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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 88**

**ROADS AND BRIDGES**

**The Road Works (Scottish Road Works Register, Notices,  
Directions and Designations) (Scotland) Regulations 2008**

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|------------------------------------------------|---------|-----------------------|
| <i>Made</i>                                    | - - - - | <i>5th March 2008</i> |
| <i>Laid before the Scottish<br/>Parliament</i> | - - - - | <i>6th March 2008</i> |
| <i>Coming into force</i>                       | - -     | <i>1st April 2008</i> |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 108(5), 112A(2), 112B, 113(1), (2) and (3A), 114(1), (2), (3A) and (7), 115(2), 115A(4), 116(3A), 117(1) and (5), 121(1), 122(2), 123(1) and (2), 129(5A), 131(3) and (3A), 149(2) and (2A), 156(1) and (2) and 163(1) and (3) of the New Roads and Street Works Act 1991(1) and all other powers enabling them to do so.

In accordance with section 163A of that Act(2) they have consulted with such—

- (a) persons considered by them to be representative of the interests of undertakers;
  - (b) road works authorities; and
  - (c) other persons,
- as they think appropriate.

**Citation and commencement**

1. These Regulations may be cited as the Road Works (Scottish Road Works Register, Notices, Directions and Designations) (Scotland) Regulations 2008 and come into force on 1st April 2008.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the New Roads and Street Works Act 1991;

“day” means a working day;

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(1) 1991 c. 22. Sections 112A, 112B, 113(3A), 114(3A), 115A, 116(3A), 129(5A), 131(3A) and 149(2A) were inserted into the 1991 Act by sections 19, 21, 28 and 29 of the [Transport \(Scotland\) Act 2005 \(asp 12\)](#) (“the 2005 Act”). Sections 113, 114, 115, 116, 117, 121, 129, 131, 149 and 156 were amended by sections 19, 20, 21, 22, 28, 29, 36 and 37 of the 2005 Act. See section 163(1) of the 1991 Act for the definition of “prescribed”. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(2) Section 163A was inserted by section 39 of the 2005 Act.

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000 (general interpretation)(3);

“major works” means–

- (a) road works by an undertaker (other than minor works)–
  - (i) which have been identified specifically in the undertaker’s annual operating programme or which, if not specifically identified in that programme, are normally planned at least six months in advance of work commencing;
  - (ii) where an order is required under section 14 of the Road Traffic Regulation Act 1984 (temporary prohibition or restriction on roads)(4) for any works other than emergency works;
  - (iii) other than emergency works and urgent works, in a multi-lane road that is a traffic-sensitive road where one or more lanes are closed to enable the works to take place; or
  - (iv) other than emergency works and urgent works, which have a duration in excess of 10 days and for which traffic control is required for 3 or more of those days in accordance with the Code of Practice “Safety at Street Works and Road Works” 2001(5); and
- (b) works for road purposes by a road works authority (other than minor works)–
  - (i) which have been identified specifically in a roads authority’s annual operating programme or which, if not specifically identified in that programme, are normally planned at least 6 months in advance of work commencing;
  - (ii) where an order is required under section 14 of the Road Traffic Regulation Act 1984 for any works other than emergency works;
  - (iii) other than emergency works and urgent works, in a multi-lane road that is a traffic-sensitive road where one or more lanes are closed to enable the works to take place; or
  - (iv) other than emergency works and urgent works, which have a duration in excess of 10 days and for which traffic control is required for 3 or more of those days in accordance with the Code of Practice “Safety at Street Works and Road Works” 2001;

“minor works” means–

- (a) road works by an undertaker (not being emergency works or urgent works) whether in the footway, verge or carriageway, which are of a planned duration of not more than 3 days, do not form part of a rolling programme and do not involve at any one time more than 30 metres of works or 20 square metres of reinstatement, or leave less than the minimum width of carriageway necessary for one way traffic in accordance with the Code of Practice “Safety at Street Works and Road Works” 2001; and
- (b) works for roads purposes by a road works authority (not being emergency works or urgent works) whether in the footway, verge or carriageway, which are of a planned duration of not more than 3 days, do not form part of a rolling programme and do not involve at any one time more than 30 metres of works or 20 square metres of reinstatement or leave less than the minimum width of carriageway necessary for one way traffic in accordance with the Code of Practice “Safety at Street Works and Road Works” 2001;

(3) 2000 c. 7. Section 15(1) was amended by the Communications Act 2003 (c. 21), section 406(1) and Schedule 17, paragraph 158.

(4) 1984 c. 27.

(5) ISBN: 011 551 9580. Published by the Department for Transport, the Scottish Executive and the Welsh Assembly under section 124(3) of the Act.

“month” means a calendar month;

“responsible authority”, other than in regulation 14 where it has the same meaning as in section 149(4) (provisions as to reinstatement of sewers, drains or tunnels), means the local or national authority that has current responsibility for naming or numbering a road, identified by an authority code allocated by the Office for National Statistics;

“statutory undertaker” means an undertaker who is entitled to carry out road works by virtue of a statutory right;

“standard works” means–

- (a) road works by an undertaker; and
- (b) works for road purposes by a road works authority,

which are not emergency works, urgent works, minor works or major works;

“traffic control” means any of the 5 methods of controlling traffic detailed in the Code of Practice “Safety at Street Works and Road Works” 2001;

“traffic sensitive road” means a road designated by a road works authority as traffic sensitive pursuant to section 123 (traffic-sensitive roads) and in a case where a limited designation is made pursuant to section 123(3) any reference to works in a traffic sensitive road shall be construed as a reference to works to be executed at the times and dates specified in such a designation;

“unique street reference number” means the reference number uniquely identifying a road allocated by a responsible authority compiling a street gazetteer compliant with the publication issued by the British Standards Institution on 15th June 1993 entitled “Spatial data – sets for geographic referencing” under reference No.BS 7666, which shall not be changed if the responsibility changes from one authority to another;

“unit of inspection” has the same meaning as in regulation 3(3) (inspection fees) of the Road Works (Inspection Fees) (Scotland) Regulations 2003(6); and

“urgent works” means–

- (a) road works by an undertaker (not being emergency works) whose execution at the time they are executed is required (or which the person responsible for the works believes on reasonable grounds to be required)–
  - (i) to prevent or put an end to an unplanned interruption of any supply or service provided by the undertaker;
  - (ii) to avoid substantial loss to the undertaker in relation to an existing service; or
  - (iii) to reconnect supplies or services where the undertaker would be under a civil or criminal liability if the reconnection is delayed until after the expiration of the appropriate notice period,

and include works which cannot reasonably be severed from such works; and

- (b) works for road purposes by a road works authority (not being emergency works) whose execution at the time they are executed is required (or which the person responsible for the works believes on reasonable grounds to be required) to prevent or put an end to an unplanned obstruction of any part of the road and includes works which cannot reasonably be severed from such works.

(2) Unless otherwise provided a reference in these Regulations to a numbered section is a reference to the section bearing that number in the Act.

(3) References in these Regulations to–

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(6) [S.S.I. 2003/415](#); to which there are amendments not relevant to these Regulations.

- (a) the Code of Practice “Safety at Street Works and Road Works” 2001;
  - (b) the publication issued by the British Standards Institution on 15th June 1993 entitled “Spatial data – sets for geographic referencing” under reference No. BS 7666; and
  - (c) the Specification for the Reinstatement of Openings in Roads (October 2003)(7),
- operate as references to those documents as revised or re issued from time to time.

### **The Scottish Road Works Register**

3.—(1) For the purposes of section 112A(2) (the Scottish Road Works Register), the SRWR(8) shall be kept in such form and manner so as to enable the information referred to in paragraphs (2) to (7) relating to a particular road to be traced and shall be indexed and be in a form which complies with the system of street referencing specified in Part I of the publication issued by the British Standards Institution on 15th June 1993 entitled “Spatial data – sets for geographic referencing” under reference No. BS 7666.

(2) For the purposes of section 112B(1) (duty to enter certain information in the Scottish Road Works Register), the prescribed particulars of each road are—

- (a) the name of the responsible authority;
- (b) the unique street reference number of the road;
- (c) the designated name or description allocated to the road by the responsible authority;
- (d) the British National Grid co ordinates of the extremity points of the road;
- (e) the name of the road works authority;
- (f) the reinstatement category of the road as defined in S1.3 and S1.4 of the Specification for the Reinstatement of Openings in Roads (October 2003);
- (g) details of any designation of the road as a protected road pursuant to section 121 (supplementary provisions as to designation of protected roads), a traffic sensitive road or a road having special engineering difficulties pursuant to section 122 (roads with special engineering difficulties), as follows—
  - (i) the type of designation;
  - (ii) whether it applies to the whole road or a part of it;
  - (iii) the British National Grid co ordinates of the start and end points of the designation; and
  - (iv) details of the dates and times when the designation as a traffic-sensitive road applies if it does not apply at all dates and times, and details of any withdrawal of any such designation;
- (h) details of the location and general description of apparatus found in a road and notified to the road works authority under section 139(2)(b) (duty to inform undertakers of location of apparatus);
- (i) details of any notice given pursuant to section 144(2)(a) (sharing of cost of necessary measures);
- (j) the location and description of works for which plans and sections have been submitted to the road works authority under Schedule 6 to the Act (roads with special engineering difficulties); and

(7) ISBN: 07559 09739. Published by the Scottish Executive and is available in electronic form at <http://www.scotland.gov.uk> and in paper form from Blackwell’s Bookshop, 53 South Bridge, Edinburgh EH1 1YS.

(8) The Scottish Road Works Register. See the definition in section 112A(1) of the Act. Section 112A was inserted by section 19 of the 2005 Act.

(k) details of any notice given by a road works authority under Schedule 6 to the Act.

(3) For the purposes of section 112B(2), (4) and (5) the information to be entered in the SRWR is prescribed to be as follows—

- (i) a unique reference number;
- (ii) the date and time of entry;
- (iii) the expected start date;
- (iv) the expected completion date;
- (v) the type of works;
- (vi) whether the works are to be carried out in a traffic sensitive road;
- (vii) whether the works are to be carried out in a road designated pursuant to section 122 as being a road having special engineering difficulties;
- (viii) the location of the works described by the address of the nearest premises, but only where those premises are within 200 metres of the works;
- (ix) the unique street reference number of the road in which the works are to be carried out;
- (x) the British National Grid co ordinates of the mid-point of the works; and
- (xi) a general description of the works.

(4) For the purposes of section 112B(2), the time by which the information listed in paragraph (3) shall be entered in the SRWR is prescribed to be as follows—

- (i) in the case of major works, 3 months before the date proposed for the start of the works;
- (ii) in the case of standard works in a traffic sensitive road, 1 month before the date proposed for the start of the works;
- (iii) in the case of standard works in a road which is not a traffic sensitive road, 7 days before the date proposed for the start of the works;
- (iv) in the case of minor works involving excavation in a traffic sensitive road, 1 month before the date proposed for the start of the works;
- (v) in the case of minor works involving excavation in a road which is not a traffic sensitive road, by noon on the day before the day on which works are proposed to start; and
- (vi) in the case of minor works not involving excavation in a traffic sensitive road, 3 days before the date proposed for the start of the works.

(5) For the purposes of section 112B(3), the information to be entered in the SRWR is prescribed to be a copy of the permission or direction as appropriate.

(6) For the purposes of section 112B(6), the information to be entered in the SRWR is prescribed to be as follows—

- (a) the date of the completion of the works; and
- (b) the location of the works as completed described by the address of the nearest premises, but only where those premises are within 200 metres of the works.

(7) For the purposes of section 112B(7), the information to be entered in the SRWR in relation to each matter in column (1) of Schedule 1 is prescribed to be that shown in the corresponding entry in column (2) of that Schedule.

(8) For the purposes of section 112B(8), information to be entered in the SRWR under section 112B shall be entered in a form and manner consistent with paragraph 3(1).

### Prescribed notice

4.—(1) Subject to paragraphs (2) and (3), any notice for the purposes of sections 113 (advance notice of certain works), 114 (notice of starting date of works) and 116 (notice of emergency works) shall contain the following information—

- (a) a unique reference number;
- (b) the date and time of entry;
- (c) the expected start date or, in the case of emergency works where the work has already started by the time of the giving of the notice under section 116, the actual start date and time at which the works started;
- (d) the expected completion date;
- (e) the type of works;
- (f) whether the works are to be carried out in a traffic sensitive road;
- (g) whether the works are to be carried out in a road designated pursuant to section 122 as being a road having special engineering difficulties;
- (h) the location of the works described by the address of the nearest premises, but only where those premises are within 200 metres of the works;
- (i) the unique street reference number of the road in which the works are to be carried out;
- (j) the British National Grid co ordinates of the mid-point of the works; and
- (k) a general description of the works.

(2) Paragraph (1)(c) does not apply to a notice for the purposes of section 114(9).

(3) Any notice for the purposes of sections 114 and 116 shall also contain the undertaker's estimate of the number of units of inspection which will arise in relation to the works to which the notice relates.

(4) Any notice required or authorised to be given for the purposes of any provision of Part 4 of the Act, other than section 154A(10) and Schedule 6B(11) to the Act (which both relate to fixed penalties for certain offences under Part 4), shall be in writing (which may be in the form of an electronic communication where that may be used to serve a notice pursuant to regulation 5), and shall refer to the provision of the Act pursuant to which it is given and may be in any form.

### Prescribed manner of service of notices

5.—(1) Subject to paragraphs (2) and (4), where under the Act or these Regulations an undertaker is under an obligation to give notice within a specified period of works beginning, such notice, at the option of the person giving it, shall be given by—

- (a) sending it to the person to whom it is addressed at that person's proper address by using an electronic communication in accordance with the conditions set out in paragraph (5);
- (b) delivering it to that person at that address; or
- (c) any other means agreed between the person giving it and the person to whom it is to be sent.

(2) Where the person to whom an undertaker is obliged to give such notice does not have arrangements for receiving and responding to notices for any period between 4.30 pm and 9.00 am the following day, the undertaker shall have complied with that obligation if the undertaker serves a notice by 10.00 am on that following day.

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(9) But see section 114(3A)(a)(i). Subsection (3A) was inserted by section 19(4)(b) of the 2005 Act.

(10) Inserted by section 34(1) of the 2005 Act.

(11) Inserted by section 34(3) of, and Schedule 5 to, the 2005 Act.

(3) Subject to paragraph (4), in any other case under the Act or these Regulations, where any person is required or authorised to give a notice, such notice, at the option of the person giving it, shall be given by—

- (a) sending it to the person to whom it is to be given at that person’s proper address by using an electronic communication in accordance with the conditions set out in paragraph (5);
- (b) delivering it to the person;
- (c) leaving it at the person’s proper address;
- (d) sending it by first class post to the person at their proper address; or
- (e) any other means agreed between the person giving it and the person to whom it is to be sent.

(4) Paragraphs (1)(a) and (3)(a) shall only apply where the person to whom a notice is to be given has provided the person giving the notice with an address for service using an electronic communication and has not notified the latter that the address is withdrawn for that purpose.

(5) The conditions mentioned in paragraphs (1)(a) and (3)(a) are that the notice shall be—

- (a) capable of being accessed by the person to whom it is being sent;
- (b) legible in all material respects; and
- (c) in a form sufficiently permanent to be used for subsequent reference,

and for this purpose “legible in all material respects” means that the information contained in the notice is available to that person to no lesser extent than it would be if given by means of a notice in printed form.

(6) Subject to paragraph (7), where an electronic communication is used for the purpose of giving a notice, then, unless the contrary is proved, the notice shall be deemed to be given at the time of day recorded by the transmitting apparatus as being the time of satisfactory completion of the transmission.

(7) Where, after three attempts (duly recorded by the person serving the notice) to effect service by using an electronic communication, service cannot be effected, the notice may be given by serving it upon the person to whom it is addressed by any of the other means referred to in paragraph (3).

(8) Subject to paragraph (9), for the purposes of this regulation, the proper address of any person to whom notice is to be given shall be—

- (a) where such person has furnished to the person giving the notice an address for service of notices under the Act other than by using an electronic communication or postal service, that address;
- (b) where such person has furnished to the person giving the notice an address for postal service of notices under the Act, that address;
- (c) where such person has furnished to the person giving the notice an address for service of notices under the Act by using an electronic communication, that address; and
- (d) otherwise—
  - (i) in the case of a corporation, the registered or principal office of the corporation; or
  - (ii) in any other case, the last known address of such person.

(9) A person may furnish different addresses for different notices or different classes of notice.

(10) In this regulation “address”, in relation to an electronic communication, means any number or address used for the purposes of such communication.

### **Advance notice of works**

6. For the purposes of section 113, an undertaker, in addition to giving notice in accordance with regulation 7, shall, for each of the categories of work specified in column (1) of the table below,

give a period of advance notice in relation to that category not less than that shown in column (2) of that table.

**TABLE**

| <i>Category of works</i><br>(1)                                         | <i>Notice period</i><br>(2) |
|-------------------------------------------------------------------------|-----------------------------|
| Major works.                                                            | 3 months.                   |
| Standard works in a traffic sensitive road.                             | 1 month.                    |
| Minor works involving breaking up the road in a traffic sensitive road. | 1 month.                    |

**Notice of starting date of works**

7.—(1) Subject to regulation 5(2) and to paragraphs (4) and (5), for the purposes of section 114, an undertaker proposing to execute road works in a traffic sensitive road shall, for each of the categories of work specified in column (1) of the table below, give a period of notice in relation to that category not less than that shown in column (2) of that table(12).

**TABLE**

| <i>Category of works</i><br>(1)                                                             | <i>Notice period</i><br>(2) |
|---------------------------------------------------------------------------------------------|-----------------------------|
| Urgent works.                                                                               | 2 hours.                    |
| Minor works not involving breaking up the road.                                             | 3 days.                     |
| Remedial works by an undertaker to a reinstatement not causing danger to users of the road. | 3 days.                     |

(2) Subject to regulation 5(2) and paragraphs (3) and (5), for the purposes of section 114, an undertaker proposing to execute road works in a road which is not a traffic sensitive road shall, for each of the categories of work specified in column (1) of the table below, give a period of notice in relation to that category not less than that shown in column (2) of that table(13).

**TABLE**

| <i>Category of works</i><br>(1)             | <i>Notice period</i><br>(2)                                                                 |
|---------------------------------------------|---------------------------------------------------------------------------------------------|
| Urgent works.                               | As soon as reasonably practicable and in any event within 2 hours of the works being begun. |
| Minor works involving breaking up the road. | By noon on the day before the proposed start date.                                          |

(12) The period specified in section 114(1) (not less than 7 working days' notice) continues to apply to those other categories of work not specified in column (1) of the table.

(13) The period specified in section 114(1) (not less than 7 working days' notice) continues to apply to those other categories of work not specified in column (1) of the table unless regulation 7(3) applies.



| <i>Category of works</i><br>(1)                                                                 | <i>Notice period</i><br>(2)                        |
|-------------------------------------------------------------------------------------------------|----------------------------------------------------|
| Remedial works by an undertaker to a reinstatement not causing danger to the users of the road. | By noon on the day before the proposed start date. |

(3) Where an undertaker proposes to execute road works in a road which is not a traffic-sensitive road no notice is required under section 114 in the case of—

- (a) minor works not involving breaking up the road; or
- (b) the replacement of poles, lamps, columns and signs, pole testing and similar works involving minimal breaking up the road.

(4) Where—

- (a) notice has been given under section 117(1) (restriction on works following substantial works carried out for road purposes);
- (b) the proposed works are such as to be exempted from any restriction imposed by virtue of that notice under any of the exceptions set out in section 117(5); and
- (c) the works are not urgent works,

then for each of the periods of notice shown in column (2) of the table in paragraph (1) there shall be substituted 1 month.

(5) No notice is required to be given under section 114 by a statutory undertaker to any person to whom this paragraph applies, unless such a person has requested such a notice.

(6) Paragraph (5) applies to—

- (a) any statutory undertaker having apparatus in a road which is likely to be affected by the works; and
- (b) any person who would otherwise be entitled to such notice solely by virtue of that person having in the road part of a service pipe lying between the boundary of the road and the stopcock on such pipe in that road, or having a drain in that road.

(7) In paragraph (6) “drain”, “service pipe” and “stopcock” have the same meaning as in section 219 of the Water Industry Act 1991 (general interpretation)(14).

(8) For the purposes of section 114(7) the period at the end of which a notice shall cease to have effect in relation to any road works to which it relates shall be the same as the period of notice specified for that category of works in the appropriate table in paragraph (1) or paragraph (2) as the case may be.

### **Procedure for giving directions**

**8.—**(1) Every direction under section 115(1), section 115(1A) (power to give directions as to timing of works) and section 115A(1) (power to give directions as to placing of apparatus) shall be given by the road works authority serving upon the undertaker a copy of the notice relating to the works given by the undertaker for the purposes of section 113, 114 or 116, as the case may be, and the notice shall be endorsed with the terms of the direction.

(2) The provisions of regulation 5(3) to (10) shall apply to the service of such directions.

(3) In relation to a notice for the purposes of section 113, a direction under section 115(1) or section 115A(1) shall be of no effect if given more than 10 days after its receipt by the road works authority.

(14) 1991 c. 56.

(4) In relation to a notice for the purposes of section 114, a direction under section 115(1) or section 115A(1) shall be of no effect if given—

- (a) later than 1 hour after its receipt by the authority where the period of notice prescribed in either of the tables in regulation 7 is 2 hours;
- (b) later than 16:00 hours on the day before the day on which the work is proposed to start where the period of notice is by noon on the day before the proposed start date;
- (c) later than 1 day after receipt where the period of notice is 3 days; and
- (d) later than 3 days after receipt where the period of notice is 7 days pursuant to section 114.

### **Substantial works**

9.—(1) For the purposes of section 117(1), substantial works means works for road purposes which comprise a reconstruction, widening, alteration in the level, resurfacing or specialist non skid surface dressing of the part of the road concerned and—

- (a) if executed in a footpath, footway, bridleway or cycle track, extend for more than 30 metres of continuous length and result in the width of the footpath, footway, bridleway or cycle track available for pedestrians, cyclists, or others having right to use the way as the case may be, being reduced by more than two thirds; or
- (b) if carried out in the carriageway, extend for more than 30 metres of continuous length and result in the use by vehicles of the carriageway being prohibited or the width of the carriageway available for vehicular traffic being reduced by more than one third.

(2) In paragraph (1)—

“bridleway” has the same meaning as in section 47 of the Countryside (Scotland) Act 1967 (interpretation of Part 3)(15);

“cycle track” has the same meaning as in section 151(2) of the Roads (Scotland) Act 1984 (interpretation)(16); and

“footpath” has the same meaning as in section 151(2) of the Roads (Scotland) Act 1984.

(3) For the purposes of section 117(5), in addition to the works specified in that subsection, the following works may be executed by an undertaker—

- (a) urgent works;
- (b) works required to respond to a request for a new service or supply to a customer which was not received at a time when it was practicable for the works to be done before the period of restriction began; and
- (c) the following—
  - (i) works not involving breaking up the road;
  - (ii) repairing, resetting and replacing manhole or chamber covers and frames;
  - (iii) resurfacing up to 20 square metres;
  - (iv) pole, lamp, column or sign replacement in the same location;
  - (v) pole testing; and
  - (vi) works of a similar nature.

(15) 1967 c. 86. Section 47 was relevantly amended by the [Land Reform \(Scotland\) Act 2003 \(asp 2\)](#), schedule 2, paragraph 5.

(16) 1984 c. 54.

### **Designation of protected roads**

**10.**—(1) A road works authority shall not designate a road as a protected road pursuant to section 120 (protected roads) unless—

- (a) the road fulfils a specific strategic traffic need;
- (b) the road is subject to such high and constant traffic flows that designation as a traffic sensitive road would not be sufficient to avoid serious disruption to traffic caused by road works; and
- (c) there exists a reasonable alternative for placing undertakers' apparatus which could lawfully be placed in the road.

(2) The procedure for making or withdrawing such a designation is specified in Schedule 2.

(3) The information to be made available by the road works authority in respect of roads for the time being designated by them under section 120(1)(b) shall include—

- (a) the date of designation;
- (b) the unique reference number of the designation;
- (c) details of the road which is the subject of designation in sufficient detail to enable it to be identified; and
- (d) particulars of all consents to the placing of apparatus in the road.

### **Designation of roads with special engineering difficulties**

**11.**—(1) The criteria for designating a road as having special engineering difficulties pursuant to section 122 (roads with special engineering difficulties) are—

- (a) in the case of a road, that there is a specific engineering feature identified as fundamental to the structure and integrity of the road as a whole requiring special measures to be taken in the planning and execution of road works in order to avoid serious failure of the road as a whole; or
- (b) in the case of an engineering structure associated with a road, that its fundamental integrity and safety is dependent upon special measures being taken in the planning and execution of road works in the relevant part of the road in order to avoid serious failure of the structure concerned.

(2) The procedure for making or withdrawing such a designation is specified in Schedule 2.

(3) The information to be made available by the road works authority in respect of each road for the time being designated by them under section 122 shall include—

- (a) the date of designation;
- (b) the unique reference number of the designation;
- (c) particulars of the road in sufficient detail to enable it to be identified;
- (d) whether the designation applies to the whole road or a part of it and, if it applies only to a part, particulars of that part in sufficient detail to enable that part to be identified;
- (e) the features which justify the designation; and
- (f) particulars of the authority or undertaker with an interest in the road.

### **Designation of roads as traffic-sensitive**

**12.**—(1) In any case where a road works authority have not by agreement with a majority of statutory undertakers having apparatus in the road, or a reasonable likelihood of having apparatus in

the road, designated the road as a traffic sensitive road, the road works authority shall not designate the road as a traffic sensitive road unless one or more of the following criteria apply—

- (a) the road is one on which at any time the road works authority estimate the traffic flow to be greater than that shown in the table below and on both sides of which the parking of vehicles is prohibited or restricted on the relevant day by an order under section 1 (traffic regulation orders outside Greater London) or 9 (experimental traffic orders) of the Road Traffic Regulation Act 1984<sup>(17)</sup> for at least one hour between 7.30 am and 9.30 am and for at least one hour between 3.30 pm and 7.00 pm (whether or not the parking of vehicles is prohibited or restricted on the road at any other hours) or on which parking does not normally take place on either side during these hours;

**TABLE**

**Traffic flows (vehicles per hour)**

| <i>Width of carriageway</i>         | <i>&lt;10.25m</i> | <i>10.25–13.25m</i> | <i>&gt;13.25m</i> |
|-------------------------------------|-------------------|---------------------|-------------------|
| Single carriageway                  | 1050 (2-way)      | 1320 (1-way)        | 3330 (2-way)      |
| Dual carriageway/<br>one-way street | 1390 (1-way)      | 2770 (1-way)        | 4090 (1-way)      |

The traffic flow figures used in this table assume a traffic mix containing up to 12 per cent of buses or heavy goods vehicles or both. If, in the case of any road, the number of buses or heavy goods vehicles or both counted exceeds that percentage of the total number of vehicles counted, a conversion factor of 2 may be applied to the number of buses or heavy goods vehicles or both in excess of such percentage;

- (b) the road is—
- (i) within the area of a critical signalised junction or 100 metres of the major arm, or 50 metres of the minor arm, of such junction, measured in each case from the junction, or
- (ii) within the area of a critical gyratory or roundabout system or 40 metres of the major arm, or 20 metres of the minor arm of the approach to or exit from such system, measured in each case from the junction of that arm with the system;
- (c) the road is a road in respect of which there is in force an order made under section 1 or 9 of the Road Traffic Regulation Act 1984 prohibiting (with or without exemptions) the use of the road by vehicular traffic for more than 8 hours in any period of 24 hours or an order made under section 203(2) of the Town and Country Planning (Scotland) Act 1997 (order extinguishing right to use vehicles on road)<sup>(18)</sup>; and the two way pedestrian traffic flow is at least 22 persons per minute per metre width during the busiest hour on the relevant day;
- (d) the road is a single carriageway two way road less than 6.5 metres wide having a traffic flow of not less than 600 vehicles per hour which is a trunk road or a principal road within the meaning of the Roads (Scotland) Act 1984<sup>(19)</sup>;

<sup>(17)</sup> Section 1 was amended by the New Roads and Street Works Act 1991 (c. 22), Schedule 8, paragraph 17 (and partially repealed by Schedule 9 of that Act), the Environment Act 1995 (c. 25), Schedule 22, paragraph 36(1) and by the Transport (Scotland) Act 2001 (asp 2), schedule 2, paragraph 3. Section 9 was amended by the New Roads and Street Works Act 1991, Schedule 8, paragraph 23, and by the Road Traffic Act 1991 (c. 40), Schedule 4, paragraph 24.

<sup>(18)</sup> 1997 c. 8.

<sup>(19)</sup> See section 11 for the classification of a road as a principal road. See section 151(1) for the definition of “trunk road”. The definition of “trunk road” was amended by the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11), sections 4 and 6(2), Schedule 2, paragraph 38(15)(a).

- (e) the road is the first 50 metres or complete length, whichever is shorter, of a side road that has a junction with a traffic sensitive road if the road works to be carried out within that first 50 metres or complete length of the side road, whichever is shorter, will employ temporary traffic control.
- (2) A road works authority may only designate a road as traffic sensitive for the times and on the dates when one or more of the criteria set out in sub paragraphs (a) to (e) of paragraph (1) apply.
- (3) The procedure for making or withdrawing such a designation is specified in Schedule 2.
- (4) The information to be made available by the road works authority in respect of each road for the time being designated under section 123 (traffic sensitive roads) shall include–
- (a) the date of designation;
  - (b) the unique reference number of the designation;
  - (c) particulars of the road in sufficient detail to enable it to be identified;
  - (d) whether the designation is made by virtue of any of the criteria set out in sub-paragraphs (a) to (e) of paragraph (1) or whether it has been made by agreement with a majority of statutory undertakers having apparatus in the road, or a reasonable likelihood of having apparatus in the road, that it should be designated; and
  - (e) in the case of a limited designation, the times of day, days, periods or occasions to which the designation applies.
- (5) In this regulation–
- “critical signalised junction” means a traffic signal junction at which, in the absence of road works or works for road purposes and at times when the exit is not blocked, no less than 5 per cent of peak hour vehicles on average fail to clear the junction on the first green signal;
- “critical gyratory or roundabout system” means a gyratory or roundabout system where, in the absence of road works or works for road purposes, no less than 5 per cent of peak hour vehicles on average are delayed by more than 20 seconds;
- “major arm” of a critical signalised junction means the arm which receives more than 10 seconds of green time per cycle or which is the exit for at least 10 per cent of traffic passing through the junction in the peak hour and “minor arm” of such a junction shall be construed accordingly;
- “major arm” of a critical gyratory or roundabout system means an arm which is used by no less than 20 per cent of the vehicles using that system and “minor arm” of such a system shall be construed accordingly; and
- “peak hour” means between 7.30 am and 9.30 am and between 3.30 pm and 7.00 pm on the relevant day.

### **Prescribed information for a notice of completion of reinstatement**

- 13.** A notice given by an undertaker for the purposes of section 129(3) or (4) (duty of undertaker to reinstate) shall contain information on–
- (a) when the reinstatement in question was completed; and
  - (b) the number of units of inspection which have arisen in relation to the works to which the reinstatement relates.

### **Prescribed minimum periods for notices requiring remedial works**

- 14.** For the purposes of sections 131(3) (powers of road works authority in relation to reinstatement) and 149(2) (provisions as to reinstatement of sewers, drains or tunnels), the prescribed period is 7 days for all descriptions of remedial works unless the defect is considered by the road

works authority or responsible authority, as the case may be, to be hazardous to the travelling public in which case the prescribed period is 24 hours.

### **Exemptions**

**15.** Road managers are exempted from the provisions of sections 112B(1), (2) and (3) (duty to enter certain information in the Scottish Road Works Register), 117(2) (restriction on works following substantial works carried out for road purposes) and 118(2A) and (2B) (general duty of road works authority to co-ordinate works).

### **Revocations**

**16.** The following Regulations are revoked—

- (a) the Road Works (Registers, Notices, Directions and Designations) (Scotland) Regulations 1992(**20**);
- (b) the Road Works (Registers, Notices, Directions and Designations) (Scotland) Amendment Regulations 1997(**21**); and
- (c) the Road Works (Registers, Notices, Directions and Designations) (Scotland) Amendment Regulations 1998(**22**).

St Andrew's House,  
Edinburgh  
5th March 2008

*STEWART STEVENSON*  
Authorised to sign by the Scottish Ministers

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(20) S.I.1992/2991. Amended by S.I. 1997/1505 and S.I. 1998/2254.

(21) S.I. 1997/1505.

(22) S.I. 1998/2254.

## SCHEDULE 1

Regulation 3(7)

INFORMATION TO BE ENTERED IN THE SRWR  
FOR THE PURPOSES OF SECTION 112B(7)

| <i>Matter</i><br>(1)                                                                                                                                                                                                                          | <i>Information</i><br>(2)                                                                                                        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| 1. Notice of affected statutory undertakers under subsection (2) of section 56 of the Roads (Scotland) Act 1984 (c. 54) to an applicant for consent for road works or excavations.                                                            | 1. A copy of that notice.                                                                                                        |
| 2. Notification under subsection (8) of section 56 of the Roads (Scotland) Act 1984 of unlawful works removed or unlawful excavations filled in.                                                                                              | 2. A copy of that notification.                                                                                                  |
| 3. Permission under section 58(1) of the Roads (Scotland) Act 1984 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.                            | 3. A copy of that permission.                                                                                                    |
| 4. Permission under section 61(1) of the Roads (Scotland) Act 1984 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.            | 4. A copy of that permission.                                                                                                    |
| 5. Permission under section 85 of the Roads (Scotland) Act 1984 for the deposit of a skip on a road for which a roads authority are responsible.                                                                                              | 5. A copy of that permission.                                                                                                    |
| 6. Under subsection (2) of section 86 of the Roads (Scotland) Act 1984, the removal or repositioning of a skip deposited on a road for which a roads authority are responsible or removal or repositioning of such a skip.                    | 6. The original position of the skip and the position to which it has been, or has been required to be, removed or repositioned. |
| 7. Roads authority becoming aware that a constable has, under subsection (1) of section 86 of the Roads (Scotland) Act 1984, required or caused the removal or repositioning of a skip on a road for which a roads authority are responsible. | 7. The original position of the skip and the position to which it has been, or has been required to be, removed or repositioned. |
| 8. Notice under—                                                                                                                                                                                                                              | 8. A copy of that notice.                                                                                                        |
| (i) section 87 of the Roads (Scotland) Act 1984 requiring the removal of a structure from a road for which a roads 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.                                                                                                                                        |                                                                                                                                  |

*Status: This is the original version (as it was originally made).*

| <i>Matter</i><br>(1)                                                                                                                                                                                                                                                               | <i>Information</i><br>(2)                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| <p><b>9.</b> Consent under section 90 of the Roads (Scotland) Act 1984 for the fixing or placing of an overhead bridge, beam, rail or other apparatus along or across a road for which a roads authority are responsible.</p>                                                      | <p><b>9.</b> A copy of that consent.</p>                                 |
| <p><b>10.</b> Notice under section 91 of the Roads (Scotland) Act 1984 requiring work to be done or carried out in relation to a road for which a roads authority are responsible.</p>                                                                                             | <p><b>10.</b> A copy of that notice.</p>                                 |
| <p><b>11.</b> Consent under section 92 of the Roads (Scotland) Act 1984 to the planting of a tree or shrub near a carriageway or notice under that section requiring its removal, where the carriageway is, or is part of, a road for which a roads authority are responsible.</p> | <p><b>11.</b> A copy of that consent or notice (as the case may be).</p> |

SCHEDULE 2

Regulations 10(2), 11(2) and 12(3)

PROCEDURES FOR DESIGNATIONS AND WITHDRAWAL OF DESIGNATIONS

PART I

Designations of protected roads

**1.** Before making a designation of a protected road the road works authority shall publish a notice of their intention to make the designation specifying a time, not less than one month, within which objections may be made, in one or more newspapers circulating in the locality in which the road to which the proposed designation relates is situated.

**2.** The road works authority shall not later than the date on which the publication required by paragraph 1 is made serve a copy of that notice on—

- (a) every undertaker which the authority know to have apparatus in any road to which the proposed designation refers or which has given notice under section 113 of their intention to execute road works in the road;
- (b) every local authority (other than the road works authority) in whose area any road to which the proposed designation relates is situated;
- (c) the owners or reputed owners, and the occupiers or reputed occupiers of any land which is adjacent to the road; and
- (d) any person who has requested the road works authority in writing to be given notice of a proposed designation.

**3.** If within the specified period no objection is received by the road works authority, or if all objections have been withdrawn, that authority may make the designation.

**4.** If within that period an objection is received by the road works authority from any person on whom a copy of a notice is required to be served under paragraph 2 or from any other person appearing to the road works authority to be affected by the proposed designation and the objection



is not withdrawn the road works authority shall before making the designation cause a local inquiry to be held.

5. Where a local inquiry has been held the road works authority shall consider the objections and the report of the person who held the inquiry and may make the designation, with or without modifications, or may decide not to make the designation, as they think fit.

## PART II

### Designation of roads with special engineering difficulties and traffic sensitive roads

6. Before making a designation of a road either as a road with special engineering difficulties or as a traffic sensitive road the road works authority shall give notice of its proposal specifying a time, not less than one month, within which objections may be made, to—

- (a) every undertaker which the authority know to have apparatus in any road to which the proposed designation refers or which has given notice under section 113 of their intention to execute road works in the road;
- (b) every local authority (other than the road works authority) in whose area any road to which the proposed designation relates is situated; and
- (c) any person who has requested the road works authority in writing to be given notice of a proposed designation.

7. If within the specified period no objection is received by the road works authority, or if all objections have been withdrawn, that authority may make the designation.

8. If within that period an objection is received by the road works authority from any person on whom notice is required to be served under paragraph 6 or from any other person appearing to the road works authority to be affected by the proposed designation and the objection is not withdrawn the road works authority shall before making the designation consider the objection and may make the designation, with or without modifications, or may decide not to make the designation, as they think fit.

## PART III

### Withdrawal of designations

9. A road works authority may at any time withdraw—

- (a) the designation of a road as a protected road; and
- (b) the designation of a road as traffic sensitive.

10. Subject to the provisions of paragraph 11, a road works authority may at any time withdraw the designation of a road as a road with special engineering difficulties.

11. No withdrawal as mentioned in paragraph 10 shall occur without prior consultation with the transport authority or undertaker at whose request the designation was made, or without the consent of the Scottish Ministers where the designation was made in pursuance of a direction by them.

12. If a road works authority withdraws a designation of a road as a protected road they shall publish a notice in one or more newspapers circulating in the locality in which the road to which the withdrawn designation related.

## PART IV

### Interpretation

**13.** In this Schedule “designation” means a designation of a road as a protected road within section 120, as a road having special engineering difficulties within section 122, or as a traffic sensitive road.

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke and replace the Road Works (Registers, Notices, Directions and Designations) (Scotland) Regulations 1992 in consequence of new provisions being added to Part 4 of the New Roads and Street Works Act 1991 (“the Act”) by Part 2 of the Transport (Scotland) Act 2005.

Regulation 2 provides definitions including “major works”, “minor works”, “standard works” and “urgent works”.

Regulation 3 and Schedule 1 make provision in respect of the Scottish Road Works Register (“SRWR”) including prescribing the form and manner in which it is to be kept and the information about roads and road works which are to be held in the SRWR by virtue of section 112B of the Act.

Regulation 4 prescribes the form of notice to be given for the purposes of sections 113, 114 and 116 of the Act (advance notice of certain works, notice of starting date of works, notice of emergency works and notice relating to reinstatement).

Regulation 5 prescribes the manner in which service of notices under the Act or the Regulations is to be effected.

Regulation 6 prescribes the instances in which an advance notice of works (section 113 of the Act) is required and the period of notice for different categories of work.

Regulation 7 prescribes the period of notice of the starting date of road works (required to be given under section 114 of the Act) for different categories of work in traffic sensitive roads and roads which are not traffic-sensitive.

Regulation 8 sets out the procedure to be followed where a road works authority gives a direction under section 115(1), 115(1A) or 115A(1) of the Act as to the timing of road works or the placing of apparatus in the road.

Regulation 9 defines “substantial works” for the purposes of section 117(1) of the Act and prescribes exceptions (additional to those set out in section 117(5) of the Act) to the restriction on the execution of road works following substantial works carried out for road purposes imposed by section 117(1) of the Act.

Regulations 10(1), 11(1) and 12(1) prescribe the criteria which a road works authority shall use when designating a road as a protected road pursuant to section 120 of the Act, as a road having special engineering difficulties pursuant to section 122 of the Act or (except where a designation is by agreement between the road works authority and the majority of the relevant undertakers) as traffic sensitive pursuant to section 123 of the Act.

Regulations 10(3), 11(3) and 12(4) set out the information which a road works authority shall make available when designating a road as a protected road, as having special engineering difficulties or as traffic sensitive.

Regulation 10(2) and Part I of Schedule 2 to the Regulations prescribe the procedure for designating protected roads. Provision is made for the publication of a notice, its service upon specified bodies and persons and for the holding of a public inquiry before designation is made if there are objections.

Regulations 11(2), 12(3) and Part II of Schedule 2 to the Regulations prescribe the procedure for designating roads as having special engineering difficulties or as traffic sensitive. Provision is made for the giving of a notice of the proposal to specified bodies and persons and for the consideration of objections before a designation is made.

Regulations 10(2), 11(2) and 12(3) and Part III of Schedule 2 to the Regulations make provision for the withdrawal by the road works authority of a designation of a road as a protected road, as having special engineering difficulties or as traffic sensitive.

Regulation 13 prescribes the information that must be contained in a notice of completion of reinstatement.

Regulation 14 prescribes the minimum period for notices requiring remedial works under sections 131(3) and 149(2) of the Act to be 7 days except where the defect is considered hazardous to the travelling public (in which case the prescribed period is 24 hours).

Regulation 15 exempts road managers from certain provisions of the Act regarding entering information on the SRWR.

Regulation 16 revokes previous Regulations.

A regulatory impact assessment has been prepared in respect of these Regulations. A copy can be obtained from the Scottish Government Transport Directorate, Victoria Quay, Edinburgh, EH6 6QQ.