

## **TRANSPORT (SCOTLAND) ACT 2005**

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### **EXPLANATORY NOTES**

#### **NEW ROAD AND STREET WORKS ACT 1991 PART IV ROAD WORKS IN SCOTLAND**

**(NB THIS TEXT IS PROVIDED FOR GUIDANCE ONLY AND ACCURACY IS NOT WARRANTED)**

**Key:**

**New text inserted** = *this is new text inserted by the Act*

**Text deleted or repealed** = this is existing text which has been deleted or repealed

*“Introductory provisions*

**107. 107. Roads, road works and undertakers.**

- (1) In this Part a "road" means any way (other than a substitute road made under section 74(1) of the [1984 c. 54.] Roads (Scotland) Act 1984 or a waterway) whether or not there is over it a public right of passage and whether or not it is for the time being formed as a way; and the expression includes a square or court, and any part of a road.
- (2) Where a road passes over a bridge or through a tunnel, references in this Part to the road include that bridge or tunnel.
- (3) In this Part "road works" means works for any purposes other than roads purposes, being works of any of the following kinds executed in a road in pursuance of a statutory right or with permission granted under section 109—
  - (a) placing apparatus, or
  - (b) inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, changing the position of apparatus or removing it,or works required for or incidental to any such works (including, in particular, breaking up or opening the road, or any sewer, drain or tunnel under it, or tunnelling or boring under the road).
- (4) In this Part "undertaker" in relation to road works means the person by whom the relevant statutory right is exercisable (in the capacity in which it is exercisable by him) or a person having permission under section 109 to execute road works, as the case may be.
- (5) References in this Part to the undertaker in relation to apparatus in a road are to the person entitled, by virtue of a statutory right or a permission granted under section 109,

to carry out in relation to the apparatus such works as are mentioned in subsection (3); and references to an undertaker having apparatus in the road, or to the undertaker to whom apparatus belongs, shall be construed accordingly.

**108. 108. The road works authority and other relevant authorities.**

- (1) In this Part "the road works authority" in relation to a road means, subject to the following provisions—
  - (a) if the road is a public road, the roads authority, and
  - (b) if the road is not a public road, the road managers.
- (2) In the case of a road for which the Secretary of State is the roads authority but in relation to which a local roads authority acts as his agent under section 4 of the Roads (Scotland) Act 1984, the local roads authority shall be regarded as the road works authority for the purposes of section 112 *section 112B (duty to enter certain information in the Scottish Road Works Register)* and sections 113 to 119 (advance notice and co-ordination of works).
- (3) Subsection (1)(b) has effect subject to section 146 as regards the application of this Part to prospective public roads.
- (4) In this Part the expression "road managers", used in relation to a road which is not a public road, means the authority, body or person liable to the public to maintain or repair the road or, if there is none, any authority, body or person having the management or control of the road.
- (5) The Secretary of State may by regulations make provision for exempting road managers from provisions of this Part which would otherwise apply to them as the road works authority in relation to a road.
- (6) References in this Part to the relevant authorities in relation to any road works are to the roads authority and also—
  - (a) where the works include the breaking up or opening in the road of a sewer vested in the local authority, that local authority;
  - (b) where the road is carried or crossed by a bridge vested in a transport authority, or crosses or is crossed by any other property held or used for the purposes of a transport authority, that authority; and
  - (c) where in any other case the road, not being a public road, is carried or crossed by a bridge, the bridge authority.

**109. 109. Permission to execute road works.**

- (1) A road works authority may grant permission in writing, subject to such reasonable conditions as they consider appropriate, to persons to whom this section applies—
  - (a) to place, or to retain, apparatus in a road, and
  - (b) thereafter to inspect, maintain, adjust, repair, alter or renew the apparatus, change its position or remove it,and to execute for those purposes any works required for or incidental to such works (including, in particular, breaking up or opening the road, or any sewer, drain or tunnel under it, or tunnelling or boring under the road).
- (2) A person to whom permission has been granted under this section to execute works may do so without obtaining any consent which would otherwise be required to be given—
  - (a) by any other relevant authority in its capacity as such, or
  - (b) by any person in his capacity as the owner of apparatus affected by the works;

but without prejudice to the provisions of this Part as to the making of requirements by any such authority or person or as to the settlement of a plan and section and the execution of the works in accordance with them.

- (3) The granting of permission under this section to a person does not dispense that person from obtaining any other consent, licence or permission which may be required; and it does not authorise the installation of apparatus for the use of which the licence of the Secretary of State is required unless and until that licence has been granted.
- (4) This section applies to persons who are described in one or more of the following paragraphs—
  - (a) persons of a prescribed class,
  - (b) persons carrying out works of a prescribed class,
  - (c) persons carrying out works in a prescribed area.
- (5) The conditions referred to in subsection (1) may include conditions as to—
  - (a) the payment of fees,
  - (b) the future cessation or withdrawal of the permission, and
  - (c) indemnification of the authority against claims arising out of what is permitted.
- (6) Before granting permission under this section the road works authority shall give not less than 10 working days' notice to each of the following—
  - (a) where the works are likely to affect a sewer vested in a local authority, to that authority,
  - (b) where the works are to be executed in a part of a road which is carried or crossed by a bridge vested in a transport authority, or crosses or is crossed by any other property held or used for the purposes of a transport authority, to that authority,
  - (c) where in any other case the part of the road in which the works are to be executed is carried or crossed by a bridge, to the bridge authority,
  - (d) to any person who has given notice under section 113 (advance notice of certain works) of his intention to execute road works which are likely to be affected by the works to which the permission relates, and
  - (e) to any person having apparatus in the road which is likely to be affected by the works; but a failure to do so does not affect the validity of the permission.
- (7) Where permission has been granted under section 61 of the [1984 c. 54.] Roads (Scotland) Act 1984 in respect of apparatus and the road works authority consider that permission could be granted under this section in respect of that apparatus, they may cancel the permission granted under section 61 of the 1984 Act and, if they cancel that permission, they shall substitute for it permission granted in accordance with subsection (1) above.
- (8) The works referred to in subsection (1) above do not include works for road purposes.

**110. 110. Prohibition of unauthorised road works.**

- (1) It is an offence for a person other than the road works authority—
  - (a) to place apparatus in a road, or
  - (b) to break up or open a road, or a sewer, drain or tunnel under it, or to tunnel or bore under a road, for the purpose of placing, inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, or of changing the position of apparatus or removing it, otherwise than in pursuance of a statutory right or in accordance with a permission granted under section 109.
- (2) A person committing an offence under this section is liable on summary conviction to a fine not exceeding *level 5* on the standard scale.

- (3) This section does not apply to—
- (a) works for which consent or permission has been given under the Roads (Scotland) Act 1984 by a roads authority,
  - (b) works for road purposes, or
  - (c) emergency works of any description.
- (4) If a person commits an offence under this section, the road works authority may—
- (a) in the case of an offence under subsection (1)(a), direct him to remove the apparatus in respect of which the offence was committed, and
  - (b) in any case, direct him to take such steps as appear to them necessary to reinstate the road or any sewer, drain or tunnel under it.

If he fails to comply with the direction, the authority may remove the apparatus or, as the case may be, carry out the necessary works and recover from him the costs reasonably incurred by them in doing so.

### **111. 111. Emergency works.**

- (1) In this Part "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.
- (2) Where works comprise items some of which fall within the preceding definition, the expression "emergency works" shall be taken to include such of the items as do not fall within that definition as cannot reasonably be severed from those that do
- (3) Where in any civil or criminal proceedings brought by virtue of any provision of this Part the question arises whether works were emergency works, it is for the person alleging that they were to prove it.

**FN1**

**FN2112.**

**FN3** (1) A road works authority shall keep a register showing with respect to each road for which they are responsible such information as may be prescribed with respect to the road works, and such other descriptions of works as may be prescribed, executed or proposed to be executed in the road.

- (2) The register shall contain such other information, and shall be kept in such form and manner, as may be prescribed.
- (3) The authority shall make the register available for inspection, at all reasonable hours and free of charge
- (a) so far as it relates to restricted information, by any person having authority to execute works of any description in the road, or otherwise appearing to the authority to have a sufficient interest, and
  - (b) so far as it relates to information which is not restricted, by any person.

The Secretary of State may make provision by regulations as to the information which is restricted for the purposes of this subsection.

- (4) The Secretary of State may make arrangements for the duties [ FN4 under this section of such road works authorities as he may specify ] to be discharged by means of one or more central registers kept by a person appointed in pursuance of the arrangements.
- (4A) Before making any arrangements under subsection (4) the Secretary of State shall consult

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- (a) any road works authority having duties under this section which he intends not to specify for the purposes of the arrangements; and
  - (b) any undertaker (other than a person having permission under section 109 to execute road works) having apparatus in a road for which such road works authority is responsible. ]
- (5) If such arrangements are made the Secretary of State may require[ FN6 the ] road works authorities[ FN6 so specified ] to participate in and make contributions towards the cost of the arrangements.
- (6) The Secretary of State may by regulations make provision with respect to any register kept in pursuance of this section
- (a) requiring the registration of such information as may be prescribed, and
  - (b) requiring the payment of such fee as may be prescribed in respect of the registration of information of any prescribed description;
- and the regulations may contain provision as to the person responsible for securing the registration of the information and the person liable to pay the fee.

**112A. 112A. The Scottish Road Works Register.**

- (1) *The Scottish Road Works Commissioner (in this Part, “the Commissioner”) shall keep a register, to be known as the Scottish Road Works Register (in this Part, “the SRWR”).*
- (2) *The SRWR shall be kept in such form and manner as may be prescribed.*
- (3) *The Commissioner shall make arrangements so as to enable any person who is required, by a provision of this Act, to enter particulars, information or a notice in the SRWR, to have access to the SRWR for that purpose.*
- (4) *The Scottish Ministers may by regulations-*
  - (a) *provide that the payment to the Commissioner of the prescribed fee is a condition of access to the SRWR as mentioned in subsection (3) (and different fees may be prescribed for access for different purposes), and*
  - (b) *make other provision as to the payment to the Commissioner by such persons as are prescribed of such amounts as are prescribed.*
- (5) *Amounts received by the Commissioner under subsection (4) are to be applied by the Commissioner to the keeping of the SRWR.*
- (6) *The Commissioner shall make the SRWR available, at all reasonable times and free of charge, for inspection—*
  - (a) *so far as it relates to restricted information, by any person having authority to execute works of any description in the road in respect of which that restricted information is kept in the SRWR or who, not being a person having that authority, nevertheless appears to the Commissioner to have a sufficient interest in that information,*
  - (b) *so far as it relates to information which is not restricted, by any person.*
- (7) *In subsection (6), “restricted” information is information of a prescribed description.*

**112B. 112B. Duty to enter certain information in the Scottish Road Works Register.**

- (1) *A road works authority shall enter in the SRWR such particulars of each road for which the authority are responsible as may be prescribed.*
- (2) *A road works authority proposing to execute works in any such road shall, not later than such time before the date proposed for the start of the works as may be prescribed,*

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*enter in the SRWR such information relating to that matter (including such information about the start of the works) as may be prescribed.*

- (3) *A road works authority which has—
  - (a) under section 109, granted permission as regards apparatus and works,
  - (b) under section 115, given directions as to the timing of works, or
  - (c) under section 115A, given directions as to the placing of apparatus,shall enter in the SRWR such information relating to that matter as may be prescribed.*
- (4) *A local roads authority proposing to execute works in roads in pursuance of section 1 of the [Roads \(Scotland\) Act 1984\(c.54\)](#) (management and maintenance of certain public roads) they shall enter in the SRWR such information relating to that matter as may be prescribed.*
- (5) *If the Scottish Ministers (as roads authority) propose to execute works in roads under section 2 of that Act (management and maintenance of certain public roads) they shall enter in the SRWR such information relating to that matter as may be prescribed.*
- (6) *On completion of works of the kind referred to in subsection (4) or (5) the roads authority which executed them shall enter in the SRWR such information about their completion as may be prescribed.*
- (7) *A roads authority which has—
  - (a) under subsection (2) of section 56 of the [Roads \(Scotland\) Act 1984 \(c.54\)](#), given an applicant for consent for road works or excavations notice of affected statutory undertakers,
  - (b) under subsection (8) of that section, given notification of unlawful works removed or unlawful excavations filled in,
  - (c) under section 58(1) of that Act, given permission for the occupation of part of a road for the deposit of materials or for the erection of staging or scaffolding projecting over part of a road,
  - (d) under section 61(1) of that Act, given permission for the placing, leaving, retention, maintenance, repair or reinstatement of apparatus in or under a road or the breaking open of or having access to the road,
  - (e) under section 85 of the [Roads \(Scotland\) Act 1984 \(c.54\)](#), given permission for the deposit of a skip on a road for which a road works authority are responsible,
  - (f) under subsection (2) of section 86 of that Act, required the removal or repositioning of a skip deposited on such a road or removed or repositioned such a skip,
  - (g) become aware that a constable has, under subsection (1) of that section, required or caused the removal or repositioning of such a skip,
  - (h) given notice under—
    - (i) section 87 of that Act requiring the removal of a structure from a road for which a road works authority are responsible and (where considered requisite under that section) the reinstatement of the road, or
    - (ii) section 88 of that Act requiring the removal or alteration of a projection affecting such a road,
  - (i) under section 90 of that Act, given consent for the fixing or placing of an overhead bridge, beam, rail or other apparatus along or across such a road,
  - (j) under section 91 of that Act, served notice requiring work to be done or carried out work in relation to such a road, or
  - (k) under section 92 of that Act, given consent to the planting of a tree or shrub near a carriageway or required its removal, where the carriageway is, or is part of, such a road,shall enter in the SRWR such information relating to that matter as may be prescribed.*

- (8) *Information to be entered in the SRWR under this section shall be entered in such form and manner as may be prescribed.*

*Notice and co-ordination of works*

**113. 113. Advance notice of certain works.**

- (1) In such cases as may be prescribed an undertaker proposing to execute road works shall give the prescribed advance notice of the works to the road works authority.
- (2) Different periods of notice may be prescribed for different descriptions of works.
- (3) The notice shall contain such information as may be prescribed.
- (3A) *For the purposes of subsection (1) an undertaker gives notice by entering in the SRWR such information as may be prescribed.*
- (4) After giving advance notice under this section an undertaker shall comply with such requirements as may be prescribed, or imposed by the road works authority, as to the providing of information and other procedural steps to be taken for the purpose of co-ordinating the proposed works with other works of any description proposed to be executed in the road.
- (5) An undertaker who fails to comply with his duties under this section commits an offence and is liable on summary conviction to a fine not exceeding *level 4* on the standard scale.

**114. 114. Notice of starting date of works.**

- (1) An undertaker proposing to begin to execute road works involving-
- (a) breaking up or opening the road, or any sewer, drain or tunnel under it, or
  - (b) tunnelling or boring under the road,
- shall give not less than 7 working days' notice (or such other notice as may be prescribed) to the road works authority, to any other relevant authority and to any other person having apparatus in the road which is likely to be affected by the works.
- (2) Different periods of notice may be prescribed for different descriptions of works *or in cases where the undertaker has been given notice under section 117(1)*, and cases may be prescribed in which no notice is required.
- (3) The notice shall state the date on which it is proposed to begin the works and shall contain such other information as may be prescribed.
- (3A) *For the purposes of subsection (1) an undertaker or road works authority which is a local authority gives notice by—*
- (a) *giving to any relevant authority (not being the road works authority) and to any other person having apparatus in the road which is likely to be affected by the works a notice—*
    - (i) *stating the date on which it is proposed to begin the works, and*
    - (ii) *containing such other information as may be prescribed, and*
  - (b) *entering in the SRWR a copy of that notice.*
- (4) Where notice is required to be given under this section, the works shall not be begun without notice or before the end of the notice period, except with the consent of those to whom notice is required to be given.

- (5) An undertaker who begins to execute any works in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding *level 4* on the standard scale.
- (6) In proceedings against a person for such an offence it is a defence for him to show that the contravention was attributable-
- (a) to his not knowing the position, or not knowing of the existence, of another person's apparatus, or
  - (b) to his not knowing the identity or address of-
    - (i) a relevant authority, or
    - (ii) the person to whom any apparatus belongs,
- and that his ignorance was not due to any negligence on his part or to any failure to make inquiries which he ought reasonably to have made.
- (7) A notice under this section shall cease to have effect if the works to which it relates are not substantially begun before the end of the period of seven working days (or such other period as may be prescribed) beginning with the starting date specified in the notice, or such further period as may be allowed by those to whom notice is required to be given.

**115. 115. Power to give directions as to timing of works.**

- (1) If it appears to the road works authority-
- (a) that proposed road works are likely to cause serious disruption to traffic, and
  - (b) that the disruption would be avoided or reduced if the works were carried out only at certain times, *or on certain days (or at certain times on certain days)*,
- the authority may give the undertaker such directions as may be appropriate as to the times *or days (or both)* when the works may or may not be carried out.
- (1A) *If it appears to a road works authority—*
- (a) *that subsisting road works are causing or are likely to cause serious disruption to traffic, and*
  - (b) *that the disruption would be avoided or reduced if the works were to continue to be carried out only at certain times or on certain days (or at certain times on certain days),*
- the authority may give the undertaker such directions as may be appropriate as to the times or days (or both) when the works may or may not continue to be carried out.*
- (2) The procedure for giving a direction shall be prescribed by the Secretary of State.
- (2A) *The Scottish Ministers shall by regulations make provision for appeals against directions under this section, including provision as to the procedure to be followed on an appeal.*
- (3) An undertaker who executes works in contravention of a direction under this section commits an offence and is liable on summary conviction to a fine not exceeding *level 5* on the standard scale.
- (3A) *An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, the failure is attributable to a direction under this section.*
- (4) The Secretary of State may *shall* issue or approve for the purpose of this section a code of practice giving practical guidance as to the exercise by road works authorities of the power conferred by this section; and in exercising that power a road works authority shall have regard to the code of practice.



**115A. 115A. Power to give directions as to placing of apparatus.**

- (1) *Where—*
  - (a) *an undertaker is proposing to execute road works consisting of the placing of apparatus in a road (the “proposed road”),*
  - (b) *placing the apparatus in the proposed road is likely to cause disruption to traffic, and*
  - (c) *it appears to the road works authority that—*
    - (i) *there is another road in which the apparatus could be placed (the “other road”), and*
    - (ii) *the conditions in subsection (2) are satisfied,**the authority may by directions require the undertaker not to place the apparatus in the proposed road (but shall not require the undertaker to place the apparatus in the other road).*
- (2) *The conditions referred to in subsection (1)(c)(ii) are that—*
  - (a) *disruption to traffic would be avoided or reduced if the apparatus were to be placed in the other road,*
  - (b) *placing the apparatus in the other road would be a reasonable way of achieving the purpose for which the apparatus is to be placed, and*
  - (c) *it is reasonable to require the undertaker not to place the apparatus in the proposed road.*
- (3) *Directions under this section may be varied or revoked by further such directions.*
- (4) *The procedure for giving directions under this section shall be as prescribed.*
- (5) *The Scottish Ministers shall by regulations make provision for appeals against directions under this section, including provision as to the procedure to be followed on an appeal.*
- (6) *An undertaker who executes works in contravention of directions under this section commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.*
- (7) *An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, the failure is attributable to a direction under this section.*
- (8) *The Scottish Ministers shall issue or approve for the purposes of this section a code of practice giving practical guidance as to the exercise by road works authorities of the power conferred by this section; and in exercising that power a road works authority shall have regard to the code of practice.”.*

**116. 116. Notice of emergency works.**

- (1) *Nothing in section 113 (advance notice), section 114 (notice of starting date) or section 115 (directions as to timing of works) or section 115A (power to give directions as to placing of apparatus) affects the right of an undertaker to execute emergency works.*
- (2) *An undertaker executing emergency works shall, if the works are of a kind in respect of which notice is required by section 114, give notice as soon as reasonably practicable, and in any event within two hours (or such other period as may be prescribed) of the works being begun, to the persons to whom notice would be required to be given under that section.*

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- (3) The notice shall state his intention or, as the case may be, the fact that he has begun to execute the works and shall contain such other information as may be prescribed.
- (3A) *For the purposes of subsection (2) an undertaker or road works authority which is a local authority gives notice by—*
- (a) *giving to each person to whom notice would be required to be given under section 114 a notice—*
    - (i) *stating the undertaker's or road works authority's intention, or as the case may be, the fact that he has or they have begun to execute the works, and*
    - (ii) *containing such other information as may be prescribed, and*
  - (b) *entering in the SRWR a copy of that notice.*
- (4) An undertaker who fails to give notice in accordance with this section commits an offence and is liable on summary conviction to a fine not exceeding *level 4* on the standard scale.
- (5) In proceedings against a person for such an offence it is a defence for him to show that the contravention was attributable-
- (a) to his not knowing the position, or not knowing of the existence, of another person's apparatus, or
  - (b) to his not knowing the identity or address of-
    - (i) a relevant authority, or
    - (ii) the person to whom any apparatus belongs,
- and that his ignorance was not due to any negligence on his part or to any failure to make inquiries which he ought reasonably to have made.

**117. 117. Restriction on works following substantial works carried out for road purposes.**

- (1) Where it is proposed to carry out substantial works in a road, the road works authority may by notice in accordance with this section restrict the execution of road works during the twelve months *such period* following the completion of those works.
- For this purpose substantial works means works for road purposes, or such works together with other works, of such description *as may be prescribed*.
- (2) The notice shall be published in the prescribed manner *entered in the SRWR* and shall specify the nature and location of the proposed works, the date (not being less than three months after the notice is published *so entered*, or first published *so entered*) on which it is proposed to begin the works, and the extent of the restriction.
- (3) A copy of the notice shall be given to each of the following-
- (a) where there is a sewer vested in a [sewerage ] authority in the part of the road to which the restriction relates, to that authority,
  - (b) where the part of the road to which the restriction relates is carried or crossed by a bridge vested in a transport authority, or crosses or is crossed by any other property held or used for the purposes of a transport authority, to that authority,
  - (c) where in any other case the part of the road to which the restriction relates is carried or crossed by a bridge, to the bridge authority,
  - (d) any person who has given notice under section 113 (advance notice of certain works) of his intention to execute road works in the part of the road to which the restriction relates, and
  - (e) any other person having apparatus in the part of the road to which the restriction relates,

but a failure to do so does not affect the validity of the restriction imposed by the notice.

- (4) A notice ceases to be effective if the works to which it relates are not substantially begun-
  - (a) on or within one month from the date specified in the notice, or
  - (b) where road works are in progress in the part of the road to which the restriction relates on that date, within one month from the completion of those works.
- (5) An undertaker shall not in contravention of a restriction imposed by a notice under this section break up or open the part of the road to which the restriction relates, except-
  - (a) to execute emergency works,
  - (b) with the consent of the road works authority, or
  - (c) in such other cases as may be prescribed.
- (6) If he does-
  - (a) he commits an offence and is liable on summary conviction to a fine not exceeding *level 5* on the standard scale, and
  - (b) *if convicted of an offence under this subsection* he is liable to reimburse the road works authority any costs reasonably incurred by them in reinstating the road.
- (7) The consent of the road works authority under subsection (5)(b) shall not be unreasonably withheld; and any question whether the withholding of consent is unreasonable shall be settled by arbitration *in the prescribed manner*.
- (8) An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, his failure is attributable to a restriction imposed by a notice under this section.
- (9) *The Scottish Ministers may issue or approve for the purposes of this section a code of practice giving practical guidance as to the performance by road works authorities of their functions under this section; and in carrying out those functions a road works authority shall have regard to the code of practice.*

#### **118. 118. General duty of road works authority to co-ordinate works.**

- (1) A road works authority shall use their best endeavours to co-ordinate the execution of works of all kinds (including works for road purposes) in the roads for which they are responsible-
  - (a) in the interests of safety,
  - (b) to minimise the inconvenience to persons using the road (having regard, in particular, to the needs of people with a disability), and
  - (c) to protect the structure of the road and the integrity of apparatus in it.
- (2) That duty extends to co-ordination with other road works authorities where works in a road for which one authority are responsible affect roads for which other authorities are responsible.
- (2A) *In discharging their duty under this section, a road works authority shall have regard to all information in the SRWR which relates to the functions of the authority.*
- (2B) *A road works authority shall, so as to maximise the utility of that information for the purposes of subsection (2A)—*
  - (a) *assist the Commissioner in complying with the duty imposed by subsection (1) of section 112A (as read with subsection (2) of that section), and*
  - (b) *keep that information under surveillance.*
- (3) The Secretary of State shall issue or approve for the purposes of this section codes of practice giving practical guidance as to the matters mentioned above; and in discharging

their general duty of co-ordination *and the specific duties imposed by subsections (2) to (2B)* a road works authority shall have regard to any such code of practice.

(3A) *In discharging all the duties referred to in subsection (3), a road works authority shall have regard also to such guidance as is contained in the practice referred to in section 15(3)(b) of the [Transport \(Scotland\) Act 2004 \(asp 00\)](#).*

(4) If it appears to the Secretary of State *Commissioner* that a road works authority are not properly discharging their general duty of co-ordination, he may direct the authority to supply him with such information as he considers necessary to enable him to decide whether that is the case and if so what action to take.

The direction shall specify the information to be provided and the period within which it is to be provided.

(5) If after the end of that period (whether or not the direction has been complied with) it appears to the Secretary of State *Commissioner* that the authority are not properly discharging their general duty of co-ordination, he may direct the authority to take such steps as he considers appropriate for the purpose of discharging that duty.

The direction shall specify the steps to be taken and the period within which they are to be taken, and may include a requirement to make a report or periodic reports to the Secretary of State *Commissioner* as to what steps have been taken and the results of taking them.

(6) A direction under this section may be varied or revoked by a further direction.

#### **119. 119. General duty of undertakers to co-operate.**

(1) An undertaker shall as regards the execution of road works use his best endeavours to co-operate with the road works authority and with other undertakers-

- (a) in the interests of safety,
- (b) to minimise the inconvenience to persons using the road (having regard, in particular, to the needs of people with a disability), and
- (c) to protect the structure of the road and the integrity of apparatus in it.

(1A) *In discharging the duty under this section, an undertaker shall have regard to all information in the SRWR about matters which might affect, or be affected by, works being or proposed to be carried out by the undertaker.*

(1B) *An undertaker shall, so as to maximise the utility of that information for the purposes of subsection (1A)—*

- (a) *assist the Commissioner in complying with the duty imposed by subsection (1) of section 112A (as read with subsection (2) of that section), and*
- (b) *keep that information under surveillance.*

(1C) *In subsections (1A) and (1B), “undertaker” does not include a person having permission under section 109 to execute road works*

(2) The Secretary of State shall issue or approve for the purposes of this section codes of practice giving practical guidance as to the matters mentioned in subsection (1); and-

- (a) so far as an undertaker complies with such a code of practice he shall be taken to comply with his duty under that subsection, and
- (b) a failure in any respect to comply with any such code is evidence of failure in that respect to comply with that duty.

(2A) *In discharging the duties imposed by subsections (1) to (1B), an undertaker shall-*

- (a) *comply with any direction in that respect given to the undertaker by the Commissioner, and*

*These notes relate to the Transport (Scotland) Act 2005  
(asp 12) which received Royal Assent on 5 August 2005*

(b) *have regard to such guidance as is contained in the practice referred to in section 17(4)(b) of the [Transport \(Scotland\) Act 2005 \(asp00\)](#), and paragraphs (a) and (b) of subsection (2) shall apply in relation to any such direction as they apply in relation to the code of practice referred to in that subsection.*

- (2B) *If it appears to the Commissioner that an undertaker is not properly complying with his duty under subsection (1), he may direct the undertaker to supply him with such information as he considers necessary to enable him to decide whether that is the case and, if so, what action to take.*

*The direction shall specify the information to be provided and the period within which it is to be provided.*

- (3) An undertaker who fails to comply with his duty under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) *A direction under this section may be varied or revoked by a further direction.*

#### **119A. 119A. Enforcement of section 119: imposition of penalties**

- (1) *The Scottish Ministers may, by regulations, make provision for or in connection with—*
- (a) *the imposition by the Commissioner of penalties on road works authorities and undertakers who fail to comply with duties imposed on them by sections 118 and 119 respectively,*
  - (b) *the payment of such penalties.*
- (2) *The regulations may include provision for or in connection with—*
- (a) *the notification and enforcement of penalties,*
  - (b) *the level of penalties,*
  - (c) *appeals against the imposition of penalties including the appointment of persons to hear and determine such appeals.*

*Roads subject to special controls*

#### **120. 120. Protected roads.**

- (1) The consent of the road works authority is required for the placing of apparatus by an undertaker in a protected road, except as mentioned below.

The following are "protected roads" for this purpose-

- (a) any road or proposed road which is a special road in accordance with section 7 of the Roads (Scotland) Act 1984, and
  - (b) any road designated by the road works authority as protected.
- (2) Consent is not required for the placing of apparatus-
- (a) by way of renewal of existing apparatus, or
  - (b) in pursuance of a permission granted under section 109 of this Act (permission to execute road works) or section 61 of the Roads (Scotland) Act 1984 (permission to place and maintain apparatus under a road), except where the permission was granted before the road became a protected road.
- (3) The road works authority may require the payment of-
- (a) a reasonable fee in respect of the legal or other expenses incurred in connection with the giving of their consent under this section, and
  - (b) an annual fee of a reasonable amount for administering the consent;

and any such fee is recoverable from the undertaker.

This shall not be construed as affecting any right of the authority where they own the land on which the road is situated to grant, subject to such terms and conditions as they think fit, the right to place anything in, under or over the land.

- (4) Where the apparatus is to be placed crossing the protected road and not running along it, the road works authority shall not withhold their consent unless there are special reasons for doing so.
- (5) Consent to the placing of apparatus in a protected road may be given subject to conditions; and the road works authority may agree to contribute to the expenses incurred by the undertaker in complying with the conditions.
- (6) Any dispute between a road works authority and an undertaker as to the withholding of consent, the imposition of conditions, or the making of contributions shall be settled by arbitration *in the prescribed manner*.
- (7) An undertaker having a statutory duty to afford a supply or service shall not be regarded as in breach of that duty if, or to the extent that, it is not reasonably practicable to afford a supply or service by reason of anything done by the road works authority in exercise of their functions in relation to a protected road.

**121. 121. Supplementary provisions as to designation of protected roads.**

- (1) The Secretary of State may prescribe-
  - (a) the criteria for designating a road as protected,
  - (b) the procedure for making or withdrawing such a designation, and
  - (c) the information to be made available by a road works authority as to the roads for the time being designated by them.
- (2) Where a road has been designated as protected the road works authority may direct an undertaker to remove or change the position of apparatus placed in the road at a time when it was not so designated.

The authority shall indemnify the undertaker in respect of his reasonable expenses in complying with such a direction.

- (3) Where a designation is withdrawn the road works authority may give such directions as they consider appropriate as to-
  - (a) the continuance in force of any conditions subject to which consent was given for the placing of apparatus in the road, and
  - (b) the continuance of entitlement to any contributions in respect of the expenses of an undertaker in complying with such conditions.
- (4) Where a designation is made or withdrawn the road works authority may give such directions as they consider appropriate with respect to works in progress in the road when the designation comes into force or ceases to have effect.
- (5) Any dispute between a road works authority and an undertaker as to the exercise by the authority of their powers under subsection (2), (3) or (4) shall be settled by arbitration *in the prescribed manner*.
- (6) Where a road has been designated as protected, the roads authority shall indicate that it has been so designated in the list of public roads which they are obliged to maintain by virtue of section 1 or 2 of the Roads (Scotland) Act 1984.

**122. 122. Roads with special engineering difficulties.**

*These notes relate to the Transport (Scotland) Act 2005  
(asp 12) which received Royal Assent on 5 August 2005*

- (1) The provisions of Schedule 6 have effect for requiring the settlement of a plan and section of road works to be executed in a road designated by the road works authority as having special engineering difficulties.
- (2) The Secretary of State may prescribe-
  - (a) the criteria for designating a road as having special engineering difficulties,
  - (b) the procedure for making or withdrawing such a designation, and
  - (c) the information to be made available by a road works authority as to the roads for the time being so designated by them.
- (3) Where a local roads authority are asked to designate a road as having special engineering difficulties-
  - (a) by a transport authority on the ground of the proximity of the road to a structure belonging to, or under the management or control of, the authority, or
  - (b) by an undertaker having apparatus in the road,and decline to do so, the transport authority or undertaker may appeal to the Secretary of State who may direct that the road be designated.
- (4) The designation of a road as having special engineering difficulties shall not be withdrawn except after consultation with any transport authority or undertaker at whose request the designation was made; and a designation made in pursuance of a direction by the Secretary of State shall not be withdrawn except with his consent.
- (5) Where a road has been designated as having special engineering difficulties, the roads authority shall indicate that it has been so designated in the list of public roads which they are obliged to maintain by virtue of section 1 or 2 of the Roads (Scotland) Act 1984.

**123. 123. Traffic-sensitive roads.**

- (1) Regulations made for the purposes of section 113, 114 or 116 (notices required to be given in respect of road works) may make special provision in relation to road works in a road designated by the road works authority as traffic-sensitive.
- (2) The Secretary of State may prescribe-
  - (a) the criteria for designating a road as traffic-sensitive,
  - (b) the procedure for making or withdrawing such a designation, and
  - (c) the information to be made available by a road works authority as to the roads for the time being so designated by them.
- (3) If it appears to the road works authority that the prescribed criteria are met only at certain times or on certain dates, a limited designation may be made accordingly.

In such a case the reference in subsection (1) to the execution of works in a road designated as traffic-sensitive shall be construed as a reference to works so executed at those times or on those dates.
- (4) Where a road has been designated as traffic-sensitive, the roads authority shall indicate that it has been so designated in the list of public roads which they are obliged to maintain by virtue of section 1 or 2 of the Roads (Scotland) Act 1984.

*General requirements as to execution of road works*

**124. 124. Safety measures.**

- (1) An undertaker executing road works shall secure-

*These notes relate to the Transport (Scotland) Act 2005  
(asp 12) which received Royal Assent on 5 August 2005*

- (a) that any part of the road which is broken up or open, or is obstructed by plant or materials used or deposited in connection with the works, is adequately guarded and lit, and
  - (b) that such traffic signs are placed and maintained, and where necessary operated, as are reasonably required for the guidance or direction of persons using the road, and in accordance with section 120 of the Roads (Scotland) Act 1984 (duty to have regard to the needs of people with a disability).
- (2) In discharging in relation to a road his duty with respect to the placing, maintenance or operation of traffic signs, an undertaker shall comply with any directions given by the traffic authority.

The power of the traffic authority to give directions under this subsection is exercisable subject to any directions given by the Secretary of State under section 65 of the Road Traffic Regulation Act 1984.

- (3) The Secretary of State may issue or approve for the purposes of this section codes of practice giving practical guidance as to the matters mentioned in subsection (1); and-
- (a) so far as an undertaker complies with such a code of practice he shall be taken to comply with that subsection; and
  - (b) a failure in any respect to comply with any such code is evidence of failure in that respect to comply with that subsection.
- (4) An undertaker who fails to comply with subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding *level 5* on the standard scale.
- (5) If it appears to the road works authority that an undertaker has failed to comply with subsection (1) or (2), they may take such steps as appear to them necessary and may recover from the undertaker the costs reasonably incurred by them in doing so.
- (6) If a person without lawful authority or excuse-
- (a) takes down, alters or removes any fence, barrier, traffic sign or light erected or placed in pursuance of subsection (1) or (2) above, or
  - (b) extinguishes a light so placed,
- he commits an offence and is liable on summary conviction to a fine not exceeding *level 5* on the standard scale.

#### **125. 125. Avoidance of unnecessary delay or obstruction.**

- (1) An undertaker executing road works which involve-
- (a) breaking up or opening the road, or any sewer, drain or tunnel under it, or
  - (b) tunnelling or boring under the road,
- shall carry on and complete the works with all such dispatch as is reasonably practicable.
- (2) An undertaker who fails to do so commits an offence and is liable on summary conviction to a fine not exceeding *level 5* on the standard scale.
- (3) Where an undertaker executing any road works creates an obstruction in a road to a greater extent or for a longer period than is reasonably necessary, the road works authority may by notice require him to take such reasonable steps as are specified in the notice to mitigate or discontinue the obstruction.
- (4) If the undertaker fails to comply with such a notice within 24 hours of receiving it, or such longer period as the authority may specify, the authority may take the necessary steps and recover from him the costs reasonably incurred by them in doing so.

#### **126. 126. Qualifications of supervisors and operatives.**



*These notes relate to the Transport (Scotland) Act 2005  
(asp 12) which received Royal Assent on 5 August 2005*

- (1) It is the duty of an undertaker executing road works involving-
- (a) breaking up the road, or any sewer, drain or tunnel under it, or
  - (b) tunnelling or boring under the road,
- to secure that, except in such cases as may be prescribed, the execution of the works is supervised by a person having a prescribed qualification as a supervisor.
- (1A) *A road works authority may (unless the case is one excepted from subsection (1)) by notice require an undertaker executing road works—*
- (a) *to notify them of the name of—*
    - (i) *the person who is currently the qualified supervisor required under 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 the person or, as the case may be, each person named as may be prescribed.*
- (2) It is the duty of an undertaker executing road works involving-
- (a) breaking up or opening the road, or any sewer, drain or tunnel under it, or
  - (b) tunnelling or boring under the road,
- to secure that, except in such cases as may be prescribed, there is on site at all times when any such works are in progress at least one person having a prescribed qualification as a trained operative.
- (2A) *A road works authority may (unless the case is one excepted from subsection (2)) by notice require an undertaker executing road 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 under subsection (2), and*
  - (B) *to provide them such evidence of the requisite qualification of the or, as the case may be, each person named as may be prescribed.*
- (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 and in such way as may be prescribed.*
- (3) An undertaker who fails to comply with his duty under subsection (1) or (2) , (2) or (2C) commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Regulations made by the Secretary of State for the purposes of this section may include provision with respect to.
- (a) the approval of bodies conferring qualifications (and the withdrawal of such approval), and
  - (b) the circumstances in which a qualification may be conferred *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.*

**126A. 126A. Duty of authorities, undertakers etc. to ensure competence of employees etc.**

*Each of the authorities and other persons set out in the first column below shall use their or, as the case may be, his best endeavours to ensure that each of that authority's or, as the case may be, that person's employees or agents whose duty it is to carry out for that authority or person a function conferred on that authority or person by or under an enactment set out relative to that authority or person in the second column below is competent to perform that duty—*

<b>A road works authority</b>	<i>Section 112B(1) and (2) of this Act; section 18 of the <a href="#">Transport (Scotland) Act 2005 (asp 00)</a> (duty to provide Scottish Road Works Commissioner with certain information).</i>
<b>A roads authority</b>	<b>Section 112B(4) to (7) of this Act.</b>
<b>An undertaker</b>	<i>Sections 113(1), 114(1) and 116(2) of this Act; section 18 of the <a href="#">Transport (Scotland) Act 2005 (asp 00)</a> (duty to provide Scottish Road Works Commissioner with certain information).</i>

**127. 127. Facilities to be afforded to road works authority.**

- (1) An undertaker executing road works shall afford the road works authority reasonable facilities for ascertaining whether he is complying with his duties under this Part.
- (2) An undertaker who fails to afford the road works authority such facilities commits an offence in respect of each failure and is liable on summary conviction to a fine not exceeding *level 4* on the standard scale.

**128. 128. Works likely to affect other apparatus in the road.**

- (1) Where road works are likely to affect another person's apparatus in the road, the undertaker executing the works shall take all reasonably practicable steps-
  - (a) to give the person to whom the apparatus belongs reasonable facilities for monitoring the execution of the works, and
  - (b) to comply with any requirement made by him which is reasonably necessary for the protection of the apparatus or for securing access to it.
- (2) An undertaker who fails to comply with subsection (1) commits an offence in respect of each failure and is liable on summary conviction to a fine not exceeding *level 4* on the standard scale.
- (3) In proceedings against a person for such an offence it is a defence for him to show that the failure was attributable-
  - (a) to his not knowing the position, or not knowing of the existence, of another person's apparatus, or
  - (b) to his not knowing the identity or address of the person to whom any apparatus belongs,

and that his ignorance was not due to any negligence on his part or to any failure to make inquiries which he ought reasonably to have made.

*Reinstatement*

**129. 129. Duty of undertaker to reinstate.**

- (1) It is the duty of the undertaker by whom road works are executed to reinstate the road.
- (2) He shall begin the reinstatement as soon after the completion of any part of the road works as is reasonably practicable and shall carry on and complete the reinstatement with all such dispatch as is reasonably practicable.
- (3) He shall before the end of the next working day after the day on which the reinstatement is completed inform the road works authority *give the required notice* that he has completed the reinstatement of the road, stating whether the reinstatement is permanent or interim.
- (4) If it is interim, he shall complete the permanent reinstatement of the road as soon as reasonably practicable and in any event within six months (or such other period as may be prescribed) from the date on which the interim reinstatement was completed; and he shall notify the road works authority *give the required notice* when he has done so.
- (5) The permanent reinstatement of the road shall include, in particular, the reinstatement of features designed to assist people with a disability.
- (5A) *For the purposes of subsection (3) or (4) an undertaker gives the required notice by—*
  - (a) *giving to the Commissioner a notice containing such information as may be prescribed, and*
  - (b) *entering in the SRWR a copy of that notice.*
- (6) An undertaker who fails to comply with any provision of this section commits an offence and is liable on summary conviction to a fine not exceeding *level 5* on the standard scale.
- (7) In proceedings against a person for an offence of failing to comply with subsection (2) it is a defence for him to show that any delay in reinstating the road was in order to avoid hindering the execution of other works, or other parts of the same works, to be undertaken immediately or shortly thereafter.

**130. 130. Materials, workmanship and standard of reinstatement.**

- (1) An undertaker executing road works shall in reinstating the road 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 reinstatement conforms to such performance standards as may be prescribed—
  - (a) in the case of interim reinstatement, until permanent reinstatement is effected, and
  - (b) in the case of permanent reinstatement, for the prescribed period after the completion of the reinstatement.

This obligation is extended in certain cases and restricted in others by the provisions of section 132 as to cases where a reinstatement is affected by subsequent works.

- (3) Regulations made for the purposes of this section may make different provision in relation to different classes of excavation and different descriptions of road, and in relation to interim and permanent reinstatement.

- (4) The Secretary of State may issue or approve for the purposes of this section codes of practice giving practical guidance as to the matters mentioned in subsections (1) and (2); and regulations made for the purposes of this section may provide that-
  - (a) so far as an undertaker complies with such a code of practice he shall be taken to comply with his duties under this section; and
  - (b) a failure in any respect to comply with any such code is evidence of failure in that respect to comply with those duties.
- (5) An undertaker who fails to comply with his duties under this section commits an offence and is liable on summary conviction to a fine not exceeding *level 5* on the standard scale.

**131. 131. Powers of road works authority in relation to reinstatement.**

- (1) The road works authority may carry out such investigatory works as appear to them to be necessary to ascertain whether an undertaker has complied with his duties under this Part with respect to reinstatement.

If such a failure is disclosed, the undertaker shall bear the cost of the investigatory works; if not, the road works authority shall bear the cost of the investigatory works and of any necessary reinstatement.

- (2) Where an undertaker has failed to comply with his duties under this Part with respect to reinstatement, he shall bear the cost of-
  - (a) a joint inspection with the road works authority to determine the nature of the failure and what remedial works need to be undertaken,
  - (b) an inspection by the authority of the remedial works in progress, and
  - (c) an inspection by the authority when the remedial works have been completed.
- (3) The road works authority may by notice require an undertaker who has failed to comply with his duties under this Part with respect to reinstatement to carry out the necessary remedial works within such period of not less than 7 working days *not being shorter than such period as may be prescribed* as may be specified in the notice.

If he fails to comply with the notice, the authority may carry out the necessary works and recover from him the costs reasonably incurred by them in doing so.

- (3A) *Different minimum periods may be prescribed under subsection (3) for different descriptions of remedial works; and cases may be so prescribed in which no minimum period applies.*
- (4) If it appears to the road works authority that a failure by an undertaker to comply with his duties under this Part as to reinstatement is causing danger to users of the road, the authority may carry out the necessary works without first giving notice and may recover from him the costs reasonably incurred by them in doing so.

They shall, however, give notice to him as soon as reasonably practicable stating their reasons for taking immediate action.

**132. 132. Reinstatement affected by subsequent works.**

- (1) The provisions of this section apply in relation to an undertaker's duty under section 130(2) to ensure that a reinstatement conforms to the prescribed performance standards for the requisite period; and references to responsibility for a reinstatement and to the period of that responsibility shall be construed accordingly.
- (2) Where a reinstatement is affected by remedial works executed by the undertaker in order to comply with his duties under this Part with respect to reinstatement and the extent

of the works exceeds that prescribed, the subsequent reinstatement shall be treated as a new reinstatement as regards the period of his responsibility.

- (3) Where the road works authority carry out investigatory works in pursuance of section 131(1) and the investigation does not disclose any failure by the undertaker to comply with his duties under this Part with respect to reinstatement, then, to the extent that the original reinstatement has been disturbed by the investigatory works, the responsibility of the undertaker for the reinstatement shall cease.
- (4) Where a reinstatement is affected by remedial works executed by the road works authority in exercise of their powers under section 131(3) or (4) (powers to act in default of undertaker)
  - (a) the undertaker is responsible for the subsequent reinstatement carried out by the authority, and
  - (b) if the extent of the works exceeds that prescribed, the subsequent reinstatement shall be treated as a new reinstatement as regards the period of his responsibility.
- (5) The following provisions apply where a reinstatement is affected by subsequent works in the road otherwise than as mentioned above.
- (6) If the reinstatement is dug out to any extent in the course of the subsequent works, the responsibility of the undertaker for the reinstatement shall cease to that extent.
- (7) If in any other case the reinstatement ceases to conform to the prescribed performance standards by reason of the subsequent works, the responsibility of the undertaker for the reinstatement is transferred to the person executing the subsequent works; and the provisions of this Part apply in relation to him as they would have applied in relation to the undertaker.
- (8) Where there are successive subsequent works affecting a reinstatement, then as between earlier and later works-
  - (a) subsections (6) and (7) apply in relation to the cessation or transfer of the responsibility of the person for the time being responsible for the reinstatement; and
  - (b) if the reinstatement ceases to conform to the prescribed performance standards by reason of the works or any of them, it shall be presumed until the contrary is proved that this was caused by the later or last of the works.

### *Resurfacing*

#### **132A. 132A. Power to require undertaker to resurface road**

- (1) *In prescribed circumstances, the road works authority may by notice (a “resurfacing notice”) require an undertaker within subsection (2) to execute such resurfacing works in a road as may be specified in the notice.*
- (2) *An undertaker is within this subsection if—*
  - (a) *he has given notice under section 113 or 114 of proposed road works,*
  - (b) *he is executing road works, or*
  - (c) *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 road works,*  
*and the works will involve, involve or (as the case may be) involved the breaking up of any part of the road.*
- (3) *The works specified in the resurfacing notice may relate to any part of the road (including any part not, and not to be, broken up by the undertaker); but regulations*

*made by the Scottish Ministers may restrict the extent of the works that may be so specified.*

- (4) *The resurfacing notice relieves the undertaker to the extent (if any) specified in the notice of his duty under section 129 to reinstate the surface of the road; but regulations made by the Scottish Ministers may restrict the circumstances in which and the extent to which undertakers may be relieved of that duty.*
- (5) *The road works authority may by notice to the undertaker vary or withdraw a resurfacing notice; but regulations made by the Scottish Ministers may restrict the circumstances in which notices may be varied or withdrawn.*
- (6) *A road works authority may serve a resurfacing 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—  
“resurfacing notice” has the meaning given by subsection (1),  
“resurfacing works” means any works relating to the replacement of the surface of any part of a road,  
“surface” includes a paved surface.*

**132B. 132B. Power to specify timing etc. of resurfacing**

- (1) *A resurfacing 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 Scottish Ministers 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 road works 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.*

**132C. 132C. Materials, workmanship and standard of resurfacing**

- (1) *An undertaker who has been served with a resurfacing 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) *The undertaker shall also ensure that, for the prescribed period after completion of the works, those works conform to such performance standards as may be prescribed.*

**132D. 132D. Resurfacing: regulations**

*These notes relate to the Transport (Scotland) Act 2005  
(asp 12) which received Royal Assent on 5 August 2005*

- (1) *The Scottish Ministers may make regulations supplementing sections 132A to 132C.*
- (2) *The regulations may, in particular—*
  - (a) *make provision about the information to be contained in a resurfacing notice (including the way in which resurfacing works are to be described),*
  - (b) *prescribe, for cases where a resurfacing notice may be served on more than one undertaker, the matters that a road works authority shall take into account when selecting the undertaker to be served with the notice,*
  - (c) *impose a requirement on an undertaker, in prescribed circumstances, to give notice to the road works authority of a prescribed event,*
  - (d) *prescribe circumstances in which an undertaker is entitled to pay a sum to the road works authority instead of executing the works specified in a resurfacing notice, and make provision about the manner in which such sums are to be calculated,*
  - (e) *confer a right of review or appeal against a resurfacing notice or any requirement contained in it, and 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 132A(1)) to be determined in such manner and by such persons as may be prescribed,*
  - (g) *apply, with or without modifications, any provisions of this Part or of the [Roads \(Scotland\) Act 1984 \(c.54\)](#) in relation to works specified in a resurfacing notice (and provide that for those purposes the works are to be treated as road works or works of any other description).*
- (3) *The regulations may create, in respect of any breach of a requirement imposed by a resurfacing notice or of the duty imposed by section 132C, or any contravention of the regulations, an offence punishable on summary conviction—*
  - (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.*
- (4) *The first regulations under each of this section and sections 132A to 132C shall not be made unless a draft of them has been laid before and approved by a resolution of the Scottish Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.*

**132E. 132E. Resurfacing: guidance**

- (1) *The Scottish Ministers shall, for the purposes of sections 132A to 132D (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, road works authorities and undertakers shall have regard to the code of practice.*

*Charges, fees and contributions payable by undertakers*

**133. 133. Charge for occupation of the road where works unreasonably prolonged.**

- (1) The Secretary of State may make provision by regulations requiring an undertaker executing road works in a public road to pay a charge to the roads authority where-
  - (a) the duration of the works exceeds such period as may be prescribed, and

(b) the works are not completed within a reasonable period.

- (2) For this purpose "a reasonable period" means such period as is agreed by the authority and the undertaker to be reasonable or, in default of such agreement, is determined by arbitration *in the prescribed manner* to be reasonable, for completion of the works in question.

In default of agreement, the authority's view as to what is a reasonable period shall be acted upon pending the decision of the arbiter.

- (3) The regulations may provide that if an undertaker has reason to believe that the duration of works will exceed the prescribed period he may submit to the authority an estimate of their likely duration-
- (a) in the case of works in connection with the initial placing of apparatus in the road in pursuance of a permission granted under section 109 (permission to execute road works), together with his application for permission,
  - (b) in the case of other works (not being emergency works), together with his notice under section 114 (notice of starting date), or
  - (c) in the case of emergency works, as soon as reasonably practicable after the works are begun,

and that the period stated in an estimate so submitted shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.

- (4) The regulations may also provide that if it appears to the undertaker that by reason of matters not previously foreseen or reasonably foreseeable the duration of the works-
- (a) is likely to exceed the prescribed period,
  - (b) is likely to exceed the period stated in his previous estimate, or
  - (c) is likely to exceed the period previously agreed or determined to be a reasonable period,

he may submit an estimate or revised estimate accordingly, and that if he does so any previous estimate, agreement or determination shall cease to have effect and the period stated in the new estimate shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.

- (5) The amount of the charge shall be determined in such manner as may be prescribed by reference to the time taken to complete the works and the extent to which the surface of the road is affected by the works.

Different rates of charge may be prescribed according to the place and time at which the works are executed and such other factors as appear to the Secretary of State to be relevant.

- (6) The regulations may make provision as to the time and manner of making payment of any charge.
- (7) The regulations shall provide that a roads authority may reduce the amount, or waive payment, of a charge in any particular case, in such classes of case as they may decide or as may be prescribed, or generally.
- (8) The first regulations for the purposes of 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.

#### **134. 134. Inspection fees.**



*These notes relate to the Transport (Scotland) Act 2005  
(asp 12) which received Royal Assent on 5 August 2005*

- (1) An undertaker executing road works shall, subject to the provisions of any scheme under this section, pay to the road works authority the prescribed fee in respect of each inspection of the works carried out by the authority.
- (2) Different fees may be prescribed according 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.
- (3) The Secretary of State may by regulations make a scheme under which undertakers pay the prescribed fee only in respect of such proportion or number of excavations or other works as may be determined in accordance with the scheme.
- (4) The scheme may make provision-
  - (a) as to the periods and areas by reference to which the proportion or number is to be determined, and
  - (b) as to the intervals at which an account is to be struck between an undertaker and a road works authority and any necessary payment or repayment made, and different provision may be made for different descriptions of undertaker and different descriptions of road works authority.
- (5) Nothing in this section applies in relation to inspections in respect of which the undertaker is obliged to bear the cost under section 131(2) (inspections consequent on his failure to comply with his duties as to reinstatement).

**135. 135. Liability for cost of temporary traffic regulation.**

- (1) Where by reason of road works-
  - (a) the traffic authority makes an order or issues a notice under section 14 of the Road Traffic Regulation Act 1984 (temporary prohibition or restriction of traffic), or
  - (b) a concessionaire issues a notice under that section by virtue of section 43(4) of this Act,the authority or concessionaire may recover from the undertaker the whole of the costs incurred by them in connection with or in consequence of the order or notice.
- (2) Those costs shall be taken to include, in particular, the cost to the authority or concessionaire-
  - (a) of complying with any requirement to notify the public of any matter in connection with the making, issuing or operation of the order or notice, and
  - (b) of providing traffic signs in connection with the prohibition or restriction of traffic by the order or notice.

**136. 136. Liability for cost of use of alternative route.**

- (1) Where by reason of road works the use of a road is restricted or prohibited and the diverted traffic uses as an alternative route a road of a lower classification, the undertaker shall indemnify the roads authority for the latter road in respect of costs reasonably incurred by them-
  - (a) in strengthening the road, so far as that is done with a view to and is necessary for the purposes of its use by the diverted traffic, or
  - (b) in making good any damage to the road occurring in consequence of the use by it of the diverted traffic.
- (2) For this purpose the order of classification of roads, from higher to lower, is as follows:

1	Trunk roads.
2	Principal roads.
3	Other classified roads.
4	Other roads.

- (3) In this section, "trunk road" and "classified road" have the meanings given by section 151 of the Roads (Scotland) Act 1984 and "principal road" refers to a road classified as such by the Secretary of State under section 11 of that Act.

**137. 137. Contributions to costs of making good long-term damage.**

- (1) The Secretary of State may make provision by regulations requiring an undertaker executing road works to contribute to the costs incurred or likely to be incurred by a road works authority in works of reconstruction or re-surfacing of the road.
- (2) The regulations may provide-
- (a) for a contribution to the cost of particular remedial works, or
  - (b) for a general contribution calculated in such manner as may be prescribed.
- (3) In the former case the regulations may contain provision for apportioning the liability where the need for the remedial works is attributable to works executed by more than one person.
- (4) In the latter case the regulations may provide for the amount of the contribution to vary according to the nature of the road, the description and extent of the works and such other factors as appear to the Secretary of State to be relevant.
- (5) 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.

**137A. 137A. Contributions to costs of resurfacing by undertaker**

- (1) *Where a road works authority have given a resurfacing notice to an undertaker—*
- (a) *the authority shall pay to the undertaker a proportion, calculated in the prescribed manner, of the costs reasonably incurred by the undertaker in executing the works specified in the notice,*
  - (b) *an undertaker to whom subsection (2) applies shall pay to the undertaker referred to in paragraph (a) a proportion, calculated in the prescribed manner, of those costs.*
- (2) *This subsection applies to an undertaker if—*
- (a) *the undertaker has, before the completion of the works specified in the notice, executed road works which involved the breaking up of any part of a road, and*
  - (b) *the works specified in the notice include the resurfacing of that part of the road.*
- (3) *The Scottish Ministers 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, as may be prescribed.*

*These notes relate to the Transport (Scotland) Act 2005  
(asp 12) which received Royal Assent on 5 August 2005*

- (5) *The Scottish Ministers may by regulations make provision 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 road works 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 first regulations under this section shall not be made unless a draft of them has been laid before and approved by a resolution of the Scottish Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.*

*Duties and liabilities of undertakers with respect to apparatus*

**138. 138. Records of location of apparatus.**

- (1) An undertaker shall, except in such cases as may be prescribed, record the location of every item of apparatus belonging to him as soon as reasonably practicable after-
  - (a) placing it in the road or altering its position,
  - (b) locating it in the road in the course of executing any other works, or
  - (c) being informed of its location under section 139 below,stating the nature of the apparatus and (if known) whether it is for the time being in use.
- (2) The records shall be kept up to date and shall be kept in such form and manner as may be prescribed.
- (3) An undertaker shall make his records available for inspection, at all reasonable hours and free of charge, by any person having authority to execute works of any description in the road or otherwise appearing to the undertaker to have a sufficient interest.
- (4) If an undertaker fails to comply with his duties under this section-
  - (a) he commits an offence and is liable on summary conviction to a fine not exceeding *level 5* on the standard scale, and
  - (b) he is liable to compensate any person in respect of damage or loss incurred by him in consequence of the failure.
- (5) In criminal or civil proceedings arising out of any such failure it is a defence for the undertaker to show that all reasonable care was taken by him, and by his contractors and by persons in his employ or that of his contractors, to secure that no such failure occurred.
- (6) An order under section 161 (power to make consequential amendments, repeals, &c.) relating to an enactment or instrument containing provision for the keeping of records of apparatus which appears to the Secretary of State to be superseded by or otherwise inconsistent with the provisions of this section-
  - (a) shall not be subject to the procedure provided for in Schedule 7, and
  - (b) may make such transitional and other provision as appears to the Secretary of State appropriate for applying in relation to records compiled under that enactment or instrument the provisions of subsections (2) to (5) above and section 139 below.

**139. 139. Duty to inform undertakers of location of apparatus.**

- (1) A person executing works of any description in the road who finds apparatus belonging to an undertaker which is not marked, or is wrongly marked, on the records made available by the undertaker, shall take such steps as are reasonably practicable to inform the undertaker to whom the apparatus belongs of its location and (so far as appears from external inspection) its nature and whether it is in use.
- (2) Where a person executing works of any description in the road finds apparatus which does not belong to him and is unable, after taking such steps as are reasonably practicable, to ascertain to whom the apparatus belongs, he shall-
  - (a) if he is an undertaker, note on the records kept by him under section 138(1) (in such manner as may be prescribed) the location of the apparatus he has found and its general description, and
  - (b) in any other case, inform the road works authority of the location and general description of the apparatus he has found.
- (3) Subsections (1) and (2) have effect subject to such exceptions as may be prescribed.
- (4) A person who fails to comply with subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding *level 4* on the standard scale.

**140. 140. Duty to maintain apparatus.**

- (1) An undertaker having apparatus in the road shall secure that the apparatus is maintained to the reasonable satisfaction of-
  - (a) the road works authority, as regards the safety and convenience of persons using the road (having regard, in particular, to the needs of people with a disability), the structure of the road and the integrity of apparatus of the authority in the road, and
  - (b) any other relevant authority, as regards any land, structure or apparatus of theirs,and he shall afford reasonable facilities to each such authority for ascertaining whether it is so maintained.
- (2) For this purpose maintenance means the carrying out of such works as are necessary to keep the apparatus in efficient working condition (including periodic renewal where appropriate); and includes works rendered necessary by other works in the road, other than major works for road purposes, major bridge works or major transport works (as to which, see sections 143 and 144 below).
- (3) If an undertaker fails to give a relevant authority the facilities required by this section-
  - (a) the road works authority may in such cases as may be prescribed, and
  - (b) any other relevant authority may in any case,execute such works as are needed to enable them to inspect the apparatus in question, including any necessary breaking up or opening of the road.
- (4) If an undertaker fails to secure that apparatus is maintained to the reasonable satisfaction of a relevant authority in accordance with this section-
  - (a) the road works authority may in such cases as may be prescribed, and
  - (b) any other relevant authority may in any case,execute any emergency works needed in consequence of the failure.
- (5) The provisions of this Part apply in relation to works executed by a relevant authority under subsection (3) or (4) as if they were executed by the undertaker; and the undertaker shall indemnify the authority in respect of the costs reasonably incurred by them in executing the works.

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- (6) A relevant authority who execute or propose to execute any works under subsection (3) or (4) shall give notice to any other relevant authority as soon as reasonably practicable stating the general nature of the works.
- (7) Nothing in subsection (3) or (4) shall be construed as excluding any other means of securing compliance with the duties imposed by subsection (1).

**141. 141. Liability for damage or loss caused.**

- (1) An undertaker shall compensate-
  - (a) the road works authority or any other relevant authority in respect of any damage or loss suffered by the authority in their capacity as such, and
  - (b) any other person having apparatus in the road in respect of any expense reasonably incurred in making good damage to that apparatus,as a result of the execution by the undertaker of road works or any event of a kind mentioned in subsection (2) below.
- (2) The events referred to in subsection (1) are any explosion, ignition, discharge or other event occurring to gas, electricity, water or other thing required for the purposes of a supply or service afforded by an undertaker which-
  - (a) at the time of or immediately before the event in question was in apparatus of the undertaker in the road, or
  - (b) had been in such apparatus before that event and had escaped therefrom in circumstances which contributed to its occurrence.
- (3) The liability of an undertaker under this section arises-
  - (a) whether or not the damage or loss is attributable to negligence on his part or on the part of any person for whom he is responsible, and
  - (b) notwithstanding that he is acting in pursuance of a statutory duty.
- (4) However, his liability under this section does not extend to damage or loss which is attributable to misconduct or negligence on the part of-
  - (a) the person suffering the damage or loss, or any person for whom he is responsible, or
  - (b) a third party, that is, a person for whom neither the undertaker nor the person suffering the damage or loss is responsible.
- (5) For the purposes of this section the persons for whom a person is responsible are his contractors and any person in his employ or that of his contractors.
- (6) Nothing in this section shall be taken as exonerating an undertaker from any liability to which he would otherwise be subject.

*Apparatus affected by road, bridge or transport works*

**142. 142. Works for road purposes likely to affect apparatus in the road.**

- (1) This section applies to works for road purposes other than major works for road purposes (as to which see section 143 below).
- (2) Where works to which this section applies are likely to affect apparatus in the road, the authority executing the works shall take all reasonably practicable steps-
  - (a) to give the person to whom the apparatus belongs reasonable facilities for monitoring the execution of the works, and

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- (b) to comply with any requirement made by him which is reasonably necessary for the protection of the apparatus or for securing access to it.
- (3) An authority who fail to comply with subsection (2) commit an offence in respect of each failure and are liable on summary conviction to a fine not exceeding *level 4* on the standard scale.
- (4) In proceedings against an authority for such an offence it is a defence for them to show that the failure was attributable-
  - (a) to their not knowing the position, or not knowing of the existence, of a person's apparatus, or
  - (b) to their not knowing the identity or address of the person to whom any apparatus belongs,and that their ignorance was not due to any negligence on their part or to any failure to make inquiries which they ought reasonably to have made.

**143. 143. Measures necessary where apparatus affected by major works.**

- (1) Where an undertaker's apparatus in a road is or may be affected by major works for roads purposes, major bridge works or major transport works, the roads, bridge or transport authority concerned and the undertaker shall take such steps as are reasonably required-
  - (a) to identify any measures needing to be taken in relation to the apparatus in consequence of, or in order to facilitate, the execution of the authority's works,
  - (b) to settle a specification of the necessary measures and determine by whom they are to be taken, and
  - (c) to co-ordinate the taking of those measures and the execution of the authority's works,so as to secure the efficient implementation of the necessary work and the avoidance of unnecessary delay.
- (2) The Secretary of State may issue or approve for the purposes of this section a code of practice giving practical guidance as to the matters mentioned in subsection (1) and the steps to be taken by the authority and the undertaker.
- (3) Any dispute between the authority and the undertaker as to any of the matters mentioned in subsection (1) shall, in default of agreement, be settled by arbitration *in the prescribed manner*.
- (4) If the authority or the undertaker fails to comply with an agreement between them as to any of those matters, or with the decision of the arbiter *made* under subsection (3) *in settlement of a dispute*, the authority or undertaker shall be liable to compensate the other in respect of any loss or damage resulting from the failure.

**144. 144. Sharing of cost of necessary measures.**

- (1) Where an undertaker's apparatus in a road is affected by major works for roads purposes, major bridge works or major transport works, the allowable costs of the measures needing to be taken in relation to the apparatus in consequence of the works, or in order to facilitate their execution, shall be borne by the roads, bridge or transport authority concerned and the undertaker in such manner as may be prescribed.
- (2) The regulations may make provision as to the costs allowable for this purpose.  
Provision may, in particular, be made for disallowing costs of the undertaker-
  - (a) where the apparatus in question was placed in the road after the authority had given the undertaker the prescribed notice of their intention to execute the works, or

- (b) in respect of measures taken to remedy matters for which the authority were not to blame,  
and for allowing only such costs of either party as are not recoverable from a third party.
- (3) Where the authority have a right to recover from a third party their costs in taking measures in relation to undertaker's apparatus but in accordance with section 143 it is determined that the measures should be taken by the undertaker, the right of the authority includes a right to recover the undertaker's costs in taking those measures and they shall account to the undertaker for any sum received.
- (4) The regulations shall provide for the allowable costs to be borne by the authority and the undertaker in such proportions as may be prescribed.  
Different proportions may be prescribed for different cases or classes of case.
- (5) The regulations may require the undertaker to give credit for any financial benefit to him from the betterment or deferment of renewal of the apparatus resulting from the measures taken.
- (6) The regulations may make provision as to the time and manner of making any payment required under this section.

*Provisions with respect to particular authorities and undertakings*

**145. 145. Roads authorities, roads and related matters.**

- (1) In this Part-  
"roads authority" and "local roads authority" have the same meaning as in section 151 of the Roads (Scotland) Act 1984, and  
"public road" means a road which a roads authority have a duty to maintain.
- (2) In this Part "works for road purposes" means-
- (a) works for the maintenance of a road,
  - (b) works for any purpose falling within the definition of "improvement" in section 151 of that Act,
  - (c) the erection, maintenance, alteration or removal of traffic signs, or
  - (d) the construction of a crossing for vehicles across a footway or the strengthening or adaptation of a footway for use as a crossing for vehicles.
- (3) In this Part "major works for roads purposes" means works of any of the following descriptions executed by the roads authority in relation to a road which consists of or includes a carriageway-
- (a) reconstruction or widening of the road,
  - (b) substantial alteration of the level of the road,
  - (c) provision, alteration of the position or width, or substantial alteration in the level of a carriageway, footpath or cycle track in the road,
  - (d) the construction or removal of a road hump within the meaning of section 40 of the Roads (Scotland) Act 1984,
  - (e) works carried out in exercise of the powers conferred by section 63 of the Roads (Scotland) Act 1984 (new access over verges and footways),
  - (f) provision of a cattle-grid in the road or works ancillary thereto, or
  - (g) tunnelling or boring under the road.

**146. 146. Prospective public roads.**

*These notes relate to the Transport (Scotland) Act 2005  
(asp 12) which received Royal Assent on 5 August 2005*

- (1) Subject to subsection (2), where a local roads authority are satisfied that a road in their area which is not a public road is likely to become a public road, they may make a declaration to that effect.
- (2) Subsection (1) does not apply to a road which is under the management or control of a transport authority.
- (3) The provisions of this Part apply to a road in respect of which such a declaration has been made as they apply to a public road.
- (4) In relation to road works in such a road, the road works authority-
  - (a) shall secure the performance by undertakers of their duties under this Part, and shall exercise their powers under this Part, in such manner as is reasonably required for the protection of the road managers, and
  - (b) shall comply with any reasonable request as to securing performance of those duties, or as to the exercise of those powers, which may be made by the road managers.

**147. 147. Bridges, bridge authorities and related matters.**

- (1) In this Part-
  - (a) references to a bridge include so much of any road as gives access to the bridge and any embankment, retaining wall or other work or substance supporting or protecting that part of the road, and
  - (b) "bridge authority" means the authority, body or person in whom a bridge is vested.
- (2) In this Part "major bridge works" means works for the replacement, reconstruction or substantial alteration of a bridge.
- (3) Where a road is carried or crossed by a bridge, any statutory right to place apparatus in the road includes the right to place apparatus in, and attach apparatus to, the structure of the bridge; and other rights to execute works in relation to the apparatus extend accordingly.

References in this Part to apparatus in the road include apparatus so placed or attached.

- (4) An undertaker proposing to execute road works affecting the structure of a bridge shall consult the bridge authority before giving notice under section 114 (notice of starting date) in relation to the works.
- (5) An undertaker executing such works shall take all reasonably practicable steps-
  - (a) to give the bridge authority reasonable facilities for monitoring the execution of the works, and
  - (b) to comply with any requirement made by them which is reasonably necessary for the protection of the bridge or for securing access to it.
- (6) An undertaker who fails to comply with any requirement of subsection (4) or (5) commits an offence in respect of each failure and is liable on summary conviction to a fine not exceeding *level 5* on the standard scale.
- (7) Subsections (4) to (6) do not apply to works in relation to which Schedule 6 applies (works in roads with special engineering difficulties).

**148. 148. Sewers.**



*These notes relate to the Transport (Scotland) Act 2005  
(asp 12) which received Royal Assent on 5 August 2005*

- (1) An undertaker proposing to execute road works affecting a sewer vested in a [sewerage ] authority shall consult that authority before giving notice under section 114 (notice of starting date) in relation to the works.
- (2) References in this Part to apparatus include a sewer, drain or tunnel.
- (3) References in this Part to an undertaker having apparatus shall, where the apparatus is a sewer, drain or tunnel, be construed-
  - (a) in the case of apparatus vested in a sewerage authority, as references to that authority, and
  - (b) in any other case, as references to the authority, body or person having the management or control of the apparatus. ]
- (4) Section 128 (provisions as to works likely to affect other apparatus in the road) does not apply by virtue of subsection (2) above in relation to works likely to affect a sewer vested in a [sewerage ] authority if, or to the extent that, Schedule 6 (works in roads with special engineering difficulties) applies.

**149. 149. Provisions as to reinstatement of sewers, drains or tunnels**

- (1) The duties of an undertaker under this Part with respect to reinstatement of the road extend, in the case of road works which involve breaking up or opening a sewer, drain or tunnel under the road, to the reinstatement of the sewer, drain or tunnel.
- (2) The responsible authority may by notice require an undertaker who has failed to comply with his duties under this Part with respect to reinstatement to carry out the necessary remedial works within such period of not less than 7 working days *not being shorter than such period as may be prescribed* as may be specified in the notice.

If he fails to comply with the notice, the authority may carry out the necessary works and recover from him the costs reasonably incurred by them in doing so.

- (2A) *Different minimum periods may be prescribed under subsection (2) for different descriptions of remedial works; and cases may be so prescribed in which no minimum period applies.*

- (3) If it appears to the responsible authority that a failure by an undertaker to comply with his duties under this Part as to reinstatement is causing danger to users of the road, the authority may carry out the necessary works without first giving notice and may recover from him the costs reasonably incurred by them in doing so.

They shall, however, give notice to him as soon as reasonably practicable stating their reasons for taking immediate action.

- (4) The responsible authority for the purposes of this section is-
  - (a) in the case of a sewer vested in a [sewerage ] authority, that authority, and
  - (b) in the case of any other sewer, drain or tunnel, the authority, body or person having the management or control of it.

**150. 150. Transport authorities, transport undertakings and related matters.**

- (1) In this Part--
  - (a) "transport authority" means the authority, body or person having the control or management of a transport undertaking, and
  - (b) "transport undertaking" means a railway, tramway, dock, harbour, pier, canal or inland navigation undertaking of which the activities, or some of the activities, are carried on under statutory authority.

- (2) In this Part "major transport works" means substantial works required for the purposes of a transport undertaking and executed in property held or used for the purposes of the undertaking.
- (3) References in this Part to a road which crosses or is crossed by property held or used for the purposes of a transport undertaking extend to cases in which the road and the property in question are at different levels.

But the transport authority shall not be treated as a relevant authority as regards undertakers' works in such a road where the property in question consists only of-

- (a) subsoil of the road which is held by the transport authority but is not used, and has not been adapted for use, for the purposes of the undertaking, or
  - (b) property underground at such a depth that there is no reasonable possibility of the works affecting it.
- (4) The provisions of this Part relating to a road which crosses or is crossed by property held or used for the purposes of a transport undertaking apply to a road which is or forms part of a towing-path or other way running along a canal or inland navigation, provided the path or way is held or used, or the subsoil of it is held, for the purposes of the canal or inland navigation undertaking.

**151. 151. Special precautions as to displaying of lights.**

- (1) An undertaker executing road works in a road which crosses, or is crossed by, or is in the vicinity of, a railway, tramway, dock, harbour, pier, canal or inland navigation, shall comply with any reasonable requirements imposed by the transport authority concerned with respect to the displaying of lights so as to avoid any risk of their-
  - (a) being mistaken for any signal light or other light used for controlling, directing or securing the safety of traffic thereon, or
  - (b) being a hindrance to the ready interpretation of any such signal or other light.
- (2) An undertaker who fails to comply with any such requirement commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) In proceedings for such an offence it is a defence for the undertaker to show that all reasonable care was taken by him, and by his contractors and by persons in his employ or that of his contractors, to secure that no such failure occurred.

**152. 152. Works affecting level crossings or tramways.**

- (1) This section applies to road works at a crossing of a railway on the level or which affect a tramway.

In this section "the relevant transport authority" means the authority having the management of the railway or tramway undertaking concerned.

- (2) An undertaker proposing to begin to execute works to which this section applies shall give the prescribed notice to the relevant transport authority notwithstanding that such notice is not required under section 114 (notice of starting date).

The provisions of subsections (2) to (7) of that section (contents of notice, when works may be begun, &c.) apply in relation to the notice required by this subsection as in relation to a notice under subsection (1) of that section.

- (3) An undertaker executing works to which this section applies shall comply with any reasonable requirements made by the relevant transport authority-
  - (a) for securing the safety of persons employed in connection with the works, or

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- (b) for securing that interference with traffic on the railway or tramway caused by the execution of the works is reduced so far as is practicable,

and, except where submission of a plan and section is required, he shall defer beginning the works for such further period as the relevant transport authority may reasonably request as needed for formulating their requirements under this subsection or making their traffic arrangements.

- (4) Nothing in subsection (2) or (3) affects the right of an undertaker to execute emergency works.
- (5) An undertaker executing emergency works shall give notice to the relevant transport authority as soon as reasonably practicable of his intention or, as the case may be, of his having begun to do so notwithstanding that such notice is not required by section 116 (notice of emergency works).

The provisions of subsections (3) and (4) of that section (contents of notice and penalty for failure to give notice) apply in relation to the notice required by this subsection as in relation to a notice under subsection (2) of that section.

*Power of road works authority or district council to undertake road works*

**153. 153. Power of road works authority or district council to undertake road works.**

- (1) A road works authority [or district council ] may enter into an agreement with an undertaker for the execution by the authority [or council ] on behalf of the undertaker of any road works.
- (2) The agreement may contain such terms as to payment and otherwise as the parties consider appropriate.
- (3) Nothing in this section shall be construed as derogating from any powers exercisable by the authority [or council ] apart from this section.
- (4) This section shall cease to have effect upon such day as the Secretary of State may appoint by order made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Supplementary provisions*

**154. 154. Offences.**

- (1) Any provision of this Part imposing criminal liability in respect of any matter is without prejudice to any civil liability in respect of the same matter.
- (2) Where a failure to comply with a duty imposed by this Part is continued after conviction, the person in default commits a further offence.

**154A. 154A. Fixed penalties for certain offences under this Part**

- (1) *Any offence under this Part relating to road works which is listed in the first column of Schedule 6A (and described in general terms in the second column) is a fixed penalty offence for the purposes of this Part.*
- (2) *Offences listed in that Schedule which are committed by virtue of section 166 (offences by bodies corporate and partnerships) are not fixed penalty offences.*

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- (3) *The Scottish Ministers may by order made by statutory instrument modify that Schedule so as to provide for offences under this Part relating to road works to become (or cease to be) fixed penalty offences.*
- (4) *No such order shall be made unless a draft of the statutory instrument containing it has been laid before and approved by resolution of the Scottish Parliament.*
- (5) *Schedule 6B (which makes provision about fixed penalties for fixed penalty offences) has effect.*

**154B. 154B. Civil penalties for certain offences**

- (1) *The Scottish Ministers may, by regulations, make provision for or in connection with—*
  - (a) *the imposition by road works authorities of penalty charges in respect of such offences under this Part of this Act as are specified in the regulations,*
  - (b) *the payment of such charges.*
- (2) *The regulations shall include provision specifying the person or persons by whom a penalty charge in respect of an offence is to be paid (who may be or, as the case may be, include a person other than the person who committed the offence).*
- (3) *The regulations shall include provision—*
  - (a) *prohibiting criminal proceedings or the giving of a fixed penalty notice in respect of any description of conduct for which a penalty charge may be imposed, or*
  - (b) *securing that a penalty charge is not payable or is refunded where the conduct is the subject of criminal proceedings or of a fixed penalty notice.*
- (4) *The regulations shall include provision about the standard of proof required to establish the commission of an offence in respect of which a penalty charge may be imposed and may include other provision for or in connection with evidence and procedure.*
- (5) *The regulations may set different levels of penalty charges in respect of different offences and in respect of the same offences committed in different circumstances.*
- (6) *The regulations may include provision for and in connection with—*
  - (a) *the notification of penalty charges to persons appearing to be liable to pay them,*
  - (b) *the enabling and effect of the making of representations to road works authorities by persons who are or may be liable to pay those charges,*
  - (c) *appeals by those persons against the imposition of those charges.*
- (7) *Regulations shall not be made unless a draft of them has been laid before and approved by resolution of the Scottish Parliament.*

**155. 155. Recovery of costs or expenses.**

- (1) Any provision of this Part enabling an authority, body or person to recover the costs or expenses of taking any action shall be taken to include the relevant administrative expenses of that authority, body or person including an appropriate sum in respect of general staff costs and overheads.

The Secretary of State may prescribe the basis on which such amounts are to be calculated; and different provision may be made for different cases or descriptions of case.

- (2) Where a right to payment enuring for the benefit of a person is conferred in respect of the same matter—
- (a) both under this Part and under any enactment or agreement passed or made before the commencement of this Part, or
  - (b) by two or more provisions of this Part,
- a payment made in discharge of any of those rights shall be treated as being made in or towards satisfaction of the other or others.
- (3) Where under any provision of this Part a person is entitled in certain circumstances to recover costs or expenses incurred by him in executing works or taking other steps, any dispute as to the existence of those circumstances or as to the amount recoverable shall be determined by arbitration *in the prescribed manner*.

This applies whether the provision is expressed as conferring a right to recover, or as imposing a liability to reimburse or indemnify or to bear the cost, but does not apply in relation to a provision expressed as providing for the charging of a fee or conferring a right to compensation or in relation to section 137 (contribution to the cost of making good long-term damage to the road) or 137A (*contributions to costs of resurfacing by undertakers*).

**156. 156. Service of notices and other documents.**

- (1) Notices required or authorised to be given for the purposes of this Part shall be given in the prescribed form.
- (2) The Secretary of State may make provision by regulations as to the manner of service of notices and other documents required or authorised to be served for the purposes of this Part.
- (3) *References in this section to notices authorised to be given or served for the purposes of this Part include reference to notices under Schedule 8B to the [Roads \(Scotland\) Act 1984 \(c.54\)](#) (fixed penalties for certain offences under that Act).*

**157. 157. Reckoning of periods.**

- (1) In reckoning for the purposes of this Part a period expressed as a period from or before a given date, that date shall be excluded.
- (2) For the purposes of this Part a working day means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday; and a notice given after 4.30 p.m. on a working day shall be treated as given on the next working day.
- (3) In subsection (2) a "bank holiday" means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the locality in which the road in question is situated.

**157A. 157A. Regulations prescribing manner of settlement of disputes**

*Regulations under this Part prescribing the manner in which any question or dispute is to be settled may in particular make provision for the question or, as the case may be, dispute to be settled—*

- (a) *by the Commissioner, or*
- (b) *by arbitration.*

**158. 158. Arbitration.**

- (1) Any matter which under this Part is to be settled by arbitration shall be referred for determination by a single arbiter appointed by agreement between the parties concerned or, in default of agreement, by the sheriff.
- (2) In any arbitration in accordance with subsection (1) the arbiter may, and if so directed by the Court of Session shall, state a case for the decision of the Court on any question of law arising in the arbitration; and the decision of the Court shall be final unless the Court or the House of Lords give leave to appeal to the House of Lords against the decision.
- (3) Leave under subsection (2) may be given on such terms as to expenses or otherwise as the Court or the House of Lords may determine.

**159. 159. Agreements inconsistent with the provisions of this Part.**

- (1) An agreement which purports to make provision regulating the execution of road works is of no effect to the extent that it is inconsistent with the provisions of this Part.
- (2) This does not affect an agreement for the waiver or variation of a right conferred on a relevant authority by any of the provisions of this Part which is made after the right has accrued and is not inconsistent with the future operation of those provisions.

**160. 160. Effect of this Part on certain existing special enactments or instruments.**

- (1) Any special enactment passed or made before the commencement of this Part which makes or authorises the making of provision regulating the execution of road works in a manner inconsistent with the provisions of this Part shall cease to have effect; and unless a contrary intention appears no enactment passed or made after the commencement of this Part shall be construed as making or authorising the making of any such provision.

This subsection does not apply to any provision as to the obtaining of consent for the execution of the works or for any other purpose.

- (2) Any special enactment passed or made before the commencement of this Part which requires the consent of a relevant authority (in its capacity as such) to the execution of road works shall cease to have effect, except as mentioned below; and unless a contrary intention appears no special enactment passed or made after the commencement of this Part shall be construed as requiring such consent.

This subsection does not apply to a consent requirement so far as it relates to—

- (a) works above the surface level of the road, or
  - (b) works outside the limits of supply of an undertaker in relation to whom such limits are imposed.
- (3) A provision made by way of condition imposed on the giving of a consent for the execution of road works is of no effect in so far as it would have been so by virtue of section 159 if it had been made by an agreement.
  - (4) If it appears to the Secretary of State—
    - (a) that by the operation of subsection (1) a person has been or will be deprived of some protection afforded by a special enactment and that corresponding protection is in all the circumstances required, or
    - (b) that a requirement of consent imposed by a special enactment should be saved from the operation of subsection(2), either as regards all works to which the requirement extends or as regards any description of such works, or
    - (c) that conditions of any descriptions should be rendered valid notwithstanding subsection (3), or

- (d) that uncertainty or obscurity has resulted or is likely to result from the operation on a special enactment of the general provisions of subsection (1), (2) or (3), he may by order make such provision as he considers appropriate for affording such protection, saving the requirement, rendering the conditions valid or modifying the special enactment, as the case may be.
- (5) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament; and the provisions of Schedule 7 have effect with respect to the procedure for making such an order.
- (6) The provisions of this section apply in relation to an instrument having effect under or by virtue of an enactment as in relation to an enactment; and references to a special enactment shall be construed accordingly.

**161. 161. Effect of this Part on other existing enactments or instruments.**

- (1) The Secretary of State may by order make such provision amending, repealing, or preserving the effect of, any enactment passed or made before the commencement of this Part (not being a special enactment to which section 160(1), (2) or (3) applies) as appears to him appropriate in consequence of the provisions of this Part.
- (2) Subject to any order under this section and (in the case of a public general Act) to any express amendment made by this Act, any such enactment which proceeds by reference to any provision of the [1950 c. 39.] Public Utilities Street Works Act 1950, or any other provision repealed by this Act in consequence of this Part, shall continue to have effect as if the provision referred to had not been repealed.
- (3) An order under this section may, in particular, make provision in relation to—
- (a) enactments providing for the keeping of records of apparatus, and
  - (b) enactments providing for the giving of notice of proposed road works.
- (4) An order under this section may contain such transitional provisions and savings as appear to the Secretary of State to be appropriate
- (5) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Except as mentioned in section 138(6), the provisions of Schedule 7 have effect with respect to the making of an order under this section in relation to a special enactment.
- (7) The provisions of this section apply in relation to an instrument having effect under or by virtue of an enactment as in relation to an enactment; and references to a special enactment shall be construed accordingly.

**162. 162. Former controlled land.**

- (1) The following provisions apply with respect to land (not forming part of a road) in which immediately before the commencement of this Part there is apparatus placed by virtue of Schedule 1 to the [1950 c. 39.] Public Utilities Street Works Act 1950 (authorisation of works in certain land abutting a road).
- (2) If any person having a sufficient interest in the land gives notice to the undertaker that he objects to the continuance of the powers and rights over the land given by that Schedule, those powers and rights shall cease to have effect at the end of the period of six months from the date on which the notice was given.

For this purpose a person has a sufficient interest in the land if he is an owner, lessee or occupier of the land having an interest greater than that of tenant for a year or from year to year.

- (3) The road works authority shall indemnify the undertaker in respect of the costs reasonably incurred by him in or in connection with—
  - (a) any removal of apparatus rendered necessary by the cessation of his powers and rights under this section, and
  - (b) the execution of any works or taking of any other measures rendered necessary thereby for the purposes of the supply or service for which apparatus whose removal is rendered necessary was used.
- (4) Where the land becomes part of the road after the commencement of this Part, any consent which would have been required for the placing of the apparatus in the road had it been placed there immediately after the land in question became part of the road shall be deemed to have been given unconditionally.
- (5) Subject to any exercise of the right conferred by subsection (2), the rights and powers of the undertaker under Schedule 1 to the Public Utilities Street Works Act 1950 continue unaffected by the repeal of that Act.

**163. 163. Meaning of "prescribed" and regulations generally.**

- (1) In this Part "prescribed" means prescribed by the Secretary of State by regulations, which may (unless the context otherwise requires) make different provision for different cases.
- (2) Regulations under this Part shall be made by statutory instrument which, unless provision to the contrary is made, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Regulations under this Part may provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time.

**163A. 163A. Consultation on regulations and codes of practice.**

- (1) *Before –*
  - (a) *making, amending or revoking regulations under or for the purposes of any provision of this part; or*
  - (b) *issuing, amending or revoking a code of practice under or for the purposes of any such provision or approving any such code of practice or its amendment or revocation,*

*the Scottish Ministers shall consult the persons and authorities set out in subsection (2).*
- (2) *Those persons and authorities are such –*
  - (a) *persons considered by the Scottish ministers to be representative of the interests of undertakers;*
  - (b) *road works authorities;*
  - (c) *other persons,*

*as the Scottish Ministers think appropriate.*

**164. 164. Minor definitions.**

- (1) In this Part—



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"apparatus" includes any structure for the lodging therein of apparatus or for gaining access to apparatus;

"carriageway" and "footway" have the same meaning as in the [1984 c. 54.] Roads (Scotland) Act 1984;

"enactment" includes an enactment contained in subordinate legislation within the meaning of the [1978 c. 30.] Interpretation Act 1978.

"in", in a context referring to works, apparatus or other property in a road or other place includes a reference to works, apparatus or other property under, over, across, along or upon it;

"railway" includes a light railway other than one in the nature of a tramway (see the definition of "tramway" below);

"reinstatement" includes making good;

"special enactment" means an enactment which is not a public general enactment, and includes—

- (a) any Act for confirming a provisional order,
- (b) any provision of a public general Act in relation to the passing of which any of the Standing Orders of the House of Lords or the House of Commons relating to Private Business applied, and
- (c) any enactment to the extent that it is incorporated or applied for the purposes of a special enactment;

"statutory right" means a right (whether expressed as a right, a power or otherwise) conferred by an enactment (whenever passed or made), other than a right exercisable by virtue of a permission granted under section 109;

"traffic" includes pedestrians and animals;

"traffic authority" and "traffic sign" have the same meaning as in the [1984 c.27.] Road Traffic Regulation Act 1984;

"tramway" means a system, mainly or exclusively for the carriage of passengers, using vehicles guided, or powered by energy transmitted, by rails or other fixed apparatus installed exclusively or mainly in a road.

- (2) A right to execute works which extends both to a road and to other land is included in references in this Part to a right to execute works in a road in so far as it extends to the road.
- (3) A right to execute works which extends to part of the road but not the whole is included in references in this Part to a right to execute works in a road; and in relation to such a right references in this Part to the road in which it is exercisable shall be construed as references to the part to which the right extends
- (4) For the purposes of this Part apparatus shall be regarded as affected by works if the effect of the works is to prevent or restrict access to the apparatus (for example, by laying other apparatus above or adjacent to it).
- (5) Section 28 of the [1970 c. 44.] Chronically Sick and Disabled Persons Act 1970 (power to define "disability" and other expressions) applies in relation to the provisions of this Part as to the provisions of that Act.

**165. 165. Index of defined expressions.**

The expressions listed below are defined or otherwise fall to be construed for the purposes of this Part in accordance with the provisions indicated—

affected by (in relation to apparatus and works)	section 164(4)
apparatus	section 148(2) and 164
arbitration	section 158
bridge	section 147(1)(a)
bridge authority	section 147(1)(b)
carriageway	section 164
<i>the Commissioner</i>	<i>section 112A(1)</i>
costs	section 155
disability	(see section 164(4))
emergency works	section 111
enactment	section 164
expenses	section 155
<i>fixed penalty offence</i>	<i>section 154A(1)</i>
footway	section 164
in (in a context referring to works, apparatus or other property in a road)	section 164
local roads authority	section 145(1)
major bridge works	section 147(2)
major works for roads purposes	section 145(3)
major transport works	section 150(2)
notice	section 156
prescribed	section 163
public road	section 145(1)
railway	section 164
reinstatement	section 164 (and see sections 129(5) and 149(1))
relevant authority (in relation to road works)	section 108(6) (and see section 150(3))
<i>resurfacing notice</i>	<i>section 132A(7)</i>
<i>resurfacing works</i>	<i>section 132A(7)</i>
road	section 107(1)
road managers	section 108(4)
road works	section 107(3) (and see section 164(2) and (3))
road works authority	section 108(1)

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roads authority	section 145(1)
special enactment	section 164(1)
<i>the SRWR</i>	<b>Section 112A(1)</b>
statutory right	section 164(1)
<i>surface</i>	<b>Section 132A(7)</b>
traffic	section 164(1)
traffic authority	section 164(1)
traffic sign	section 164(1)
tramway	section 164(1)
transport authority	section 150(1)(a)
transport undertaking	section 150(1)(b)
undertaker (in relation to road works or apparatus)	sections 107(4) and (5) and 148(3)
working day	section 157(2)
works for road purposes	section 145(2).”