



New Roads and Street Works Act 1991

1991 CHAPTER 22

PART IV

ROAD WORKS IN SCOTLAND

Duties and liabilities of undertakers with respect to apparatus

PROSPECTIVE

138 Records of location of apparatus.

- (1) An undertaker shall, except in such cases as may be prescribed, record the location of every item of apparatus belonging to him as soon as reasonably practicable after—
 - (a) placing it in the road or altering its position,
 - (b) locating it in the road in the course of executing any other works, or
 - (c) being informed of its location under section 139 below,stating the nature of the apparatus and (if known) whether it is for the time being in use.
- (2) The records shall be kept up to date and shall be kept in such form and manner as may be prescribed.
- (3) An undertaker shall make his records available for inspection, at all reasonable hours and free of charge, by any person having authority to execute works of any description in the road or otherwise appearing to the undertaker to have a sufficient interest.
- (4) If an undertaker fails to comply with his duties under this section—
 - (a) he commits an offence and is liable on summary conviction to a fine not exceeding [^{F1}level 5] on the standard scale; and
 - (b) he is liable to compensate any person in respect of damage or loss incurred by him in consequence of the failure.
- (5) In criminal or civil proceedings arising out of any such failure it is a defence for the undertaker to show that all reasonable care was taken by him, and by his contractors

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and by persons in his employ or that of his contractors, to secure that no such failure occurred.

- (6) An order under section 161 (power to make consequential amendments, repeals, &c.) relating to an enactment or instrument containing provision for the keeping of records of apparatus which appears to the Secretary of State to be superseded by or otherwise inconsistent with the provisions of this section—
- (a) shall not be subject to the procedure provided for in Schedule 7, and
 - (b) may make such transitional and other provision as appears to the Secretary of State appropriate for applying in relation to records compiled under that enactment or instrument the provisions of subsections (2) to (5) above and section 139 below.

Textual Amendments

- F1** Words in s. 138(4) 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

PROSPECTIVE

139 Duty to inform undertakers of location of apparatus.

- (1) A person executing works of any description in the road who finds apparatus belonging to an undertaker which is not marked, or is wrongly marked, on the records made available by the undertaker, shall take such steps as are reasonably practicable to inform the undertaker to whom the apparatus belongs of its location and (so far as appears from external inspection) its nature and whether it is in use.
- (2) Where a person executing works of any description in the road finds apparatus which does not belong to him and is unable, after taking such steps as are reasonably practicable, to ascertain to whom the apparatus belongs, he shall—
 - (a) if he is an undertaker, note on the records kept by him under section 138(1) (in such manner as may be prescribed) the location of the apparatus he has found and its general description; and
 - (b) in any other case, inform the road works authority of the location and general description of the apparatus he has found.
- (3) Subsections (1) and (2) have effect subject to such exceptions as may be prescribed.
- (4) A person who fails to comply with subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding [^{F2}level 4] on the standard scale.

Textual Amendments

- F2** Words in s. 139(4) 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

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140 Duty to maintain apparatus.

- (1) An undertaker having apparatus in the road shall secure that the apparatus is maintained to the reasonable satisfaction of—
 - (a) the road works authority, as regards the safety and convenience of persons using the road (having regard, in particular, to the needs of people with a disability), the structure of the road and the integrity of apparatus of the authority in the road, and
 - (b) any other relevant authority, as regards any land, structure or apparatus of theirs;and he shall afford reasonable facilities to each such authority for ascertaining whether it is so maintained.
- (2) For this purpose maintenance means the carrying out of such works as are necessary to keep the apparatus in efficient working condition (including periodic renewal where appropriate); and includes works rendered necessary by other works in the road, other than major works for road purposes, major bridge works or major transport works (as to which, see sections 143 and 144 below).
- (3) If an undertaker fails to give a relevant authority the facilities required by this section—
 - (a) the road works authority may in such cases as may be prescribed, and
 - (b) any other relevant authority may in any case,execute such works as are needed to enable them to inspect the apparatus in question, including any necessary breaking up or opening of the road.
- (4) If an undertaker fails to secure that apparatus is maintained to the reasonable satisfaction of a relevant authority in accordance with this section—
 - (a) the road works authority may in such cases as may be prescribed, and
 - (b) any other relevant authority may in any case,execute any emergency works needed in consequence of the failure.
- (5) The provisions of this Part apply in relation to works executed by a relevant authority under subsection (3) or (4) as if they were executed by the undertaker; and the undertaker shall indemnify the authority in respect of the costs reasonably incurred by them in executing the works.
- (6) A relevant authority who execute or propose to execute any works under subsection (3) or (4) shall give notice to any other relevant authority as soon as reasonably practicable stating the general nature of the works.
- (7) Nothing in subsection (3) or (4) shall be construed as excluding any other means of securing compliance with the duties imposed by subsection (1).

Commencement Information

- II [S. 140](#) wholly in force: [s. 140\(1\)\(2\)\(5\)-\(7\)](#) in force at 1.1.1993, see [s. 170](#) and [S.I. 1992/2990, art. 2\(2\), Sch. 2](#); [s. 140\(3\)\(4\)](#) in force at 14.7.1992 by [S. I. 1992/1671, art. 2, Sch.](#)

141 Liability for damage or loss caused.

- (1) An undertaker shall compensate—

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- (a) the road works authority or any other relevant authority in respect of any damage or loss suffered by the authority in their capacity as such, and
 - (b) any other person having apparatus in the road in respect of any expense reasonably incurred in making good damage to that apparatus,
- as a result of the execution by the undertaker of road works or any event of a kind mentioned in subsection (2) below.
- (2) The events referred to in subsection (1) are any explosion, ignition, discharge or other event occurring to gas, electricity, water or other thing required for the purposes of a supply or service afforded by an undertaker which—
- (a) at the time of or immediately before the event in question was in apparatus of the undertaker in the road, or
 - (b) had been in such apparatus before that event and had escaped therefrom in circumstances which contributed to its occurrence.
- (3) The liability of an undertaker under this section arises—
- (a) whether or not the damage or loss is attributable to negligence on his part or on the part of any person for whom he is responsible, and
 - (b) notwithstanding that he is acting in pursuance of a statutory duty.
- (4) However, his liability under this section does not extend to damage or loss which is attributable to misconduct or negligence on the part of—
- (a) the person suffering the damage or loss, or any person for whom he is responsible, or
 - (b) a third party, that is, a person for whom neither the undertaker nor the person suffering the damage or loss is responsible.
- (5) For the purposes of this section the persons for whom a person is responsible are his contractors and any person in his employ or that of his contractors.
- (6) Nothing in this section shall be taken as exonerating an undertaker from any liability to which he would otherwise be subject.

Modifications etc. (not altering text)

- C1** S. 141 modified (1. 1. 1993) by [Local Government, Planning and Land Act 1980 \(c. 65\), s. 167\(7\)](#) (as substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22\), s. 168\(1\), Sch. 8 Pt. IV para. 109](#); S.I. 1992/2990, art. 2(2), [Sch.2](#))

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