Transport (Scotland) Act 2019

2019 asp 17

PART 9

ROAD WORKS

Scottish Road Works Commissioner: status and functions

110 Inspection functions

(1) The Transport (Scotland) Act 2005 is amended as follows.

(2) After section 18 insert—

"**18A Power to carry out inspections**

(1) The Commissioner or an inspector ("the authorised person") may—

(a) enter any premises of the type mentioned in subsection (3) and inspect it and anything in it,

(b) require the production of any information relating to the fulfilment of specified functions or obligations, and specify the form in which the information is to be produced,

(c) take copies of, or take possession of, information (in whatever form) which relates to the fulfilment of specified functions or obligations and retain it for as long as the authorised person reasonably considers necessary,

(d) carry out an examination of, and conduct tests on, any equipment used or to be used in fulfilling specified functions or obligations by—

(i) an undertaker,

(ii) a road works authority, or

(iii) a roads authority,

(e) require any person to provide the authorised person with such facilities and assistance as the authorised person reasonably considers necessary.

(2) The powers in subsection (1) may be exercised only for the purposes of—

Changes to legislation: *There are currently no known outstanding effects for the Transport (Scotland) Act 2019, Section 110. (See end of Document for details)*

(a) establishing whether an offence has been committed under the 1991 Act,

(b) establishing whether a duty under section 118 or 119 of the 1991 Act has been breached, or

(c) establishing whether a duty under section 60(3A) or 61B of the 1984 Act has been breached.

(3) The premises referred to in subsection (1)(a) are—

(a) any premises (other than any premises that is used as a dwelling) occupied or used by any of the following persons for the purposes of exercising their functions as—

(i) an undertaker,

(ii) a road works authority, or

(iii) a roads authority, or

(b) any land on which works in roads are being carried out.

(4) For the purposes of this section—

(a) an "inspector" means a member of staff—

(i) appointed under paragraph 1(1) of schedule 2, and

(ii) designated by the Scottish Ministers as an inspector for the purpose of this section,

(b) a "specified function or obligation" means—

(i) any function or obligation under the 1991 Act, or

(ii) any function or obligation under the 1984 Act so far as it relates to works in roads.

18B Inspections: warrants

(1) This section applies to the powers conferred by section 18A(1).

(2) A sheriff may grant a warrant under this subsection only if the sheriff is satisfied, by evidence on oath—

(a) that there are reasonable grounds for entering premises—

(i) for a purpose specified in section 18A(2), and

(ii) of a type mentioned in section 18A(3)(a), and

(b) that—

(i) entry to the premises has been refused,

(ii) such a refusal is reasonably expected,

(iii) the premises are unoccupied, or

(iv) the occupier is temporarily absent.

(3) A warrant authorises an authorised person—

(a) to enter the premises,

(b) to exercise any other power conferred by section 18A(1), and

(c) if necessary, to use reasonable force in doing so.

(4) A warrant expires—

(a) 28 days after the day on which the warrant was granted, or

(b) if earlier, when any period as is specified in it for the purpose for which it was granted expires.

18C Inspections: further provision

(1) This section applies to the powers conferred by section 18A(1) (whether exercised by virtue of that section or under a warrant granted under section 18B).

(2) The power of entry may be exercised only at a reasonable time of day.

(3) An authorised person seeking to exercise a power must, on request, produce evidence of the person's identity and authorisation before exercising the power.

(4) An authorised person may take onto the premises such other persons, and such materials and equipment, as the authorised person considers necessary.

(5) If an authorised person enters the premises by virtue of a warrant, the authorised person must, if taking possession of anything under section 18A(1)(c), leave a statement on the premises giving particulars of what has been taken and by whom.

(6) On leaving any premises which an authorised person is authorised to enter under a warrant, the person must, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against entry as the authorised person found them.

18D Offence of obstructing inspections

(1) A person commits an offence if the person—
  (a) without reasonable excuse, fails to comply with a requirement of an authorised person, or
  (b) intentionally obstructs an authorised person in the exercise of a power conferred by section 18A(1) or by virtue of section 18F.

(2) A person who commits an offence under subsection (1) is liable—
  (a) on summary conviction, to a fine not exceeding the statutory maximum,
  (b) on conviction on indictment, to a fine.

18E Liability of authorised persons

(1) An authorised person does not incur any civil or criminal liability for anything done or omitted to be done in the exercise or purported exercise of a power conferred by section 18A(1) or by virtue of section 18F.

(2) Subsection (1) does not apply where it is proved that—
  (a) the authorised person acted in bad faith,
  (b) the authorised person failed to exercise a reasonable degree of care and skill, or
  (c) the authorised person did not act on reasonable grounds.

(3) For the purpose of subsection (1), no regard is to be had to any defect in the appointment of an authorised person.

(4) Subsection (1) does not affect any liability of any other person in respect of things done or omitted to be done by the authorised person.

18F Power to make regulations about inspections

(1) The Scottish Ministers may by regulations make further provision about the functions of authorised persons in relation to inspections.

(2) Regulations under subsection (1) may, in particular, make provision—

(a) conferring powers on an authorised person,

(b) specifying requirements with which an authorised person must comply.”.

(3) In section 52 (orders and regulations), in subsection (3)—

(a) after “above” insert “ or regulations under section 18F ”,

(b) after “draft of the order” insert “ (or, as the case may be, regulations) ”.

(4) In paragraph 3 of schedule 2 (Scottish Road Works Commissioner: further provision)—

(a) the existing text becomes sub-paragraph (1), and

(b) after sub-paragraph (1), insert—

“(2) A report under sub-paragraph (1)—

(a) must include information on the use made during the year of the Commissioner's inspection functions conferred by section 18A or by virtue of section 18F,

(b) may include recommendations—

(i) as to how to improve the carrying out of works in roads,

(ii) in furtherance of the Commissioner's functions under section 17(1)(b) or (c),

(iii) on any other matter relating to the Commissioner's functions.

(3) The Commissioner may at any time give the Scottish Ministers and publish a report on any person who has functions conferred on or permissions granted to them by or under the 1991 Act who has—

(a) failed to comply with the 1991 Act and any obligations imposed on them under it, or

(b) failed to follow good practice within the meaning of section 17(4).”.

Commencement Information

I1 S. 110 in force at 1.4.2024 by S.S.I. 2023/250, **sch.**

Changes to legislation:
There are currently no known outstanding effects for the Transport (Scotland) Act 2019, Section 110.