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# Transport (Scotland) Act 2019

## 2019 asp 17

### PART 9

#### ROAD WORKS

##### *Scottish Road Works Commissioner: status and functions*

PROSPECTIVE

#### **111 Compliance notices**

- (1) The New Roads and Street Works Act 1991 is amended as follows.
- (2) After section 153 insert—

*“Power of Scottish Road Works Commissioner to issue compliance notices*

#### **153A Compliance notices**

- (1) Where the Commissioner considers that a person has breached a specified duty to which the person is subject, the Commissioner may issue a compliance notice to the person.
- (2) A “compliance notice” is a notice requiring the person to whom it is issued to take the steps set out in the notice in order to address the person's breach of a specified duty.
- (3) For the purpose of this section, the specified duties are the duties—
  - (a) in the Roads (Scotland) Act 1984, under—
    - (i) section 60(1) and (3A) (fencing and lighting of obstructions and excavations),
    - (ii) section 61B (requirement for qualified supervisors and operatives),
  - (b) in this Act, under—

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- (i) section 112B (duty to enter certain information in the Scottish Road Works Register),
- (ii) section 113(1) and (4) (advance notice of certain works),
- (iii) section 114(1) (notice of starting date of works),
- (iv) section 114A(2) (notice confirming start of works),
- (v) section 116(2) (notice of emergency works),
- (vi) section 118 (general duty of road works authority to co-ordinate works), other than the duty to issue or approve codes of practice under subsection (3),
- (vii) section 119 (general duty of undertakers to co-operate), other than the duty under subsection (2),
- (viii) section 124(1) and (2) (safety measures),
- (ix) section 126(1), (2) and (2C) (qualifications of supervisors and operatives),
- (x) section 129(1) to (5) (duty of undertaker to reinstate),
- (xi) section 130(1) and (2) (materials, workmanship and standard of reinstatement),
- (xii) section 139(1B) and (2) (duty to inform undertakers of location of apparatus),
- (xiii) section 140(1) (duty to maintain apparatus).

### **153B Restriction on issuing a compliance notice**

- (1) A compliance notice may not be issued to a person in respect of a breach of a duty arising out of a particular act or omission if a compliance notice has previously been issued to the person (and not withdrawn) in respect of the same breach arising out of the same act or omission.
- (2) A compliance notice may not be issued to a person—
  - (a) in respect of a breach of a duty arising out of a particular act or omission which amounts to an offence, and
  - (b) requiring that person to take steps to stop committing the offence, if criminal proceedings have been brought against the person for the same offence arising out of the same act or omission.
- (3) A compliance notice issued in contravention of subsection (1) or (2) is of no effect.

### **153C Content and form of a compliance notice**

- (1) A compliance notice must include the following information—
  - (a) a statement of the grounds for issuing the notice, including a statement of—
    - (i) the duty that is alleged to have been breached, and
    - (ii) the act or omission which has caused the Commissioner to conclude that the duty has been breached,
  - (b) details of the steps that the Commissioner requires the person to whom the notice is issued to take in order to—
    - (i) stop breaching the duty, or

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- (ii) ensure that the duty will not be breached in future,
  - (c) the date of issue of the notice,
  - (d) the period of time within which the required steps are to be taken (“the compliance period”),
  - (e) information about the person to whom, and as to how and by when, any representations about the notice may be made,
  - (f) information about the right of appeal, including the period of time within which an appeal may be made,
  - (g) an explanation of the consequences of failure to comply with the requirements of the notice.
- (2) The reference in subsection (1)(d) to the period of time within which the required steps are to be taken is a reference to such period of not less than 28 days, beginning with the date on which the notice was issued, as the Commissioner determines.
- (3) The Scottish Ministers may by regulations make further provision about the form and content of compliance notices including, in particular—
- (a) provision about the form and content of any of the information required to be included under subsection (1),
  - (b) provision about other information that is to be included in addition to that required under subsection (1).

#### **153D Variation of a compliance notice**

- (1) The Commissioner may vary a compliance notice so as to extend the compliance period.
- (2) A compliance notice may be varied in accordance with subsection (1)—
- (a) at any time before expiry of the compliance period,
  - (b) by issuing a notice in writing to that effect to the person to whom the compliance notice was issued.
- (3) The variation of a compliance notice under this section does not affect the date of its issue for the purpose of section 153F.

#### **153E Withdrawal of a compliance notice**

- (1) The Commissioner may withdraw a compliance notice.
- (2) A compliance notice may be withdrawn—
- (a) at any time before completion of the steps that are to be taken to comply with the requirements of the notice,
  - (b) by issuing a notice in writing to that effect to the person to whom the compliance notice was issued.
- (3) Where a compliance notice is withdrawn, it is to be treated as if it had never been issued.

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### **153F Appeal against a compliance notice**

- (1) A person to whom a compliance notice has been issued may, before the expiry of the period of 21 days beginning with the date of issue of the notice, appeal to a sheriff against the decision to issue the notice.
- (2) In an appeal under this section, the sheriff may—
  - (a) cancel the compliance notice, or
  - (b) affirm the notice, either with or without modifications.
- (3) Where an appeal is made under this section, the compliance period is suspended until the appeal is finally determined or is withdrawn.

### **153G Failure to comply with a compliance notice**

- (1) If a person to whom a compliance notice has been issued fails, without reasonable excuse, to comply with the notice, the person commits an offence.
- (2) Where a person to whom a compliance notice has been issued fails to take any step required by the notice, the person does not, by reason of that failure, commit an offence under subsection (1) if—
  - (a) the person takes other steps to—
    - (i) stop breaching the duty in respect of which the notice was issued, or (as the case may be)
    - (ii) ensure that the duty in respect of which the notice was issued will not be breached in future, and
  - (b) the Commissioner notifies the person in writing that those steps are acceptable for the purposes of complying with the notice.
- (3) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction, to a fine not exceeding £50,000,
  - (b) on conviction on indictment, to a fine.

### **153H Effect of a compliance notice on criminal proceedings**

- (1) This section applies where a compliance notice is issued to a person—
  - (a) in respect of a breach of a duty arising out of a particular act or omission which amounts to an offence, and
  - (b) requiring that person to take steps to stop committing the offence.
- (2) Criminal proceedings for the offence may not be brought against the person in respect of the same act or omission before the end of the compliance period.
- (3) If the person—
  - (a) complies with the requirements of the compliance notice, or
  - (b) though failing to comply, by virtue of section 153G(2) does not commit an offence under section 153G(1) in relation to the notice,the person may not at any time be convicted of the offence arising out of the same act or omission.

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### **153I Power to make supplementary etc. provision**

- (1) The Scottish Ministers may by regulations make such supplementary, incidental or consequential provision as they consider appropriate in connection with compliance notices and the carrying out of the Commissioner's functions under sections 153A to 153H.
  - (2) Regulations under subsection (1) may, in particular, include provision facilitating, prohibiting or restricting—
    - (a) the issuing of a compliance notice in respect of a breach of a duty arising out of a particular act or omission in cases where a fixed penalty notice has been issued in respect of the same act or omission,
    - (b) the issuing of a fixed penalty notice in respect of an act or omission in cases where a compliance notice has been issued in respect of the breach of a duty arising out of the same act or omission.
  - (3) Regulations under subsection (1) may make such modifications of section 153H and paragraph 6 of schedule 6B as the Scottish Ministers consider appropriate in relation to the case where a person has been issued with a compliance notice and a fixed penalty notice in relation to the same breach of a duty arising out of the same act or omission.
  - (4) But, for cases where a compliance notice is issued to a person—
    - (a) in respect of a breach of a duty arising out of a particular act or omission which amounts to an offence, and
    - (b) requiring that person to take steps to stop committing the offence,regulations under subsection (1) may not make provision which has the effect that the person may still be convicted of the offence if the condition in subsection (5) is met.
  - (5) The condition is that the person both—
    - (a) makes payment in accordance with the fixed penalty notice, and
    - (b) complies with the requirements of the compliance notice or, though failing to comply, by virtue of section 153G(2) does not commit an offence under section 153G(1) in relation to the notice.
  - (6) In this section, “fixed penalty notice“ means a fixed penalty notice within the meaning given in schedule 6B.”
- (3) In section 163 (meaning of “prescribed” and regulations generally), after subsection (2) insert—
- “(2A) Regulations under section 153I(1) which modify section 153H or paragraph 6 of schedule 6B are subject to the affirmative procedure.”.

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**Changes and effects yet to be applied to :**

- s. 111 coming into force by [S.S.I. 2023/250 sch.](#)