



# Transport (Scotland) Act 2005

## 2005 asp 12

### PART 2

#### ROAD WORKS

##### *The Scottish Road Works Commissioner*

#### **16 Creation, appointment, status and funding of Scottish Road Works Commissioner**

- (1) There is, by this Act, created an office, the holder of which is to be known as the Scottish Road Works Commissioner (in this Part, “the Commissioner”).
- (2) The Commissioner shall be appointed, on such terms and conditions as they determine, by the Scottish Ministers.
- (3) Those terms and conditions may include arrangements relating to the payment of pensions, allowances or gratuities to, or in respect of, persons who have ceased to hold office as the Commissioner.
- (4) The Commissioner is not a servant or agent of the Crown and has no status, immunity or privilege of the Crown.
- (5) The Scottish Ministers may make grants to the Commissioner in respect of the Commissioner's expenses.

#### **Annotations:**

#### **Commencement Information**

**II** S. 16 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, Sch. 2

#### **17 Functions of Commissioner**

- (1) The Commissioner has the general functions of—
  - (a) monitoring the carrying out of works in roads in Scotland;

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Transport (Scotland) Act 2005, Part 2 . (See end of Document for details)*

- (b) promoting compliance with the 1991 Act and obligations imposed under it; and
  - (c) promoting the pursuit of good practice by those persons who have functions conferred on or permissions granted to them by or under that Act,
- as well as the particular functions conferred upon the Commissioner by or under that or this Act.
- (2) In subsection (1) above, “works in roads” includes road works within the meaning given by section 107(3) of the 1991 Act, works for roads purposes within the meaning given by subsection (2) of section 145 of that Act and major works for roads purposes within the meaning given by subsection (3) of that section.
- (3) The Commissioner may, for the purposes of the discharge of the general functions referred to in paragraphs (b) and (c) of subsection (1) above, assess whether the persons referred to in subsection (1)(c) above are complying with the 1991 Act and any obligations imposed on them under it and are following good practice.
- (4) In this section “good practice” means compliance with—
- (a) any code of practice issued or approved under the 1991 Act or any direction issued under that Act; and
  - (b) subject to such codes and directions, such practice in the doing by the persons referred to in subsection (1)(c) above of what they must or may do by or under the 1991 Act as appears to the Commissioner to be desirable.
- (5) Schedule 2 provides further as to the Commissioner.
- (6) The Commissioner may do anything calculated to facilitate the discharge of any of the Commissioner's functions.

**Annotations:**

**Commencement Information**

**I2** S. 17 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, Sch. 2

**18 Duty of road works authority and undertakers to provide Commissioner with information**

- (1) A road works authority or an undertaker shall, on being required to do so by the Commissioner, provide the Commissioner with such information relevant to their respective functions and activities as the Commissioner reasonably asks for for the purposes of the performance of the Commissioner's functions.
- (2) For the purposes of subsection (1) above, information is relevant to functions or activities if it is information which the authority or undertaker possesses or can reasonably be expected to acquire.
- (3) Where—
- (a) a road works authority or an undertaker; and
  - (b) the Commissioner,
- do not agree as to whether information asked for by the Commissioner in pursuance of subsection (1) above is reasonably asked for, the matter shall be settled in such manner as may be prescribed by the Scottish Ministers by regulations.

*Status: This version of this part contains provisions that are prospective.*

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- (4) Where regulations under subsection (3) above prescribe that a matter is to be settled by arbitration, section 158 of the 1991 Act shall apply in relation to that matter as that section applies in relation to a matter which, under Part 4 of that Act, is to be so settled.

**Annotations:**

**Commencement Information**

**I3** S. 18 in force at 1.4.2008 by S.S.I. 2008/15, art. 2(2), Sch. 1

*The Scottish Road Works Register*

**19 The Scottish Road Works Register**

- (1) For section 112 (the road works register) of the 1991 Act there are substituted the following sections—

**“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.

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## **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, 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) 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 trunk, special and certain other public roads) they shall enter in the SRWR such information relating to that matter as may be prescribed.
- (6) On the 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 that Act, 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,

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- (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.”.

- (2) In section 108(2) of the 1991 Act (roads authority to be regarded in certain circumstances as road works authority for purposes including those of section 112 of the Act) for “112” there is substituted “ 112B (duty to enter certain information in Scottish Road Works Register) ”.

- (3) In section 113 of the 1991 Act (giving of advance notice of certain road works)—
  - (a) in subsection (1) “to the road works authority” is repealed; and
  - (b) for subsection (3) there is substituted—

“(3A) For the purposes of subsection (1) an undertaker gives notice by entering in the SRWR such information as may be prescribed.”.

- (4) In section 114 of the 1991 Act (notice of starting date of road works)—
  - (a) in subsection (1) the words from “to”, where thirdly occurring, to the end are repealed; and
  - (b) for subsection (3) there is substituted—

“(3A) For the purposes of subsection (1) an undertaker 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.”.

- (5) In section 116 of the 1991 Act (notice of emergency works)—

- (a) in subsection (2) the words from “to” to the end are repealed; and
- (b) for subsection (3) there is substituted—

“(3A) For the purposes of subsection (2) an undertaker gives notice by—



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- (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.”.

- (4) After subsection (2) there is inserted—

“(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.”.

- (5) After subsection (3) there is inserted—

“(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.”.

- (6) In subsection (4), for “may” there is substituted “ shall ”.

#### Annotations:

#### Commencement Information

I7 S. 20 in force at 1.4.2008 by S.S.I. 2008/15, art. 2(2), Sch. 1

## 21 Directions as to placing of apparatus in roads

- (1) After section 115 of the 1991 Act there is inserted—

### “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.

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- (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.”.
- (2) In section 116 of the 1991 Act (notice of emergency works in roads), in subsection (1), the word “or” is repealed and after “works”, where first occurring, there is inserted “ or section 115A (power to give directions as to placing of apparatus) ”.

#### Annotations:

#### Commencement Information

**I8** S. 21 in force at 1.4.2008 by S.S.I. 2008/15, art. 2(2), Sch. 1

## 22 Restriction on works following substantial road works

- (1) In section 117 of the 1991 Act (restriction on works following substantial road works)
- (a) in subsection (1)—
    - (i) for “twelve months” there is substituted “ such period ”; and
    - (ii) at the end there is inserted “ as may be prescribed. ”;
  - (b) in subsection (6), at the beginning of paragraph (b) there is inserted “ if convicted of an offence under this subsection, ”; and
  - (c) at end there is inserted—
 

“(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.”.
- (2) In section 114 of the 1991 Act (notice of starting date of works), in subsection (2), after “works” there is inserted “ or in cases where the undertaker has been given notice under section 117(1) ”.

*Status: This version of this part contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the Transport (Scotland) Act 2005, Part 2. (See end of Document for details)*

**Annotations:**

**Commencement Information**

**I9** S. 22(1)(b)(c)(2) in force at 1.4.2008 by S.S.I. 2008/15, art. 2(2), Sch. 1 (with art. 3)

**23 Duty of road works authority to co-ordinate road works etc.**

- (1) Section 118 of the 1991 Act (road works authority's duty to co-ordinate road works etc.) is amended in accordance with subsections (2) to (5) below.
- (2) After subsection (2) there is inserted—
  - “(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) In subsection (3), after “co-ordination”, there is inserted “ and the specific duties imposed by subsections (2) to (2B) ”.
- (4) After that subsection there is inserted—
  - “(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 17(4)(b) of the Transport (Scotland) Act 2005 (asp 12).”
- (5) In subsections (4) and (5), for “Secretary of State”, in each place where it occurs, there is substituted “ Commissioner ”.

**Annotations:**

**Commencement Information**

**I10** S. 23 in force at 1.4.2008 by S.S.I. 2008/15, art. 2(2), Sch. 1

**24 Duty of undertakers to co-operate with authorities and other undertakers**

- (1) Section 119 of the 1991 Act (undertakers' duty to co-operate) is amended in accordance with subsections (2) to (4) below.
- (2) After subsection (1) there is inserted—
  - “(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)—

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- (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.”.

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

“(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
- (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 (asp 12), 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.”.

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

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

#### Annotations:

#### Commencement Information

**III** S. 24 in force at 1.4.2008 by S.S.I. 2008/15, art. 2(2), Sch. 1

## 25 Enforcement of sections 118 and 119 of 1991 Act

- (1) Subsection (3) of section 119 of the 1991 Act (which subsection makes it an offence for an undertaker executing road works to fail to use best endeavours to co-operate with the road works authority and other undertakers) is repealed.
- (2) After that section (which requires undertakers to co-operate with road works authorities and others in the execution of road works) there is inserted—

### “119A Enforcement of sections 118 and 119: imposition of penalties

- (1) The Scottish Ministers may, by regulations, make provision for or in connection with—

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Transport (Scotland) Act 2005, Part 2. (See end of Document for details)*

- (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.”.

**Annotations:**

**Commencement Information**

**I12** S. 25 in force at 1.10.2007 by S.S.I. 2007/409, art. 2

## 26 Qualifications of supervisors and operatives

(1) Section 126 of the 1991 Act (qualifications of supervisors and operatives) is amended in accordance with subsections (2) to (5) below.

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

“(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.”.

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

“(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.

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Transport (Scotland) Act 2005, Part 2. (See end of Document for details)*

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

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

(5) In subsection (4), after paragraph (b) there is inserted “and

(“ 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.”.

**Annotations:**

**Commencement Information**

**I13** S. 26 in force at 1.4.2008 by S.S.I. 2008/15, art. 2(2), Sch. 1

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

After section 126 of the 1991 Act there is inserted—

**“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—

**Annotations:**

**Commencement Information**

**I14** S. 27 in force at 1.4.2008 by S.S.I. 2008/15, art. 2(2), Sch. 1

**28 Duty of undertaker to notify completion of road works: form and procedure**

In section 129 of the 1991 Act (duty of undertaker to reinstate road after road works)—

- (a) in subsection (3), for “inform the road works authority” there is substituted “give the required notice ”;
- (b) in subsection (4), for “notify the road works authority” there is substituted “give the required notice ”;
- (c) after subsection (5) there is inserted—

“(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.”.

*Status: This version of this part contains provisions that are prospective.*  
**Changes to legislation:** There are currently no known outstanding effects for the Transport (Scotland) Act 2005, Part 2. (See end of Document for details)

**Annotations:**

**Commencement Information**

**I15** S. 28 in force at 1.4.2008 by S.S.I. 2008/15, art. 2(2), Sch. 1

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

(1) In section 131 of the 1991 Act (powers of road works authority in relation to reinstatement of roads)—

- (a) in subsection (3), for “of not less than 7 working days” there is substituted “, not being shorter than such period as may be prescribed, ”; and
- (b) after that subsection there is inserted—

“(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.”.

(2) In section 149 of the 1991 Act (which, among other things, enables the authorities responsible for sewers, drains and tunnels to require their reinstatement)—

- (a) in subsection (2), for “of not less than 7 working days” there is substituted “, not being shorter than such period as may be prescribed, ”; and
- (b) after that subsection there is inserted—

“(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.”.

**Annotations:**

**Commencement Information**

**I16** S. 29 in force at 1.4.2008 by S.S.I. 2008/15, art. 2(2), Sch. 1

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—

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*Changes to legislation: There are currently no known outstanding effects for the Transport (Scotland) Act 2005, Part 2. (See end of Document for details)*

- (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 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.

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*Status: This version of this part contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the Transport (Scotland) Act 2005, Part 2. (See end of Document for details)*

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

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

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

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“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

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### **“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,

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Transport (Scotland) Act 2005, Part 2. (See end of Document for details)*

- (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 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—

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Transport (Scotland) Act 2005, Part 2 . (See end of Document for details)*

- (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.
- (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) ”.

#### *Enforcement of 1991 Act*

### **33 Increase in penalties for summary offences under 1991 Act**

- (1) The maximum fine for each offence under a provision of the 1991 Act listed in column 1 of the table in schedule 3 is increased from level 3 on the standard scale to the level specified for that provision in column 3 of the table.
- (2) Accordingly, in each provision so listed, for “level 3” there is substituted “ level 4 ” or “ level 5 ” (as specified in column 3 of the table).

#### **Annotations:**

#### **Commencement Information**

**I17** S. 33 in force at 1.4.2008 by S.S.I. 2008/15, art. 2(2), Sch. 1

### **34 Fixed penalty offences**

- (1) After section 154 of the 1991 Act there is inserted—



*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Transport (Scotland) Act 2005, Part 2. (See end of Document for details)*

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.”.

#### *Resolution of disputes under 1991 Act*

### **36 Method of settlement of certain disputes under 1991 Act**

- (1) In each of the provisions of the 1991 Act mentioned in subsection (2) below, for “by arbitration” there is substituted “ in the prescribed manner ”.
- (2) Those provisions are—
  - (a) section 117(7) (consent to contravene restriction on works following substantial road works);
  - (b) section 120(6) (protected roads: consent as to placing of apparatus);
  - (c) section 121(5) (exercise of powers in relation to protected roads);
  - (d) section 133(2) (meaning of “reasonable period” for the purposes of charges for prolonged road works);
  - (e) section 143(3) (measures necessary where apparatus affected by major works);
  - (f) section 155(3) (disputes about costs and expenses); and
  - (g) in Schedule 6 (roads with special engineering difficulties), paragraph 2(1).
- (3) In section 143(4) of the 1991 Act (failure to comply with agreement or decision)—
  - (a) for “of the arbiter” there is substituted “ made ”; and
  - (b) after “subsection (3)” there is inserted “ in settlement of a dispute ”.

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Transport (Scotland) Act 2005, Part 2. (See end of Document for details)*

(4) After section 157 of the 1991 Act (reckoning of time periods) there is inserted—

**“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.”.

(5) In Schedule 6 (roads with special engineering difficulties)—

- (a) in paragraph 10(1), for “arbiter” to “arbitration” there is substituted “ person to whom it falls, by virtue of regulations made under paragraph 2(1), to settle a dispute under that paragraph ”; and
- (b) in paragraph 12—
  - (i) in sub-paragraph (2), for “arbitration” there is substituted “ be settled in the prescribed manner ”;
  - (ii) in sub-paragraph (3), for “arbiter” there is substituted “ person to whom it falls to settle the matter ”; and
  - (iii) in sub-paragraph (4), for “the arbiter” there is substituted “ that person ”.

**Annotations:**

**Commencement Information**

**I19** S. 36 in force at 1.4.2008 by S.S.I. 2008/15, art. 2(2), Sch. 1

*Enforcement of certain offences under the Roads (Scotland) Act 1984*

**37 Fixed penalty offences under the Roads (Scotland) Act 1984**

(1) After section 130 of the Roads (Scotland) Act 1984 (c. 54) there is inserted—

**“130A Fixed penalties for certain offences**

- (1) Any offence under this Act which is listed in the first column of Schedule 8A to this Act (and described in general terms in the second column) is a fixed penalty offence for the purposes of this Act.
- (2) Offences listed in that Schedule which are committed by virtue of section 130 of this Act (offences committed by bodies corporate, etc.) are not fixed penalty offences.
- (3) The Scottish Ministers may, by order, modify that Schedule so as to provide that an offence is to cease to be a fixed penalty offence.
- (4) Schedule 8B to this Act (which makes provision about fixed penalties for fixed penalty offences) has effect.
- (5) An order under subsection (3) above may make transitional provision.”.

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*Status: This version of this part contains provisions that are prospective.*  
**Changes to legislation:** There are currently no known outstanding effects for the Transport (Scotland) Act 2005, Part 2. (See end of Document for details)

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- (2) In section 143 of that Act (which includes provision as to orders under the Act), in subsection (2)(b)(ii), after “section” there is inserted “ 130A or ”.
- (3) After Schedule 8 to that Act there are inserted Schedules 8A and 8B as set out in schedules 6 and 7 to this Act.
- (4) In section 156 of the 1991 Act (service of notices etc.) after subsection (2) there is inserted—
  - “(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).”.

**Annotations:**

**Commencement Information**

**I20** S. 37 in force at 1.10.2008 by S.S.I. 2008/15, art. 2(3), Sch. 2

PROSPECTIVE

**38 Civil penalties for certain offences under the roads (Scotland) Act 1984**

- (1) After section 130A of the Roads (Scotland) Act 1984 (as inserted by section 37 above) there is inserted—

**“130B Civil penalties for certain offences**

- (1) The Scottish Ministers may, by regulations, make provision for or in connection with—
  - (a) the imposition by roads authorities of penalty charges in respect of the offences which, under section 130A of this Act, are fixed penalty offences;
  - (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

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Transport (Scotland) Act 2005, Part 2. (See end of Document for details)*

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 roads authorities by persons who are or may be liable to pay those charges;
  - (c) appeals by those persons against the imposition of those charges.”.
- (2) In section 143 of that Act (which includes provision as to regulations under the Act), in subsection (2)(b)(i) after “17” there is inserted “ or 130B ”.

### 39 Consultation on regulations and codes of practice

After section 163 of the 1991 Act there is inserted the following section—

#### “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.”.

#### Annotations:

#### Commencement Information

121 S. 39 in force at 1.10.2007 by S.S.I. 2007/409, art. 2

**Status:**

This version of this part contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Transport (Scotland) Act 2005, Part 2 .