Roads (Scotland) Act 1984

1984 CHAPTER 54

PART V

ROADS AND BUILDING CONTROL

Works and excavations

56 Control of works and excavations.

(1) Subject to section 61 of this Act and without prejudice to any requirement imposed by, under or by virtue of any other enactment, no works shall be executed in, or excavation made under, a public road except with the roads authority's consent in writing and in accordance with any reasonable conditions which they think fit to attach to the consent.

(2) An application for the consent of a roads authority under subsection (1) above shall be in writing. On receipt of the application they shall give the applicant notice of all statutory undertakers whose apparatus is, in the opinion of the authority, likely to be affected by the works or excavation and the applicant shall then forthwith in writing intimate the application to those undertakers of whom he has received such notice.

(3) This section does not apply to works or excavations to which the **[**[F1]provisions of Part IV of the New Roads and Street Works Act 1991 apply**]**.

(4) A person shall, as soon as reasonably practicable after he—

(a) executes such works as are, or

(b) makes such excavation as is,

mentioned in subsection (1) above, make good any damage to the road occasioned by the works or excavation and shall immediately thereafter give notice to the authority that the damage is made good; and without prejudice to section 66 of this Act, until twelve months have elapsed from the authority certifying that the damage has been made good to their satisfaction (which certificate shall not be withheld unreasonably) the person shall maintain so much of the road as is made good.

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Changes to legislation: *Roads (Scotland) Act 1984, Part V is up to date with all changes known to be in force on or before 14 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) At the completion of the works or excavation mentioned in subsection (1) above any opening left in the road shall be provided with a door or cover by the person executing the works or making the excavation; and such door or cover shall be constructed in such manner, and of such materials, as may be specified by the roads authority.

(6) A person who contravenes—
  (a) subsection (1) above; or
  (b) subsection (5) above,
commits an offence.

(7) Works executed, or an excavation made, in contravention of subsection (1) above may be removed, or as the case may be filled in, by the roads authority; and the authority may recover such expenses as are reasonably incurred in so doing, or in maintaining an excavation which has under this subsection been filled in, from the person who executed those works or made that excavation.

(8) The roads authority shall, where practicable, notify the person mentioned in subsection (7) above about anything removed under that subsection; but if the person cannot be traced, or if he has not recovered the thing within a reasonable period of time after being so notified, the authority may dispose of the thing.

(9) Any proceeds of a disposal under subsection (8)

above shall be used to meet any such expenses in relation to the removal or filling in as are mentioned in subsection (7) above. Thereafter any surplus shall be given to the person so mentioned if he can be traced and if he cannot may be retained by the roads authority.

(10) Where a person contravenes subsection (4) (other than by a failure duly to give information) or (5) above, the roads authority may make good the damage to the road, or as the case may be provide a door or cover for the opening, and recover from him such expenses as are reasonably incurred in so doing.

Textual Amendments

F1 Words in s. 56(3) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 para. 83**; S.I. 1992/2990, art. 2(2), **Sch. 2**

Modifications etc. (not altering text)

C1 S. 56: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, **Sch. para. 5(l)**

57 Dangerous works.

(1) Where, in the opinion of the roads authority, works which a person is executing in, or excavations which he is making under, a road are causing, or are likely to cause, a danger the authority may by notice to him require him within such period as may be specified in the notice to take such steps as will ensure that such danger is brought to an end or as the case may be does not arise.

(2) Notwithstanding any consent granted under section 56 or 61 of this Act and without prejudice to the generality of subsection (1) above, steps specified in the notice under that subsection may include the removal of the works or filling in of the excavations.

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(3) Subsections (1) and (2) above do not apply to works or excavations which are in contravention of section 56(1) or 61(1) of this Act.

(4) Without prejudice to sections 56 and 61 of this Act, but notwithstanding any consent granted under either of those sections, a person executing works, or making excavations—

(a) which constitute a danger; or

(b) who permits them to become a danger,

commits an offence.

(5) This section does not apply to works or excavations to which the **[**[F2]provisions of Part IV of the New Roads and Street Works Act 1991 apply**]**.

(6) A person upon whom a notice has been served under subsection (1)

above may within 28 days of such service refer the matter by summary application to the sheriff; and the decision of the sheriff on the matter shall be final.

Textual Amendments

F2 Words in s. 57(5) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 para. 84**; S.I. 1992/2990, art. 2(2), **Sch. 2**

Modifications etc. (not altering text)

C2 S. 57: power to contract out functions of the Secretary of State (16.3.1996) art. 2, Sch. para. 5(m)

58 Occupation of parts of road for deposit of building materials etc.

(1) Subject to subsection (7) below, a person who without, or otherwise than in accordance with, the written permission of the roads authority, in conducting operations for the construction, repair, maintenance or demolition of any building, occupies for the purpose of depositing materials or otherwise in connection with those operations, a part of a road, whether public or private, or erects staging or scaffolding which projects over a part of a road, commits an offence.

(2) Such permission as is mentioned in subsection (1) above may be granted either unconditionally or subject to such conditions, including conditions as to the duration of the permission, as may be specified therein; and notwithstanding anything in any enactment or in any rule of law, a person who complies with the permission (including the conditions) does not by the occupation or erection in respect of which the permission is granted commit an offence:

Provided that the foregoing provisions of this subsection shall not constitute a defence as regards any such contravention as is mentioned in section 128(1) of this Act.

(3) Subject to subsection (7) below, where a person by such occupation as is mentioned in subsection (1) above commits an offence under that subsection, any other person who, in connection with the operations, either by himself or by his servant or agent, deposits materials on the part of the road so occupied commits an offence.

(4) Where a person is charged with an offence under subsection (1) above it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

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(5) Where a person is charged with an offence under subsection (3) above, it shall be a defence for him to prove that the offence—

(a) took place on the instructions, or by the authority, of his employer or of the person conducting the operations, or

(b) was due to a mistake, or

(c) was due to reliance on information supplied to him,

and that he was unaware that he was depositing the materials otherwise than under and in accordance with a permission granted under subsection (1) above.

(6) If in any case the defence provided by subsection (5) above involves the allegation that the offence took place on the instructions, or by the authority, of another person, or was due to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven days before the hearing, he has served on the prosecutor notice giving such information identifying or assisting in the identification of that other person as is then in his possession.

(7) The occupation mentioned in the foregoing provisions of this section does not include occupation with a builder's skip (within the meaning of section 85 of this Act).

Modifications etc. (not altering text)

C3 S. 58: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, **Sch. para. 5(n)**

59 Control of obstructions in roads.

(1) Subject to subsection (6) below, nothing shall be placed or deposited in a road so as to cause an obstruction except with the roads authority's consent in writing and in accordance with any reasonable conditions which they think fit to attach to the consent.

(2) A person who contravenes subsection (1) above commits an offence.

(3) Without prejudice to subsection (2) above, a person who contravenes subsection (1) above may be required by the roads authority or by a constable in uniform to remove the obstruction forthwith, and commits an offence if he fails to do so.

(4) Where—

(a) a requirement under subsection (3) above is not complied with;

(b) the person who placed or deposited the obstruction cannot be readily traced; or

(c) the case is one of emergency,

the roads authority or a constable may remove the obstruction (or cause it to be removed) and recover such expenses as are reasonably incurred in so doing from the said person.

(5) Subsections (8) and (9) of section 56 of this Act shall apply in relation to anything removed under subsection (4) above as they apply in relation to anything removed under subsection (7) of that section, except that where the removal is by a constable the said subsections (8) and (9) shall be read as if any reference therein to the roads authority were a reference to the police authority.

(6) The foregoing provisions of this section do not apply—

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(a) where section 58, 85 or 86 of this Act or section 2 of the [M1]Refuse Disposal (Amenity) Act 1978 (penalty for unauthorised dumping of motor vehicles etc.) applies; or

(b) to works to which the **[**[F3]provisions of Part IV of the New Roads and Street Works Act 1991 apply**]**.

Textual Amendments

F3 Words in s. 59(6)(b) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 para. 85**; S.I. 1992/2990, art. 2(2), **Sch. 2**

Modifications etc. (not altering text)

C4 S. 59: power to contract out functions of the Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, **Sch. para. 5(o)**

Marginal Citations

M1 1978 c. 3.

60 Fencing and lighting of obstructions and excavations.

(1) Without prejudice to [F4]. . . sections 57 to 59 or section 85 of this Act, where any person places or deposits anything on a road so as to cause an obstruction, or executes works in a road, he shall, whether or not the obstruction is, or works are, on or in the road with the consent of the roads authority—

(a) cause the obstruction or works to be marked in such manner and with such materials as may, for the purpose of making it or them immediately visible to oncoming traffic, be specified;

(b) provide such lighting of the obstruction or works during the hours of darkness as is necessary for preventing danger to traffic and for warning traffic of danger;

(c) erect such fences, barriers and traffic signs for preventing danger to traffic, for regulating traffic, and for warning traffic of danger, as may be necessary and remove them as soon as they cease to be necessary therefor; and

(d) in the case of an obstruction or works whose nature so requires, cause any building adjoining the road to be shored up or otherwise protected.

(2) If the person referred to in subsection (1) above fails to fulfil a requirement imposed on him by that subsection, the roads authority may fulfil the requirement and recover the expenses reasonably incurred by them in so doing from that person.

(3) A person who fails to fulfil a requirement imposed on him by subsection (1) above commits an offence.

(4) A person who, without lawful authority or reasonable excuse, takes down, alters or removes any fence, barrier, shoring or other support or protection, or any traffic sign erected in pursuance of subsection (1) or (2) above, or removes, interferes with or extinguishes any light placed in pursuance of either of those subsections to indicate an obstruction or works on or in any road commits an offence.

(5) In this section—

"hours of darkness" means the time between half an hour after sunset and half an hour before sunrise; and

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"specified" means specified by the Secretary of State in regulations.

[[F5](6) This section shall not apply to an undertaker executing road works, within the meaning of Part IV of the New Roads and Street Works Act 1991.**]**

Textual Amendments

F4 Words in s. 60(1) omitted (1.1.1993) by virtue of New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 para. 86(a)**; S.I. 1992/2990, art. 2(2), **Sch. 2**

F5 S. 60(6) inserted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 para. 86(b)**; S.I. 1992/2990, art. 2(2), **Sch. 2**

Modifications etc. (not altering text)

C5 S. 60: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, **Sch. para. 5(p)**

61 Granting of permission to place and maintain etc. apparatus under a road.

(1) Subject to subsections (3) and (5) below, the roads authority may permit, subject to such reasonable conditions as they consider appropriate (including, without prejudice to the generality of this subsection, conditions as to future cessation or withdrawal of the permission and indemnification of the authority against claims arising out of what is so permitted), a person to place and leave, or to retain, and thereafter (in either case) to maintain, repair and reinstate, apparatus in or under a public road or proposed public road and to break open, and to have access to, the road or proposed road, for those purposes **[**[F6]; and such permission shall be in writing**]**.

(2) In subsection (1) above, "proposed public road" means a new road in course of construction by or on behalf of the roads authority.

(3) Before giving permission under subsection (1) above, the roads authority shall give not less than 28 days notice of their intention so to do to any other person whose apparatus is, or plans for the installation of apparatus are, likely to be affected by the works which would thereby be authorised.

(4) **[**[F7]Works carried out by a person in pursuance of permission under subsection (1) above are not**][**[F8]road works within the meaning of section 107 of the New Roads and Street Works Act 1991**]**.

(5) Subsection (1) above does not apply to the apparatus of statutory undertakers or of local authorities **[**[F9]nor does it apply to apparatus in respect of which permission has been granted under section 109 of the New Roads and Street Works Act 1991 to execute road works**]**.

Textual Amendments

F6 Words in s. 61(1) inserted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 para. 87(a)**; S.I. 1992/2990, art. 2(2), **Sch. 2**

F7 Words in s. 61(4) substituted by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 30, Sch. 17 paras. 33, **35(1)**

F8 Words in s. 61(4) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 para. 87(b)**; S.I. 1992/2990, art. 2(2), **Sch. 2**

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F9 Words in s. 61(5) inserted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 para. 87(c)**; S.I. 1992/2990, art. 2(2), **Sch. 2**

Modifications etc. (not altering text)

C6 S. 61 power to contract out functions of the Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, **Sch. para. 5(q)**

[61A [F10]Charge for occupation of road.

(1) The Secretary of State may make provision by regulations requiring a person who occupies a public road by doing anything to which this section applies to pay a charge to the roads authority if the duration of the occupation exceeds the longer of the following periods—

(a) such period as may be prescribed; or

(b) such period as is agreed by the authority and the person to be reasonable or, in default of such agreement, is determined by arbitration to be reasonable in the circumstances.

(2) This section applies to the occupation of a public road by doing anything which would require the consent or permission of a roads authority under any of the following provisions of this Act—

section 56 (works executed in or excavations under a public road);

section 58 (occupation of road for deposit of building materials and erection of scaffolding);

section 59 (placing or depositing anything in a road);

section 61 (placing, leaving, retaining, maintaining, repairing and reinstating apparatus in or under a public road); or

section 85 (depositing a builder's skip).

(3) For the purposes of paragraph (b) of subsection (1) above, in default of agreement, the roads authority's view as to what is a reasonable period shall be acted upon pending the decision of the arbiter.

(4) The regulations may provide that if a person applying to the roads authority for consent or permission under any of the provisions of this Act specified in subsection (2) above submits together with his application an estimate of the likely duration of the occupation, the period stated in the estimate shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.

(5) The regulations may provide that if it appears to the person occupying the road that by reason of matters not previously foreseen or reasonably foreseeable the duration of the occupation—

(a) is likely to exceed the prescribed period,

(b) is likely to exceed the period stated in the previous estimate, or

(c) is likely to exceed the period previously agreed or determined to be a reasonable period,

he may submit an estimate or revised estimate accordingly, and that if he does so any previous estimate, agreement or determination shall cease to have effect and the period stated in the new estimate shall be taken to be agreed by the roads authority to be

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reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.

(6) The amount of the charge shall be determined in such manner as may be prescribed by reference to the duration and extent of the occupation and different rates of charge may be prescribed according to the purpose of the occupation and such other factors as appear to the Secretary of State to be relevant.

(7) The regulations may make provision as to the time and manner of making payment of any charge.

(8) The regulations shall provide that a roads authority may reduce the amount, or waive payment, of a charge in any particular case, in such classes of case as they may decide or as may be prescribed, or generally.

(9) In this section "prescribed" means prescribed by the Secretary of State by regulations.**]**

Textual Amendments

F10 S. 61A inserted (1.1.1993) by New Roads and Street Works Act (c. 22, SIF 59, 108), s. 168(1), Sch. 8 para. 88; S.I. 1992/2990, art. 2(2), **Sch. 2**

Control of traffic

62 Temporary prohibition or restriction of traffic etc. on roads for reasons of public safety or convenience.

(1) Where, as regards any road, an order under section 14 of the [M2]Road Traffic Regulation Act 1984 (which makes provision for the temporary prohibition or restriction of traffic and foot passage on roads in certain circumstances) cannot be made but in the opinion of the roads authority considerations of public safety or convenience require, or make it desirable that there should be, a temporary restriction on, or temporary prohibition of, traffic or foot passage on the road, the authority may make an order imposing such restriction or prohibition and (where practicable) specifying an alternative route or alternative routes.

(2) An order under subsection (1) above—

(a) shall not have the effect of preventing at any time access for foot passengers to any premises situated on or adjacent to the road or to any other premises accessible for foot passengers only from the road;

(b) may relate to vehicles, or persons, in general or to a class thereof; and

(c) without prejudice to paragraph (a) above may be subject to such conditions or exceptions as are considered necessary by the roads authority.

(3) In subsection (1) above "temporary" means for a period not exceeding seven days.

(4) Notice of an order under subsection (1) above shall be given by the authority by advertisement in a newspaper circulating in the area to which the order relates; and the order shall not come into effect before the date of the advertisement.

(5) A person who contravenes a restriction or prohibition imposed by virtue of subsection (1) above commits an offence.

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Marginal Citations

M2 1984 c. 27.

Footpaths, footways and verges

63 New access over verges and footways.

(1) Where, in the opinion of the roads authority, vehicles when driven to or from premises adjacent to a public road are habitually being taken across that road's verge or footway other than by way of a satisfactory vehicular crossing they may serve a notice on the owner or occupier of the premises requiring that—

(a) by such date as is specified in the notice he shall have commenced; and

(b) within such period thereafter as is, and to such detailed specifications as are, so specified he shall have completed,

the construction of such a crossing over the affected part of the verge or footway.

(2) A vehicular crossing constructed under or by virtue of this section shall on completion be part of the public road.

(3) A person upon whom a notice has been served under sub-section (1) above may within 28 days of such service refer the matter by summary application to the sheriff; and the decision of the sheriff on the matter shall be final.

Modifications etc. (not altering text)

C7 S. 63 power to contract out functions of the Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, **Sch. para. 5(r)**

64 Use of appliances etc. on footways, footpaths and cycle tracks.

(1) No enactment prohibiting or restricting the use of footways, footpaths or cycle tracks shall affect the use of appliances or vehicles—

(a) for the construction, maintenance, improvement or cleansing of a road;

(b) subject to subsection (2) below, by statutory undertakers for works on footways, footpaths or cycle tracks maintainable by a roads authority, in connection with apparatus belonging to the statutory undertakers.

(2) Statutory undertakers may exercise rights enjoyed by them by virtue of subsection (1)(b) above only if they have obtained the consent of the roads authority; and such consent may be subject to such reasonable conditions as the authority think fit.

(3) In this section "statutory undertakers" includes an authority responsible for sewerage.

Modifications etc. (not altering text)

C8 S. 64: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, **Sch. para. 5(s)**

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Horse traffic etc.

65 Regulation of drivers of horsedrawn carts etc.

(1) The driver of a drawn vehicle commits an offence if he conveys on it on any road anything which is not adequately secured and which, were it to fall off, might be expected to endanger other road users.

(2) The owner of a drawn vehicle commits an offence if he permits a child of under—
- (a) 14 years of age to drive that vehicle on a road; or
- (b) 16 years of age (not being such child as is mentioned in paragraph (a) above) to drive that vehicle on a road other than under the immediate supervision of a person of 18 years of age or more.

(3) In subsections (1) and (2) above, "drawn vehicle" means a vehicle pulled by one or more draught animals.

Miscellaneous

66 Maintenance of vaults and cellars etc.

(1) As regards any road, the following things shall be kept in good condition and repair by their owners or occupiers or by occupiers of the premises to which the thing belong—
- (a) every vault, arch, cellar and tunnel under the road;
- (b) every opening into any such vault, arch, cellar or tunnel from the surface of the road;
- (c) every door or cover (whether fixed or removable) to any such opening;
- (d) every pavement light in the surface of the road; and
- (e) every wall or other structure supporting any such vault, arch, cellar, tunnel, door or cover.

(2) Where an owner or occupier is in contravention of sub-section (1) above the roads authority may by notice to him require him within 28 days of the date of service of the notice to replace, repair or put into good condition the thing in respect of which the contravention arises.

(3) A person upon whom a notice has been served under subsection (2) above may, within the 28 days mentioned in that subsection, refer the matter by summary application to the sheriff; and the decision of the sheriff on the matter shall be final.

(4) A local roads authority may, if they think fit, pay the whole or any part of any expenditure incurred by a person in complying with subsection (1) or (2) above.

Modifications etc. (not altering text)

C9 S. 66: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, **Sch. para. 5(t)**

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67 Power to direct that doors etc. should not open outward into road.

Where a door, gate, window, window shutter or bar opens outward into a road so as to interfere with the safety or convenience of road users the roads authority may by notice to the owner or occupier of the premises to which the thing belongs require him within such period as may be specified in the notice to take such steps as will ensure that such interference no longer occurs.

Modifications etc. (not altering text)

C10 S. 67: power to contract out functions of Secretary of State (16.3.1996) by S.I. 1996/878, art. 2, **Sch. para. 5(u)**

Status:
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Changes to legislation:
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