



# New Roads and Street Works Act 1991

## 1991 CHAPTER 22

### PART IV

#### ROAD WORKS IN SCOTLAND

##### *Reinstatement*

#### **129 Duty of undertaker to reinstate.**

- (1) It is the duty of the undertaker by whom road works are executed to reinstate the road.
- (2) He shall begin the reinstatement as soon after the completion of any part of the road works as is reasonably practicable and shall carry on and complete the reinstatement with all such dispatch as is reasonably practicable.
- (3) He shall before the end of the next working day after the day on which the reinstatement is completed [<sup>F1</sup>give the required notice] that he has completed the reinstatement of the road, stating whether the reinstatement is permanent or interim.
- (4) If it is interim, he shall complete the permanent reinstatement of the road as soon as reasonably practicable and in any event within six months (or such other period as may be prescribed) from the date on which the interim reinstatement was completed; and he shall [<sup>F2</sup>give the required notice] when he has done so.
- (5) The permanent reinstatement of the road shall include, in particular, the reinstatement of features designed to assist people with a disability.

[<sup>F3</sup>(5A) For the purposes of subsection (3) or (4) an undertaker gives the required notice by—

- (a) giving to the Commissioner a notice containing such information as may be prescribed, and
- (b) entering in the SRWR a copy of that notice.]

- (6) An undertaker who fails to comply with any provision of this section commits an offence and is liable on summary conviction to a fine not exceeding [<sup>F4</sup>level 5] on the standard scale.

*Status: Point in time view as at 07/09/2016.*

*Changes to legislation: New Roads and Street Works Act 1991, Cross Heading: Reinstatement is up to date with all changes known to be in force on or before 10 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)*

- (7) In proceedings against a person for an offence of failing to comply with subsection (2) it is a defence for him to show that any delay in reinstating the road was in order to avoid hindering the execution of other works, or other parts of the same works, to be undertaken immediately or shortly thereafter.

#### Textual Amendments

- F1** Words in s. 129(3) substituted (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 28(a)**, 54(2); [S.S.I. 2008/15](#), art. 2(2), sch. 1
- F2** Words in s. 129(4) substituted (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 28(b)**, 54(2); [S.S.I. 2008/15](#), art. 2(2), sch. 1
- F3** S. 129(5A) inserted (1.4.2008) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 28(c)**, 54(2); [S.S.I. 2008/15](#), art. 2(2), sch. 1
- F4** Words in s. 129(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

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

- C1** S. 129 excluded (28.11.1992) by [S.I. 1992/2990](#), **art. 9**

#### Commencement Information

- II** S. 129 wholly in force: s. 129(1)-(3)(5)-(7) in force at 1.1.1993, see s. 170 and [S.I. 1992/2990](#), art. 2(2), **Sch. 2**; s. 129(4) in force at 14.7.1992 by [S. I. 1992/1671](#), art. 2, **Sch.**

### 130 Materials, workmanship and standard of reinstatement.

- (1) An undertaker executing road works shall in reinstating the road comply with such requirements as may be prescribed as to the specification of materials to be used and the standards of workmanship to be observed.
- (2) He shall also ensure that the reinstatement conforms to such performance standards as may be prescribed—
- in the case of interim reinstatement, until permanent reinstatement is effected, and
  - in the case of permanent reinstatement, for the prescribed period after the completion of the reinstatement.

This obligation is extended in certain cases and restricted in others by the provisions of section 132 as to cases where a reinstatement is affected by subsequent works.

- (3) Regulations made for the purposes of this section may make different provision in relation to different classes of excavation and different descriptions of road, and in relation to interim and permanent reinstatement.
- (4) The Secretary of State may issue or approve for the purposes of this section codes of practice giving practical guidance as to the matters mentioned in subsections (1) and (2); and regulations made for the purposes of this section may provide that—
- so far as an undertaker complies with such a code of practice he shall be taken to comply with his duties under this section; and
  - a failure in any respect to comply with any such code is evidence of failure in that respect to comply with those duties.

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- (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>F5</sup>level 5] on the standard scale.

#### Textual Amendments

- F5** Words in s. 130(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

### 131 Powers of road works authority in relation to reinstatement.

- (1) The road works authority may carry out such investigatory works as appear to them to be necessary to ascertain whether an undertaker has complied with his duties under this Part with respect to reinstatement.

If such a failure is disclosed, the undertaker shall bear the cost of the investigatory works; if not, the road works authority shall bear the cost of the investigatory works and of any necessary reinstatement.

- (2) Where an undertaker has failed to comply with his duties under this Part with respect to reinstatement, he shall bear the cost of—
- (a) a joint inspection with the road works authority to determine the nature of the failure and what remedial works need to be undertaken,
  - (b) an inspection by the authority of the remedial works in progress, and
  - (c) an inspection by the authority when the remedial works have been completed.
- (3) The road works authority may by notice require an undertaker who has failed to comply with his duties under this Part with respect to reinstatement to carry out the necessary remedial works within such period [<sup>F6</sup>, not being shorter than such period as may be prescribed,] as may be specified in the notice.

If he fails to comply with the notice, the authority may carry out the necessary works and recover from him the costs reasonably incurred by them in doing so.

- [<sup>F7</sup>(3A) Different minimum periods may be prescribed under subsection (3) for different descriptions of remedial works; and cases may be so prescribed in which no minimum period applies.]

- (4) If it appears to the road works authority that a failure by an undertaker to comply with his duties under this Part as to reinstatement is causing danger to users of the road, the authority may carry out the necessary works without first giving notice and may recover from him the costs reasonably incurred by them in doing so.

They shall, however, give notice to him as soon as reasonably practicable stating their reasons for taking immediate action.

#### Textual Amendments

- F6** Words in s. 131(3) substituted (1.4.2008) by Transport (Scotland) Act 2005 (asp 12), ss. 29(1)(a), 54(2); S.S.I. 2008/15, art. 2(2), sch. 1
- F7** S. 131(3A) inserted (1.4.2008) by Transport (Scotland) Act 2005 (asp 12), ss. 29(1)(b), 54(2); S.S.I. 2008/15, art. 2(2), sch. 1

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

- C2** [S. 131](#): power to contract out functions of the Secretary of State conferred (16.3.1996) by [S.I. 1996/878](#), art. 2, [Sch. para. 6\(h\)](#)

**132 Reinstatement affected by subsequent works.**

- (1) The provisions of this section apply in relation to an undertaker's duty under section 130(2) to ensure that a reinstatement conforms to the prescribed performance standards for the requisite period; and references to responsibility for a reinstatement and to the period of that responsibility shall be construed accordingly.
- (2) Where a reinstatement is affected by remedial works executed by the undertaker in order to comply with his duties under this Part with respect to reinstatement and the extent of the works exceeds that prescribed, the subsequent reinstatement shall be treated as a new reinstatement as regards the period of his responsibility.
- (3) Where the road works authority carry out investigatory works in pursuance of section 131(1) and the investigation does not disclose any failure by the undertaker to comply with his duties under this Part with respect to reinstatement, then, to the extent that the original reinstatement has been disturbed by the investigatory works, the responsibility of the undertaker for the reinstatement shall cease.
- (4) Where a reinstatement is affected by remedial works executed by the road works authority in exercise of their powers under section 131(3) or (4) (powers to act in default of undertaker)—
  - (a) the undertaker is responsible for the subsequent reinstatement carried out by the authority, and
  - (b) if the extent of the works exceeds that prescribed, the subsequent reinstatement shall be treated as a new reinstatement as regards the period of his responsibility.
- (5) The following provisions apply where a reinstatement is affected by subsequent works in the road otherwise than as mentioned above.
- (6) If the reinstatement is dug out to any extent in the course of the subsequent works, the responsibility of the undertaker for the reinstatement shall cease to that extent.
- (7) If in any other case the reinstatement ceases to conform to the prescribed performance standards by reason of the subsequent works, the responsibility of the undertaker for the reinstatement is transferred to the person executing the subsequent works; and the provisions of this Part apply in relation to him as they would have applied in relation to the undertaker.
- (8) Where there are successive subsequent works affecting a reinstatement, then as between earlier and later works—
  - (a) subsections (6) and (7) apply in relation to the cessation or transfer of the responsibility of the person for the time being responsible for the reinstatement; and
  - (b) if the reinstatement ceases to conform to the prescribed performance standards by reason of the works or any of them, it shall be presumed until the contrary is proved that this was caused by the later or last of the works.

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

**C3** S. 132(5)-(8) extended (28.11.1992) by S.I. 1992/2990, **art.11**

**Status:**

Point in time view as at 07/09/2016.

**Changes to legislation:**

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