

POLICY NOTE

THE ROAD WORKS (MAINTENANCE) (SCOTLAND) AMENDMENT REGULATIONS 2012

SSI 2012/286

The above instrument was made in exercise of powers conferred by section 140(4) of the New Roads and Street Works Act 1991 and all other powers enabling them to do so. The instrument is subject to negative resolution procedure.

Policy Objectives

The policy of this instrument is to remove the requirement for a roads authority to first request the undertaker to provide facilities to carry out an inspection before carrying out emergency works. This is to clarify that regulation 4 may apply following any inspection by a road works authority rather than only following an inspection under regulation 3 of those Regulations.

Background

S140 of The New Road and Street Works Act 1991 sets out the general duty of the undertaker to maintain apparatus to the reasonable satisfaction of the road works authority and, if required, to afford reasonable facilities to the roads authority to ascertain whether it has been maintained.

The section further defines what is meant by maintenance, which is to carry out works to keep the apparatus in efficient working condition, and sets out the cases, which are prescribed in The Road Works (Maintenance) (Scotland) Regulations 1992, under which a road works authority can execute works to enable them to inspect apparatus to determine if this is the case.

If an undertaker fails to give the road works authority the facilities required by section 140(1) of the Act in relation to relevant apparatus, the road works authority may execute such works as are needed to enable them to inspect the relevant apparatus in such cases where they have reasonable cause to believe, by reason of subsidence or disturbance of the road surface, that the undertaker's apparatus has not been maintained in accordance with that subsection.

If an undertaker fails to secure that its relevant apparatus is maintained to the reasonable satisfaction of a road works authority in accordance with section 140(1) of the Act, the road works authority may execute any emergency works needed in consequence of the failure in such cases, but only where they have made an inspection "in accordance with regulation 3 above" and have found that the relevant apparatus has not been so maintained.

The effect of the inclusion of "in accordance with regulation 3" in regulation 4 is to create a condition to be met by a road works authority before they could execute any emergency works needed in consequence of defective utility apparatus and thereafter charge for carrying out such work.

The outcome is to therefore to enable a road works authority to carry out emergency works arising from defective apparatus which are necessary to secure the safety and convenience of persons using the road, the structure of the road and the integrity of apparatus in the road.

The revocation of “in accordance with regulation 3” in regulation 4 will address the above issue.

Consultation

As required by Section 163A of the New Roads and Street Works Act 1991, the Scottish Government consulted all interested parties i.e. road works authorities and undertakers operating in Scotland.

Financial Effects

This SSI will have no financial effect on the Scottish Government. A Business and Regulatory Impact Assessment is not required as there is no significant additional burden on business.

Scottish Government
Transport Policy Directorate
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