



New Roads and Street Works Act 1991

1991 CHAPTER 22

PART IV

ROAD WORKS IN SCOTLAND

Introductory provisions

107 Roads, road works and undertakers.

- (1) In this Part a “road” means any way (other than a substitute road made under section 74(1) of the ^{M1}Roads (Scotland) Act 1984 or a waterway) whether or not there is over it a public right of passage and whether or not it is for the time being formed as a way; and the expression includes a square or court, and any part of a road.
- (2) Where a road passes over a bridge or through a tunnel, references in this Part to the road include that bridge or tunnel.
- (3) In this Part “road works” means works for any purposes other than roads purposes, being works of any of the following kinds executed in a road in pursuance of a statutory right or with permission granted under section 109—
 - (a) placing apparatus, or
 - (b) inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, changing the position of apparatus or removing it,or works required for or incidental to any such works (including, in particular, breaking up or opening the road, or any sewer, drain or tunnel under it, or tunnelling or boring under the road).
- (4) In this Part “undertaker” in relation to road works means the person by whom the relevant statutory right is exercisable (in the capacity in which it is exercisable by him) or a person having permission under section 109 to execute road works, as the case may be.
- (5) References in this Part to the undertaker in relation to apparatus in a road are to the person entitled, by virtue of a statutory right or a permission granted under section 109,

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

Marginal Citations

M1 1984 c. 54.

108 The road works authority and other relevant authorities.

- (1) In this Part “the road works authority” in relation to a road means, subject to the following provisions—
 - (a) if the road is a public road, the roads authority, and
 - (b) if the road is not a public road, the road managers.
- (2) In the case of a road for which the Secretary of State is the roads authority but in relation to which a local roads authority acts as his agent under section 4 of the Roads (Scotland) Act 1984, the local roads authority shall be regarded as the road works authority for the purposes of section 112 (the road works register) and sections 113 to 119 (advance notice and co-ordination of works).
- (3) Subsection (1)(b) has effect subject to section 146 as regards the application of this Part to prospective public roads.
- (4) In this Part the expression “road managers”, used in relation to a road which is not a public road, means the authority, body or person liable to the public to maintain or repair the road or, if there is none, any authority, body or person having the management or control of the road.
- (5) The Secretary of State may by regulations make provision for exempting road managers from provisions of this Part which would otherwise apply to them as the road works authority in relation to a road.
- (6) References in this Part to the relevant authorities in relation to any road works are to the roads authority and also—
 - (a) where the works include the breaking up or opening in the road of a sewer vested in [^{F1}a sewerage authority, that] authority;
 - (b) where the road is carried or crossed by a bridge vested in a transport authority, or crosses or is crossed by any other property held or used for the purposes of a transport authority, that authority; and
 - (c) where in any other case the road, not being a public road, is carried or crossed by a bridge, the bridge authority.

Textual Amendments

F1 Words in s. 108(6)(a) substituted (1.4.1996) by 1994 c. 39 s. 180(1), Sch. 13 para. 168(2); S.I. 1996/323 art. 4(c)

109 Permission to execute road works.

- (1) A road works authority may grant permission in writing, subject to such reasonable conditions as they consider appropriate, to persons to whom this section applies—

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- (a) to place, or to retain, apparatus in a road, and
 - (b) thereafter to inspect, maintain, adjust, repair, alter or renew the apparatus, change its position or remove it,
- and to execute for those purposes any works required for or incidental to such works (including, in particular, breaking up or opening the road, or any sewer, drain or tunnel under it, or tunnelling or boring under the road).
- (2) A person to whom permission has been granted under this section to execute works may do so without obtaining any consent which would otherwise be required to be given—
- (a) by any other relevant authority in its capacity as such, or
 - (b) by any person in his capacity as the owner of apparatus affected by the works;
- but without prejudice to the provisions of this Part as to the making of requirements by any such authority or person or as to the settlement of a plan and section and the execution of the works in accordance with them.
- (3) The granting of permission under this section to a person does not dispense that person from obtaining any other consent, licence or permission which may be required; and it does not authorise the installation of apparatus for the use of which the licence of the Secretary of State is required unless and until that licence has been granted.
- (4) This section applies to persons who are described in one or more of the following paragraphs—
- (a) persons of a prescribed class,
 - (b) persons carrying out works of a prescribed class,
 - (c) persons carrying out works in a prescribed area.
- (5) The conditions referred to in subsection (1) may include conditions as to—
- (a) the payment of fees,
 - (b) the future cessation or withdrawal of the permission, and
 - (c) indemnification of the authority against claims arising out of what is permitted.
- (6) Before granting permission under this section the road works authority shall give not less than 10 working days' notice to each of the following—
- (a) where the works are likely to affect a sewer vested in a [F²sewerage] authority, to that authority,
 - (b) where the works are to be executed in a part of a road which is carried or crossed by a bridge vested in a transport authority, or crosses or is crossed by any other property held or used for the purposes of a transport authority, to that authority,
 - (c) where in any other case the part of the road in which the works are to be executed is carried or crossed by a bridge, to the bridge authority,
 - (d) to any person who has given notice under section 113 (advance notice of certain works) of his intention to execute road works which are likely to be affected by the works to which the permission relates, and
 - (e) to any person having apparatus in the road which is likely to be affected by the works;
- but a failure to do so does not affect the validity of the permission.
- (7) Where permission has been granted under section 61 of the ^{M2}Roads (Scotland) Act 1984 in respect of apparatus and the road works authority consider that permission

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could be granted under this section in respect of that apparatus, they may cancel the permission granted under section 61 of the 1984 Act and, if they cancel that permission, they shall substitute for it permission granted in accordance with subsection (1) above.

(8) The works referred to in subsection (1) above do not include works for road purposes.

Textual Amendments

F2 Word in [s. 109\(6\)\(a\)](#) substituted (1.4.1996) by [1994 c. 39 s. 180\(1\), Sch. 13 para. 168\(3\)](#); [S.I. 1996/323 arts. 4\(c\)](#)

Modifications etc. (not altering text)

C1 [S. 109](#): power to contract out functions of the Secretary of State conferred (16.3.1996) by [S.I. 1996/878, art. 2, Sch. para. 6\(a\)](#)

Marginal Citations

M2 [1984 c. 54](#).

110 Prohibition of unauthorised road works.

- (1) It is an offence for a person other than the road works authority—
 - (a) to place apparatus in a road, or
 - (b) to break up or open a road, or a sewer, drain or tunnel under it, or to tunnel or bore under a road, for the purpose of placing, inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, or of changing the position of apparatus or removing it,
 otherwise than in pursuance of a statutory right or in accordance with a permission granted under section 109.
- (2) A person committing an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) This section does not apply to—
 - (a) works for which consent or permission has been given under the Roads (Scotland) Act 1984 by a roads authority,
 - (b) works for road purposes, or
 - (c) emergency works of any description.
- (4) If a person commits an offence under this section, the road works authority may—
 - (a) in the case of an offence under subsection (1)(a), direct him to remove the apparatus in respect of which the offence was committed, and
 - (b) in any case, direct him to take such steps as appear to them necessary to reinstate the road or any sewer, drain or tunnel under it.

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

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111 Emergency works.

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

Modifications etc. (not altering text)

C2 [S. 111](#) excluded (28.11.1992) by [S.I. 1992/2990](#), [art. 5](#)

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