
STATUTORY INSTRUMENTS

1985 No. 2080 (S. 159)

ROADS AND BRIDGES, SCOTLAND

**The Security for Private Road Works (Scotland) Regulations
1985**

Laid before Parliament in draft

Made - - - - - 19th December 1985

Coming into Operation 1st April 1986

ARRANGEMENT OF REGULATIONS

1. Citation and commencement.
2. Interpretation.
3. Application of regulations.
4. Commencement of building works.
5. Lodging and duration of security.
6. Amount of security.
7. Scheme of apportionment of security.
8. Security in the case of joint owners.
9. Interest on security in the form of a deposit.
10. Withdrawal and re-lodging of security.
11. Provision of additional security.
12. Sale or transfer of land while security lodged.
13. Construction of private road by local roads authority.
14. Application of security and entry of road in list of public roads.
15. Release of security.
16. Offence and penalty.

In exercise of the powers conferred on me by sections 17(2) and (3) and 143(1) of the Roads (Scotland) Act 1984(a), and of all other powers enabling me in that behalf, I hereby make the following regulations:—

Citation and commencement

1. These regulations may be cited as the Security for Private Road Works (Scotland) Regulations 1985 and shall come into operation on 1st April 1986.

(a) 1984 c.54.

Interpretation

2.— (1) In these regulations, unless the context otherwise requires—

“the Act” means the Roads (Scotland) Act 1984;

“bond” means a sum of money secured to the satisfaction of the local roads authority by way of a cautionary obligation undertaken either by a recognised bank or a licensed institution under the Banking Act 1979(a), or by an insurance company carrying on insurance business within the meaning of the Insurance Companies Act 1982(b);

“building works” means works for the erection of a building, or the alteration of an existing building which is not a private dwelling-house, for use in either case as a private dwelling-house;

“construction consent” has the same meaning as in section 21(1) of the Act;

“security” means a bond or the deposit of a sum of money;

“specified standard” in relation to a private road means the standard specified in the construction consent.

(2) Any reference in these regulations to a numbered regulation shall, unless the context otherwise requires, be construed as a reference to the regulation bearing that number in these regulations.

Application of regulations

3.— (1) Subject to the provisions of this regulation, these regulations apply to any proposal to carry out building works where the plot of land on which the building is or is to be erected will front or abut a private road which has not been constructed.

(2) These regulations shall not apply to any case where the building works are to be carried out by or on behalf of—

- (a) a regional, islands or district council;
- (b) a development corporation within the meaning of the New Towns (Scotland) Act 1968(c);
- (c) the Scottish Special Housing Association;
- (d) the Housing Corporation;
- (e) a housing association registered in the register of housing associations maintained under section 3 of the Housing Associations Act 1985(d), where the project of which the building works form part falls within a programme approved and either financed or guaranteed by the Housing Corporation or by a regional, islands or district council; or
- (f) an unregistered self-build society within the meaning of sections 1 and 3 of the Housing Associations Act 1985, where the project of which the building works form part is financed by a loan from the Housing

(a) 1979 c.37.

(b) 1982 c.50.

(c) 1968 c.16.

(d) 1985 c.69.

Corporation or from a regional, islands or district council or, if the project is financed from another source, the finance is guaranteed by the Housing Corporation.

Commencement of building works

4. Where these regulations apply, no building works shall commence until—
- (a) any construction consent required for the private road concerned has been obtained; and
 - (b) security in respect of that private road has been provided in accordance with these regulations.

Lodging and duration of security

5. The security to be provided shall—
- (a) where it is in the form of a bond, be made out in favour of and lodged with the local roads authority and remain in force, or
 - (b) where it is in the form of the deposit of a sum of money, be lodged with the authority and be retained by them,

until such time as the authority have either added the private road concerned to their list of public roads, or released the security at an earlier date in accordance with regulation 15.

Amount of security

6.— (1) The security shall be an amount sufficient to meet the cost of constructing or, as the case may be, completing the construction of, the private road concerned in accordance with the construction consent, which amount shall be based on the cost of work required as at the time of calculation to bring the private road, within the period of time stated in the construction consent, up to the specified standard.

(2) The local roads authority shall calculate the amount of security required in accordance with paragraph (1) above, and shall notify in writing such amount to the person who applied for the construction consent either when that consent is issued or, where appropriate, at a later date.

Scheme of apportionment of security

7.— (1) Where, in respect of the same private road, more than one person proposes to carry out building works, the local roads authority shall—

- (a) make a scheme of apportionment whereby the total cost of the work to be carried out on the private road is apportioned among all the persons concerned, on a basis which in the opinion of the authority is fair and reasonable to all concerned, and which determines for each such person the proportion of cost to be paid by that person, and
- (b) notify the terms of the scheme in writing to each of the persons concerned.

(2) Where paragraph (1) above applies, security covering the total amount required by the local roads authority in respect of the private road shall be provided by each person concerned lodging security in the proportion for which that person is liable under the scheme, and subject to paragraph (3) below, no building works shall commence until the total amount of the security required has been provided.

(3) Where a person has lodged security with the local roads authority which covers the share of that person in any scheme of apportionment prepared by the authority, but the remaining amount of the total security required by the authority in terms of the scheme has not been lodged by the other persons liable, then the person who has lodged security may apply to the authority for their consent to the commencement of the building works proposed by him, and the authority, having regard to what is in their opinion fair and reasonable in the circumstances of the case, shall either grant or refuse the application and shall notify that person in writing of their decision.

Security in the case of joint owners

8. Where security is required by a local roads authority in a case of joint ownership of land, then unless otherwise agreed with the authority, the joint owners shall lodge security in joint names for the total amount required for such land.

Interest on security in the form of a deposit

9. Where the security takes the form of a deposit—

- (a) the local roads authority shall place the deposit in a bank or building society account in their name, earning interest at current rates until such time as the deposit or any remaining part of it falls to be repaid in accordance with regulation 15; and
- (b) the person who lodged the deposit with the authority shall be entitled to the interest earned on it, and the authority shall make arrangements for such interest to be paid to that person at such regular intervals as may be mutually agreed during the period of retention by the authority of the deposit or any part of it.

Withdrawal and re-lodging of security

10. Where there is a delay in commencing the building works after the granting of a construction consent and the provision of security, the person who lodged the security with the local roads authority may advise the authority that he wishes to withdraw the security; and in such a case the authority shall return the security to that person; but that person shall re-lodge security of the amount required by the authority prior to the commencement of the building works.

Provision of additional security

11. Where the local roads authority extend the period of time specified in a construction consent for constructing a private road, the authority as a condition of such extension may require additional security to be provided to take account of any increased cost of the work required to construct the private road.

Sale or transfer of land while security lodged

12. Where a person who has lodged security with the local roads authority sells or disposes of the plot of land on which the building works are proposed to be, or are being, carried out, then, unless otherwise agreed between that person and the authority—

- (a) where the security lodged is in the form of a deposit—
 - (i) that person and the new owner shall serve a joint notice on the authority giving intimation of the sale or disposal and stating the name and main residence of the new owner, and
 - (ii) the authority shall continue to retain the deposit and shall as from the date they receive the notice treat the deposit for the purpose of these regulations as if it had been lodged by the new owner; and
- (b) where the security lodged is in the form of a bond—
 - (i) the bond shall be retained by the authority and shall continue in force in accordance with these regulations unless the new owner lodges with the authority a bond in similar terms, and
 - (ii) where the authority receive a bond in similar terms from the new owner, they shall treat the bond lodged by the former owner as no longer required by them and shall return that bond for cancellation to the person who lodged it.

Construction of private road by local roads authority

13.— (1) Where, after the building works have commenced, the private road concerned has not been constructed in accordance with the construction consent within whichever period last expires of either—

- (a) that stated in the construction consent as issued or as subsequently extended by the local roads authority, or
- (b) that specified in a notice served by the authority under section 21(5) of the Act^(a) (notice requiring new road to be brought into conformity with construction consent),

then the authority shall construct the private road in accordance with the construction consent.

(2) Where the private road concerned has been constructed in accordance with the construction consent and thereafter defects in it appear before the local roads authority add the private road to their list of public roads, the authority shall serve a notice on the person who lodged the security, stating that they are not satisfied with the condition of the private road, specifying the defects and the work required to rectify them, and requiring that person to carry out the work within such reasonable period as the authority may specify.

(3) Where the works specified in a notice served under paragraph (2) above have not been carried out to the satisfaction of the local roads authority within the period specified in the notice, the authority shall carry out such works themselves.

(a) 1984 c.54.

Application of security and entry of road in list of public roads

14. Where a private road is constructed, or defects in it are rectified, by the local roads authority in accordance with regulation 13—

- (a) the authority may for that purpose call up each or any bond lodged in respect of the private road in so far as still in force and apply the proceeds or, as the case may be, apply each or any deposit in so far as retained by them in respect of the private road; and
- (b) section 20(2) of the Act shall apply to that road as it applies to a road constructed under section 20(1) of the Act (entry of new roads in list of public roads).

Release of security

15.— (1) Where the construction of the private road concerned has commenced, and the local roads authority are satisfied that part of any security lodged in respect of it is sufficient to meet the cost of completing the construction, the authority may, if so requested,

- (a) where one person lodged the security, release a part of it to that person, and
- (b) where—
 - (i) a scheme of apportionment has been made under regulation 7, and
 - (ii) the liability of any person in terms of the scheme is partly or wholly covered by the construction works which have been carried out on the private road,

release to that person such part of the security lodged by that person as is in the opinion of the authority fair and reasonable in relation to the extent of such work carried out,

subject to a minimum retention of 20% of the total amount of the original security required.

(2) Where—

- (a) a person who proposed to carry out building works and has lodged security notifies the local roads authority that the proposals have been abandoned; or
- (b) the authority consider that security is no longer required for any reason; or
- (c) the private road concerned has been added to their list of public roads,

the authority shall return the bond for cancellation or, as the case may be, refund the deposit or any remaining part of it, to the person who lodged it.

Offence and penalty

16. Any person carrying out building works in contravention of, or otherwise than in accordance with, the terms of these regulations shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £2,000 and on conviction on indictment to a fine.

New St Andrew's House,
Edinburgh.
19th December 1985.

George Younger,
One of Her Majesty's Principal
Secretaries of State.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations provide that where private dwelling-houses are being erected, or formed by altering an existing building, on land adjoining a private road which has not been constructed, security in the form of a bond or deposit shall be given to the local roads authority for the construction of the road to the standard required by the authority for that road to be added to their list of public roads.

The regulations do not apply to local authorities, new town development corporations, the Scottish Special Housing Association, or the Housing Corporation, nor to registered housing associations or unregistered self-build societies which meet the criteria specified in the regulations (regulation 3).

Construction work on the private dwelling-houses is prohibited until construction consent for the private road has been obtained and security has been provided (regulation 4). Provision is made for the lodging and duration of the security, the amount of the security and its apportionment among the persons concerned, and for security in the case of joint owners (regulations 5 to 8). Where the security takes the form of a deposit of money the interest will be paid to the persons who deposited the money (regulation 9). The regulations provide for the withdrawal of the security, for the circumstances in which additional security may be required, and for the case where the land is sold while security is lodged (regulations 10, 11 and 12).

In the event of default on the part of the persons concerned, the regulations require the local roads authority to construct the road or remedy defects in its construction, empower the authority to apply the security towards the cost of such works and require the authority to add the road to their list of public roads (regulations 13 and 14). Regulation 15 covers the release of the security and regulation 16 makes contravention of the regulations a criminal offence and prescribes penalties. The statutory maximum fine on summary conviction is prescribed by the Criminal Justice Act 1982 (c.48) and the Increase of Criminal Penalties etc. (Scotland) Order 1984 (S.I. 1984/526).