



# New Roads and Street Works Act 1991

## 1991 CHAPTER 22

### PART IV

#### ROAD WORKS IN SCOTLAND

##### *Notice and co-ordination of works*

#### **113 Advance notice of certain works**

- (1) In such cases as may be prescribed an undertaker proposing to execute road works shall give the prescribed advance notice of the works to the road works authority.
- (2) Different periods of notice may be prescribed for different descriptions of works.
- (3) The notice shall contain such information as may be prescribed.
- (4) After giving advance notice under this section an undertaker shall comply with such requirements as may be prescribed, or imposed by the road works authority, as to the providing of information and other procedural steps to be taken for the purpose of co-ordinating the proposed works with other works of any description proposed to be executed in the road.
- (5) An undertaker who fails to comply with his duties under this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **114 Notice of starting date of works**

- (1) An undertaker proposing to begin to execute road works involving—
  - (a) breaking up or opening the road, or any sewer, drain or tunnel under it, or
  - (b) tunnelling or boring under the road,shall give not less than 7 working days' notice (or such other notice as may be prescribed) to the road works authority, to any other relevant authority and to any other person having apparatus in the road which is likely to be affected by the works.

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- (2) Different periods of notice may be prescribed for different descriptions of works, and cases may be prescribed in which no notice is required.
- (3) The notice shall state the date on which it is proposed to begin the works and shall contain such other information as may be prescribed.
- (4) Where notice is required to be given under this section, the works shall not be begun without notice or before the end of the notice period, except with the consent of those to whom notice is required to be given.
- (5) An undertaker who begins to execute any works in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) In proceedings against a person for such an offence it is a defence for him to show that the contravention was attributable—
  - (a) to his not knowing the position, or not knowing of the existence, of another person's apparatus, or
  - (b) to his not knowing the identity or address of—
    - (i) a relevant authority, or
    - (ii) the person to whom any apparatus belongs,and that his ignorance was not due to any negligence on his part or to any failure to make inquiries which he ought reasonably to have made.
- (7) A notice under this section shall cease to have effect if the works to which it relates are not substantially begun before the end of the period of seven working days (or such other period as may be prescribed) beginning with the starting date specified in the notice, or such further period as may be allowed by those to whom notice is required to be given.

## **115 Power to give directions as to timing of works**

- (1) If it appears to the road works authority—
  - (a) that proposed road works are likely to cause serious disruption to traffic, and
  - (b) that the disruption would be avoided or reduced if the works were carried out only at certain times,the authority may give the undertaker such directions as may be appropriate as to the times when the works may or may not be carried out.
- (2) The procedure for giving a direction shall be prescribed by the Secretary of State.
- (3) An undertaker who executes works in contravention of a direction under this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) The Secretary of State may issue or approve for the purpose of this section a code of practice giving practical guidance as to the exercise by road works authorities of the power conferred by this section; and in exercising that power a road works authority shall have regard to the code of practice.

## **116 Notice of emergency works**

- (1) Nothing in section 113 (advance notice), section 114 (notice of starting date) or section 115 (directions as to timing of works) affects the right of an undertaker to execute emergency works.
- (2) An undertaker executing emergency works shall, if the works are of a kind in respect of which notice is required by section 114, give notice as soon as reasonably practicable, and in any event within two hours (or such other period as may be prescribed) of the works being begun, to the persons to whom notice would be required to be given under that section.
- (3) The notice shall state his intention or, as the case may be, the fact that he has begun to execute the works and shall contain such other information as may be prescribed.
- (4) An undertaker who fails to give notice in accordance with this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) In proceedings against a person for such an offence it is a defence for him to show that the contravention was attributable—
  - (a) to his not knowing the position, or not knowing of the existence, of another person's apparatus, or
  - (b) to his not knowing the identity or address of—
    - (i) a relevant authority, or
    - (ii) the person to whom any apparatus belongs,and that his ignorance was not due to any negligence on his part or to any failure to make inquiries which he ought reasonably to have made.

## **117 Restriction on works following substantial works carried out for road purposes**

- (1) Where it is proposed to carry out substantial works in a road, the road works authority may by notice in accordance with this section restrict the execution of road works during the twelve months following the completion of those works.

For this purpose substantial works means works for road purposes, or such works together with other works, of such description as may be prescribed.
- (2) The notice shall be published in the prescribed manner and shall specify the nature and location of the proposed works, the date (not being less than three months after the notice is published, or first published) on which it is proposed to begin the works, and the extent of the restriction.
- (3) A copy of the notice shall be given to each of the following—
  - (a) where there is a sewer vested in a local authority in the part of the road to which the restriction relates, to that authority;
  - (b) where the part of the road to which the restriction relates is carried or crossed by a bridge vested in a transport authority, or crosses or is crossed by any other property held or used for the purposes of a transport authority, to that authority,
  - (c) where in any other case the part of the road to which the restriction relates is carried or crossed by a bridge, to the bridge authority,

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- (d) any person who has given notice under section 113 (advance notice of certain works) of his intention to execute road works in the part of the road to which the restriction relates, and
  - (e) any other person having apparatus in the part of the road to which the restriction relates;
- but a failure to do so does not affect the validity of the restriction imposed by the notice.
- (4) A notice ceases to be effective if the works to which it relates are not substantially begun—
    - (a) on or within one month from the date specified in the notice, or
    - (b) where road works are in progress in the part of the road to which the restriction relates on that date, within one month from the completion of those works.
  - (5) An undertaker shall not in contravention of a restriction imposed by a notice under this section break up or open the part of the road to which the restriction relates, except—
    - (a) to execute emergency works,
    - (b) with the consent of the road works authority, or
    - (c) in such other cases as may be prescribed.
  - (6) If he does—
    - (a) he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and
    - (b) he is liable to reimburse the road works authority any costs reasonably incurred by them in reinstating the road.
  - (7) The consent of the road works authority under subsection (5)(b) shall not be unreasonably withheld; and any question whether the withholding of consent is unreasonable shall be settled by arbitration.
  - (8) An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, his failure is attributable to a restriction imposed by a notice under this section.

## **118 General duty of road works authority to co-ordinate works**

- (1) A road works authority shall use their best endeavours to co-ordinate the execution of works of all kinds (including works for road purposes) in the roads for which they are responsible—
  - (a) in the interests of safety,
  - (b) to minimise the inconvenience to persons using the road (having regard, in particular, to the needs of people with a disability), and
  - (c) to protect the structure of the road and the integrity of apparatus in it.
- (2) That duty extends to co-ordination with other road works authorities where works in a road for which one authority are responsible affect roads for which other authorities are responsible.
- (3) The Secretary of State shall issue or approve for the purposes of this section codes of practice giving practical guidance as to the matters mentioned above; and in discharging their general duty of co-ordination a road works authority shall have regard to any such code of practice.

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- (4) If it appears to the Secretary of State that a road works authority are not properly discharging their general duty of co-ordination, he may direct the authority to supply him with such information as he considers necessary to enable him to decide whether that is the case and if so what action to take.

The direction shall specify the information to be provided and the period within which it is to be provided.

- (5) If after the end of that period (whether or not the direction has been complied with) it appears to the Secretary of State that the authority are not properly discharging their general duty of co-ordination, he may direct the authority to take such steps as he considers appropriate for the purpose of discharging that duty.

The direction shall specify the steps to be taken and the period within which they are to be taken, and may include a requirement to make a report or periodic reports to the Secretary of State as to what steps have been taken and the results of taking them.

- (6) A direction under this section may be varied or revoked by a further direction.

## **119 General duty of undertakers to co-operate**

- (1) An undertaker shall as regards the execution of road works use his best endeavours to co-operate with the road works authority and with other undertakers—
- (a) in the interests of safety,
  - (b) to minimise the inconvenience to persons using the road (having regard, in particular, to the needs of people with a disability), and
  - (c) to protect the structure of the road and the integrity of apparatus in it.
- (2) The Secretary of State shall issue or approve for the purposes of this section codes of practice giving practical guidance as to the matters mentioned in subsection (1); and—
- (a) so far as an undertaker complies with such a code of practice he shall be taken to comply with his duty under that subsection, and
  - (b) a failure in any respect to comply with any such code is evidence of failure in that respect to comply with that duty.
- (3) An undertaker who fails to comply with his duty under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.