Transport (Scotland) Act 2019

2019 asp 17

PART 9

ROAD WORKS

Scottish Road Works Commissioner: status and functions

109 Status of the Scottish Road Works Commissioner

(1) The Transport (Scotland) Act 2005 is amended as follows.

(2) In section 16 (creation, appointment, status and funding of Scottish Road Works Commissioner), after subsection (4) insert—

"(4A) The Commissioner is, as such, to be regarded as a juristic person distinct from the individual for the time being holding the office.".

Commencement Information

I1 S. 109 in force at 14.1.2021 by S.S.I. 2020/429, **reg. 2(f)**

VALID FROM 01/04/2024

110 Inspection functions

(1) The Transport (Scotland) Act 2005 is amended as follows.

(2) After section 18 insert—

"**18A Power to carry out inspections**

(1) The Commissioner or an inspector ("the authorised person") may—

(a) enter any premises of the type mentioned in subsection (3) and inspect it and anything in it,

Status: *Point in time view as at 25/01/2023. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Transport (Scotland) Act 2019, PART 9. (See end of Document for details)*

(b) require the production of any information relating to the fulfilment of specified functions or obligations, and specify the form in which the information is to be produced,

(c) take copies of, or take possession of, information (in whatever form) which relates to the fulfilment of specified functions or obligations and retain it for as long as the authorised person reasonably considers necessary,

(d) carry out an examination of, and conduct tests on, any equipment used or to be used in fulfilling specified functions or obligations by—

(i) an undertaker,

(ii) a road works authority, or

(iii) a roads authority,

(e) require any person to provide the authorised person with such facilities and assistance as the authorised person reasonably considers necessary.

(2) The powers in subsection (1) may be exercised only for the purposes of—

(a) establishing whether an offence has been committed under the 1991 Act,

(b) establishing whether a duty under section 118 or 119 of the 1991 Act has been breached, or

(c) establishing whether a duty under section 60(3A) or 61B of the 1984 Act has been breached.

(3) The premises referred to in subsection (1)(a) are—

(a) any premises (other than any premises that is used as a dwelling) occupied or used by any of the following persons for the purposes of exercising their functions as—

(i) an undertaker,

(ii) a road works authority, or

(iii) a roads authority, or

(b) any land on which works in roads are being carried out.

(4) For the purposes of this section—

(a) an "inspector" means a member of staff—

(i) appointed under paragraph 1(1) of schedule 2, and

(ii) designated by the Scottish Ministers as an inspector for the purpose of this section,

(b) a "specified function or obligation" means—

(i) any function or obligation under the 1991 Act, or

(ii) any function or obligation under the 1984 Act so far as it relates to works in roads.

18B Inspections: warrants

(1) This section applies to the powers conferred by section 18A(1).

(2) A sheriff may grant a warrant under this subsection only if the sheriff is satisfied, by evidence on oath—

(a) that there are reasonable grounds for entering premises—
(i) for a purpose specified in section 18A(2), and
(ii) of a type mentioned in section 18A(3)(a), and
(b) that—
(i) entry to the premises has been refused,
(ii) such a refusal is reasonably expected,
(iii) the premises are unoccupied, or
(iv) the occupier is temporarily absent.

(3) A warrant authorises an authorised person—
(a) to enter the premises,
(b) to exercise any other power conferred by section 18A(1), and
(c) if necessary, to use reasonable force in doing so.

(4) A warrant expires—
(a) 28 days after the day on which the warrant was granted, or
(b) if earlier, when any period as is specified in it for the purpose for which it was granted expires.

18C Inspections: further provision

(1) This section applies to the powers conferred by section 18A(1) (whether exercised by virtue of that section or under a warrant granted under section 18B).

(2) The power of entry may be exercised only at a reasonable time of day.

(3) An authorised person seeking to exercise a power must, on request, produce evidence of the person's identity and authorisation before exercising the power.

(4) An authorised person may take onto the premises such other persons, and such materials and equipment, as the authorised person considers necessary.

(5) If an authorised person enters the premises by virtue of a warrant, the authorised person must, if taking possession of anything under section 18A(1)(c), leave a statement on the premises giving particulars of what has been taken and by whom.

(6) On leaving any premises which an authorised person is authorised to enter under a warrant, the person must, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against entry as the authorised person found them.

18D Offence of obstructing inspections

(1) A person commits an offence if the person—
(a) without reasonable excuse, fails to comply with a requirement of an authorised person, or
(b) intentionally obstructs an authorised person in the exercise of a power conferred by section 18A(1) or by virtue of section 18F.

(2) A person who commits an offence under subsection (1) is liable—

Status: *Point in time view as at 25/01/2023. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Transport (Scotland) Act 2019, PART 9. (See end of Document for details)*

(a) on summary conviction, to a fine not exceeding the statutory maximum,
(b) on conviction on indictment, to a fine.

18E Liability of authorised persons

(1) An authorised person does not incur any civil or criminal liability for anything done or omitted to be done in the exercise or purported exercise of a power conferred by section 18A(1) or by virtue of section 18F.

(2) Subsection (1) does not apply where it is proved that—
(a) the authorised person acted in bad faith,
(b) the authorised person failed to exercise a reasonable degree of care and skill, or
(c) the authorised person did not act on reasonable grounds.

(3) For the purpose of subsection (1), no regard is to be had to any defect in the appointment of an authorised person.

(4) Subsection (1) does not affect any liability of any other person in respect of things done or omitted to be done by the authorised person.

18F Power to make regulations about inspections

(1) The Scottish Ministers may by regulations make further provision about the functions of authorised persons in relation to inspections.

(2) Regulations under subsection (1) may, in particular, make provision—
(a) conferring powers on an authorised person,
(b) specifying requirements with which an authorised person must comply.”.

(3) In section 52 (orders and regulations), in subsection (3)—
(a) after “above” insert “ or regulations under section 18F ”,
(b) after “draft of the order” insert “ (or, as the case may be, regulations) ”.

(4) In paragraph 3 of schedule 2 (Scottish Road Works Commissioner: further provision)—
(a) the existing text becomes sub-paragraph (1), and
(b) after sub-paragraph (1), insert—

“(2) A report under sub-paragraph (1)—
(a) must include information on the use made during the year of the Commissioner's inspection functions conferred by section 18A or by virtue of section 18F,
(b) may include recommendations—
(i) as to how to improve the carrying out of works in roads,
(ii) in furtherance of the Commissioner's functions under section 17(1)(b) or (c),
(iii) on any other matter relating to the Commissioner's functions.

(3) The Commissioner may at any time give the Scottish Ministers and publish a report on any person who has functions conferred on or permissions granted to them by or under the 1991 Act who has—

(a) failed to comply with the 1991 Act and any obligations imposed on them under it, or

(b) failed to follow good practice within the meaning of section 17(4).”.

VALID FROM 01/04/2024

111 Compliance notices

(1) The New Roads and Street Works Act 1991 is amended as follows.

(2) After section 153 insert—

“Power of Scottish Road Works Commissioner to issue compliance notices

153A Compliance notices

(1) Where the Commissioner considers that a person has breached a specified duty to which the person is subject, the Commissioner may issue a compliance notice to the person.

(2) A “compliance notice” is a notice requiring the person to whom it is issued to take the steps set out in the notice in order to address the person's breach of a specified duty.

(3) For the purpose of this section, the specified duties are the duties—

(a) in the Roads (Scotland) Act 1984, under—

(i) section 60(1) and (3A) (fencing and lighting of obstructions and excavations),

(ii) section 61B (requirement for qualified supervisors and operatives),

(b) in this Act, under—

(i) section 112B (duty to enter certain information in the Scottish Road Works Register),

(ii) section 113(1) and (4) (advance notice of certain works),

(iii) section 114(1) (notice of starting date of works),

(iv) section 114A(2) (notice confirming start of works),

(v) section 116(2) (notice of emergency works),

(vi) section 118 (general duty of road works authority to co-ordinate works), other than the duty to issue or approve codes of practice under subsection (3),

(vii) section 119 (general duty of undertakers to co-operate), other than the duty under subsection (2),

(viii) section 124(1) and (2) (safety measures),

Status: *Point in time view as at 25/01/2023. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Transport (Scotland) Act 2019, PART 9. (See end of Document for details)*

(ix) section 126(1), (2) and (2C) (qualifications of supervisors and operatives),

(x) section 129(1) to (5) (duty of undertaker to reinstate),

(xi) section 130(1) and (2) (materials, workmanship and standard of reinstatement),

(xii) section 139(1B) and (2) (duty to inform undertakers of location of apparatus),

(xiii) section 140(1) (duty to maintain apparatus).

153B Restriction on issuing a compliance notice

(1) A compliance notice may not be issued to a person in respect of a breach of a duty arising out of a particular act or omission if a compliance notice has previously been issued to the person (and not withdrawn) in respect of the same breach arising out of the same act or omission.

(2) A compliance notice may not be issued to a person—

(a) in respect of a breach of a duty arising out of a particular act or omission which amounts to an offence, and

(b) requiring that person to take steps to stop committing the offence,

if criminal proceedings have been brought against the person for the same offence arising out of the same act or omission.

(3) A compliance notice issued in contravention of subsection (1) or (2) is of no effect.

153C Content and form of a compliance notice

(1) A compliance notice must include the following information—

(a) a statement of the grounds for issuing the notice, including a statement of—

(i) the duty that is alleged to have been breached, and

(ii) the act or omission which has caused the Commissioner to conclude that the duty has been breached,

(b) details of the steps that the Commissioner requires the person to whom the notice is issued to take in order to—

(i) stop breaching the duty, or

(ii) ensure that the duty will not be breached in future,

(c) the date of issue of the notice,

(d) the period of time within which the required steps are to be taken ("the compliance period"),

(e) information about the person to whom, and as to how and by when, any representations about the notice may be made,

(f) information about the right of appeal, including the period of time within which an appeal may be made,

(g) an explanation of the consequences of failure to comply with the requirements of the notice.

(2) The reference in subsection (1)(d) to the period of time within which the required steps are to be taken is a reference to such period of not less than

28 days, beginning with the date on which the notice was issued, as the Commissioner determines.

(3) The Scottish Ministers may by regulations make further provision about the form and content of compliance notices including, in particular—
  (a) provision about the form and content of any of the information required to be included under subsection (1),
  (b) provision about other information that is to be included in addition to that required under subsection (1).

153D Variation of a compliance notice

(1) The Commissioner may vary a compliance notice so as to extend the compliance period.

(2) A compliance notice may be varied in accordance with subsection (1)—
  (a) at any time before expiry of the compliance period,
  (b) by issuing a notice in writing to that effect to the person to whom the compliance notice was issued.

(3) The variation of a compliance notice under this section does not affect the date of its issue for the purpose of section 153F.

153E Withdrawal of a compliance notice

(1) The Commissioner may withdraw a compliance notice.

(2) A compliance notice may be withdrawn—
  (a) at any time before completion of the steps that are to be taken to comply with the requirements of the notice,
  (b) by issuing a notice in writing to that effect to the person to whom the compliance notice was issued.

(3) Where a compliance notice is withdrawn, it is to be treated as if it had never been issued.

153F Appeal against a compliance notice

(1) A person to whom a compliance notice has been issued may, before the expiry of the period of 21 days beginning with the date of issue of the notice, appeal to a sheriff against the decision to issue the notice.

(2) In an appeal under this section, the sheriff may—
  (a) cancel the compliance notice, or
  (b) affirm the notice, either with or without modifications.

(3) Where an appeal is made under this section, the compliance period is suspended until the appeal is finally determined or is withdrawn.

153G Failure to comply with a compliance notice

(1) If a person to whom a compliance notice has been issued fails, without reasonable excuse, to comply with the notice, the person commits an offence.

Status: *Point in time view as at 25/01/2023. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Transport (Scotland) Act 2019, PART 9. (See end of Document for details)*

(2) Where a person to whom a compliance notice has been issued fails to take any step required by the notice, the person does not, by reason of that failure, commit an offence under subsection (1) if—
  (a) the person takes other steps to—
    (i) stop breaching the duty in respect of which the notice was issued, or (as the case may be)
    (ii) ensure that the duty in respect of which the notice was issued will not be breached in future, and
  (b) the Commissioner notifies the person in writing that those steps are acceptable for the purposes of complying with the notice.

(3) A person who commits an offence under subsection (1) is liable—
  (a) on summary conviction, to a fine not exceeding £50,000,
  (b) on conviction on indictment, to a fine.

153H Effect of a compliance notice on criminal proceedings

(1) This section applies where a compliance notice is issued to a person—
  (a) in respect of a breach of a duty arising out of a particular act or omission which amounts to an offence, and
  (b) requiring that person to take steps to stop committing the offence.

(2) Criminal proceedings for the offence may not be brought against the person in respect of the same act or omission before the end of the compliance period.

(3) If the person—
  (a) complies with the requirements of the compliance notice, or
  (b) though failing to comply, by virtue of section 153G(2) does not commit an offence under section 153G(1) in relation to the notice,

the person may not at any time be convicted of the offence arising out of the same act or omission.

153I Power to make supplementary etc. provision

(1) The Scottish Ministers may by regulations make such supplementary, incidental or consequential provision as they consider appropriate in connection with compliance notices and the carrying out of the Commissioner's functions under sections 153A to 153H.

(2) Regulations under subsection (1) may, in particular, include provision facilitating, prohibiting or restricting—
  (a) the issuing of a compliance notice in respect of a breach of a duty arising out of a particular act or omission in cases where a fixed penalty notice has been issued in respect of the same act or omission,
  (b) the issuing of a fixed penalty notice in respect of an act or omission in cases where a compliance notice has been issued in respect of the breach of a duty arising out of the same act or omission.

(3) Regulations under subsection (1) may make such modifications of section 153H and paragraph 6 of schedule 6B as the Scottish Ministers

consider appropriate in relation to the case where a person has been issued with a compliance notice and a fixed penalty notice in relation to the same breach of a duty arising out of the same act or omission.

(4) But, for cases where a compliance notice is issued to a person—

(a) in respect of a breach of a duty arising out of a particular act or omission which amounts to an offence, and

(b) requiring that person to take steps to stop committing the offence,

regulations under subsection (1) may not make provision which has the effect that the person may still be convicted of the offence if the condition in subsection (5) is met.

(5) The condition is that the person both—

(a) makes payment in accordance with the fixed penalty notice, and

(b) complies with the requirements of the compliance notice or, though failing to comply, by virtue of section 153G(2) does not commit an offence under section 153G(1) in relation to the notice.

(6) In this section, "fixed penalty notice" means a fixed penalty notice within the meaning given in schedule 6B."

(3) In section 163 (meaning of "prescribed" and regulations generally), after subsection (2) insert—

"(2A) Regulations under section 153I(1) which modify section 153H or paragraph 6 of schedule 6B are subject to the affirmative procedure.".

PROSPECTIVE

112 Fixed penalty notices

(1) The New Roads and Street Works Act 1991 is amended as follows.

(2) In schedule 6A (fixed penalty offences under Part 4), at the end of the table, insert—

"An offence under section 153G(1)	Failure to comply with a compliance notice".

(3) In schedule 6B (fixed penalties for certain offences under Part 4)—

(a) in paragraph 1(1) for "An" substitute " The Commissioner, an authorised member of the Commissioner's staff or an ",

(b) after paragraph 1(1) insert—

"(1A) But, despite sub-paragraph (1), a road works authority may not give a fixed penalty notice in relation to an offence under section 153G(1).",

(c) in paragraph 1(2)—

(i) the words after "Schedule" become paragraph (a),

(ii) after paragraph (a), insert—

"(b) "issuing authority" means the Commissioner or (as the case may be) the road works authority.",

(d) in paragraph 4—

(i) in sub-paragraph (1), after "subject to" insert " sub-paragraph (1A) and ",

(ii) after sub-paragraph (1), insert—

"(1A) The penalty for a fixed penalty offence in relation to an offence under section 153G(1) is such amount, not exceeding £100,000, as is prescribed.",

(e) in paragraph 5, before sub-paragraph (1) insert—

"(A1) This paragraph applies to fixed penalty offences other than an offence under section 153G(1).",

(f) in paragraph 7(4)(b) for "road works authority in whose area the offence was committed" substitute " issuing authority ",

(g) after paragraph 13, insert—

"13A (1) The Scottish Ministers may by regulations make such supplementary, incidental or consequential provision as they consider appropriate in connection with fixed penalty notices and the carrying out of issuing authorities' functions under this schedule.

(2) Regulations under sub-paragraph (1) may, in particular, include provision prohibiting or restricting the giving of a fixed penalty notice to a person in respect of an offence arising out of an act or omission in cases where the person has already been given a fixed penalty notice in respect of the same offence arising out of the same act or omission by a different issuing authority.".

(h) in each of the following paragraphs, for each occurrence of the expression "road works authority" substitute " issuing authority "

(i) paragraph 3(3),

(ii) paragraph 4(3),

(iii) paragraph 6(3) and (5)(a),

(iv) paragraph 7(4)(a),

(v) paragraph 8(1), (2)(a) and (3),

(vi) paragraph 12(1) and (2).

113 Functions in relation to the Scottish Road Works Register

(1) Section 112A of the New Roads and Street Works Act 1991 (the Scottish Road Works Register) is amended as follows.

(2) For subsections (6) and (7) substitute—

"(6A) The Commissioner is to—

(a) make publicly available, in such form and manner as the Commissioner considers appropriate—

(i) information contained in the SRWR relating to the timing, location, duration and purpose of works in roads, and

(ii) such other information contained in the SRWR as the Scottish Ministers may prescribe, and

(b) make information contained in the SRWR available to—

(i) any person having authority to execute works of any description in a road, or

(ii) any person who does not have that authority, but who appears to the Commissioner to have sufficient interest in the information to be permitted to access it.”.

Commencement Information

I2 S. 113 in force at 10.1.2022 by S.S.I. 2021/428, reg. 2, **sch.**

Permission to execute works in a road

114 Permission to execute works in a road

(1) In the Roads (Scotland) Act 1984, section 61 (granting of permission to place etc. apparatus under a road) is repealed.

(2) In the New Roads and Street Works Act 1991, in section 109 (permission to execute road works), subsections (7) and (8) are repealed.

Commencement Information

I3 S. 114 in force at 10.1.2022 by S.S.I. 2021/428, reg. 2, **sch.**

Safety measures for the carrying out of works in roads

115 Fencing and lighting of obstructions and excavations

(1) The Roads (Scotland) Act 1984 is amended as follows.

(2) In section 60 (fencing and lighting of obstructions and excavations)—

(a) in subsection (1), after “person” insert “ (other than a roads authority) ”,

(b) after subsection (3) insert—

“(3A) Where the roads authority places or deposits anything on a road so as to cause an obstruction, or executes works in a road, they must comply with the requirements in paragraphs (a) to (d) of subsection (1).”,

(c) in subsection (4)—

(i) for “or (2)” substitute “ , (2) or (3A) ”,

(ii) for “either” substitute “ any ”.

(3) After section 60 insert—

“**60A Safety measures: codes of practice**

(1) The Scottish Ministers may, for the purposes of section 60, and following consultation with such persons as they consider appropriate, issue or approve codes of practice giving practical guidance as to the matters mentioned in that section.

(2) A code of practice under subsection (1) must be published in such manner as the Scottish Ministers consider appropriate as soon as reasonably practicable after it is issued or approved.

(3) If (and in so far as) a person complies with such a code of practice, the person is to be taken to comply with the requirements imposed on the person by section 60(1) or, as the case may be, (3A).

(4) A failure to comply with such a code of practice is evidence of a failure to comply with the requirements imposed on the person by section 60(1) or, as the case may be, (3A).”.

(4) In schedule 8 (penalties for offences)—

(a) in respect of the entry for section 60(3) (paragraph 9 in column 1), in column 2, for “Level 3.” substitute “ Level 5. ”,

(b) in respect of the entry for section 60(4) (paragraph 10 in column 1), in column 2, for “Level 3.” substitute “ Level 5. ”.

Commencement Information

I4 S. 115 in force at 10.1.2022 by S.S.I. 2021/428, reg. 2, **sch.**

116 Qualifications of supervisors and operatives

(1) In the Roads (Scotland) Act 1984, after section 61A insert—

“**61B Requirement for qualified supervisors and operatives**

(1) This section applies to any person (including a roads authority) executing—

(a) works (other than road works within the meaning of section 107(3) of the New Roads and Street Works Act 1991) in or on a road or works which otherwise involve a person placing or depositing anything on a road so as to cause an obstruction—

(i) to which the requirements of section 60(1)(b) or (c) apply, and

(ii) which involve the placing of lights, fences, barriers or signs on a carriageway,

(b) works in a road which involve—

(i) breaking up the road, or any sewer, drain or tunnel under it, or

(ii) tunnelling or boring under the road, and

(c) works to subsequently reinstate the road.

(2) The person executing the works must secure that—

(a) the execution of the works is supervised by an individual having a prescribed qualification as a supervisor, and

(b) there is on site at all times when any such works are in progress at least one individual having a prescribed qualification as a trained operative.

(3) Where a roads authority are not the person who is executing the works, the authority may by notice require the person executing the works—

(a) to notify the authority of the name of any individual who is or has been the supervisor, or trained operative, in respect of the work, and

(b) to provide the authority with prescribed evidence of the requisite qualification of the individual.

(4) The Scottish Road Works Commissioner may by notice require the roads authority—

(a) to notify the Commissioner of the name of any individual who is or has been the supervisor or trained operative in respect of any work to which this section applies, and

(b) to provide the Commissioner with prescribed evidence of the requisite qualification of the individual.

(5) A notice under subsection (3) or (4) may—

(a) require the notification of—

(i) the name of an individual who was the supervisor or, as the case may be, trained operative at a particular time,

(ii) all individuals who have been the supervisor, or as the case may be, trained operative,

(b) be given at any time while the works are being executed or within such period after their completion as is prescribed.

(6) A person who receives a notice under subsection (3) must comply with the requirements of the notice within the period and manner prescribed.

(7) A person, other than a roads authority, who fails to comply with a duty imposed on the person by subsection (2) or (6) commits an offence.

(8) A person who commits an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) The Scottish Ministers may by regulations make provision for the purposes of this section, including provision—

(a) specifying circumstances in which the duties in subsection (2) do not apply to a person executing works in a road,

(b) specifying—

(i) circumstances in which more than one trained operative must be on site at all times when work is in progress, and

(ii) the number of trained operatives that must be on site in those circumstances,

(c) about the approval of bodies conferring qualifications (and the withdrawal of such approval),

(d) about the circumstances in which a qualification may be conferred,

(e) about the form of any evidence to be issued by an approved body to certify or otherwise show that a qualification has been conferred on an individual.

(10) In this section, “prescribed” means prescribed by the Scottish Ministers in regulations made under subsection (9).

(11) This section does not apply to an undertaker executing road works, within the meaning of Part IV of the New Roads and Street Works Act 1991.”.

(2) In the New Roads and Street Works Act 1991, in section 126 (qualifications of supervisors and operatives)—

(a) after subsection (1) insert—

"(1ZA) The duty under subsection (1) continues until the road is reinstated.",

(b) after subsection (2) insert—

"(2ZA) The duty under subsection (2) continues until the road is reinstated.",

(c) after subsection (2ZA) (inserted by this section) insert—

"(2ZB) For the purpose of subsection (2), the Scottish Ministers may by regulations specify—

(a) circumstances in which more than one trained operative must be on site at all times when work is in progress, and

(b) the number of trained operatives that must be on site in those circumstances.".

Commencement Information

I5 S. 116 in force at 25.1.2023 by S.S.I. 2022/332, reg. 2, **sch.**

Commencement and completion notices

117 Commencement and completion notices

(1) The New Roads and Street Works Act 1991 is amended as follows.

(2) In section 112B (duty to enter information in the Scottish Road Works Register)—

(a) after subsection (2) insert—

"(2A) On the completion of works of the kind referred to in subsection (2), the road works authority must, within such period as may be prescribed, enter in the SRWR such information about their completion (including the date on which the works were completed) as may be prescribed.",

(b) after subsection (5) insert—

"(5A) Where a road works authority, a local roads authority or the Scottish Ministers—

(a) are under a duty to enter in the SRWR the prescribed information about proposed works under this section, and

(b) have begun to execute the works,

they must, within such period as may be prescribed, enter in the SRWR the date on and time at which the works began and any further prescribed information.",

(c) in subsection (6)—

(i) after "shall" insert " , within such period as may be prescribed, ",

(ii) after "completion" where it second occurs insert " (including the date on which the works were completed) ",

(d) after subsection (8) insert—

"(9) For the purposes of subsections (2A), (5A) and (6), different periods of notice may be prescribed for different descriptions of works.".

(3) After section 114 insert—

"**114A Notice confirming start of works**

(1) This section applies where an undertaker—
  (a) is under a duty to give notice of the undertaker's intention to begin to execute road works under section 114(1), and
  (b) has begun to execute the works.

(2) The undertaker must, within such period as may be prescribed, give notice of the date on and time at which the works began.

(3) 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).

(4) Cases may be prescribed in which no notice is required under subsection (2).

(5) For the purposes of subsection (2), an undertaker gives notice by—
  (a) giving notice to any person or authority to whom notice is required to be given under section 114(3A),
  (b) entering in the SRWR a copy of the notice.

(6) An undertaker who, in contravention of subsection (2), fails to give notice commits an offence.

(7) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) In proceedings against a person for an offence under this section, it is a defence for the person to show that the contravention was attributable—
  (a) to the person not knowing the position, or not knowing of the existence, of another person's apparatus, or
  (b) to the person not knowing the identity or address of—
    (i) a relevant authority, or
    (ii) the person to whom any apparatus belongs,

and that the person's ignorance was not due to any negligence on the person's part or to any failure to make inquiries which the person ought reasonably to have made.".

(4) In section 129 (duty of undertaker to reinstate)—
  (a) in subsection (3), for the words from "before" to "completed" substitute " within such period after the reinstatement is completed as may be prescribed ",
  (b) in subsection (4), after "so" insert " within such period as may be prescribed ",
  (c) after subsection (5A) insert—

"(5B) For the purposes of subsections (3) and (4), different periods of notice may be prescribed for different descriptions of works.".

Commencement Information

I6 S. 117 in force at 25.1.2023 by S.S.I. 2022/332, reg. 2, **sch.**

Reinstatement of roads following works

118 Reinstatement quality plans

(1) The New Roads and Street Works Act 1991 is amended as follows.

(2) After section 130 insert—

"**130A Reinstatement quality plans: undertakers etc.**

(1) This section applies where a person (other than a roads authority) proposes to execute road works or works for road purposes which will involve—
  (a) breaking up the road, or any sewer, drain or tunnel under it,
  (b) tunnelling or boring under the road,
  (c) any other activity that will involve reinstating the road.

(2) Before commencing the proposed works, the person must enter in the SRWR—
  (a) a plan, approved by the Commissioner, which sets out the intended approach to reinstating the road after completion of the proposed works (a "specific reinstatement quality plan"), or
  (b) either—
    (i) a plan, approved by the Commissioner, which sets out the intended approach to reinstating roads in circumstances such as those applicable for the proposed works (a "general reinstatement quality plan"), or
    (ii) a notice confirming that an applicable general reinstatement quality plan has previously been approved and entered.

(3) Where a person enters a notice under subsection (2)(b)(ii), the Commissioner may require the person, before commencing the proposed works, to enter in the SRWR—
  (a) a specific reinstatement quality plan for the proposed works, or
  (b) an updated general reinstatement quality plan,

  which has been approved by the Commissioner.

(4) The Commissioner may approve a plan under this section only if the Commissioner is satisfied that the plan demonstrates the person—
  (a) is competent to safely and effectively execute the reinstatement of the road, and
  (b) has in place quality control procedures sufficient to ensure that the reinstatement of the road is to a sufficient standard and in compliance with the statutory obligations applicable to the works.

(5) A person who fails to comply with a duty to which the person is subject under subsection (2) or (3) commits an offence.

(6) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

130B Reinstatement quality plans: roads authorities

(1) This section applies where a roads authority proposes to execute works for roads purposes which will involve—
   (a) breaking up the road, or any sewer, drain or tunnel under it,
   (b) tunnelling or boring under the road,
   (c) any other activity that will involve reinstating the road.

(2) The Commissioner may, at any time before works to reinstate the road commence, require the roads authority to enter in the SRWR a plan, approved by the Commissioner, which sets out the authority's intended approach to reinstating the road in respect of the proposed works.

(3) The Commissioner may approve a plan under subsection (2) only if the Commissioner is satisfied that the plan demonstrates that the authority has in place—
   (a) appropriate arrangements to safely and effectively execute the reinstatement of the road, and
   (b) quality control procedures sufficient to ensure that the reinstatement of the road is to a sufficient standard and in compliance with the statutory obligations applicable to the works.

(4) Nothing in this section prevents a roads authority from—
   (a) preparing a plan for the reinstatement of a road and sending it to the Commissioner for approval,
   (b) entering a plan approved by the Commissioner in the SRWR.

130C Reinstatement quality plans: codes of practice and further provision

(1) The Scottish Ministers may issue or approve for the purposes of sections 130A and 130B codes of practice giving practical guidance as to the matters mentioned in sections 130A and 130B (and regulations made under this section).

(2) The Scottish Ministers may by regulations make further provision about plans to be entered in the SRWR under section 130A or 130B.

(3) In particular, and without limit to that generality, regulations under subsection (2) may include provision—
   (a) about the form and content of the plans,
   (b) about the form, content and timing of any notice to be entered in the SRWR under section 130A(2)(b)(ii),
   (c) specifying circumstances in which the Commissioner may (or must) require—
      (i) a person to enter a plan in the SRWR under section 130A(3), or

(ii) a roads authority to enter a plan in the SRWR under section 130B(2),

(d) relating to the process to be followed (including any time periods which must be complied with) by the Commissioner in order to require a plan to be entered in the SRWR,

(e) requiring a plan to be reviewed by the person who has entered it in the SRWR at such intervals or otherwise in such circumstances as are specified,

(f) about the consequences of complying, and of failing to comply, with a code of practice issued or approved under subsection (1).

(4) Regulations under subsection (2) may create offences for failure to comply with requirements imposed under the regulations.

(5) Where regulations under subsection (2) include provision creating an offence—

(a) they must provide for the offence to be triable summarily only, and

(b) they must provide for the maximum penalty for the offence to be a fine, which must not exceed level 5 on the standard scale.

(6) Regulations under subsection (2) which include provision creating an offence are subject to the affirmative procedure.”.

Commencement Information

I7 S. 118 in force at 25.1.2023 for specified purposes by S.S.I. 2022/332, reg. 2, **sch.**

VALID FROM 01/04/2024

Information about apparatus

119 Information about apparatus

(1) The New Roads and Street Works Act 1991 is amended as follows.

(2) For section 138 (records of location of apparatus) substitute—

“**138A Entering details about apparatus in the Scottish Road Work Register**

(1) This section applies where a person—

(a) places in, alters the position of, or removes from a road, apparatus that belongs to the person,

(b) discovers, in the course of executing other works in a road, apparatus that belongs to the person (but in respect of which no information, or incorrect information, is entered in the SRWR), or

(c) is informed under section 139 about the location of apparatus that belongs to the person.

(2) The person must, except in such cases as are prescribed, enter in the SRWR such information about the apparatus as is prescribed as soon as is reasonably practicable after the occurrence of an event in paragraph (a) to (c) of subsection (1).

(3) If the person fails to comply with the duty under subsection (2)—
- (a) the person commits an offence, and
- (b) the person is liable to compensate any person in respect of loss or damage incurred by that person in consequence of the failure.

(4) A person guilty of an offence under subsection (3)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In civil or criminal proceedings against a person arising out of a failure to comply with the duty under subsection (2), it is a defence for the person to show that all reasonable care was taken to secure that no such failure occurred by—
- (a) the person and the person's employees, and
- (b) any contractor of the person and the contractor's employees.”.

(3) In section 139 (duty to inform undertakers of apparatus)—
- (a) for subsection (1) substitute—

“(1A) Subsection (1B) applies where a person executing works of any description in a road finds apparatus belonging to an undertaker which—
- (a) is not entered in the SRWR, or
- (b) is entered in the SRWR but the details pertaining to it are incorrect.

(1B) The person must 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.”,

- (b) in subsection (2)(a), for the words from “note” to “prescribed)” substitute “ enter in the SRWR ”,
- (c) in subsection (3), for “(1)” substitute “ (1B) ”, and
- (d) in subsection (4), for “(1)” substitute “ (1B) ”.

(4) The italic heading immediately preceding section 138 becomes “ *Duties and liabilities with respect to apparatus* ”.

Status:
Point in time view as at 25/01/2023. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:
There are currently no known outstanding effects for the Transport (Scotland) Act 2019, PART 9.