



# Traffic Management Act 2004

## 2004 CHAPTER 18

### PART 4

#### STREET WORKS

##### *Miscellaneous*

#### 49 Notices of street works

- (1) In section 54 of the 1991 Act (advance notice of certain works)—
- (a) in subsection (3) for “contain such” there is substituted “state the date on which it is proposed to begin the works and shall contain such other”;
  - (b) after subsection (4) there is inserted—
    - “(4A) If an undertaker who has given advance notice under this section has not, before the starting date specified in the notice, given to the street authority a notice under section 55 in respect of the works, he shall within such period as may be prescribed give to that authority a notice containing such information as may be prescribed.
    - (4B) An advance notice under this section shall cease to have effect in relation to the proposed works (so that subsection (1) applies again in relation to the works) if those works are not substantially begun before the end of such period beginning with the starting date specified in the notice as may be prescribed, or such further period as the street authority may allow.
    - (4C) Different periods may be prescribed under subsection (4B) for different descriptions of works.”
- (2) In section 55 of that Act (notice of starting date of works) after subsection (7) there is inserted—
- “(8) If a notice under this section ceases to have effect the undertaker shall, within such period as may be prescribed, give a notice containing such information as

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may be prescribed to those to whom the notice under this section was required to be given.

(9) An undertaker who fails to give notice in accordance with subsection (8) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.”

(3) In section 93 of that Act (works affecting level crossings or tramways) in subsection (2) for “(7)” there is substituted “ (9) ”.

#### Annotations:

#### Commencement Information

- I1** S. 49 in force at 29.6.2007 for specified purposes for E. and 1.4.2008 for E. in so far as not already in force by [S.I. 2007/1890, art. 2, Sch.](#) (with [art. 5](#))
- I2** S. 49 in force at 26.11.2007 for specified purposes for W. and 1.4.2008 for W. in so far as not already in force by [S.I. 2007/3174, art. 2, Sch.](#) (with [art. 6](#))

PROSPECTIVE

## 50 Qualifications of supervisors and operatives

(1) Section 67 of the 1991 Act (qualifications of supervisors and operatives) is amended as follows.

(2) After subsection (1) there is inserted—

“(1A) A street authority may (unless the case is one excepted from subsection (1)) by notice require an undertaker executing street works—

- (a) to notify them of the name of—
  - (i) the person who is currently the qualified supervisor required by subsection (1); and
  - (ii) each person who has previously been the qualified supervisor so required; and
- (b) to provide them with such evidence of the requisite qualification of each person named as may be prescribed.”

(3) After subsection (2) there is inserted—

“(2A) A street authority may (unless the case is one excepted from subsection (2)) by notice require an undertaker executing street works—

- (a) to notify them of the name of—
  - (i) a person whose presence on site at any time specified in the notice (being a time when the works were in progress) enabled the undertaker to comply with his duty under subsection (2); or
  - (ii) each person whose presence on site during the progress of the works enabled the undertaker to comply with his duty in subsection (2); and
- (b) to provide them with such evidence of the requisite qualification of each person named as may be prescribed.

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(2B) A notice under subsection (1A) or (2A) may be given at any time while the works are being executed or within such period after their completion as may be prescribed.

(2C) The undertaker shall comply with a notice under subsection (1A) or (2A) within such period as may be prescribed.”

(4) In subsection (3) for “or (2)” there is substituted “, (2) or (2C) ”.

(5) In subsection (4), after paragraph (b) there is inserted “and  
(c) the form of any document to be issued by an approved body to certify or otherwise show that a qualification has been conferred on any person.”

## 51 Restriction on works following substantial road works

(1) Section 58 of the 1991 Act (restriction on works following substantial road works) is amended as specified in subsections (2) to (8).

(2) In subsection (1), for the words “twelve months” there is substituted “ prescribed period ”.

(3) In subsection (2), after “prescribed” there is inserted “ form and ” and for “three months” there is substituted “ such period as may be prescribed ”.

(4) In subsection (3) after paragraph (e) there is inserted “and  
(f) any other person of a prescribed description;”

(and the word “and” after paragraph (d) is omitted).

(5) In subsection (4), for paragraphs (a) and (b) there is substituted “ within such period as may be prescribed ”.

(6) In subsection (6), at the beginning of paragraph (b) there is inserted “ if he is convicted of an offence under this subsection ”.

(7) In subsection (7), for “by arbitration” there is substituted “ in the prescribed manner ”.

(8) After that subsection there is inserted—

“(7A) Regulations under subsection (7) may in particular make provision for the question referred to in that subsection to be settled—

(a) by arbitration;

(b) by a person designated by the Secretary of State on appeal by the undertaker.”

(9) In section 55 of the 1991 Act (notice of starting date of works), in subsection (2), after “works,” there is inserted “ or in cases where the undertaker has been given notice under section 58(1), ”.

### Annotations:

### Commencement Information

**I3** S. 51(1)-(3)(5)(7)-(9) in force at 29.6.2007 for specified purposes for E. and 1.4.2008 for E. in so far as not already in force by [S.I. 2007/1890](#), [art. 2](#), [Sch.](#) (with [art. 6](#))

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- I4** S. 51(1)-(3)(5)(7)-(9) in force at 26.11.2007 for specified purposes for W. and 1.4.2008 for W. in so far as not already in force by [S.I. 2007/3174](#), art. 2, Sch. (with art. 7)
- I5** S. 51(4) in force at 29.6.2007 for E. by [S.I. 2007/1890](#), art. 2, **Sch.** (with art. 6)
- I6** S. 51(4) in force at 26.11.2007 for W. by [S.I. 2007/3174](#), art. 2, Sch. (with art. 7)
- I7** S. 51(6) in force at 1.4.2008 for E. by [S.I. 2007/1890](#), art. 2, **Sch.** (with art. 6)
- I8** S. 51(6) in force at 1.4.2008 for W. by [S.I. 2007/3174](#), art. 2, **Sch.** (with art. 7)

## 52 Restriction on works following substantial street works

(1) After section 58 of the 1991 Act there is inserted—

### “58A Restriction on works following substantial street works

Schedule 3A shall have effect.”

(2) After Schedule 3 to that Act there is inserted Schedule 3A as set out in Schedule 4 to this Act.

(3) In section 57 of that Act (notice of emergency works)—

- (a) in subsection (1) after “works)” there is inserted “ or paragraph 2(1)(d) or 3(1) of Schedule 3A (notification of proposed works or directions as to timings of works) ”;
- (b) in subsection (2) after “is” there is inserted “ (or would, but for paragraph 2(6) of Schedule 3A, be) ”.

(4) In section 64 of that Act (traffic-sensitive streets) in subsection (1) after “works)” there is inserted “ or paragraph 2 of Schedule 3A ”.

(5) In section 74 of that Act (charge for occupation of highway where works unreasonably prolonged) in subsection (3)(b) after “date)” there is inserted “ or notification under paragraph 2(1)(d) of Schedule 3A (notification of proposed works) ”.

(6) In section 88 of that Act (provisions relating to bridges) in subsection (4) after “date)” there is inserted “ , or making a notification under paragraph 2(1)(d) of Schedule 3A (notification of proposed works), ”.

(7) In section 89 of that Act (provisions relating to sewers) in subsection (2) after “date)” there is inserted “ , or making a notification under paragraph 2(1)(d) of Schedule 3A (notification of proposed works), ”.

### Annotations:

#### Commencement Information

- I9** S. 52(1)(2)(4)(5) in force at 29.6.2007 for specified purposes for E. and 1.4.2008 for E. in so far as not already in force by [S.I. 2007/1890](#), art. 2, **Sch.** (with art. 7)
- I10** S. 52(1)(2)(4)(5) in force at 26.11.2007 for specified purposes for W. and 1.4.2008 for W. in so far as not already in force by [S.I. 2007/3174](#), art. 2, **Sch.** (with art. 8)
- I11** S. 52(3)(6)(7) in force at 1.4.2008 for E. by [S.I. 2007/1890](#), art. 2, **Sch.** (with art. 7)
- I12** S. 52(3)(6)(7) in force at 1.4.2008 for W. by [S.I. 2007/3174](#), art. 2, **Sch.**

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PROSPECTIVE

**53 Notices requiring remedial works relating to reinstatements**

- (1) In section 72 of the 1991 Act (powers of street authority in relation to reinstatement)—
- (a) in subsection (3), for “of not less than 7 working days” there is substituted “, not being less than such period as may be prescribed, ”; and
  - (b) after subsection (3) there is inserted—  
“(3A) Different minimum periods may be prescribed under subsection (3) for different descriptions of remedial works; and cases may be prescribed in which no minimum period applies.”
- (2) In section 90 of the 1991 Act (powers of street authority in relation to reinstatement of sewers, etc.)—
- (a) in subsection (2), for “of not less than 7 working days” there is substituted “, not being less than such period as may be prescribed, ”; and
  - (b) after subsection (2) there is inserted—  
“(2A) Different minimum periods may be prescribed under subsection (2) for different descriptions of remedial works; and cases may be prescribed in which no minimum period applies.”

**54 Duty to notify street authority of reinstatement**

- (1) Section 70 of the 1991 Act (duty of undertaker to reinstate) is amended as follows.
- (2) After subsection (1) there is inserted—  
“(1A) The reinstatement required by subsection (1) may be permanent or interim.”
- (3) For subsections (3) and (4) there is substituted—  
“(3) He shall within 7 working days from the date on which the reinstatement is completed give notice to the street authority of that completion—  
  - (a) stating whether the reinstatement is permanent or interim; and
  - (b) giving such other information about the reinstatement as may be prescribed.  
(4) If the reinstatement is interim, he shall complete the permanent reinstatement of the street as soon as reasonably practicable, and in any event within 6 months from the date on which the interim reinstatement was completed.  
  
(4A) He shall, within 7 working days from the date on which the permanent reinstatement required by subsection (4) is completed, give notice to the street authority of that completion, giving such other information about the reinstatement as may be prescribed.  
  
(4B) The Secretary of State may by regulations modify the period specified in subsection (3), (4) or (4A).”

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#### Annotations:

#### Commencement Information

- I13** S. 54 in force at 29.6.2007 for specified purposes for E. and 1.4.2008 for E. in so far as not already in force by [S.I. 2007/1890, art. 2, Sch.](#) (with [art. 8](#))
- I14** S. 54 in force at 26.11.2007 for specified purposes for W. and 1.4.2008 for W. in so far as not already in force by [S.I. 2007/3174, art. 2, Sch.](#) (with [art. 9](#))

PROSPECTIVE

### 55 Power of street authority to require undertaker to re-surface street

- (1) After section 73 of the 1991 Act there is inserted—

*“Re-surfacing*

#### 73A Power to require undertaker to re-surface street

- (1) In prescribed circumstances, the street authority for a street may by notice (a “re-surfacing notice”) require an undertaker within subsection (2) to execute such re-surfacing works in the street as may be specified in the notice.
- (2) An undertaker is within this subsection if—
- he has given notice under section 54 or 55 of, or made a notification under paragraph 2(1)(d) of Schedule 3A in respect of, proposed street works,
  - he is executing street works, or
  - he has, within such period ending with the giving of the notice as may be prescribed (or if no period is prescribed, at any time), executed street works,
- and the works will involve, involve or (as the case may be) involved the breaking up of any part of the street.
- (3) The works specified in the re-surfacing notice may relate to any part of the street (including any part not, and not to be, broken up by the undertaker); but regulations may restrict the extent of the works that may be so specified.
- (4) The re-surfacing notice relieves the undertaker to the extent (if any) specified in the notice of his duty under section 70 to reinstate the surface of the street; but regulations may restrict the circumstances in which and the extent to which undertakers may be relieved of that duty.
- (5) The street authority may by notice to the undertaker vary or withdraw a re-surfacing notice; but regulations may restrict the circumstances in which notices may be varied or withdrawn.
- (6) A street authority may give a re-surfacing notice notwithstanding that the authority (in any capacity) are under a duty to undertake any of the works specified in the notice.
- (7) In this Part—

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“re-surfacing notice” has the meaning given by subsection (1);  
“re-surfacing works” means any works relating to the replacement of the surface of any part of a street;  
“surface” includes a paved surface.

- (8) The reference in subsection (2)(c) to the execution of street works is a reference to the execution of such works after the commencement of this section (whether or not regulations under it have been made).

### **73B Power to specify timing etc. of re-surfacing**

- (1) A re-surfacing notice may require an undertaker to—
- (a) execute the works specified in the notice in stages so specified;
  - (b) begin the execution of those works (or any stage of them) at or by a date and time so specified;
  - (c) execute those works (or any stage of them) at times or on days (or at times on days) so specified;
  - (d) complete the execution of those works (or any stage of them) by a date and time so specified.
- (2) The Secretary of State may by regulations make provision restricting, in some or all cases, the power to include requirements within subsection (1), including provision that—
- (a) requires a street authority to consult an undertaker before a prescribed description of requirement is included in a notice;
  - (b) provides that any date specified in a notice for the beginning, execution or completion of works shall not be earlier than a prescribed period from the date on which the notice is given.

### **73C Materials, workmanship and standard of re-surfacing**

- (1) An undertaker who has been given a re-surfacing notice shall, when executing the works specified in the notice, comply with such requirements as may be prescribed as to the specification of materials to be used and the standards of workmanship to be observed.
- (2) He shall also ensure that the new surface conforms to such performance standards as may be prescribed, for the prescribed period after completion of the works.”
- (2) In section 106 of that Act—
- (a) after the entry for relevant authority (in relation to street works) there is inserted—

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“re-surfacing notice	section 73A(7)
re-surfacing works	section 73A(7)”;

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- (b) after the entry for street works licence there is inserted—

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“surface

section 73A(7)”.

PROSPECTIVE

## 56 Re-surfacing: regulations and guidance

After section 73C of the 1991 Act there is inserted—

### “73D Re-surfacing: regulations

- (1) The Secretary of State may make regulations supplementing sections 73A to 73C.
- (2) The regulations may in particular—
  - (a) make provision about the information to be contained in a re-surfacing notice (including the way in which re-surfacing works are to be described);
  - (b) prescribe, for cases where a re-surfacing notice may be given to more than one undertaker, the matters that a street authority shall take into account when selecting the undertaker to whom the notice is to be given;
  - (c) impose a requirement on an undertaker, in prescribed circumstances, to give notice to the street authority of a prescribed event;
  - (d) prescribe circumstances in which an undertaker may elect to make a payment to the street authority instead of executing the works specified in a re-surfacing notice, and make provision about the calculation of the amount of such payments;
  - (e) confer a right of review or appeal against a re-surfacing notice or any requirement contained in it, and may make provision about the period within which and manner in which any such right may be exercised and about the determination of appeals and the persons who may determine them;
  - (f) require disputes of a prescribed description (including disputes as to the existence of circumstances prescribed under section 73A(1)) to be determined in such manner and by such persons as may be prescribed;
  - (g) apply any provisions of this Part or the Highways Act 1980 (c. 66), with or without modifications, in relation to works specified in a re-surfacing notice (and provide that for those purposes the works are to be treated as street works or works of any other description).
- (3) The regulations may provide that where a re-surfacing notice has been served on an undertaker, the street authority may (in such circumstances and to such extent as may be prescribed) by notice relieve any other undertaker within section 73A(2) of his duty under section 70 to reinstate the surface of the street.
- (4) The regulations may create in respect of any breach of a requirement imposed by a re-surfacing notice or of the duty imposed by section 73C, or any contravention of the regulations, an offence punishable on summary conviction—



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- (a) where the offence consists of a failure to give a notice in accordance with the regulations, with a fine not exceeding level 4 on the standard scale;
- (b) in any other case, with a fine not exceeding level 5 on the standard scale.

(5) The first regulations under this section or any of sections 73A to 73C shall not be made unless a draft of them has been laid before and approved by a resolution of each House of Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **73E Re-surfacing: guidance**

- (1) The Secretary of State may, for the purposes of sections 73A to 73D (including regulations under those sections), issue or approve a code of practice giving practical guidance as to the exercise of powers and the discharge of duties under those sections.
- (2) In exercising those powers and in discharging those duties, street authorities and undertakers shall have regard to the code of practice.”

PROSPECTIVE

### **57 Contributions to costs of re-surfacing by undertaker**

(1) After section 78 of the 1991 Act there is inserted—

#### **“78A Contributions to costs of re-surfacing by undertaker**

- (1) Where a street authority has given a re-surfacing notice to an undertaker (A)—
  - (a) the authority shall pay to A a proportion, calculated in the prescribed manner, of the costs reasonably incurred by A in executing the works specified in the notice;
  - (b) an undertaker to whom subsection (2) applies shall pay to A a proportion, calculated in the prescribed manner, of those costs.
- (2) This subsection applies to an undertaker if—
  - (a) he has, after the commencement of this section (whether or not regulations under it have been made) and before the completion of the works specified in the notice, executed street works which involved the breaking up of any part of a street, and
  - (b) the works specified in the notice include the re-surfacing of that part of the street.
- (3) The Secretary of State may by regulations prescribe exceptions to the duty imposed by subsection (1)(b).
- (4) The payments referred to in subsection (1) shall be made in such instalments and manner, and within such period of such event, as may be prescribed.
- (5) The Secretary of State may by regulations make provision—

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- (a) requiring a street authority, within such period of such event as may be prescribed, to give to an undertaker to whom subsection (2) applies a notice containing such information as may be prescribed;
  - (b) requiring a street authority to pay to an undertaker to whom it has given a re-surfacing notice such sum as he has been unable to recover under subsection (1)(b) on account of the insolvency of an undertaker;
  - (c) requiring disputes of a prescribed description (including disputes as to whether subsection (2) applies to an undertaker) to be determined in such manner and by such persons as may be prescribed.
- (6) For the purposes of this section, any costs incurred by an undertaker (including any costs of a street authority which are borne by the undertaker) in consequence of a failure by the undertaker to comply with any duty under this Part shall be treated as having been incurred unreasonably.
- (7) The Secretary of State may by regulations make provision requiring undertakers to make payments to a street authority where—
- (a) the authority has given a re-surfacing notice to an undertaker,
  - (b) that undertaker has exercised a right, conferred by regulations under section 73D, of the sort mentioned in subsection (2)(d) of that section, and
  - (c) the authority has carried out any of the works specified in the notice.
- (8) The power in subsection (7) includes power to make provision corresponding to provision that may be made under subsections (1) to (5).
- (9) Regulations under this section may make different provision for cases where an undertaker mentioned in subsection (1) or (7) has made, or is liable to make, a payment under section 78.
- (10) The first regulations under this section shall not be made unless a draft of them has been laid before and approved by a resolution of each House of Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) In subsection (5)(b) “insolvency”—
- (a) in relation to a company, has the meaning given by section 247(1) of the Insolvency Act 1986;
  - (b) in relation to an individual, includes the approval of a voluntary arrangement under Part 8 of that Act.”
- (2) In section 96 of the 1991 Act, in subsection (3), after “street)” there is inserted “ or 78A (contributions to costs of re-surfacing by undertakers) ”.

PROSPECTIVE

## 58 Inspection fees

- (1) In section 72 of the 1991 Act (powers of street authority in relation to reinstatement) after subsection (2) there is inserted—

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“(2A) The Secretary of State may prescribe a fee in respect of a prescribed description of inspection mentioned in subsection (2).

If he does so that subsection has effect, in relation to that description of inspection, as if for “he shall bear the cost of” there were substituted “he shall pay the prescribed fee in respect of”.

(2B) The power to make different provision under subsection (2A) for different cases includes power—

- (a) to make different provision for different descriptions of street authority or undertakers;
- (b) to prescribe different fees by reference to the nature or extent of the inspection, the place where it is carried out and such other factors as appear to the Secretary of State to be relevant.”

(2) For section 75 of that Act (inspection fees) there is substituted—

**“75 Inspection fees**

(1) The Secretary of State may make provision by regulations requiring an undertaker to pay to the street authority the prescribed fee in respect of—

- (a) all inspections carried out by the authority of his street works; or
- (b) such inspections of those works as may be prescribed.

(2) The regulations may—

- (a) require undertakers to make payments in respect of inspections anticipated to take place within a prescribed period; and
- (b) make provision for the striking of an account between an undertaker and a street authority and the making of any necessary payment or repayment.

(3) The power to make different provision under this section for different cases includes power—

- (a) to make different provision for different descriptions of street authority or different descriptions of undertakers (including descriptions framed by reference to their previous performance);
- (b) to prescribe different fees by reference to the nature or extent of the excavation or other works, the place where they are executed and such other factors as appear to the Secretary of State to be relevant.

(4) The reference in subsection (3)(a) to the previous performance of an undertaker is to the performance of the undertaker, during such period as may be prescribed, as respects such description of his duties under this Part as may be prescribed.

(5) The regulations may require disputes of any prescribed description to be determined by arbitration.

(6) Nothing in this section applies to inspections in respect of which the undertaker is obliged to bear the cost, or pay the prescribed fee, under section 72(2) (inspections consequent on failure to comply with duties as to reinstatement).”

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## **59 Guidance about inspections**

After section 73E of the 1991 Act (as inserted by section 56 above) there is inserted—

### *“Inspections*

#### **73F Guidance about street authority inspections**

- (1) The Secretary of State may issue or approve guidance to street authorities about any matter relating to the exercise by them of any power to carry out inspections of street works.
- (2) In exercising their powers to carry out such inspections a street authority shall have regard to any guidance issued or approved under this section.
- (3) In this section any reference to inspections includes the carrying out of investigatory works.”

#### **Annotations:**

#### **Commencement Information**

**I15** S. 59 in force at 6.4.2015 for E. by S.I. 2015/199, art. 2

**Status:**

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**Changes to legislation:**

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