



New Roads and Street Works Act 1991

1991 CHAPTER 22

PART IV

ROAD WORKS IN SCOTLAND

Roads subject to special controls

120 Protected roads.

- (1) The consent of the road works authority is required for the placing of apparatus by an undertaker in a protected road, except as mentioned below.

The following are “protected roads” for this purpose—

- (a) any road or proposed road which is a special road in accordance with section 7 of the ^{M1}Roads (Scotland) Act 1984, and
 - (b) any road designated by the road works authority as protected.
- (2) Consent is not required for the placing of apparatus—
- (a) by way of renewal of existing apparatus, or
 - (b) in pursuance of a permission granted under section 109 of this Act (permission to execute road works) or section 61 of the ^{M2}Roads (Scotland) Act 1984 (permission to place and maintain apparatus under a road), except where the permission was granted before the road became a protected road.
- (3) The road works authority may require the payment of—
- (a) a reasonable fee in respect of the legal or other expenses incurred in connection with the giving of their consent under this section, and
 - (b) an annual fee of a reasonable amount for administering the consent;
- and any such fee is recoverable from the undertaker.

This shall not be construed as affecting any right of the authority where they own the land on which the road is situated to grant, subject to such terms and conditions as they think fit, the right to place anything in, under or over the land.

Status: Point in time view as at 01/04/2008.

Changes to legislation: New Roads and Street Works Act 1991, Cross Heading: Roads subject to special controls is up to date with all changes known to be in force on or before 28 June 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)

- (4) Where the apparatus is to be placed crossing the protected road and not running along it, the road works authority shall not withhold their consent unless there are special reasons for doing so.
- (5) Consent to the placing of apparatus in a protected road may be given subject to conditions; and the road works authority may agree to contribute to the expenses incurred by the undertaker in complying with the conditions.
- (6) Any dispute between a road works authority and an undertaker as to the withholding of consent, the imposition of conditions, or the making of contributions shall be settled [^{F1}in the prescribed manner].
- (7) An undertaker having a statutory duty to afford a supply or service shall not be regarded as in breach of that duty if, or to the extent that, it is not reasonably practicable to afford a supply or service by reason of anything done by the road works authority in exercise of their functions in relation to a protected road.

Textual Amendments

F1 Words in s. 120(6) substituted (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\), ss. 36\(1\)\(2\)\(b\), 54\(2\); S.S.I. 2008/15, art. 2\(2\), sch. 1](#)

Modifications etc. (not altering text)

C1 [S. 120](#) modified (28.11.1992) by [S.I. 1992/2990, art.7](#)

Marginal Citations

M1 1984 c. 54.
M2 1984 c. 54.

121 Supplementary provisions as to designation of protected roads.

- (1) The Secretary of State may prescribe—
 - (a) the criteria for designating a road as protected,
 - (b) the procedure for making or withdrawing such a designation, and
 - (c) the information to be made available by a road works authority as to the roads for the time being designated by them.
- (2) Where a road has been designated as protected the road works authority may direct an undertaker to remove or change the position of apparatus placed in the road at a time when it was not so designated.

The authority shall indemnify the undertaker in respect of his reasonable expenses in complying with such a direction.
- (3) Where a designation is withdrawn the road works authority may give such directions as they consider appropriate as to—
 - (a) the continuance in force of any conditions subject to which consent was given for the placing of apparatus in the road, and
 - (b) the continuance of entitlement to any contributions in respect of the expenses of an undertaker in complying with such conditions.

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- (4) Where a designation is made or withdrawn the road works authority may give such directions as they consider appropriate with respect to works in progress in the road when the designation comes into force or ceases to have effect.
- (5) Any dispute between a road works authority and an undertaker as to the exercise by the authority of their powers under subsection (2), (3) or (4) shall be settled [^{F2}in the prescribed manner].
- (6) Where a road has been designated as protected, the roads authority shall indicate that it has been so designated in the list of public roads which they are obliged to maintain by virtue of section 1 or 2 of the ^{M3}Roads (Scotland) Act 1984.

Textual Amendments

- F2** Words in s. 121(5) substituted (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\), ss. 36\(1\)\(2\)\(c\), 54\(2\); S.S.I. 2008/15, art. 2\(2\), sch. 1](#)

Marginal Citations

- M3** [1984 c. 54.](#)

122 Roads with special engineering difficulties.

- (1) The provisions of Schedule 6 have effect for requiring the settlement of a plan and section of road works to be executed in a road designated by the road works authority as having special engineering difficulties.
- (2) The Secretary of State may prescribe—
 - (a) the criteria for designating a road as having special engineering difficulties,
 - (b) the procedure for making or withdrawing such a designation, and
 - (c) the information to be made available by a road works authority as to the roads for the time being so designated by them.
- (3) Where a local roads authority are asked to designate a road as having special engineering difficulties—
 - (a) by a transport authority on the ground of the proximity of the road to a structure belonging to, or under the management or control of, the authority, or
 - (b) by an undertaker having apparatus in the road,and decline to do so, the transport authority or undertaker may appeal to the Secretary of State who may direct that the road be designated.
- (4) The designation of a road as having special engineering difficulties shall not be withdrawn except after consultation with any transport authority or undertaker at whose request the designation was made; and a designation made in pursuance of a direction by the Secretary of State shall not be withdrawn except with his consent.
- (5) Where a road has been designated as having special engineering difficulties, the roads authority shall indicate that it has been so designated in the list of public roads which they are obliged to maintain by virtue of section 1 or 2 of the Roads (Scotland) Act 1984.

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Modifications etc. (not altering text)

- C2** S. 122: power to contract out functions of the Secretary of State conferred (16.3.1996) by S.I. 1996/878, art. 2, **Sch. para. 6(f)**

123 Traffic-sensitive roads.

- (1) Regulations made for the purposes of section 113, 114 or 116 (notices required to be given in respect of road works) may make special provision in relation to road works in a road designated by the road works authority as traffic-sensitive.
- (2) The Secretary of State may prescribe—
 - (a) the criteria for designating a road as traffic-sensitive,
 - (b) the procedure for making or withdrawing such a designation, and
 - (c) the information to be made available by a road works authority as to the roads for the time being so designated by them.
- (3) If it appears to the road works authority that the prescribed criteria are met only at certain times or on certain dates, a limited designation may be made accordingly.

In such a case the reference in subsection (1) to the execution of works in a road designated as traffic-sensitive shall be construed as a reference to works so executed at those times or on those dates.

- (4) Where a road has been designated as traffic-sensitive, the roads authority shall indicate that it has been so designated in the list of public roads which they are obliged to maintain by virtue of section 1 or 2 of the ^{M4}Roads (Scotland) Act 1984.

Modifications etc. (not altering text)

- C3** S. 123: power to contract out functions of the Secretary of State conferred (16.3.1996) by S.I. 1996/878, art. 2, **Sch. para. 6(g)**

Marginal Citations

- M4** 1984 c. 54.

Status:

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