



# 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.”.

#### **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,
  - (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,

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- (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

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- (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—
  - (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).”.

## **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),
    - (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.
- (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,



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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.”.

## 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—

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