

2008 No. 89

ROADS AND BRIDGES

The Road Works (Settlement of Disputes and Appeals against Directions) (Scotland) Regulations 2008

Made - - - - *5th March 2008*

Laid before the Scottish Parliament *6th March 2008*

Coming into force - - *1st April 2008*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 115(2A), 115A(5), 117(7), 120(6), 121(5), 133(2), 143(3), 155(3), 157A and 163(1) of, and paragraphs 2(1) and 12(2) of Schedule 6 to, the New Roads and Street Works Act 1991(a) and section 18(3) of the Transport (Scotland) Act 2005(b) and all other powers enabling them to do so.

In accordance with section 163A of New Roads and Street Works Act 1991(c) they have consulted with such—

- (a) persons considered by them to be representative of the interests of undertakers;
- (b) road works authorities; and
- (c) other persons,

as they think appropriate.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Road Works (Settlement of Disputes and Appeals against Directions) (Scotland) Regulations 2008 and come into force on 1st April 2008.

(2) In these Regulations “the 1991 Act” means the New Roads and Street Works Act 1991.

Prescribed method of settlement of certain disputes under the 1991 Act

2.—(1) Subject to paragraph (3), any question or dispute to be settled under the provisions of the 1991 Act mentioned in paragraph (2) shall be settled by the Commissioner(d).

(a) 1991 c.22. Sections 115(2A), 115A(5) and 157A were inserted by sections 20(4), 21(1) and 36(4) of the Transport (Scotland) Act 2005 (asp 12) (“the 2005 Act”) respectively. Sections 117(7), 120(6), 121(5), 133(2), 143(3), 155(3) and paragraphs 2(1) and 12(2) of Schedule 6 were amended by section 36 of the 2005 Act. See section 163(1) of the 1991 Act for the definition of “prescribed”. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 2005 asp 12.

(c) Section 163A was inserted by section 39 of the 2005 Act.

(d) The Scottish Road Works Commissioner created by section 16(1) of the 2005 Act and defined in section 112A(1) of the 1991 Act; section 112A(1) was inserted by section 19 of the 2005 Act.

(2) Those provisions are—

- (a) section 117(7) (consent to contravene restriction on works following substantial road works);
- (b) section 120(6) (protected roads: consent etc as to placing of apparatus);
- (c) section 121(5) (exercise of powers in relation to protected roads);
- (d) section 133(2) (meaning of “reasonable period” for the purposes of charges for prolonged road works);
- (e) section 143(3) (measures necessary where apparatus affected by major works);
- (f) section 155(3) (disputes about costs and expenses); and
- (g) in Schedule 6 (roads with special engineering difficulties), paragraphs 2(1) and 12(2).

(3) Where one of the parties to the question or dispute to be settled under the provisions of the 1991 Act mentioned in paragraph (2) is the Scottish Ministers, the question or dispute shall be settled by arbitration.

Prescribed method of settling disagreements under section 18(3) of the Transport (Scotland) Act 2005

3. Where a disagreement arises under section 18(3) of the Transport (Scotland) Act 2005 (duty of road works authority and undertaker to provide Commissioner with information), the matter shall be settled by arbitration.

Appeals against directions under sections 115 and 115A of the 1991 Act

4.—(1) Where an undertaker has been given directions under sections 115 (power to give directions as to timing of road works) or 115A (power to give directions as to placing of apparatus) of the 1991 Act by a road works authority, the undertaker may appeal against those directions to the sheriff by way of summary application.

(2) The period within which an appeal under paragraph (1) may be brought is 28 days from the date on which those directions were given.

(3) The sheriff may—

- (a) dismiss the appeal; or
- (b) allow the appeal and quash or vary the directions,

and the decision of the sheriff shall be final.

STEWART STEVENSON

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
5th March 2008

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the method of settling certain disputes under Part 4 of the New Roads and Street Works Act 1991 (“the 1991 Act”) and provide for appeals against directions given under sections 115 and 115A of the 1991 Act.

Regulation 2(1) prescribes that, subject to regulation 2(3), any question or dispute to be settled under the provisions of the 1991 Act listed in regulation 2(2) are to be settled by the Scottish Road Works Commissioner. Regulation 2(3) provides that where the Scottish Ministers are party to a question or dispute, the question or dispute shall be settled by arbitration.

Regulation 3 prescribes that where a disagreement arises under section 18(3) of the Transport (Scotland) Act 2005 (relating to whether information asked for by the Commissioner under section 18(1) is reasonably asked for), the matter shall be settled by arbitration.

Regulation 4 makes provision for appeals by undertakers against directions given by a road works authority under sections 115 (power to give directions as to timing of works) and 115A (power to give directions as to placing of apparatus) of the 1991 Act. Appeals are to the sheriff by way of summary application and must be brought within the period of 28 days starting from the date on which the directions were given.

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