



New Roads and Street Works Act 1991

1991 CHAPTER 22

PART IV

ROAD WORKS IN SCOTLAND

Apparatus affected by road, bridge or transport works

142 Works for road purposes likely to affect apparatus in the road.

- (1) This section applies to works for road purposes other than major works for road purposes (as to which see section 143 below).
- (2) Where works to which this section applies are likely to affect apparatus in the road, the authority executing the works shall take all reasonably practicable steps—
 - (a) to give the person to whom the apparatus belongs reasonable facilities for monitoring the execution of the works, and
 - (b) to comply with any requirement made by him which is reasonably necessary for the protection of the apparatus or for securing access to it.
- (3) An authority who fail to comply with subsection (2) commit an offence in respect of each failure and are liable on summary conviction to a fine not exceeding [^{F1}level 4] on the standard scale.
- (4) In proceedings against an authority for such an offence it is a defence for them to show that the failure was attributable—
 - (a) to their not knowing the position, or not knowing of the existence, of a person's apparatus, or
 - (b) to their not knowing the identity or address of the person to whom any apparatus belongs,

and that their ignorance was not due to any negligence on their part or to any failure to make inquiries which they ought reasonably to have made.

Status: Point in time view as at 04/11/2022.

Changes to legislation: New Roads and Street Works Act 1991, Cross Heading: Apparatus affected by road, bridge or transport works is up to date with all changes known to be in force on or before 30 May 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)

Textual Amendments

- F1** Words in s. 142(3) substituted (1.4.2008) by Transport (Scotland) Act 2005 (asp 12), s. 54(2), **sch. 3**; S.S.I. 2008/15, art. 2(2), sch. 1

Modifications etc. (not altering text)

- C1** S. 142 applied (18.12.1996) by 1996 c. xii, s. 1, **Sch. para. 11**
C2 Ss. 142-144 modified (18.3.2011) by Forth Crossing Act 2011 (asp 2), **ss. 58, 80(2)** (with ss. 69, 78); S.S.I. 2011/38, art. 2, sch.

143 Measures necessary where apparatus affected by major works.

- (1) Where an undertaker's apparatus in a road is or may be affected by major works for roads purposes, major bridge works or major transport works, the roads, bridge or transport authority concerned and the undertaker shall take such steps as are reasonably required—
 - (a) to identify any measures needing to be taken in relation to the apparatus in consequence of, or in order to facilitate, the execution of the authority's works,
 - (b) to settle a specification of the necessary measures and determine by whom they are to be taken, and
 - (c) to co-ordinate the taking of those measures and the execution of the authority's works,
 so as to secure the efficient implementation of the necessary work and the avoidance of unnecessary delay.
- (2) The Secretary of State may issue or approve for the purposes of this section a code of practice giving practical guidance as to the matters mentioned in subsection (1) and the steps to be taken by the authority and the undertaker.
- (3) Any dispute between the authority and the undertaker as to any of the matters mentioned in subsection (1) shall, in default of agreement, be settled [^{F2}in the prescribed manner].
- (4) If the authority or the undertaker fails to comply with an agreement between them as to any of those matters, or with the decision [^{F3}made] under subsection (3) [^{F4}in settlement of a dispute], the authority or undertaker shall be liable to compensate the other in respect of any loss or damage resulting from the failure.

Textual Amendments

- F2** Words in s. 143(3) substituted (1.4.2008) by Transport (Scotland) Act 2005 (asp 12), **ss. 36(1)(2)(e), 54(2)**; S.S.I. 2008/15, art. 2(2), sch. 1
F3 Word in s. 143(4) substituted (1.4.2008) by Transport (Scotland) Act 2005 (asp 12), **ss. 36(3)(a), 54(2)**; S.S.I. 2008/15, art. 2(2), sch. 1
F4 Words in s. 143(4) inserted (1.4.2008) by Transport (Scotland) Act 2005 (asp 12), **ss. 36(3)(b), 54(2)**; S.S.I. 2008/15, art. 2(2), sch. 1

Modifications etc. (not altering text)

- C2** Ss. 142-144 modified (18.3.2011) by Forth Crossing Act 2011 (asp 2), **ss. 58, 80(2)** (with ss. 69, 78); S.S.I. 2011/38, art. 2, sch.
C3 S. 143 applied (18.12.1996) by 1996 c. xii, s. 1, **Sch. para. 11**

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C4 S. 143(1)(3)(4) excluded (28.11.1992) by S.I. 1992/2990, **art.10**

Commencement Information

II S. 143 wholly in force; s. 143(1)(3)(4) in force at 1.1.1993, see s. 170 and S.I. 1992/2990, art. 2(2), **Sch. 2**; s. 143(2) in force at 14.7.1992 by S.I. 1992/1671, art. 2, **Sch.**

144 Sharing of cost of necessary measures.

(1) Where an undertaker's apparatus in a road is affected by major works for roads purposes, major bridge works or major transport works, the allowable costs of the measures needing to be taken in relation to the apparatus in consequence of the works, or in order to facilitate their execution, shall be borne by the roads, bridge or transport authority concerned and the undertaker in such manner as may be prescribed.

(2) The regulations may make provision as to the costs allowable for this purpose.

Provision may, in particular, be made for disallowing costs of the undertaker—

- (a) where the apparatus in question was placed in the road after the authority had given the undertaker the prescribed notice of their intention to execute the works, or
- (b) in respect of measures taken to remedy matters for which the authority were not to blame,

and for allowing only such costs of either party as are not recoverable from a third party.

(3) Where the authority have a right to recover from a third party their costs in taking measures in relation to undertaker's apparatus but in accordance with section 143 it is determined that the measures should be taken by the undertaker, the right of the authority includes a right to recover the undertaker's costs in taking those measures and they shall account to the undertaker for any sum received.

(4) The regulations shall provide for the allowable costs to be borne by the authority and the undertaker in such proportions as may be prescribed.

Different proportions may be prescribed for different cases or classes of case.

(5) The regulations may require the undertaker to give credit for any financial benefit to him from the betterment or deferment of renewal of the apparatus resulting from the measures taken.

(6) The regulations may make provision as to the time and manner of making any payment required under this section.

Modifications etc. (not altering text)

C2 Ss. 142-144 modified (18.3.2011) by Forth Crossing Act 2011 (asp 2), **ss. 58, 80(2)** (with ss. 69, 78); S.S.I. 2011/38, **art. 2, sch.**

C5 Pt. 4 excluded (1.6.2010) by The Network Rail (Waverley Steps) Order 2010 (S.S.I. 2010/188), **arts. 1, 38(6)**

C6 S. 144 excluded (28.11.1992) by S.I. 1992/2990, **art. 10**

C7 S. 144 applied (18.12.1996) by 1996 c. xii, s. 1, **Sch. para. 11**

C8 S. 144 applied (27.4.2006) by Edinburgh Tram (Line Two) Act 2006 (asp 6), **sch. 9 para. 2(3)(a)** (with s. 75)

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- C9** S. 144 applied (8.5.2006) by Edinburgh Tram (Line One) Act 2006 (asp 7), **sch. 9 para. 2(3)(a)** (with ss. 76, 84)
- C10** S. 144 applied (1.6.2010) by The Network Rail (Waverley Steps) Order 2010 (S.S.I. 2010/188), art. 1, **sch. 7 para. 2(4)(a)**
- C11** S. 144 applied (18.3.2011) by Forth Crossing Act 2011 (asp 2), **ss. 61(3), 80(2)** (with ss. 69, 78); S.S.I. 2011/38, art. 2, sch.

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