



**BERMUDA  
1969 : 375**

**PRIVATE ROADS (IMPROVEMENT) ACT 1969**

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[25 July 1969]

*[preamble and words of enactment omitted]*

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### **Interpretation**

1 In this Act —

"Department" means the Department of Works and Engineering;

"frontage" means that part of the boundary of frontage land which fronts on the private road concerned;

"frontage land" means a lot of land which fronts on a private road the owner of which has the right to use that private road for the purpose of gaining access to that lot of land;

"frontager" means a person who owns a freehold estate in possession of frontage land and includes the Crown in the case of frontage land owned by the Crown;

"Minister" means the Minister charged with responsibility for Works and Engineering;

"Permanent Secretary" means the Permanent Secretary for the Department of Works and Engineering;

"private road" means any road, not being a "highway" or a "naval or military road" or a "United States road" (as these words are defined in the Road Traffic Act 1947 [*title 21 item 3*]), which gives access to three or more dwelling houses and over which the occupants of the dwelling houses have a right of way, or which gives access to any hotel or guest house having accommodation for more than 25 guests;

"roadworks", in relation to a private road, means the reconstruction, repair, drainage, surfacing or widening of that private road and other similar works, including the erection of walls and fences at the edge thereof and the maintenance thereof.

### **Schemes Minister may sanction**

2 Subject to this Act, the Minister may sanction any of the following schemes for the carrying out of roadworks on a private road—

- (a) a requested scheme, that is to say, a scheme to which section 3 applies;
- (b) a Government scheme, that is to say, a scheme to which section 12 applies;
- (c) a private scheme, that is to say, a scheme to which section 16 applies.

### **Requested scheme**

3 (1) The Minister may sanction a scheme for the improvement of a private road (in this Act called a "requested scheme") if a request

therefor is made to him in writing by not less than three-quarters of the frontagers on that private road.

(2) Before the Minister sanctions a requested scheme the Permanent Secretary shall prepare and submit to the Minister a memorandum containing the following particulars relating to that scheme:—

- (a) a description of the private road concerned;
- (b) the proposed roadworks to be carried out thereon;
- (c) the cost to the Department of carrying out the proposed roadworks, or, as the case may be, of employing a contractor to carry out the proposed roadworks;
- (d) the percentage of the cost, if any, to be borne by the Government, calculated in accordance with the provisions of the Schedule;
- (e) the percentage of the cost, if any, to be borne by the frontagers;
- (f) the length of each frontage;
- (g) the total length of all the frontages;

and shall at the same time submit a plan showing the private road and the location and length of each frontage.

**Adjustment of frontage lengths of requested scheme**

4 (1) If, on examination of the memorandum and plan submitted to him under section 3(2), it appears to the Minister that the length of any frontage ought to be adjusted so that the percentage of the cost of the roadworks to be borne by the frontagers will be shared between them in proportions which are more equitable than those obtained if the share of each frontager is calculated by reference to the actual length of his frontage—

- (a) the Minister may reduce the length of that frontage by such proportion, not exceeding fifty per cent, as he may determine;
- (b) the Minister may increase the length of that frontage to whichever is the lesser of—
  - (i) the average length of all the frontages calculated by reference to their actual length; or
  - (ii) seventy-five feet.

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(2) Every adjustment under subsection (1) of the length of a frontage shall be recorded on the memorandum submitted under section 3(2) and such record shall be certified by the Minister.

(3) Where the length of any frontage has been adjusted under subsection (1), then, for the purposes of section 5(2)—

- (a) the adjusted length of the frontage shall be the length of that frontage;
- (b) the total length of all the frontages shall be the aggregate of the adjusted length of such frontage and the actual lengths of the frontages the lengths of which have not been adjusted.

### **Apportionment of cost; sanction of requested scheme**

5 (1) The Permanent Secretary shall serve on each frontager a memorandum containing the particulars set out in section 3(2)(a) to (g) and specifying—

- (a) where the length of any frontage has been adjusted under section 4(1)—
  - (i) the length of any frontage as so adjusted;
  - (ii) the total length of all the frontages as so adjusted, namely, the aggregate of the adjusted length of any such frontage and the actual lengths of the frontages the lengths of which have not been adjusted; and
- (b) the proportion of the percentage of the cost of the roadworks to be borne by the frontagers which is payable by each frontager.

(2) For the purposes of subsection (1)(b) the proportion of each frontager shall be equal to that which the length of his frontage bears to the total length of all the frontages on the private road concerned.

(3) If not less than three quarters of the frontagers concerned signify their approval in writing to the Minister of the scheme contained in the memorandum served under subsection (1), the Minister may sanction the scheme.

(4) If the Minister sanctions a requested scheme he shall, by notice published in the Gazette, specify the date on which the scheme is to take effect.

### **Liability of frontager to pay towards cost of requested scheme**

6 (1) Upon the date on which a requested scheme takes effect, each frontager on the private road concerned shall be liable to pay to the Accountant General his proportion of the percentage of the cost of the

roadworks to be borne by the frontagers, pursuant to the memorandum served under section 5(1).

(2) The amount payable by a frontager pursuant to subsection (1) shall be payable forthwith or in such instalments and at such times (not exceeding in the aggregate three years from the date on which the scheme takes effect) as the Minister may specify by notice published in the Gazette.

(3) Nothing in this section or section 4 or 5 shall affect the right of the frontagers on a private road to make an agreement amongst themselves as to the proportion to be borne by each of the percentage of the cost of the roadworks to be borne by the frontagers as a whole and, in that event, if the agreement is in writing and a copy purporting to be a true copy thereof is deposited with the Accountant General, it shall be lawful for the Accountant General to receive from each frontager the proportion set out in the agreement:

Provided that nothing in any such agreement nor the acquiescence of the Accountant General therein by receiving payments pursuant thereto shall, until the whole of the percentage of the cost to be borne by the frontagers has been paid, in any way extinguish the liability of any frontager under subsections (1) and (2) and each such frontager shall remain liable for any balance unpaid in respect of his frontage land calculated in accordance with those subsections.

(4) Non-compliance with any formality leading up to the sanctioning of a requested scheme shall not affect the liability of any frontager under that scheme if there has been substantial compliance with the provisions of this Act in the steps leading up to that sanctioning.

**Liability of successor in title**

7 (1) If after the date on which a requested scheme takes effect and before all sums for which a frontager is liable, by virtue of section 6, have been paid to the Accountant General in relation to any frontage land, that frontager for an reason ceases to be a frontager in relation to that frontage land then his successor in title as frontager in respect of such land shall become liable to pay to the Accountant General the balance then unpaid; and, in like manner, if any such successor in title cease thereafter to be a frontager in relation to that frontage land, the his successor in title, and any subsequent successor in title, shall become liable to pay to the Accountant General any balance then unpaid.

(2) In the case of any subdivision of frontage land on or after the date on which a requested scheme takes effect, the liability of the successor in title as frontager in relation to each subdivision for the sums payable by virtue of section 6, or any balance then unpaid, shall be

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in proportion to the frontage of each subdivision; and subsection (1) shall apply in relation to each subdivision accordingly.

### **Rights of successor in title to recover cost**

8 Subject to any contract to the contrary, the successor in title as frontager in relation to any frontage land or subdivision thereof who has, by virtue of section 7, become liable to pay and has paid to the Accountant General any sums owing to the Accountant General, may recover the same from his immediate predecessor in title without limitation as to amount in the manner provided by the Magistrates Act 1948 [*title 8 item 15*] for the recovery of a debt or liquidated demand.

### **Accountant-General may enforce payment**

9 The Accountant General may enforce the payment of any sum payable to him by any person under section 6 or section 7 in any manner in which he may enforce the payment of tax under the provisions of the Land Valuation and Tax Act 1967 [*title 14 item 31*].

### **Restriction on starting time**

10 No roadworks specified in a requested scheme shall be carried out unless —

- (a) all contributions payable by frontagers in respect thereof have been paid to the Accountant General, or
- (b) where all such contributions have not been so paid, the Minister instructs the Permanent Secretary to carry out those roadworks.

### **Entry on private road to do works under requested scheme**

11 Any person engaged in carrying out any roadworks pursuant to a requested scheme, or performing any services or engaged in other activities connected therewith, may, with the express or implied permission of the Permanent Secretary, enter upon the private road specified in the requested scheme and carry out such roadworks thereon as may be necessary to give effect thereto without the authority of any other person.

### **Government schemes**

12 (1) Where the Minister is of the opinion that it is desirable that roadworks should be carried out on a private road for the purpose of securing that fire fighting vehicles or appliances or ambulances or other emergency vehicles may travel without hazard or obstruction along that road, or that it is otherwise in the public interest that roadworks should be carried out thereon, he may cause a scheme to be drawn up for that purpose.

(2) The proposed Government scheme shall be embodied in a memorandum prepared by the Permanent Secretary containing the same particulars as are required to be contained in respect of a requested scheme under section 3(2) and section 4 and section 5(1) and (2) shall apply to a Government scheme as they apply to a requested scheme.

(3) Where a memorandum has been served on each frontager under section 5(1) the Minister shall consider any objections by any frontager to his sanctioning the scheme if objection is made within thirty days after service of the memorandum on that frontager.

(4) Not earlier than thirty days after service of the memorandum referred to in subsection (3), the Minister may sanction the scheme contained in the memorandum, with or without modifications, which shall thereupon become a Government scheme:

Provided that no modification shall increase the potential liability of any frontager under the Government scheme.

(5) If the Minister sanctions a Government scheme he shall, by notice published in the Gazette, specify the date on which the scheme is to take effect.

(6) Upon the date upon which a Government scheme takes effect the provisions of sections 6, 7, 8, 9, 10 and 11 shall apply mutatis mutandis as if such Government scheme were a requested scheme then in force.

**Common ownership of land**

13 Where a freehold estate in possession which fronts on a private road is vested in more than one person, any request, or objection made, or approval signified, by a person or persons in whom is or are vested a moiety or more of interest in that estate shall be deemed to be the request, objection or approval, as the case may be, of all persons in whom any interest in such estate is vested.

**Ownership of two or more lots**

14 For the purpose of determining if three-quarters or more of the frontagers on a private road have made any requests or objection or signified any approval under this Act a person who is a frontager in respect of two or more lots of frontage land which are not contiguous with each other shall be counted as a separate frontager in respect of each such lot.

**Service of documents**

15 Any document required to be served under this Act on any person may be served in any manner in which a document required to be served under the Land Valuation and Tax Act 1967 [*title 14 item 31*] may, under the provisions of section 72 of that Act, be served on any person

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for the purposes of that Act; and service in that manner shall be deemed to be effective service for the purposes of this Act.

### **Private schemes**

16 (1) Any person or persons who has or have entered into a contract with a contractor for the carrying out of roadworks on a private road (in this Act called a "private scheme") may apply to the Minister for a Government contribution towards the cost of that private scheme.

(2) The Minister, if he sanctions the private scheme, may authorise the Accountant General to pay by way of contribution to the contractor concerned, at such times and in such instalments and on such terms and conditions as he may stipulate, such percentage of the contract price as he thinks appropriate, not exceeding in all the maximum sum which the Minister may authorise.

(3) The payment to a contractor of any sum of money under subsection (2) shall, as between the contractor and the person or persons contracting with him, be deemed to be a part payment by that person or those persons of the contract price.

(4) Nothing in this section shall confer on any contractor any right of action to recover from the Government, the Minister or the Accountant General any sum of money which the Minister may authorise or has authorised the Accountant General to pay to that contractor under subsection (2).

### **Calculation of Government share of cost**

17 The percentage of the cost of requested schemes or Government schemes to be borne by the Government and the maximum payments in respect of private schemes which may be authorised by the Minister shall be calculated in accordance with the Schedule.

### **Minister may amend Schedule**

17A (1) The Minister may, by order, amend the formula by which the Government contribution set out in the Schedule shall be calculated.

(2) The affirmative resolution procedure shall apply to an order made under this section.

### **Repeal**

18 [omitted]

## **SCHEDULE**

Method of Calculating the Percentage of the Cost of a Requested Scheme, or Government Scheme to be Borne by Government and the Maximum

Payments by way of Government Contribution to Contractors in respect of a Private Scheme which may be authorised by the Minister.

1 In this Schedule —

"cost" means —

- (a) in the case of a requested scheme or a Government scheme, the cost to the Department of carrying out, or of employing a contractor to carry out, the roadworks specified in the memorandum relating to that scheme as sanctioned by the Minister;
- (b) in the case of a private scheme, the contractors price or the Permanent Secretary's estimate of the cost to the Department of carrying out the roadworks concerned, whichever is the lesser;

"Government percentage contribution" means —

- (a) in the case of a requested scheme or a Government scheme, the percentage of the cost of the scheme to be borne by the Government;
- (b) in the case of a private scheme, the maximum payment which the Minister may authorise the Accountant General to pay to the contractor concerned in relation to the scheme;

"annual rental value", in relation to frontage land, means—

- (a) where the lot of land (including structures thereon) comprises a single valuation unit included in any Valuation List or Supplementary Valuation List for the time being in force under the Land Valuation and Tax Act 1967 [*title 14 item 31*] the annual rental value of such valuation unit;
- (b) where the lot of land (including structures thereon) comprises more than one valuation unit included in any such list, the sum of the annual rental values of those valuation units;
- (c) where the lot of land (including structures thereon) is excluded or not included in any such list, the annual rental value of such lot assessed for the purposes of this Act by the Director of Land Valuation in accordance with the principles specified in the Land Valuation and Tax Act 1967 [*title 14 item 31*];
- (d) where the lot of land (including structures thereon) comprises valuation units some of which are include in

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any such list and some of which are excluded not included in any such list, the sum of—

- (i) the annual rental values of the valuation units included in any such list; and
- (ii) the annual rental values of the valuation units excluded or not included in any such list assessed for the purpose of this Act by the Director of Land Valuation in accordance with the principles specified in the Land Valuation and Tax Act 1967 [title 14 item 31];

"average annual value of frontage lands" means the sum of the annual rental values of all frontage lands fronting on a private road divided by the number of valuation units (as defined in the Land Valuation and Tax Act 1967 [title 14 item 31]) comprised in such frontage lands.

2 Where the average annual rental value of frontage lands is, in the opinion of the Minister, by some anomalous circumstance unreasonably high having regard to the general character of lots comprised in those frontage lands, the Minister may by writing under his hand authorise a reduced value to be taken as the average annual value of frontage lands for the purpose of this Schedule and such reduced value shall form the basis of calculation accordingly.

3 The Government percentage contribution shall be calculated according to the following formula:—

$100 - (AAV - 16,200 / 222) \% \text{ of the cost}$

where AAV represents the average annual value of frontage lands fronting on a private road specified in the scheme concerned.

*[Schedule amended by BR 51/1998 effective 17 July 1998; by BR 73/2000 effective 29 September 2000; and by 2002:13 s.5 effective 10 July 2002]*

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*[Amended by:*

1972 : 110

1978 : 35

1980 : 30

1984 : 3

BR 51/1998

BR 73/2000

2002 : 13]