



# New Roads and Street Works Act 1991

## 1991 CHAPTER 22

### PART III

#### STREET WORKS IN ENGLAND AND WALES

##### *Duties and liabilities of undertakers with respect to apparatus*

#### **79 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 street or altering its position,
  - (b) locating it in the street in the course of executing any other works, or
  - (c) being informed of its location under section 80 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 street 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 [<sup>F1</sup>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 and by persons in his employ or that of his contractors, to secure that no such failure occurred.

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- (6) An order under section 102 (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instrument containing provision for the keeping of records of apparatus which appears to the Secretary of State to be superseded by or otherwise inconsistent with the provisions of this section—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 5, 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 80 below.

#### Textual Amendments

- F1** Words in s. 79(4) substituted (4.10.2004 for E., 26.11.2007 for W.) by [Traffic Management Act 2004](#) (c. 18), ss. 40(1)(2), 99(1), [Sch. 1](#); S.I. 2004/2380, art. 2(d)(i) (with art. 3); S.I. 2007/3174, art. 2, Sch. (with art. 4)

#### Modifications etc. (not altering text)

- C1** Pt. 3 applied (with modifications) (9.4.2013) by [The Hinkley Point C \(Nuclear Generating Station\) Order 2013](#) (S.I. 2013/648), arts. 1, [9](#) (with arts. 48, 68, 79)
- C2** Ss. 54-106 applied (28.2.2013) by [The Rookery South \(Resource Recovery Facility\) Order 2011](#) 2013 (S.I. 2013/680), [art. 10\(3\)](#)
- C3** Ss. 54-106 applied (9.4.2013) by [The Lancashire County Council \(Torrisholme to the M6 Link \(A683 Completion of Heysham to M6 Link Road\)\) Order 2013](#) (S.I. 2013/675), arts. 1, [9\(2\)](#)
- C4** Ss. 54-106 applied (15.6.2013) by [The Galloper Wind Farm Order 2013](#) (S.I. 2013/1203), arts. 1, [13\(3\)](#) (with arts. 11, 12)
- C5** Ss. 54-106 applied (15.8.2013) by [The North Blyth Biomass Power Station Order 2013](#) (S.I. 2013/1873), arts. 1, [9\(3\)](#) (with art. 30)
- C6** S. 79(1) excluded (E.) (1.5.2003) by [The Street Works \(Records\) \(England\) Regulations 2002](#) (S.I. 2002/3217), regs. 1(1), [5](#)
- C7** S. 79(1) restricted (W.) (1.12.2005) by [Street Works \(Records\) \(Wales\) Regulations 2005](#) (S.I. 2005/1812), regs. 1(1), [5](#)

#### Commencement Information

- I1** S. 79 partly in force; s. 79 not in force at Royal Assent, see s. 170  
 S. 79(1)(a)(b)(2)-(6) in force for E. at 1.5.2003 by S.I. 2002/3267, [art. 2](#)
- I2** S. 79(1)(a)(b)(2)-(6) in force for W. at 23.7.2004 by S.I. 2004/1780, [art. 2](#)

## 80 Duty to inform undertakers of location of apparatus.

- (1) A person executing works of any description in the street 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 street 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 79(1) (in such manner as may be prescribed) the location of the apparatus he has found and its general description; and

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- (b) in any other case, inform the street 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 [<sup>F2</sup>level 4] on the standard scale.

#### Textual Amendments

- F2** Words in s. 80(4) substituted (4.10.2004 for E., 26.11.2007 for W.) by [Traffic Management Act 2004](#) (c. 18), ss. 40(1)(2), 99(1), [Sch. 1](#); S.I. 2004/2380, art. 2(d)(i) (with art. 3); S.I. 2007/3174, art. 2, Sch. (with art. 4)

#### Modifications etc. (not altering text)

- C2** Ss. 54-106 applied (28.2.2013) by [The Rookery South \(Resource Recovery Facility\) Order 2011 2013](#) (S.I. 2013/680), [art. 10\(3\)](#)
- C3** Ss. 54-106 applied (9.4.2013) by [The Lancashire County Council \(Torrisholme to the M6 Link \(A683 Completion of Heysham to M6 Link Road\)\) Order 2013](#) (S.I. 2013/675), arts. 1, [9\(2\)](#)
- C4** Ss. 54-106 applied (15.6.2013) by [The Galloper Wind Farm Order 2013](#) (S.I. 2013/1203), arts. 1, [13\(3\)](#) (with arts. 11, 12)
- C5** Ss. 54-106 applied (15.8.2013) by [The North Blyth Biomass Power Station Order 2013](#) (S.I. 2013/1873), arts. 1, [9\(3\)](#) (with art. 30)
- C8** S. 80 modified (E.) (1.4.2008) by [The Street Works \(Registers, Notices, Directions and Designations\) \(England\) Regulations 2007](#) (S.I. 2007/1951), regs. 1(1), [13\(2\)\(a\)](#) (with reg. 19)
- C9** S. 80 modified (W.) (1.4.2008) by [The Street Works \(Registers, Notices, Directions and Designations\) \(Wales\) Regulations 2008](#) (S.I. 2008/101), regs. 1, [13](#) (with reg. 19)

## 81 Duty to maintain apparatus.

- (1) An undertaker having apparatus in the street shall secure that the apparatus is maintained to the reasonable satisfaction of—
- (a) the street authority, as regards the safety and convenience of persons using the street (having regard, in particular, to the needs of people with a disability), the structure of the street and the integrity of apparatus of the authority in the street, 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 street, other than major highway, bridge or transport works (as to which, see sections 84 and 85 below).
- (3) If an undertaker fails to give a relevant authority the facilities required by this section—
- (a) the street authority may in such cases as may be prescribed, and
- (b) any other relevant authority may in any case,

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execute such works as are needed to enable them to inspect the apparatus in question, including any necessary breaking up or opening of the street.

- (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 street 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).

#### Modifications etc. (not altering text)

- C2** Ss. 54-106 applied (28.2.2013) by [The Rookery South \(Resource Recovery Facility\) Order 2011 2013 \(S.I. 2013/680\)](#), [art. 10\(3\)](#)
- C3** Ss. 54-106 applied (9.4.2013) by [The Lancashire County Council \(Torrisholme to the M6 Link \(A683 Completion of Heysham to M6 Link Road\)\) Order 2013 \(S.I. 2013/675\)](#), arts. 1, [9\(2\)](#)
- C4** Ss. 54-106 applied (15.6.2013) by [The Galloper Wind Farm Order 2013 \(S.I. 2013/1203\)](#), arts. 1, [13\(3\)](#) (with arts. 11, 12)
- C5** Ss. 54-106 applied (15.8.2013) by [The North Blyth Biomass Power Station Order 2013 \(S.I. 2013/1873\)](#), arts. 1, [9\(3\)](#) (with art. 30)
- C10** S. 81: functions of a local authority made exercisable by, or by employees of, such person as may be authorised in that behalf by the local highway authority whose function it is (23.7.1999) by [S.I. 1999/2106](#), art. 2, [Sch. 2 paras. 1\(o\), 3\(a\)](#)

#### Commencement Information

- I3** S. 81 wholly in force: s. 81(1)(2)(5)-(7) in force at 1.1.1993, see [s. 170\(1\)](#) and [S.I. 1992/2984](#), art. 2(2), [Sch. 2](#); s. 81(3)(4) in force at 14.7.1992 by [S.I. 1992/1686](#), art. 3, [Sch.](#)

## 82 Liability for damage or loss caused.

- (1) An undertaker shall compensate—
- (a) the street 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 street in respect of any expense reasonably incurred in making good damage to that apparatus,
- as a result of the execution by the undertaker of street works or any event of a kind mentioned in subsection (2).
- (2) The events referred to in subsection (1) are any explosion, ignition, discharge or other event occurring to gas, electricity, water or any other thing required for the purposes of a supply or service afforded by an undertaker which—

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- (a) at the time of or immediately before the event in question was in apparatus of the undertaker in the street, 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.
- (88) 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)**

- C2** Ss. 54-106 applied (28.2.2013) by [The Rookery South \(Resource Recovery Facility\) Order 2011 2013 \(S.I. 2013/680\)](#), **art. 10(3)**
- C3** Ss. 54-106 applied (9.4.2013) by [The Lancashire County Council \(Torrisholme to the M6 Link \(A683 Completion of Heysham to M6 Link Road\)\) Order 2013 \(S.I. 2013/675\)](#), arts. 1, **9(2)**
- C4** Ss. 54-106 applied (15.6.2013) by [The Galloper Wind Farm Order 2013 \(S.I. 2013/1203\)](#), arts. 1, **13(3)** (with arts. 11, 12)
- C5** Ss. 54-106 applied (15.8.2013) by [The North Blyth Biomass Power Station Order 2013 \(S.I. 2013/1873\)](#), arts. 1, **9(3)** (with art. 30)
- C11** S. 82 modified (1. 1. 1993) by [Local Government \(Miscellaneous Provisions\) Act 1976 \(c. 57\)](#), s. **15(4)** (as substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22\)](#), s. 168(1), **Sch. 8 Pt. IV para. 106**; S.I. 1992/2984, art. 2(2), **Sch.2**)  
S. 82 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. 1992/2984, art. 2(2), **Sch.2**)
- C12** S. 82(1): functions of a local authority made exercisable by, or by employees of, such person as may be authorised in that behalf by the local highway authority whose function it is (23.7.1999) by [S.I. 1999/2106](#), art. 2, **Sch. 2 paras. 1(p), 3(b)**

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