

Transport (Scotland) Act 2005

2005 asp 12

PART 2

ROAD WORKS

PROSPECTIVE

Resurfacing

30 Power of road works authority to require undertaker to resurface road

(1) After section 132 of the 1991 Act there is inserted—

“Resurfacing

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.

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- (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notice; but regulations made by the Scottish Ministers may restrict the circumstances in which notices may be varied or withdrawn.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 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 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.”.

- (2) In section 165 of that Act (index for Part 4)—

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- (a) after the entry for “relevant authority (in relation to road works)” there is inserted—

“resurfacing notice	section 132A(7)
resurfacing notice	section 132A(7)”;

- (b) after the entry for statutory right there is inserted—

“surface	section 132A(7)”.
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31 Resurfacing: regulations and guidance

After section 132C of the 1991 Act (as inserted by section 30 above) there is inserted—

“132D Resurfacing: regulations

- (1) The Scottish Ministers shall 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 a duty imposed by section 132C, or

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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 for the purposes of 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 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.”.

32 Contributions to costs of resurfacing by undertaker

- (1) After section 137 of the 1991 Act there is inserted—

“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.

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- (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 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 the Scottish Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.”
- (2) In section 155 of the 1991 Act, in subsection (3), after “road)” there is inserted “ or 137A (contributions to costs of resurfacing by undertakers) ”.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 10(5)(za) inserted by [2019 asp 17 sch. para. 4\(2\)\(a\)](#)
- s. 16(4A) inserted by [2019 asp 17 s. 109\(2\)](#)
- s. 18A-18F inserted by [2019 asp 17 s. 110\(2\)](#)
- sch. 2 para. 3(2)(3) inserted by [2019 asp 17 s. 110\(4\)\(b\)](#)
- sch. 2 para. 3(1) sch. 2 para. 3 renumbered as sch. 3 para. 3(1) by [2019 asp 17 s. 110\(4\)\(a\)](#)

Commencement Orders yet to be applied to the Transport (Scotland) Act 2005

Commencement Orders bringing provisions within this Act into force:

- [S.S.I. 2008/90 art. 2](#) amendment to earlier commencing SSI 2008/15 art. 3