section, either unconditionally or subject to such conditions as may be specified in the consent.

(b) In acting under this subsection the Council shall have regard to the matters specified in subsection (3) above.

(c) If the Council do not, within 21 days from the receipt of an application under this subsection, give to the applicant a consent, with or without conditions, which is acceptable to the applicant, he may appeal to the county court.

(d) On any appeal under this subsection the judge may make such order either confirming the refusal of the consent or varying any conditions subject to which the consent has been given, or ordering the giving of the consent with or without conditions as he thinks fit but shall not so vary any conditions that they are more onerous than those specified by the Council.

(7) In this section “dust” includes chemicals in solution and grit.

PART V

ENVIRONMENT AND RIVER

17.—(1) The Council may by notice prohibit either entirely or at such times or on such days as may be specified in the notice, any of the following things:—

Protection of
ornamental or
mown land.

- (a) allowing horses or cattle to enter land to which this section applies;

PART V
—cont.

- (b) driving, parking or riding a vehicle on such land;
- (c) using any equipment provided on such land by the person in whom the land is vested:

Provided that in the case of such prohibition as is mentioned in paragraph (c) above the Council may exempt a child under such age as may be specified in the notice in respect of that paragraph and may similarly exempt any other person who is in charge of such a child while the child is on the land.

(2) The land to which this section applies is—

- (a) land vested in the Council or the county council and laid out as a public garden or used for the purpose of public recreation, or a disused burial ground provided by the Council or the county council and maintained as a public garden or for that purpose or as a disused burial ground, as the case may be;
- (b) other land vested in the Council or the county council and mown or otherwise maintained in an ornamental condition;
- (c) land vested in a person other than the Council or the county council and laid out, used, mown or maintained as aforesaid:

Provided that notices shall not be given—

- (i) in respect of land vested in the county council except with the consent of the county council or in pursuance of a notice given by the county council under subsection (8) below; or
- (ii) in respect of land such as is mentioned in paragraph (c) above except with the consent of the person concerned, or his representatives.

(3) A prohibition under subsection (1) (b) above shall not extend to driving, parking or riding a vehicle on land—

- (a) in the course of building operations; or
- (b) by the British Railways Board, statutory undertakers or a telecommunications operator where reasonably necessary for the exercise of their statutory powers; or
- (c) for the maintenance of the land:

Provided that the exemption afforded by paragraph (a) above shall be conditional upon means taken to the satisfaction of the Council to minimise injury to the land and to protect persons on the land.

(4) For the purposes of the foregoing provisions of this section notice shall be given by displaying it in a conspicuous position on or near the land to which it relates.

PART V
—cont.

(5) The notice indicating a prohibition under subsection (1) (b) above shall, if it relates to a grass verge forming part of or adjoining a road, be a notice authorised by the Secretary of State as a traffic sign under section 64 of the Act of 1984 and the placing of it shall be subject to such directions (if any) as may be given by the Secretary of State.

(6) A person who without reasonable excuse contravenes a notice given under the foregoing provisions of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(7) Where land to which a prohibition contained in subsection (1) (a) or (b) above applies forms part of a highway, the rights of the public over the highway, except rights of grazing horses and cattle, shall be subject to the prohibition; but, subject as aforesaid, nothing in this section shall—

- (a) limit any right of way, public or private, over land;
- (b) restrict the exercise by any person of any statutory right to enter upon land;
- (c) restrict the entry by horses or cattle on any grass or other margin provided by a highway authority in pursuance of section 71 of the Highways Act 1980 (provision of margins for horses and livestock). 1980 c. 66.

(8) In the event of the county council giving notice to the Council requiring the Council to exercise any power under this section in respect of any land vested in the county council the Council shall erect notices under subsection (1) above on the land specified by the county council indicating such prohibitions and exemptions as the county council may request and the county council shall bear the reasonable costs of erecting such notices.

18. Section 23 of the Housing Act 1985 (byelaws about certain land) shall have effect in the city as if in subsection (2) after the word "housing" there were inserted the words "or provided by the developer of housing accommodation as amenity land for that accommodation and is land maintained by the local authority." Byelaws for private open spaces maintained by local authority. 1985 c. 68.

19.—(1) In this section—

- "excavator" means any self-propelled machinery designed to excavate material;
- "goods vehicle" means a vehicle, whether mechanically propelled or not, which is constructed or adapted for the carriage of goods and has a maximum gross weight which exceeds 3.5 tonnes;

Prohibition of parking of certain vehicles in residential streets.

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- “heavy vehicle” means an excavator, a goods vehicle or a passenger vehicle;
- “maximum gross weight” has the meaning given to it by regulation 4 (c) of the Traffic Signs (Amendment) Regulations 1982;
- “passenger vehicle” means a vehicle adapted to carry 12 or more passengers;
- “prescribed hours” means the hours between 9.00 p.m. and 8.00 a.m.;
- “residential street” means a street predominantly fronted by—
- (a) residential or mainly residential buildings;
 - (b) such buildings and schools; or
 - (c) such buildings and public open spaces;
- and which is not a trunk road within the meaning of section 329 of the Highways Act 1980.

1980 c. 66.

(2) (a) If, after the appointed day, it appears to the Council in consequence of a representation made to the Council in accordance with paragraph (b) below that amenities of any part of the city are prejudicially affected by the use during the prescribed hours of any residential street in the city as a place for parking by one or more heavy vehicles, the Council may by an order made in accordance with this section, prohibit the use for parking by heavy vehicles during the prescribed hours of the residential street to which the representation relates.

(b) A representation under paragraph (a) above shall be made in writing and signed by local government electors residing in not less than five dwelling-houses, being dwelling-houses in the residential street concerned, or dwelling-houses in any other such street which are within 100 metres thereof.

(3) (a) If the Council propose to make an order under this section, they shall—

- (i) publish a notice stating the effect of the proposal in a newspaper circulating in the city;
- (ii) post copies of the notice in a conspicuous position at each end of the residential street to which the proposal relates; and
- (iii) serve a copy of the notice and a statement of the nature of the representation made under subsection (2) above on the owner or occupier of every dwelling-house in the street to which the draft order relates.

(b) The notice under paragraph (a) above shall state where the draft order can be inspected and copies purchased and that objections to the order may be made in writing to the Council

before such day, not earlier than 28 days after the Council have complied with paragraph (a) above, as shall be specified in the notice.

PART V
—cont.

- (c) Before making the order the Council shall—
- (i) consider all objections made as provided in paragraph (b) above;
 - (ii) consult the chief officer of police and either the highway authority (if any) for the street in question or if the street is not a highway, the county council; and
 - (iii) afford to the owner or occupier of every dwelling-house in the street to which the draft order relates, being a person who has made such objection, an opportunity of being heard by a committee or sub-committee of the Council.

(4) If, after considering objections made under subsection (3) above, the Council determine to make the order, they may make the order in the terms of the draft, or in those terms as modified to meet in whole or in part all or any of the objections; but if the Council consider that any person may be adversely affected by any such modification they shall, before making the order, take such steps as appear to them to be appropriate for informing the persons likely to be so affected of the modification, for giving those persons an opportunity to make representations and for ensuring that any such representations are duly considered by the Council.

(5) When an order has been made by the Council under this section they shall publish notice of it, and of the right of appeal under subsection (7) below, in the manner required by subsection (3) (a) above for notice of a proposal.

(6) (a) Any order made under this section shall come into operation at the expiration of the period of 28 days after the Council have published notice of the making of the order under subsection (5) above or if an appeal is lodged under subsection (7) below when the appeal is disposed of or withdrawn or fails for want of prosecution and the Council shall publish notice of the date of coming into operation of any such order in the manner required by subsection (3) (a) (i), (ii) and (iii) above as soon as may be after that date is known.

(b) Any such order shall have effect for such period, not exceeding 5 years, as the Council may determine, but this paragraph does not prejudice the power of the Council to make a further order.

(7) A person who is aggrieved by an order under this section may, within 28 days after the first publication of the notice of the making of the order under subsection (5) above, appeal to the county court.

PART V
—cont.

(8) On an appeal to the county court under this subsection the judge may make such order, either confirming or quashing or varying the order as he thinks fit, but shall not so vary the order that it is more onerous than the order made by the Council.

(9) If any person parks a heavy vehicle in contravention of an order under this section, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(10) A person shall not be guilty of an offence under this section by reason only of the fact that he parks a goods vehicle during the prescribed hours in any residential street for the purpose of holding that vehicle ready for use in an emergency by British Gas plc or any public gas supplier within the meaning of Part I of the Gas Act 1986:

1986 c. 44.

Provided that the vehicle does not have a maximum gross weight exceeding 5.6 tonnes, but nothing in this subsection shall be taken to prejudice any rule of law or other enactment.

(11) A person shall not be guilty of an offence under this section by reason only of the fact that he parks a heavy vehicle during the prescribed hours in any residential street for any period not exceeding one hour or for such period as is reasonably necessary for dealing with a breakdown or other emergency.

(12) A person shall not be guilty of an offence under this section by reason only of the fact that he parks a heavy vehicle in a residential street only for so long as is necessary for the loading or unloading of the vehicle or the setting down or picking up of passengers by the vehicle.

(13) A person shall not be guilty of an offence under this section by reason only of the fact that he parks a heavy vehicle in a residential street for so long as may be necessary to enable the vehicle, if it cannot reasonably be used for such purpose without parking in that street, to be used in connection with the erection, laying, placing, maintenance, testing, alteration, repair, renewal, or removal of—

(a) any structure, works or apparatus in, on, under or over the street; or

(b) any structure, works or apparatus of the British Railways Board, statutory undertakers or a telecommunications operator in land adjacent to the street in any case where it is reasonably necessary to carry out those operations during the prescribed hours.

(14) A notice of the effect of an order made under this section shall be placed by the Council on or near the relevant residential street: any such notice shall be a notice authorised by the

Secretary of State as a traffic sign under section 64 of the Act of 1984 and the placing of it shall be subject to such directions (if any) as may be given by the Secretary of State.

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—cont.

20.—(1) In this section—

“excavator” means any self-propelled machinery designed to excavate material;

Prohibition of parking of certain vehicles in front gardens.

“front garden” means so much of the curtilage of a dwelling-house fronting on a street as lies between that street and a line, parallel to the street, which in respect of that dwelling-house passes through the part of the front wall furthest from the street;

“goods vehicle” means a vehicle, whether mechanically propelled or not, which is constructed or adapted for the carriage of goods, and has a maximum gross weight which exceeds 3.5 tonnes;

“heavy vehicle” means an excavator, a goods vehicle or a passenger vehicle;

“maximum gross weight” has the meaning given to it by article 4 (c) of the Traffic Signs (Amendment) Regulations 1982;

S.I. 1982/1879.

“passenger vehicle” means a vehicle adapted for the conveyance of 12 or more passengers;

“residential street” means a street predominantly fronted by—

(a) residential or mainly residential buildings;

(b) such buildings and schools; or

(c) such buildings and public open spaces;

and which is not a trunk road within the meaning of section 329 of the Highways Act 1980.

1980 c. 66.

(2) (a) If after the appointed day it appears to the Council, in consequence of a representation made to the Council in accordance with paragraph (b) below, that the amenities of any part of the city are prejudicially affected by the use on more than one occasion of any land within the front garden of any dwelling-house in a residential street in the city for the parking in the open of one or more heavy vehicles, the Council may, by an order made in accordance with this section, prohibit the use of land within the front gardens of the dwelling-houses in the street, or any part thereof, specified in the order for the parking in the open of heavy vehicles.

(b) A representation under paragraph (a) above shall be made in writing and signed by local government electors

PART V
—cont.

residing in not less than 5 dwelling-houses, being dwelling-houses in the residential street concerned, or dwelling-houses in any other such street which are within 100 metres of the land in question.

(3) (a) If the Council propose to make an order under this section, they shall—

- (i) publish a notice stating the effect of the proposal in a newspaper circulating in the city; and
- (ii) post copies of the notice in a conspicuous position at each end of the residential street or part thereof to which the proposal relates; and
- (iii) serve a copy of the notice and a statement of the nature of the representations (if any) made under subsection (2) above on the owner or occupier of every dwelling-house in the street or part thereof to which the draft order relates.

(b) The notice under paragraph (a) above shall state where the draft order can be inspected and copies purchased and that objections to the order may be made in writing to the Council before such day, not earlier than 12 weeks after the Council have complied with paragraph (a) above, as shall be specified in the notice.

(c) Before making the order the Council shall—

- (i) consider all objections made as provided in paragraph (b) above and the availability of parking facilities;
- (ii) consult the chief officer of police, the licensing authority for the purposes of Part V of the Transport Act 1968 (regulation of carriage of goods by road), the highway authority (if any) for the street in question or if the street is not a highway, the county council; and
- (iii) afford to the owner or occupier of every dwelling-house in the street or part thereof to which the draft order relates, being a person who has made such objection, an opportunity of being heard by a committee or sub-committee of the Council.

1968 c.73.

(4) If, after considering objections made under subsection (3) above, the Council determine to make the order, they may make the order in the terms of the draft, or in those terms as modified to meet in whole or in part all or any of the objections, but if the Council consider that any person may be adversely affected by any such modification they shall, before making the order, take such steps as appear to them to be appropriate for informing the persons likely to be affected of the modification, for giving those persons an opportunity to make representations and for ensuring that any such representations are duly considered by the Council.

(5) When an order has been made by the Council under this section they shall publish notice of it and of the right of appeal under subsection (9) below in the manner required by subsection (3) (a) above for notice of a proposal.

PART V
—cont.

(6) (a) Any order made under this section shall come into operation at the expiration of the period of 3 months after the Council have published notice of the making of the order pursuant to subsection (5) above or, if an appeal is lodged under subsection (9) below, when the appeal is disposed of or withdrawn or fails for want of prosecution and the Council shall publish notice of the date of coming into operation of any such order in the manner required by subsection (3) (a) (i), (ii) and (iii) above as soon as may be after that date is known.

(b) Any such order shall have effect for such period, not exceeding 5 years, as the Council may determine, but this paragraph does not prejudice the power of the Council to make a further order.

(7) The Council may revoke an order made under this section and may vary an order so made so as to diminish the scope thereof.

(8) An order under this section shall be a local land charge.

(9) (a) A person who is aggrieved by an order under this section may, within 28 days after the first publication of the notice of the making of the order under subsection (5) above, appeal to the county court.

(b) On appeal to the county court under this subsection the judge may make such order, either confirming or quashing or varying the order as he thinks fit, but shall not so vary the order that it is more onerous than the order made by the Council.

(10) Nothing in any order made under this section shall prevent the parking of a heavy vehicle on any land within the front garden of a dwelling-house for such period as is reasonably necessary for loading or unloading or dealing with a breakdown or other emergency.

(11) Nothing in any order made under this section shall apply to a goods vehicle held ready for use in an emergency by British Gas plc or any public gas supplier within the meaning of Part I of the Gas Act 1986, not being a vehicle which has a maximum gross weight exceeding 5.6 tonnes, but nothing in this subsection shall be taken to prejudice any rule of law or other enactment. 1986 c. 44.

(12) If any person uses, or permits to be used, land within the front garden of a dwelling-house in contravention of an order under this section, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

PART V
—cont.
Removal of
unlawfully
parked
caravans.

21.—(1) If any caravan is found by the Council upon a highway in the city the Council may cause to be affixed to the caravan a notice stating that the Council propose to remove the caravan after a date specified in the notice, being not less than 14 days after the date of the affixing of the notice.

(2) If after the date specified in the notice affixed in pursuance of subsection (1) above the caravan remains in the same place on the highway in the city, the Council may—

- (a) remove the caravan for safe custody; and
- (b) recover from the person responsible for such caravan the expenses reasonably incurred in such removal and safe custody.

1978 c. 3.

(3) Not less than 2 months after they have removed a caravan under subsection (2) above, the Council may dispose of the caravan in accordance with section 4 of the Refuse Disposal (Amenity) Act 1978 (which empowers a local authority to dispose of removed vehicles) as if the caravan were a vehicle which had been in their custody in pursuance of section 3 of that Act (which empowers a local authority to remove abandoned vehicles).

(4) In this section—

“caravan” means any trailer or van constructed for use for human habitation, not being a mechanically propelled vehicle;

“person responsible” in relation to a caravan, means the owner of the caravan at the time when it was put in the place from which it was removed, unless he shows that he was not concerned in and did not know of its being put there, in which case it means the person by whom the caravan was put in that place.

Repair, etc., of
vehicles on
highways.

22.—(1) As from the appointed day subject to the provisions of this section, a person who carries out any of the works to which this section applies to a motor vehicle or a trailer in any highway in the city shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) The works to which this section applies are—

- (a) works for the repair, maintenance, servicing, improvement or dismantling of, or of any part of or accessory to, a motor vehicle or trailer; or
- (b) works for the installation, replacement or renewal of any such part or accessory.

(3) A person shall not be convicted of an offence under this section with respect to a motor vehicle or a trailer if he proves to the satisfaction of the court that the works—

- (a) arose from an accident or breakdown in circumstances where repairs on the spot or elsewhere in the highway were necessary; and
- (b) were carried out either within 72 hours of the occurrence of such accident or breakdown or, with the permission of a police constable in uniform or of the highway authority for the highway in question, at some later time.

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—cont.

(4) A person shall not be convicted of an offence under this section if he proves to the satisfaction of the court that the works were either—

- (a) carried out to a motor vehicle or trailer kept by him so as to give no reasonable cause for annoyance to persons within the vicinity; or
- (b) carried out within 50 metres of a dwelling-house owned by him or used as his principal residence to a motor vehicle kept by him otherwise than for trade, hire or reward.

(5) In this section—

“motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads or if not so intended or adapted intended for use in competitive racing; and

“trailer” means a vehicle drawn by a motor vehicle.

23.—(1) The activities to which this section applies are—

- (a) the loading and unloading of vehicles delivering goods to or collecting goods from commercial premises while waiting on a highway maintainable at public expense; and
- (b) related activities (including the transferring and sorting of goods) in connection with goods which are intended to be or have just been unloaded from or loaded onto vehicles delivering or collecting goods as aforesaid;

Control of
noisy
unloading.

between the hours of 11.00 p.m. and 6.00 a.m. in commercial streets and 11.00 p.m. and 7.00 a.m. in other streets.

(2) As from the appointed day in the city where the Council are satisfied that noise amounting to a nuisance exists or is likely to occur or recur in connection with activities to which this section applies, the Council may serve a notice under either or both of the following paragraphs, namely:—

- (a) a notice requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence; and

PART V
—cont.

(b) a notice restricting the hours during which such activities may be carried out, if they consider that a notice under paragraph (a) of this subsection will not be sufficient.

(3) A notice requiring abatement may specify what steps shall be taken to secure that abatement.

(4) A notice served under this section shall contain a copy of this section.

(5) A notice under this section may be served upon any of the following persons:—

(a) the owner or occupier of the premises from or to which the vehicle is or is going to be loaded or unloaded; or

(b) the person in whose name the vehicle is registered under the Vehicles (Excise) Act 1971.

1971 c. 10.

(6) A person served with a notice under this section may appeal against the notice to a magistrates' court within 21 days from the service of the notice and, without prejudice to any other power it may have in relation to such appeal, the court may quash the notice if it considers that the person served would have a defence under subsection (7) or subsection (8) below in any proceedings brought in relation to a contravention of that notice.

(7) If a person upon whom a notice is served under this section without reasonable excuse contravenes any requirement of the notice he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale:

Provided that in any case in which such person has appealed against the notice no proceedings in respect of any contravention of any requirement thereof shall be taken in respect of anything done before the appeal has been disposed of or withdrawn or fails for want of prosecution.

(8) In proceedings for an offence under the preceding subsection in respect of a requirement under subsection (2) (a) above, it shall be a defence to prove that the best practicable means have been used for preventing or for counteracting the effect of, the noise.

(9) In this section—

“commercial premises” includes premises which are wholly or mainly industrial, wholesale or retail premises; and

“commercial street” means a street mainly fronted by commercial premises;

and section 72 of the Control of Pollution Act 1974 shall apply for the construction of "best practicable means" in subsection (8) above as it applies for the construction of references to that expression in Part III of that Act.

PART V
—cont.
1974 c. 40.

24.—(1) In this section—

"shopping trolley" means an unpowered trolley provided for customers' use at a shop (within the meaning of the Shops Act 1950) for the carriage of goods purchased at the shop;

Shopping
trolleys found
in open air.
1950 c. 28.

"excluded land" means—

(a) land in which the owner of the shopping trolley has an interest; or

(b) land being that part of an off-street parking place for vehicles wherein facilities for the parking of shopping trolleys after their use by shoppers are afforded; or

(c) any other place designated by the Council wherein like facilities are so afforded.

(2) This section shall have effect in the city as from the appointed day and, before fixing the appointed day and from time to time thereafter, the Council shall consult with such persons or organisations as appear to them to represent shops in the city by which shopping trolleys are provided—

(a) as to the operation of this section;

(b) as to making arrangements for affording suitable places for the parking of shopping trolleys at off-street parking places and at other places approved by the Council following use of the trolleys by the customers of shops; and

(c) as to the places to which shopping trolleys respecting which the powers of subsection (3) are exercised, should be removed and as to arrangements for collection by their owners.

(3) The Council may, if they think fit, subject to subsection (4) below remove any empty shopping trolley found—

(a) on land in the open air or forming part of a public car park provided by the Council, not being in either case excluded land; or

(b) on any other land forming part of a highway.

(4) The Council shall not be entitled to exercise their powers under subsection (3) above as respects a shopping trolley situated on land appearing to them to be occupied by any person, without his consent, unless they have given notice to