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STATUTORY INSTRUMENTS

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**1998 No. 3220 (S. 196)**

**ROADS AND BRIDGES, SCOTLAND**

**The Security for Private Road Works  
(Scotland) Amendment Regulations 1998**

*Made - - - - 18th December 1998*

*Coming into force - - 28th December 1998*

The Secretary of State, in exercise of the powers conferred on him by sections 17(2) and (3) and 143(1) of the Roads (Scotland) Act 1984<sup>(1)</sup>, and of all other powers enabling him in that behalf, hereby makes the following Regulations, a draft of which has been laid before and approved by resolution of each House of Parliament:

**Citation and commencement**

1. These Regulations may be cited as the Security for Private Road Works (Scotland) Amendment Regulations 1998 and shall come into force on the tenth day after the day on which they are made.

**Amendment of the Security for Private Road Works (Scotland) Regulations 1985**

2. The Security for Private Road Works (Scotland) Regulations 1985<sup>(2)</sup> shall be amended as follows:—

(a) for paragraph (2) of regulation 3 there shall be substituted the following:—

“(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 local authority;
- (b) Scottish Homes<sup>(3)</sup>;
- (c) a housing association registered in the register of housing associations maintained under section 3 of the Housing Associations Act 1985<sup>(4)</sup>, where the project of which the building works form part falls within a programme approved and either financed in whole or in part by or guaranteed by Scottish Homes or by a local authority; or

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(1) 1984 c. 54.

(2) S.I.1985/2080.

(3) Established under the Housing (Scotland) Act 1988 c. 43.

(4) 1985 c. 69; section 3 was amended by the Housing Act 1988 (c. 50), Schedule 6, paragraph 3 and Schedule 18.

- (d) an unregistered self-build society within the meaning of sections 1 and 3 of the Housing Associations Act 1985(5), where the project of which the building works form part is financed by a loan from Scottish Homes or from a local authority or, if the project is financed from another source, the finance is guaranteed by Scottish Homes.”;
- (b) after paragraph (b) of regulation 4 there shall be added the following:–
  - “; and
  - (c) at least two weeks' prior written notice of intention to commence such works has been given to the local roads authority.”;
- (c) after paragraph (3) of regulation 13 there shall be added the following:–
  - “(4) The duty of the authority to construct the private road in the circumstances set out in paragraph (1) above and to carry out works in the circumstances set out in paragraph (3) above shall apply irrespective of whether or not a security in respect of the private road concerned has been lodged with that authority.”;
- (d) for regulation 15 there shall be substituted the following:–
  - “15.—(1) 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,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 and that within six weeks of notification in the case where paragraph 1(a) above applies.
  - (2) If at any time a local roads authority consider that the amount of security lodged with them exceeds the amount required to be lodged in terms of regulation 6, they shall release the appropriate part of the security calculated in accordance with paragraph (5) below–
    - (a) as soon as practicable after any one of the stages specified in paragraph (3) below has been reached; or
    - (b) where one of the stages so specified has been reached and the person who has lodged security has applied to the local roads authority for release of part of that security, within six weeks of such application.
  - (3) The stages referred to in paragraph (2) above are–
    - (a) in accordance with the construction consent, completion of the base course, the drainage and the kerb base in the carriageway;
    - (b) in accordance with the construction consent, completion of construction, including traffic signs, gully connections, manholes and carriageway lighting;
    - (c) expiry of the maintenance period (or the date of completion of any works necessary to rectify defects occurring during that period, if such completion is later than the expiry of that period) or the addition of the private road concerned to the local roads authority's list of public roads, whichever is the earlier.
  - (4) In paragraph (3)–

“base course” means the course forming part of the surfacing immediately below the wearing course and, for the purposes of this definition, “wearing course” means part of the surfacing, the surface of which is in contact with traffic;

“drainage” includes gully frames and gratings;

“gully connection” means the section of drainage pipework connecting a gully to its receiving manhole;

“maintenance period” means the period of 12 months after the date of completion of construction;

“kerb base” means the foundation upon which the kerbing is to be laid;

“traffic sign” has the same meaning as in section 64(1) of the Road Traffic Regulation Act 1984<sup>(6)</sup>.

(5) For the purpose of paragraphs (1) and (2) above—

(a) where construction of the private road concerned has reached one of the stages specified in paragraph (3)(a) or (3)(b) above, the appropriate part of the security to be released to any person is the amount of the security originally lodged by him (or the amount remaining where part has previously been released) less—

(i) where a scheme of apportionment was made under regulation 7, either the proportion to be paid by that person of the amount which, in accordance with regulation 6, is sufficient to meet the cost of completing construction of the private road concerned, or 10% of the original security lodged by him, whichever is the greater, or

(ii) in any other case, the amount which, in accordance with regulation 6, is sufficient to meet the cost of completing construction of the private road concerned, or 10% of the original security lodged by him, whichever is the greater; and

(b) where construction of the private road concerned has reached the stage specified in paragraph (3)(c) above, the appropriate part of the security to be released to any person is the amount of the security originally lodged by him (or the amount remaining where part has previously been released).”;

(e) in regulation 16 for “£2000” there shall be substituted the words “the statutory maximum”.

St Andrew’s House, Edinburgh  
18th December 1998

*Calum MacDonald*  
Parliamentary Under Secretary of State, Scottish  
Office

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(6) 1984 c. 27.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Security for Private Road Works (Scotland) Regulations 1985 (“the principal Regulations”) which made provision for the lodging of security with the local roads authority in respect of the construction of certain private roads.

Regulation 2(a) amends regulation 3(2) of the principal Regulations to take account of (a) the reorganisation of local government and (b) the establishment of Scottish Homes in place of the Scottish Special Housing Association.

Regulation 2(b) amends regulation 4 of the principal Regulations so that no building works shall commence until at least two weeks' notice has been given to the local roads authority.

Regulation 13 of the principal Regulations has been amended to make clear that the obligation on the local roads authority with respect to the construction of private roads in the circumstances set out in that regulation applies even if no security has been lodged with them (regulation 2(c)).

Regulation 2(d) re-enacts with amendments regulation 15 of the principal Regulations. The main changes are—

- (a) the introduction of stages which when reached require that an appropriate part of the security is released;
- (b) the maximum retention pending satisfactory conclusion of the maintenance period or adoption of the road for maintenance by the local roads authority is reduced to 10% of the original security;
- (c) the balance of the security must be released on satisfactory conclusion of the maintenance period or when the road is adopted for maintenance by the local roads authority, whichever is the earlier.

In regulation 16 of the principal Regulations, the maximum fine on summary conviction has been changed from £2,000 to the statutory maximum which at present is £5,000 (regulation 2(e)).