



ANNO DECIMO SEPTIMO

GEORGII V REGIS.

A.D. 1926.

No. 1769.

An Act to provide for the Appointment of a Commissioner of Highways, and to make further and better Provision for the Construction and Maintenance of Roads and Works, and for other purposes.

[Assented to, December 16th, 1926.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

PART I. PRELIMINARY.

PART I.

1. This Act may be cited as the "Highways Act, 1926."

Short title.

2. This Act shall not apply to the City of Adelaide: Provided that the Council of the said city shall, when so required by notice in writing from the Commissioner, construct or reconstruct any portion of a main road within the said city to conform with the construction or reconstruction of that portion of such main road immediately adjoining the city.

Act not to apply to the City of Adelaide.

3. (1) The Lands Clauses Consolidation Acts, except sections 110, 114, 115, 116, 117, and 118 of the Ordinance No. 6 of 1847, are incorporated with this Act: Provided that upon the making of a proclamation bringing the Compulsory Acquisition of Land Act, 1925, into force, that Act shall be deemed to be incorporated with this Act, in lieu of the said Lands Clauses Consolidation Acts.

Incorporation of Lands Clauses Consolidation Acts.

(2) The

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(2) The Commissioner taking lands for such purposes shall be regarded as the promoter of an undertaking, and this Act as the special Act within the meaning of the said incorporated Acts.

Commencement of Act.

4. This Act (with the exception of subsection (2) of section 11 hereof which shall come into operation on the passing of this Act) shall come into operation on a date to be fixed by proclamation.

Repeal of 1475, 1921.

5. The "Roads Improvement Act, 1921," is hereby repealed.

Arrangement of Act.

6. The provisions of this Act are arranged as follows:—

PART I.—Preliminary.

PART II.—Administration.

PART III.—Financial Provisions relating to the Construction and Maintenance of Main Roads.

PART IV.—Miscellaneous Provisions.

Interpretation of terms.

1475, 1921, p. 5.

7. In this Act, unless some other meaning is clearly intended—

"Commissioner" means the Commissioner of Highways appointed by or pursuant to this Act:

"Council" means a Municipal or District Council:

"District" means a District Council District or a Municipality:

"Financial year" means a period of twelve months ending on the thirtieth day of June in any year:

"Inspector" means Inspector of Roads and Bridges appointed or deemed to be appointed under this Act:

"Main road" means any road which is declared under this Act to be a main road:

"Road" means any street, road, thoroughfare, terrace, court, lane, alley, cul-de-sac, or place commonly used by the public, or to which the public are permitted to have access, and includes main road:

"Work" includes any footpath, bridge, ford-crossing, causeway, road-ferry, culvert, drain, embankment, fence, and any work connected with any road.

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ADMINISTRATION.

The Commissioner of Highways.

Creation of Commissioner of Highways.

8. (1) There shall be a Commissioner of Highways who shall be charged with the duty of carrying this Act into effect.

(2) The Commissioner shall be a body corporate by the name of the "Commissioner of Highways," and by that name shall have perpetual succession and a common seal.

9. Judicial

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9. Judicial notice shall be taken of the incorporation and of the common seal of the Commissioner; and the production of any deed, instrument, or writing, if sealed with the said seal, shall be sufficient proof of the due making and execution of such deed, instrument, or writing.

Judicial notice of seal of Commissioner.

10. The present Engineer for Roads and Bridges is hereby appointed the first Commissioner, and, subject to this Act, shall hold office until the thirty-first day of December, nineteen hundred and twenty-seven.

Appointment of Commissioner.

11. (1) The Commissioner shall be paid such salary as is fixed by the Governor, and the salary so fixed shall be payable to the Commissioner out of the Main Roads Fund without any appropriation other than this Act.

Salary of Commissioner.

(2) The Governor shall fix the salary of the first Commissioner before the date of the proclamation bringing this Act into force; and shall fix the salary of every subsequent Commissioner before or at the time of his appointment; and in either case the salary so fixed shall not be diminished during the term for which the Commissioner is appointed to his office.

12. (1) The Governor may, at any time, dismiss the Commissioner from his office—

Dismissal of Commissioner from office.

- (a) for misbehavior or incompetence; or
- (b) if he is adjudicated insolvent, or makes a statutory assignment for the benefit of his creditors, or compounds with his creditors for less than Twenty Shillings in the Pound; or
- (c) if he wilfully absents himself from his duty for a period of fourteen consecutive days except on leave granted by the Minister; or
- (d) if he becomes in any way, except as Commissioner, concerned or interested in any contract made by or on behalf of the Commissioner, or in any way participates or claims to be entitled to participate directly or indirectly in the profits thereof, or in any benefit or emolument arising therefrom.

(2) Except as provided by subsection (1) of this section no Commissioner shall be dismissed from his office during the term thereof unless an address praying for his dismissal is presented to the Governor from both Houses of Parliament in one session, or from one House in one session, and from the other in the next session.

(3) If the Commissioner becomes a member of the Executive Council or of either House of Parliament of the State or of the Commonwealth, he shall thereupon cease to hold office as Commissioner.

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The Deputy
Commissioner of
Highways.

13. In case of the illness or other incapacity, absence, or suspension of the Commissioner, or any vacancy in the office of Commissioner, the Governor may appoint a Deputy Commissioner of Highways, who, during the period of such illness, incapacity, absence, suspension, or vacancy, shall have all the powers and authorities and discharge and exercise all the duties and functions of the Commissioner, and shall during the said period constitute the body corporate known as the "Commissioner of Highways."

Officers and Employees of the Commissioner.

Employment and
appointment of
officers and
employees.

Cf., N.S.W. Act,
No. 24, 1924, s. 7.

14. (1) For the purpose of carrying out the powers, duties, authorities, and obligations conferred or imposed upon the Commissioner by this or any other Act the Commissioner, with the approval of the Minister of the department concerned, may make use of the services of any of the officers and employees of the Public Service.

(2) The staff of the Commissioner shall be appointed under and be subject to the provisions of the Public Service Act, 1916.

(3) The Commissioner may appoint, employ, and dismiss such casual employees as he deems necessary for the purposes of this Act, and may, subject to any direction of the Minister, fix wages and conditions of employment where these are not fixed in accordance with the provisions of other Acts.

(4) Every Inspector of Roads and Bridges appointed under the Roads Improvement Act, 1921, or under any Act repealed by that Act, and every other person employed in the Public Service at the commencement of this Act for the purposes of the Roads Improvement Act, 1921, shall be deemed to have been appointed to the staff of the Commissioner under this Act.

Control of staff by
Commissioner.

15. All officers, servants, and other persons, whilst employed for the purposes of this Act, shall, subject to any direction of the Minister, be under the sole direction and control of the Commissioner.

Payment of wages
and salaries.

16. (1) The wages, salaries, and expenses incurred in connection with carrying out the provisions of this Act shall be payable out of the Main Roads Fund without any appropriation other than this Act.

(2) If any question arises as to what sums are properly payable out of the Main Roads Fund under this section, that question shall be determined by the Minister, whose decision shall be final.

(3) If the amounts standing to the credit of the Main Roads Fund are at any time insufficient to pay all wages, salaries, and expenses payable out of that Fund, the Treasurer shall advance to the Fund, without any authority other than this Act, such a sum as is sufficient for those purposes. Any sum so advanced shall be recouped to the Treasurer from the Main Roads Fund as soon as sufficient money is available.

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17. It shall be the duty of every Inspector, subject to the direction of the Commissioner—

Duties of Inspectors.
1475, 1921, s. 20.

- (a) to inspect and report on public roads and works ;
- (b) to supervise and inspect works being carried out by any council on or in connection with roads and works, wholly or partly by means of moneys by this Act required to be expended by a council on main roads ;
- (c) to supervise and inspect works being carried out by any council on or in connection with public roads and works, wholly or partly by means of money voted by Parliament for the purpose ; and
- (d) to inspect the materials used in carrying out any of such works, and to advise such councils as to the methods to be adopted, and the materials to be used, in carrying out any of such works.

Powers, Duties, and Functions of the Commissioner.

18. (1) All property, both real and personal, belonging to or vested in the Minister for Local Government at the time of the passing of this Act for the purposes of the Roads Improvement Act, 1921, is hereby transferred to and vested in the Commissioner.

Transfer to
Commissioner of
property and rights.

(2) All the rights, interests, titles, privileges, obligations, and liabilities of the Minister of Local Government subsisting at the commencement of this Act, or thereafter accruing, in connection with any act, matter, or thing done by the said Minister under the Roads Improvement Act, 1921, are hereby transferred to the Commissioner.

19. (1) The construction of any works which at the time of the commencement of this Act are in course of construction by the Engineer for Roads and Bridges under authority of the Minister of Local Government (as provided in section 21 of the Roads Improvement Act, 1921) shall be continued, carried on, and completed by the Commissioner subject to this Act.

Works in course of
construction to be
completed by
Commissioner.

(2) Without in any way limiting the operation of the next preceding section, it is hereby declared that all contracts, deeds, agreements, and other instruments entered into or made and subsisting at the commencement of this Act with regard to any such works and to which the Minister of Local Government or the Engineer for Roads and Bridges is a party, may be enforced by or against the Commissioner as fully and effectually as if the Commissioner instead of the Minister of Local Government or, as the case may be, the Engineer for Roads and Bridges had been party thereto.

20. (1) Subject to the provisions of this Act, the Commissioner in his corporate name may—

General powers of
the Commissioner.
Cf. 1475, 1921, s. 15.

- (a) purchase, take, receive, accept, hold, acquire by agreement or otherwise, and possess lands, tenements, and hereditaments in fee simple or for any less estate or interest, or for any term of years or otherwise, and may contract for

for the right to remove materials from any lands, tenements, and hereditaments for the purposes of this Act; and, with the consent of the Governor, may sell, grant, convey, transfer, demise, assign, or otherwise dispose of and assure any lands, tenements, or hereditaments vested in him for any estate or interest therein;

- (b) acquire, by purchase or hire or otherwise, goods and chattels, including stock, machinery, and road-making plant and materials of all kinds;
- (c) subject to the approval of the Minister, enter into such contracts as he thinks proper for the supply of materials or the execution of any works required to be supplied or executed for the purpose of this Act;
- (d) sue and be sued, and submit to arbitration, in all Courts and before all Judges, Magistrates, Justices, and arbitrators whomsoever, in all actions, suits, causes, disputes, and matters whatsoever; and
- (e) do and exercise all such further acts and powers as he is by this Act authorised to do and exercise, or as may be necessary or convenient for carrying into effect any of the purposes or objects of this Act.

(2) The Public Supply and Tender Act, 1914, shall not apply to or in respect of any contract, the consideration in respect of which does not exceed One Thousand Pounds, made by the Commissioner for the sale, purchase, or supply of any road metal, gravel, sand, or other material of a like kind used for forming roads, which metal, gravel, sand, or material is required by the Commissioner for the purposes of this Act.

Mode of entering
into contract.

21. (1) The powers hereby granted to the Commissioner to make contracts may be exercised as follows:—

- I. Any contract which, if made between private persons would be by law required to be in writing and under seal, the Commissioner may make in writing in his corporate name under the common seal, and in like manner may vary or discharge the same:
- II. Any contract which, if made between private persons, would be by law required to be in writing and signed by the parties thereto, the Commissioner may make in writing in his corporate name signed by him and in like manner may vary or discharge the same:
- III. Any contract which, if made between private persons, would be by law valid although made by parol only and not reduced into writing, the Commissioner may make by parol only without writing, and in like manner may vary or discharge the same.

(2) All

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(2) All contracts so made and duly executed by the parties thereto respectively shall be effectual in law and binding on the Commissioner and all other parties thereto, their successors, assigns, heirs, executors and administrators (as the case may be).

(3) In case of default in the execution of any such contract, either by the Commissioner or by any other party thereto, such actions or suits may be instituted, either by or against the Commissioner in his corporate name or by or against the other parties failing in the execution thereof, and such damages and costs recovered, as might be instituted and recovered had the like contract been made between private persons.

22. The Commissioner may—

- (a) sell or otherwise dispose of, on such terms as he thinks fit, to any council any of the properties or things mentioned in section 20 which are not required for the purposes of this Act; and
- (b) let or hire out, on such terms as he thinks fit, any of the properties or things mentioned in section 20.

Power of
Commissioner to
deal with plant.
Cf. *ibid.*, s. 16.

23. The Commissioner shall conduct experiments with different materials to test their relative durability and suitability for the construction and maintenance of roads, and shall make investigations to ascertain—

Experiments by
Commissioner.
Cf. *ibid.*, s. 17.

- (a) the nature and extent of the resources of the State in metals, minerals, and materials suitable for the purposes of road construction and maintenance, and the most effective and economical methods of dealing with the same and for supplying the same to, and utilising the same for the said purposes in, the whole or any part of the said State; and
- (b) the most effective methods of road construction and maintenance for the whole or any part of the State,

and shall record, publish, and make available for general information the results of such investigations in such manner as is directed by the Minister.

24. The Commissioner shall, at the request of any council, advise the council, or any officer of the council, on any question concerning the construction, reconstruction, maintenance, or repairing of roads or works, including the suitability for such purposes of the stone from any quarry or any other material proposed to be used.

Advice to councils.
Cf. *ibid.*, s. 18.

25. The Commissioner may request any council, or any officer of a council, to furnish him with information respecting any public road or work within the district of such council, and such council or officer shall, if the information requested is available to it or him, furnish the Commissioner therewith.

Duty of councils to
furnish information.
Cf. *ibid.*, s. 19.

26. (1) The

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Power of Commissioner to construct and repair roads.

Cf., *ibid.*, s. 21.

26. (1) The Commissioner may construct, reconstruct, or repair any public road or any work connected therewith, and may undertake for such term as he thinks fit the maintenance and keeping in repair of any road or work constructed, reconstructed, or repaired by him: Provided that before exercising any of his powers under this section the Commissioner shall give notice in writing to the council in whose district the work is situated of his intention, and of the date when he proposes to commence any operations, or take over the maintenance and keeping in repair of any road or work.

(2) Upon the giving of a notice under subsection (1) of this section the Commissioner shall have and may exercise all the powers for the purpose of the construction, reconstruction, repair, or maintenance of the road or work which the council in whose district the road or work is situated has or may exercise with respect to that road or work under any Act; and while operations are being carried on by the Commissioner pursuant to the notice, or during the term specified therein, the exercise by the said council of the said powers shall be suspended, except so far (if at all) as directed by the Commissioner.

(3) Upon the completion of the work mentioned in the notice, the date of which shall be notified in writing by the Commissioner to the council, or upon the expiration of the term mentioned in the notice (as the case may be) the suspension of the powers of the council shall cease.

(4) The powers of the Commissioner under this section are in addition to his general powers under this Act.

Tramways may be laid on roads for transporting materials.

Cf. *ibid.*, s. 23.

27. (1) The Minister may authorise the Commissioner to construct tramways, aerial tramways, steel tracks, and other works on any road for the purpose of transporting materials for facilitating the exercise of his powers under this Act; and the authority so given shall be sufficient authority for the Commissioner to construct and maintain such tramways, aerial tramways, steel tracks, and other works, and to use the same for the purpose aforesaid, and for all purposes incidental thereto.

(2) For the purposes of this section "road" shall include land used as a travelling stock road or reserve.

(3) The Minister may in any authority or permit given pursuant to this section authorise the enclosing with a fence of any portion of any land used as a travelling stock road or reserve for the purpose of the maintaining and working of any such tramway, aerial tramway, steel track, or other work as is referred to in this section, but so as not to obstruct the reasonable use of the said land.

Annual report.

28. The Commissioner shall not later than the thirtieth day of September in every year furnish to the Governor a report upon his proceedings under this Act during the previous financial year; and the report shall be laid before Parliament in the month of October next after the presentation thereof if Parliament is then sitting, and if Parliament is not then sitting then within fourteen days after the commencement of the next session thereof.

29. (1) No

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29. (1) No matter or thing done by the Commissioner or any Inspector or other officer in good faith for the purpose of executing this Act shall subject the Commissioner, or such Inspector or officer, to any liability in respect thereof.

Protection to officers.
Cf. *ibid.*, s. 26.

(2) No action shall be brought against the Commissioner or any Inspector or other officer for or on account of any matter or thing done or committed by them or him in the execution or intended execution of their or his duty or office under this Act, unless such action is commenced within six months after the cause of action arises.

Proclamation of Main Roads.

30. (1) The Governor may, on the recommendation of the Commissioner, by proclamation declare any road to be a main road, and may in like manner and on the like recommendation declare that any main road shall cease to be a main road or make any alteration in any proclamation for the time being in force under this section: Provided that if it is intended to make any such proclamation with respect to any road situated within any district, the council of such district shall be informed of such intention one month at least before the date on which it is intended to make such proclamation.

Main roads may be proclaimed.
Cf. *ibid.*, s. 11.

(2) In considering whether to make any such recommendation, the Commissioner shall take into account—

- (a) the moneys voted, or likely to be voted, by Parliament for main roads ;
- (b) whether the road is or will be the main trunk route connecting any large producing area, or any area capable of becoming in the near future a large producing area, with its market or nearest port or railway station ;
- (c) whether the road is or will be the main trunk route of inter-communication between two or more large producing areas, or areas capable of becoming in the near future large producing areas, or between two or more large centres of population ;
- (d) whether the road is or will be the main trunk route between the capital and any large producing area or any large centre of population ;
- (e) whether the road is or will be the main trunk route between the capitals of this State and any other State ; and
- (f) whether the area through which the road passes is, or in the near future will be, sufficiently served by a railway or railways.

(3) All lines of road, together with all public works connected therewith, declared by any proclamation in force at the commencement of this Act to be main roads, shall be deemed to be roads declared under this Act to be main roads.

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FINANCIAL PROVISIONS RELATING TO THE CONSTRUCTION AND MAINTENANCE OF MAIN ROADS.

The Main Roads Fund.

The Main Roads Fund.

31. (1) There shall be a Main Roads Fund into which shall be paid—

(a) a sum to be paid by the Treasurer as hereinafter provided from the amounts collected or received in respect of—

- I. licence fees and registration fees under the Motor Vehicles Act, 1921 :
- II. licence fees under the Vehicles (Licensing) Act, 1925 :
- III. motor vehicles tax under the Motor Vehicles Tax Act, 1915 :
- IV. fines, penalties, and forfeitures in respect of convictions for offences against the Motor Vehicles Act, 1921, or the Motor Vehicles Tax Act, 1915 (exclusive of any sum received for costs), or the Width of Tires Act, 1923 :
- V. fees for hawkers' licences issued by the Treasurer :
- VI. tax under the Taxation (Motor Spirit Vendors) Act, 1925.

(b) contributions from councils pursuant to this Part :

(c) the unexpended balance of any sums appropriated by Parliament out of the General Revenue of the State for main roads before the commencement of this Act and all sums so appropriated by Parliament for main roads after the commencement of this Act :

(d) all moneys by any law of the State directed to be paid into the said Fund :

(e) the unexpended balance of any loans raised before the commencement of this Act and appropriated for main roads, and all such loans so raised and appropriated after the commencement of this Act :

Provided that paragraph (a) of this subsection shall only apply with respect to such amounts as are mentioned in subdivisions I., III., IV., and V. thereof, where these amounts are collected or received after the thirtieth day of June, nineteen hundred and twenty-seven.

(2) Notwithstanding any other Act to the contrary, all money collected or received as mentioned in paragraph (a) of subsection (1) of this section, shall in the first place be paid into a special account in the Treasury ; and after deducting a sum not exceeding

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exceeding ten per centum of the said moneys for cost of collection (which sum shall be paid into revenue) the whole of the remainder shall be paid by the Treasurer not less frequently than once in each three months into the Main Roads Fund: Provided that this subsection shall only apply with respect to such amounts as are mentioned in subdivisions I., III., IV., and V. of paragraph (a) of subsection (1) where those amounts are collected or received after the thirtieth day of June, nineteen hundred and twenty-seven.

(3) The Seventeenth Schedule to the District Councils Act, 1914, is amended by striking out the line "No. 938 of 1907. The Motor Vehicles Act, 1907," appearing therein. This amendment shall take effect as from the first day of July, nineteen hundred and twenty-seven.

32. (1) The moneys standing to the credit of the Main Roads Fund shall be used by the Commissioner— Application of
Main Roads Fund.

- (a) in the payment of the wages, salaries, and expenses incurred in connection with carrying out the provisions of this Act;
- (b) to defray the cost of the operations undertaken by the Commissioner under this Act in connection with main roads and works appertaining to main roads;
- (c) in payment to each council of the amount of its annual grant for main roads, as determined under this Act;
- (d) in defraying the cost of any work required to be executed by the State pursuant to any agreement with the Commonwealth relating to the construction, reconstruction and maintenance of roads;
- (e) in refunding to the Treasurer any moneys paid or set aside out of General Revenue by the Treasurer pursuant to the Main Roads Fund Act, 1922;
- (f) in refunding to the Treasurer any moneys paid or set aside out of General Revenue for the purpose of payment of the interest on any loan raised after the first day of July, nineteen hundred and twenty-six, and appropriated to main roads; and
- (g) in paying during each financial year to the Public Debt Commissioners for the purposes of the reduction and redemption of any loan raised after the first day of July, nineteen hundred and twenty-six, and appropriated to main roads, in addition to any other sum required by law to be so paid for such purposes, at least such a sum as will amount to one and one-quarter per centum of the principal for the time being of such loan.

(2) Where a contribution is payable to the National Debt Sinking Fund established under the National Debt Sinking Fund Act 1923-1925 of the Commonwealth, in respect of any loan moneys in the

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the Main Roads Fund used for constructing or reconstructing roads, no contribution in respect of such loan moneys shall be made to the Public Debt Commissioners of the State.

Restriction on use of loan moneys.

33. The Commissioner shall use the loan moneys in the Main Roads Fund only for the construction or reconstruction of main roads and for such proportion of the administrative expenses as the Commissioner may consider to be reasonably chargeable to such construction.

Commissioner's control of fund.

34. Subject to the provisions of this Act, the Main Roads Fund shall be under the control of the Commissioner.

Commissioner to determine amount of each council's contribution.
Cf. *ibid.*, s. 28.

35. (1) The Commissioner shall, as early as possible in each financial year, determine—

- (a) the amount of money (if any) to be allocated to each council for the purpose of the construction, maintenance, and keeping in repair of the main roads (not being main roads which are being maintained and kept in repair by the Commissioner pursuant to section 26 of this Act) within its district during the particular financial year out of the moneys available for distribution between the councils for the said purpose ;
- (b) the amount of money (if any) to be expended by each council out of its revenue for the said purpose during such financial year in addition to its proportion of the annual subsidy allocated to it pursuant to a determination under subdivision (a) hereof ;
- (c) the amount of money (if any) to be contributed by each council to the Main Roads Fund towards the keeping in repair and maintenance of main roads maintained and kept in repair by the Commissioner during the financial year ; and
- (d) where any of the main roads in a district have been constructed or reconstructed by the Commissioner, the amount of money which in the Commissioner's opinion the council ought to contribute to the Main Roads Fund towards payment of interest on the capital cost of the construction or reconstruction :

Provided that—

- (i.) in no case shall the total amount of money determined under subdivision (b) hereof exceed one-half of the amount of money determined under subdivision (a) of this subsection ; and
- (ii.) in no case shall the total contributions of a council under subdivision (c) or (d) of this subsection in respect to any such main roads as are mentioned in those subdivisions exceed an amount calculated at the rate of One Hundred and

and Fifty Pounds per mile of those roads, or an amount representing one-third of the total amount expended during the particular financial year by the Commissioner on the maintenance and repair of such main roads, and on interest on the capital cost thereof whichever amount is the smaller.

(2) In determining the matters mentioned in subsection (1) of this section the Commissioner shall take into account—

- (a) the total amount of money available or likely to be available for distribution between the councils for main roads ;
- (b) the amount of the revenue received by each council during the preceding financial year, and the amount appropriated and carried to the account of the Main Roads Fund by each council ;
- (c) the balance standing to the credit of the Main Roads Fund of each council ;
- (d) the relative mileage of main roads within the districts of the councils, and the traffic thereon ;
- (e) the mileage of main roads which are being kept in repair and maintained by the Commissioner for a term pursuant to a notice under section 26 of this Act ;
- (f) the cost of constructing, reconstructing, or repairing any main or other public road within the district of any council, or of carrying out any work connected therewith ; and
- (g) the area of land within the district of such council which is not ratable.

(3) Any sum required by way of contribution to the Main Roads Fund under subsection (1) of this section shall be payable to the Commissioner not later than six months after the Commissioner gives notice to the council of the amount of its contribution and shall be a debt due by the council to the Commissioner, and may be recovered by the Commissioner in any Court of competent jurisdiction, and may be set off by the Commissioner against the amount of the annual grant payable under this Act to the council for main roads.

(4) If any such sum as aforesaid is owing to the Commissioner after the expiration of the time mentioned in subsection (3) of this section, the Minister may cause that sum to be withheld out of any money thereafter becoming due to the council under any other Act.

(5) Any Council dissatisfied with any determination of the Commissioner under this section affecting such Council may appeal to the Minister against that determination within two months after the Council receives notice thereof ; and the Minister after hearing the representations of the Council and the Commissioner shall determine the appeal and his decision shall be final.

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Council's contribution may be paid out of revenue or raised by special rate.

Cf. *ibid.*, s. 29.

36. (1) The amount of the moneys mentioned in subdivisions (b), (c), and (d) of subsection (1) of the next preceding section shall be appropriated by the council out of its revenue.

(2) For the purpose of raising the money to pay such amount, or any part of such amount, the council may, without the consent of the ratepayers, declare a special rate not exceeding Four Pence in the Pound on the ratable property within its District, or in the case of any district as regards which Division III. of Part XXIII. of the Municipal Corporations Act, 1923, is in operation not exceeding an amount in the pound that would produce a sum equal to that which could, if the said Division were not in operation in the district be raised by a rate of Four Pence in the Pound. Such special rate shall be in addition to any special rate authorised to be declared and levied by a council under the Municipal Corporations Act, 1923, or the District Councils Act, 1914, as the case may be, and the amount of such special rate shall not be taken into consideration in determining whether the limit up to which a council may rate has been reached.

(3) Except in so far as inconsistent with this Act, all the provisions of the Municipal Corporations Act, 1923, or of the District Councils Act, 1914, as the case may be, shall apply to and in respect of the declaring, levying, and recovery of the said special rate.

How moneys to be dealt with by council.

Cf. *ibid.*, s. 30.

37. (1) It shall be the duty of each council to construct and maintain all main roads, not being main roads which are being maintained and kept in repair by the Commissioner pursuant to section 26 of this Act, within its district in good and trafficable condition.

(2) There shall be carried by each council to the account of a fund to be called "The Main Roads Fund"—

(a) all moneys allocated to and received by such council under this Act for the purpose of the construction, maintenance, and keeping in repair of the main roads within its district;

(b) all moneys appropriated by the council out of its revenue for the said purpose; and

(c) all moneys, at the commencement of this Act, standing to the credit of the council's Main Roads Fund under any Act hereby repealed.

(3) The said fund shall be expended by the council in the construction, maintenance, and keeping in repair of the main roads and the works connected therewith within its district, and shall be applied to no other purpose.

(4) If the Commissioner is of opinion that any council has not, during any financial year, expended on the construction, maintenance, and keeping in repair of the main roads within its district the amount determined

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determined by the Commissioner as the amount to be expended by such council for that purpose, the Commissioner may—

- (a) refrain from allocating to the council any moneys under this Act; and
- (b) withhold any moneys allocated to the council under this Act,

until the council has expended the amount so determined, or has made provision for its expenditure, to the satisfaction in all things of the Commissioner.

(5) Nothing in this Act or any other Act shall preclude or exempt any council from expending any of its moneys in addition to the moneys standing to the credit of its Main Roads Fund in performing any duty imposed upon it by this Act or any other Act.

(6) In this section the term "main road" does not include any main road which is being kept in repair and maintained by the Commissioner pursuant to section 26 of this Act.

38. (1) Where the Commissioner considers that—

- (a) any main road, or the maintenance of any works upon a main road, is being neglected by any council; or
- (b) any works upon which the Commissioner has under this Act directed any sum to be expended are not being carried out,

Neglect or default
of councils.
Cf. *ibid.*, s. 31.

he may cause notice to be served requiring the council, within such reasonable time as is specified in the notice, to construct or reconstruct or to repair or maintain such road or works in such manner and to such extent, as may be specified in the notice.

(2) Where the Commissioner considers that any work in progress upon a main or other public road for which any grant has been made is not being carried out in the manner directed by him, or where any such work does not meet with his approval, he may cause notice to be served on the council requiring it to comply within a reasonable time stated in the notice with the requirements and conditions specified in the notice.

(3) Where the Commissioner considers that it is necessary that certain work should be carried out upon a main road he may cause notice to be served requiring the council to carry out such work within a reasonable time stated in the notice.

(4) It shall be the duty of the council to comply with any notice served under this section, and on default by the council in compliance therewith the Commissioner may carry out the work specified in the notice. Such proportion of the cost of such work, not exceeding one-third, as the Commissioner determines, shall be a debt due to the Commissioner from the council, and—

- (a) may be recovered by the Commissioner by action in his corporate name in any Court of competent jurisdiction as a debt due to him by such council; or
- (b) may

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(b) may be withheld from any moneys voted by Parliament and allocated to such council by the Commissioner under this Act.

(5) In this section the term "main road" does not include any main road which is being kept in repair and maintained by the Commissioner pursuant to section 26 of this Act.

Expenditure by councils from public moneys to be subject to direction of Commissioner.
Cf. *ibid.*, s. 25.

39. All moneys allocated to a council under this Act for main roads, or provided out of moneys voted by Parliament for other public roads, shall be expended upon such roads and works and in such manner as the Commissioner directs, and subject to his approval.

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MISCELLANEOUS PROVISIONS.

Minister may authorise private persons to construct and work tramways, etc., on roads.
Ibid., s. 24.

40. (1) The Minister may grant to any person desirous of constructing a telegraph or telephone line or of constructing and working tramways, aerial tramways, steel tracks, or any other work for the conveyance of agricultural products, minerals, timber, or other things, a permit to construct, manage, and work such telegraph or telephone line, tramway, aerial tramway, steel track, or work, or any part thereof, upon, across, under, or over any road which is not situated within any district.

(2) Such consent of the Minister may be given upon and subject to such conditions, reservations, restrictions, and stipulations as the Minister thinks proper.

(3) Any permit granted under subsection (1) hereof shall be sufficient authority for the person to whom it is granted to construct, maintain, manage, and work the telegraph or telephone line, tramway, aerial tramway, steel track, or other work specified in the permit subject to the conditions, reservations, restrictions, and stipulations subject to which such permit is granted, and save insofar as such conditions, reservations, restrictions, and stipulations are not complied with and observed by the person to whom such permit is granted, such person shall not be liable in any action or proceeding, whether for nuisance or otherwise, by reason only of the existence, managing, or working of such telegraph or telephone line, tramway, aerial tramway, steel track, or other work.

(4) For the purposes of this section "road" shall include land used as a travelling stock road or reserve.

(5) The Minister may, in any authority or permit given pursuant to this section, authorise the enclosing with a fence of any portion of any land used as a travelling stock road or reserve for the purpose of

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of the maintaining and working of any such tramway, aerial tramway, steel track, or other work as is referred to in this section, but so as not to obstruct the reasonable use of the said land.

41. (1) Subject to the provisions of the Control of Advertisements Act, 1916, and any regulations made thereunder, the Commissioner may upon such terms and conditions as he thinks fit license any person to erect on any main road, highway lighthouses or traffic beacons which may be used for advertising purposes.

Highway lighthouse
and traffic beacons.

(2) After the commencement of this Act no council shall license any person to erect any highway lighthouse or traffic beacon on any main road without first obtaining the consent of the Commissioner thereto.

42. (1) Where any main or other public road within the district of any council is subject to more than ordinary traffic by reason of the construction or carrying out of any railway, tramway, drain, reservoir, or other public work, the council may recover from the department, company, body, or person constructing or carrying out such railway, tramway, reservoir, drain, or other public work such sum as will suffice to keep such road in reasonable repair during such traffic, and fully to reconstruct such road after the construction of such railway, tramway, reservoir, drain, or other public work is completed.

If construction of
public work causes
damage to road,
expenses may be
recovered by
council.

Ibid., s. 32

(2) Any dispute with respect to any matter arising under this section shall be settled by reference to the Minister, whose decision shall be final.

(3) Any sum so paid may be added to the cost of the railway, tramway, reservoir, drain, or other public work.

43. (1) The Governor may, upon the recommendation of the Commissioner, make all such regulations as are necessary or convenient for carrying this Act into effect, and in particular for all or any of the following purposes, namely:—

Regulations.

- (a) the planting and preservation of trees and vegetation on main roads ;
- (b) the prevention of damage to main roads ;
- (c) the prevention of the doing of things likely to injure main roads, including the prevention of the deposit of rubbish or any other specified substance or articles on or near main roads ;
- (d) the regulation or prohibition of the use of vehicles likely to injure main roads ;
- (e) the restriction of traffic or of any specified class of traffic, to protect main roads from injury.

(2) Any

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(2) Any such regulation may fix penalties, not exceeding in any case the sum of Twenty Pounds, for breach of the same or any other regulation.

(3) Any such regulation may be binding on any person in the employ of the Government of the State.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

TOM BRIDGES, Governor.