



# New Roads and Street Works Act 1991

## 1991 CHAPTER 22

### PART IV

#### ROAD WORKS IN SCOTLAND

##### *Notice and co-ordination of works*

#### 113 Advance notice of certain works.

(1) In such cases as may be prescribed an undertaker proposing to execute road works shall give the prescribed advance notice of the works <sup>F1</sup>....

(2) Different periods of notice may be prescribed for different descriptions of works.

[<sup>F2</sup>(3A) For the purposes of subsection (1) an undertaker gives notice by entering in the SRWR such information as may be prescribed.]

(4) After giving advance notice under this section an undertaker shall comply with such requirements as may be prescribed, or imposed by the road works authority, as to the providing of information and other procedural steps to be taken for the purpose of co-ordinating the proposed works with other works of any description proposed to be executed in the road.

(5) An undertaker who fails to comply with his duties under this section commits an offence and is liable on summary conviction to a fine not exceeding [<sup>F3</sup>level 4] on the standard scale.

#### Textual Amendments

**F1** Words in s. 113(1) repealed (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 19(3)(a)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1 (with art. 3) (as amended (5.3.2008) by S.S.I. 2008/90, art. 2)

**F2** S. 113(3A) substituted for s. 113(3) (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 19(3)(b)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1 (with art. 3) (as amended (5.3.2008) by S.S.I. 2008/90, art. 2)

**F3** Words in s. 113(5) 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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#### **Modifications etc. (not altering text)**

- C1** S. 113 modified (28.11.1992) by S.I. 1992/2990, **art. 3(1)**
- C2** S. 113 applied (with modifications) (27.4.2006) by [Edinburgh Tram \(Line Two\) Act 2006 \(asp 6\)](#), **s. 7(6)(7)** (with **s. 75**)
- C3** S. 113 applied (with modifications) (8.5.2006) by [Edinburgh Tram \(Line One\) Act 2006 \(asp 7\)](#), **s. 7(6)(7)** (with **ss. 76, 84**)

## **114 Notice of starting date of works.**

- (1) An undertaker proposing to begin to execute road works involving—
  - (a) breaking up or opening the road, or any sewer, drain or tunnel under it, or
  - (b) tunnelling or boring under the road,
 shall give not less than 7 working days' notice (or such other notice as may be prescribed) <sup>F4</sup> ...
- (2) Different periods of notice may be prescribed for different descriptions of works [<sup>F5</sup>or in cases where the undertaker has been given notice under section 117(1)], and cases may be prescribed in which no notice is required.

[<sup>F6</sup>(3A) For the purposes of subsection (1) an undertaker gives notice by—

- (a) giving to any relevant authority (not being the road works authority) and to any other person having apparatus in the road which is likely to be affected by the works a notice—
    - (i) stating the date on which it is proposed to begin the works, and
    - (ii) containing such other information as may be prescribed, and
  - (b) entering in the SRWR a copy of that notice.]
- (4) Where notice is required to be given under this section, the works shall not be begun without notice or before the end of the notice period, except with the consent of those to whom notice is required to be given.
  - (5) An undertaker who begins to execute any works in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding [<sup>F7</sup>level 4] on the standard scale.
  - (6) In proceedings against a person for such an offence it is a defence for him to show that the contravention was attributable—
    - (a) to his not knowing the position, or not knowing of the existence, of another person's apparatus, or
    - (b) to his not knowing the identity or address of—
      - (i) a relevant authority, or
      - (ii) the person to whom any apparatus belongs,
 and that his ignorance was not due to any negligence on his part or to any failure to make inquiries which he ought reasonably to have made.
  - (7) A notice under this section shall cease to have effect if the works to which it relates are not substantially begun before the end of the period of seven working days (or such other period as may be prescribed) beginning with the starting date specified in the notice, or such further period as may be allowed by those to whom notice is required to be given.

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#### Textual Amendments

- F4** Words in s. 114(1) repealed (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 19(4)(a)**, 54(2); [S.S.I. 2008/15, art. 2\(2\), sch. 1](#) (with [art. 3](#)) (as amended (5.3.2008) by [S.S.I. 2008/90, art. 2](#))
- F5** Words in s. 114(2) inserted (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 22(2)**, 54(2); [S.S.I. 2008/15, art. 2\(2\), sch. 1](#) (with [art. 3](#)) (as amended (5.3.2008) by [S.S.I. 2008/90, art. 2](#))
- F6** [S. 114\(3A\)](#) substituted for s. 114(3) (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 19(4)(b)**, 54(2); [S.S.I. 2008/15, art. 2\(2\), sch. 1](#) (with [art. 3](#)) (as amended (5.3.2008) by [S.S.I. 2008/90, art. 2](#))
- F7** Words in s. 114(5) 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](#)

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

- C4** [S. 114](#) modified (28.11.1992) by [S.I. 1992/2990, art.4](#)  
[S. 114](#) 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](#))
- C5** [S. 114](#) applied (with modifications) (27.4.2006) by [Edinburgh Tram \(Line Two\) Act 2006 \(asp 6\)](#), **s. 7(6)(7)** (with [s. 75](#))
- C6** [S. 114](#) applied (with modifications) (8.5.2006) by [Edinburgh Tram \(Line One\) Act 2006 \(asp 7\)](#), **s. 7(6)(7)** (with [ss. 76, 84](#))

#### Commencement Information

- I1** [S. 114](#) wholly in force: s. 114 in force for the purpose of making regulations at 30.11.1992 and for all other purposes at 1.1.1993, see [s. 170](#) and [S.I. 1992/2990, art. 2\(1\)\(2\)](#), [Schs. 1, 2](#)

### 115 Power to give directions as to timing of works.

- (1) If it appears to the road works authority—
- that proposed road works are likely to cause serious disruption to traffic, and
  - that the disruption would be avoided or reduced if the works were carried out only at certain times [<sup>F8</sup>or on certain days (or at certain times on certain days)],
- the authority may give the undertaker such directions as may be appropriate as to the times [<sup>F9</sup>or days (or both)] when the works may or may not be carried out.

[<sup>F10</sup>(1A) If it appears to a road works authority—

- that subsisting road works are causing or are likely to cause serious disruption to traffic, and
- that the disruption would be avoided or reduced if the works were to continue to be carried out only at certain times or on certain days (or at certain times on certain days),

the authority may give the undertaker such directions as may be appropriate as to the times or days (or both) when the works may or may not continue to be carried out.]

- (2) The procedure for giving a direction shall be prescribed by the Secretary of State.

[<sup>F11</sup>(2A) The Scottish Ministers shall by regulations make provision for appeals against directions under this section, including provision as to the procedure to be followed on an appeal.]

- (3) An undertaker who executes works in contravention of a direction under this section commits an offence and is liable on summary conviction to a fine not exceeding [<sup>F12</sup>level 5] on the standard scale.

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[<sup>F13</sup>(3A) An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, the failure is attributable to a direction under this section.]

(4) The Secretary of State [<sup>F14</sup>shall] issue or approve for the purpose of this section a code of practice giving practical guidance as to the exercise by road works authorities of the power conferred by this section; and in exercising that power a road works authority shall have regard to the code of practice.

#### Textual Amendments

- F8** Words in s. 115(1)(b) added (1.4.2008) by Transport (Scotland) Act 2005 (asp 12), **ss. 20(2)(a)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F9** Words in s. 115(1) inserted (1.4.2008) by Transport (Scotland) Act 2005 (asp 12), **ss. 20(2)(b)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F10** S. 115(1A) inserted (1.4.2008) by Transport (Scotland) Act 2005 (asp 12), **ss. 20(3)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F11** S. 115(2A) inserted (1.4.2008) by Transport (Scotland) Act 2005 (asp 12), **ss. 20(4)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F12** Words in s. 115(3) 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
- F13** S. 115(3A) inserted (1.4.2008) by Transport (Scotland) Act 2005 (asp 12), **ss. 20(5)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F14** Word in s. 115(4) substituted (1.4.2008) by Transport (Scotland) Act 2005 (asp 12), **ss. 20(6)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1

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

- C7** S. 115: power to contract out functions of the Secretary of State conferred (16.3.1996) by S.I. 1996/878, art. 2, **Sch. para. 6(c)**

### [<sup>F15</sup>115A Power to give directions as to placing of apparatus

- (1) Where—
- (a) an undertaker is proposing to execute road works consisting of the placing of apparatus in a road (the “proposed road”),
  - (b) placing the apparatus in the proposed road is likely to cause disruption to traffic, and
  - (c) it appears to the road works authority that—
    - (i) there is another road in which the apparatus could be placed (the “other road”), and
    - (ii) the conditions in subsection (2) are satisfied,
 the authority may by directions require the undertaker not to place the apparatus in the proposed road (but shall not require the undertaker to place the apparatus in the other road).
- (2) The conditions referred to in subsection (1)(c)(ii) are that—
- (a) disruption to traffic would be avoided or reduced if the apparatus were to be placed in the other road,
  - (b) placing the apparatus in the other road would be a reasonable way of achieving the purpose for which the apparatus is to be placed, and

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- (c) it is reasonable to require the undertaker not to place the apparatus in the proposed road.
- (3) Directions under this section may be varied or revoked by further such directions.
- (4) The procedure for giving directions under this section shall be as prescribed.
- (5) The Scottish Ministers shall by regulations make provision for appeals against directions under this section, including provision as to the procedure to be followed on an appeal.
- (6) An undertaker who executes works in contravention of directions under this section commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, the failure is attributable to a direction under this section.
- (8) The Scottish Ministers shall issue or approve for the purposes of this section a code of practice giving practical guidance as to the exercise by road works authorities of the power conferred by this section; and in exercising that power a road works authority shall have regard to the code of practice.]

#### Textual Amendments

**F15** S. 115A inserted (S.) (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 21(1)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1

### 116 Notice of emergency works.

- (1) Nothing in section 113 (advance notice), section 114 (notice of starting date) <sup>F16</sup>... section 115 (directions as to timing of works) [<sup>F17</sup>or section 115A (power to give directions as to placing of apparatus)] affects the right of an undertaker to execute emergency works.
  - (2) An undertaker executing emergency works shall, if the works are of a kind in respect of which notice is required by section 114, give notice as soon as reasonably practicable, and in any event within two hours (or such other period as may be prescribed) of the works being begun <sup>F18</sup>....
- [<sup>F19</sup>(3A) For the purposes of subsection (2) an undertaker gives notice by—
- (a) giving to each person to whom notice would be required to be given under section 114 a notice—
    - (i) stating the undertaker's intention, or as the case may be, the fact that he has begun to execute the works, and
    - (ii) containing such other information as may be prescribed, and
  - (b) entering in the SRWR a copy of that notice.]
- (4) An undertaker who fails to give notice in accordance with this section commits an offence and is liable on summary conviction to a fine not exceeding [<sup>F20</sup>level 4] on the standard scale.

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- (5) In proceedings against a person for such an offence it is a defence for him to show that the contravention was attributable—
- (a) to his not knowing the position, or not knowing of the existence, of another person's apparatus, or
  - (b) to his not knowing the identity or address of—
    - (i) a relevant authority, or
    - (ii) the person to whom any apparatus belongs,
- and that his ignorance was not due to any negligence on his part or to any failure to make inquiries which he ought reasonably to have made.

#### Textual Amendments

- F16** Word in s. 116(1) repealed (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 21(2)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F17** Words in s. 116(1) inserted (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 21(2)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F18** Words in s. 116(2) repealed (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 19(5)(a)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F19** S. 116(3A) substituted for s. 116(3) (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 19(5)(b)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F20** Words in s. 116(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

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

- C8** S. 116 modified (28.11.1992) by [S.I. 1992/2990](#), **art. 5**

### 117 Restriction on works following substantial works carried out for road purposes.

- (1) Where it is proposed to carry out substantial works in a road, the road works authority may by notice in accordance with this section restrict the execution of road works during the twelve months following the completion of those works.

For this purpose substantial works means works for road purposes, or such works together with other works, of such description as may be prescribed.

- (2) The notice shall be [<sup>F21</sup>entered in the SRWR] and shall specify the nature and location of the proposed works, the date (not being less than three months after the notice is [<sup>F22</sup>so entered], or first [<sup>F22</sup>so entered]) on which it is proposed to begin the works, and the extent of the restriction.
- (3) A copy of the notice shall be given to each of the following—
- (a) where there is [<sup>F23</sup>a public sewer] in the part of the road to which the restriction relates, to [<sup>F24</sup>Scottish Water]
  - (b) where the part of the road to which the restriction relates is carried or crossed by a bridge vested in a transport authority, or crosses or is crossed by any other property held or used for the purposes of a transport authority, to that authority,
  - (c) where in any other case the part of the road to which the restriction relates is carried or crossed by a bridge, to the bridge authority,

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- (d) any person who has given notice under section 113 (advance notice of certain works) of his intention to execute road works in the part of the road to which the restriction relates, and
  - (e) any other person having apparatus in the part of the road to which the restriction relates;
- but a failure to do so does not affect the validity of the restriction imposed by the notice.
- (4) A notice ceases to be effective if the works to which it relates are not substantially begun—
- (a) on or within one month from the date specified in the notice, or
  - (b) where road works are in progress in the part of the road to which the restriction relates on that date, within one month from the completion of those works.
- (5) An undertaker shall not in contravention of a restriction imposed by a notice under this section break up or open the part of the road to which the restriction relates, except—
- (a) to execute emergency works,
  - (b) with the consent of the road works authority, or
  - (c) in such other cases as may be prescribed.
- (6) If he does—
- (a) he commits an offence and is liable on summary conviction to a fine not exceeding [<sup>F25</sup>level 5] on the standard scale, and
  - (b) [<sup>F26</sup>if convicted of an offence under this subsection,] he is liable to reimburse the road works authority any costs reasonably incurred by them in reinstating the road.
- (7) The consent of the road works authority under subsection (5)(b) shall not be unreasonably withheld; and any question whether the withholding of consent is unreasonable shall be settled [<sup>F27</sup>in the prescribed manner].
- (8) An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, his failure is attributable to a restriction imposed by a notice under this section.
- [<sup>F28</sup>(9) The Scottish Ministers may issue or approve for the purposes of this section a code of practice giving practical guidance as to the performance by road works authorities of their functions under this section; and in carrying out those functions a road works authority shall have regard to the code of practice.]

#### Textual Amendments

- F21** Words in s. 117(2) substituted (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 19(6)(a)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F22** Words in s. 117(2) substituted (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 19(6)(b)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F23** Words in s. 117(3)(a) substituted (1.4.2002) by [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#), s. 71, **Sch. 7 para. 21(4)(a)** (with s. 67); S.S.I. 2002/118, **art. 2**
- F24** Words in s. 117(3)(a) substituted (1.4.2002) by [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#), s. 71, **Sch. 7 para. 21(4)(b)** (with s. 67); S.S.I. 2002/118, **art. 2**
- F25** Words in s. 117(6) 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
- F26** Words in s. 117(6)(b) inserted (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 22(1)(b)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1

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- F27** Words in s. 117(7) substituted (1.4.2008) by Transport (Scotland) Act 2005 (asp 12), ss. 36(1)(2)(a), 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F28** S. 117(9) inserted (1.4.2008) by Transport (Scotland) Act 2005 (asp 12), ss. 22(1)(c), 54(2); S.S.I. 2008/15, art. 2(2), sch. 1

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

- C9** S. 117 restricted (28.11.1992) by S.I. 1992/2990, art. 6
- C10** S. 117: power to contract out functions of the Secretary of State conferred (16.3.1996) by S.I. 1996/878, art. 2, Sch. para. 6(e)

**118 General duty of road works authority to co-ordinate works.**

- (1) A road works authority shall use their best endeavours to co-ordinate the execution of works of all kinds (including works for road purposes) in the roads for which they are responsible—
- in the interests of safety,
  - to minimise the inconvenience to persons using the road (having regard, in particular, to the needs of people with a disability), and
  - to protect the structure of the road and the integrity of apparatus in it.
- (2) That duty extends to co-ordination with other road works authorities where works in a road for which one authority are responsible affect roads for which other authorities are responsible.
- [<sup>F29</sup>(2A) In discharging their duty under this section, a road works authority shall have regard to all information in the SRWR which relates to the functions of the authority.
- (2B) A road works authority shall, so as to maximise the utility of that information for the purposes of subsection (2A)—
- assist the Commissioner in complying with the duty imposed by subsection (1) of section 112A (as read with subsection (2) of that section), and
  - keep that information under surveillance.]
- (3) The Secretary of State shall issue or approve for the purposes of this section codes of practice giving practical guidance as to the matters mentioned above; and in discharging their general duty of co-ordination [<sup>F30</sup>and the specific duties imposed by subsections (2) to (2B)] a road works authority shall have regard to any such code of practice.
- [<sup>F31</sup>(3A) In discharging all the duties referred to in subsection (3), a road works authority shall have regard also to such guidance as is contained in the practice referred to in section 17(4)(b) of the Transport (Scotland) Act 2005 (asp 12).]
- (4) If it appears to the [<sup>F32</sup>Commissioner] that a road works authority are not properly discharging their general duty of co-ordination, he may direct the authority to supply him with such information as he considers necessary to enable him to decide whether that is the case and if so what action to take.
- The direction shall specify the information to be provided and the period within which it is to be provided.
- (5) If after the end of that period (whether or not the direction has been complied with) it appears to the [<sup>F33</sup>Commissioner] that the authority are not properly discharging their



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general duty of co-ordination, he may direct the authority to take such steps as he considers appropriate for the purpose of discharging that duty.

The direction shall specify the steps to be taken and the period within which they are to be taken, and may include a requirement to make a report or periodic reports to the [<sup>F33</sup>Commissioner] as to what steps have been taken and the results of taking them.

(6) A direction under this section may be varied or revoked by a further direction.

#### Textual Amendments

- F29** S. 118(2A)(2B) inserted (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 23(2)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1 (as amended (5.3.2008) by S.S.I. 2008/90, art. 2)
- F30** Words in s. 118(3) inserted (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 23(3)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F31** S. 118(3A) inserted (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 23(4)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F32** Words in s. 118(4) substituted (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 23(5)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F33** Words in s. 118(5) substituted (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 23(5)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1

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

- C11** S. 118: power to contract out functions of the Secretary of State conferred (16.3.1996) by S.I. 1996/878, art. 2, **Sch. para. 6(e)**
- C12** S. 118 applied (with modifications) (27.4.2006) by [Edinburgh Tram \(Line Two\) Act 2006 \(asp 6\)](#), **s. 7(6)(7)** (with s. 75)
- C13** S. 118 applied (with modifications) (8.5.2006) by [Edinburgh Tram \(Line One\) Act 2006 \(asp 7\)](#), **s. 7(6)(7)** (with ss. 76, 84)

#### Commencement Information

- I2** S. 118 wholly in force; s. 118(1)(2)(4)-(6) in force at 1.1.1993, see s. 170 and S.I. 1992/2990, art. 2(2), **Sch. 2**; s. 118(3) in force at 14.7.1992 by S.I. 1992/1671, art. 2, **Sch.**

## 119 General duty of undertakers to co-operate.

- (1) An undertaker shall as regards the execution of road works use his best endeavours to co-operate with the road works authority and with other undertakers—
- in the interests of safety,
  - to minimise the inconvenience to persons using the road (having regard, in particular, to the needs of people with a disability), and
  - to protect the structure of the road and the integrity of apparatus in it.

[<sup>F34</sup>(1A) In discharging the duty under this section, an undertaker shall have regard to all information in the SRWR about matters which might affect, or be affected by, works being or proposed to be carried out by the undertaker.

- (1B) An undertaker shall, so as to maximise the utility of that information for the purposes of subsection (1A)—
- assist the Commissioner in complying with the duty imposed by subsection (1) of section 112A (as read with subsection (2) of that section), and
  - keep that information under surveillance.

*Status: Point in time view as at 10/03/2023.*

*Changes to legislation: New Roads and Street Works Act 1991, Cross Heading: Notice and co-ordination of works is up to date with all changes known to be in force on or before 16 July 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)*

(1C) In subsections (1A) and (1B), “undertaker” does not include a person having permission under section 109 to execute road works.]

- (2) The Secretary of State shall issue or approve for the purposes of this section codes of practice giving practical guidance as to the matters mentioned in subsection (1); and—
- (a) so far as an undertaker complies with such a code of practice he shall be taken to comply with his duty under that subsection, and
  - (b) a failure in any respect to comply with any such code is evidence of failure in that respect to comply with that duty.

[<sup>F35</sup>(2A) In discharging the duties imposed by subsections (1) to (1B), an undertaker shall—

- (a) comply with any direction in that respect given to the undertaker by the Commissioner, and
- (b) have regard to such guidance as is contained in the practice referred to in section 17(4)(b) of the Transport (Scotland) Act 2005 (asp 12),

and paragraphs (a) and (b) of subsection (2) shall apply in relation to any such direction as they apply in relation to the code of practice referred to in that subsection.

(2B) If it appears to the Commissioner that an undertaker is not properly complying with his duty under subsection (1), he may direct the undertaker to supply him with such information as he considers necessary to enable him to decide whether that is the case and, if so, what action to take.

The direction shall specify the information to be provided and the period within which it is to be provided.]

<sup>F36</sup>(3) .....

[<sup>F37</sup>(4) A direction under this section may be varied or revoked by a further direction.]

**Textual Amendments**

- F34** S. 119(1A)-(1C) inserted (1.4.2008) by Transport (Scotland) Act 2005 (asp 12), **ss. 24(2)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F35** S. 119(2A)(2B) inserted (1.4.2008) by Transport (Scotland) Act 2005 (asp 12), **ss. 24(3)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F36** S. 119(3) repealed (1.10.2007) by Transport (Scotland) Act 2005 (asp 12), **ss. 25(1)**, 54(2); S.S.I. 2007/409, **art. 2**
- F37** S. 119(4) inserted (1.4.2008) by Transport (Scotland) Act 2005 (asp 12), **ss. 24(4)**, 54(2); S.S.I. 2008/15, art. 2(2), sch. 1

**Commencement Information**

- I3** S. 119 wholly in force: s. 119(1)(3) in force at 1.1.1993 see s. 170 and S.I. 1992/2990, art. 2(2), **Sch. 2**; s. 119(2) in force at 14.7.1992 by S.I. 1992/1671, art. 2, **Sch.**

[<sup>F38</sup>**119A Enforcement of sections 118 and 119: imposition of penalties**

- (1) The Scottish Ministers may, by regulations, make provision for or in connection with—
- (a) the imposition by the Commissioner of penalties on road works authorities and undertakers who fail to comply with duties imposed on them by sections 118 and 119 respectively,

*Status: Point in time view as at 10/03/2023.*

*Changes to legislation: New Roads and Street Works Act 1991, Cross Heading: Notice and co-ordination of works is up to date with all changes known to be in force on or before 16 July 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)*

- (b) the payment of such penalties.
- (2) The regulations may include provision for or in connection with—
  - (a) the notification and enforcement of penalties,
  - (b) the level of penalties,
  - (c) appeals against the imposition of penalties including the appointment of persons to hear and determine such appeals.]

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**Textual Amendments**

**F38** S. 119A inserted (S.) (1.10.2007) by Transport (Scotland) Act 2005 (asp 12), ss. 25(2), 54(2); S.S.I. 2007/409, art. 2

**Status:**

Point in time view as at 10/03/2023.

**Changes to legislation:**

New Roads and Street Works Act 1991, Cross Heading: Notice and co-ordination of works is up to date with all changes known to be in force on or before 16 July 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.