

TRANSPORT (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Road Works

Miscellaneous

Section 20 Directions as to timing of road works

66. Section 115 of the 1991 Act is amended to define and clarify the road works authority's powers to direct the timing of road works, by giving the road works authority the power to direct the time or days or both when road works can or cannot be carried out.
67. Subsection 20(3) introduces section 115(1A) to enable a road works authority to make a direction where works have already commenced.
68. Subsection 20(6) amends section 115(4) so as to place the Scottish Ministers under a duty to produce a code of practice giving practical guidance to road works authorities in the exercise of their powers. In drawing up the code of practice the Scottish Ministers will consider the statutory obligations of undertakers and for telecom operators any OFCOM approved codes of practice under which telecom operators deliver their services.

Section 21 Directions as to placing of apparatus in roads

69. **Section 21** of the Act introduces new powers for road works authorities to direct the placing of apparatus in the road, by the introduction of section 115A to the 1991 Act. Section 115A allows the road works authority, by directions, to refuse permission for an undertaker to place apparatus in a road where it appears likely to cause disruption, and where there is another road in which the apparatus could reasonably be placed.
70. Directions under this section may be varied or revoked by further directions. Subsection (4) provides for regulations prescribing the procedure for giving directions and subsection (5) places the Scottish Ministers under a duty to make regulations to make provision for appeals against directions. Subsection (8) places the Scottish Ministers under a duty to produce a code of practice giving practical guidance as to the exercise by road works authorities of the power conferred by section 115A, and provides that in exercising that the road works authorities must have regard to the code of practice.

Section 22 Restriction on works following substantial road works

71. **Section 22** of the Act amends section 117 of the 1991 Act which allows road works authorities to impose restrictions on works following substantial road works. Subsection 117(1) is amended so as to provide that the maximum length of a restriction on the execution of works is to be prescribed in regulations, rather than being a fixed period (such as 12 months) in the primary legislation.

72. A further minor amendment to section 114 of the 1991 Act is made, with reference to section 117(1), to impose a further restriction on the period of notice required before the starting date of works.

Section 23 Duty of road works authority to co-ordinate road works etc.

73. **Section 23** of the Act amends section 118 of the 1991 Act to strengthen the general duty of road works authorities to co-ordinate road works. New subsection (2A) requires the road works authority to have regard to all information in the SRWR which relates to their functions. Subsection (2B) requires them to assist the Commissioner in meeting the duty under section 112A (the keeping of the SRWR), by making best use of the information in fulfilling their functions, and keeping this information ‘under surveillance’. In practice, this means that the road works authority should update and use the SRWR as its daily planning tool for co-ordinating road works and fulfilling its traffic management functions. The Commissioner can issue a direction to the road works authority on how the authority should discharge its duty. The Commissioner may also require the road works authority to provide information on how it is discharging its duty. If it appears that the road works authority are not discharging their duty a further direction can be issued telling them how to comply with their statutory duty.

Section 24 Duty of undertakers to co-operate with authorities and other undertakers

74. **Section 24** of the Act amends section 119 of the 1991 Act so as to augment the general duty on undertakers to co-operate with road works authorities in executing road works. It does this with five new subsections: (1A), (1B), (1C), (2A) and (2B).
75. Under subsection (1A), undertakers must have regard to all information in the SRWR relating to road works which they are carrying out, or plan to carry out.
76. Subsection (1B) requires undertakers to assist the Commissioner to fulfil the duty to keep the SRWR. It also requires the undertaker to keep this information ‘under surveillance’, which in practice means that the undertaker should update and use the SRWR as its daily planning tool when planning and carrying out road works.
77. Under subsection (1C) any persons granted consent by a road works authority under Section 109 of the 1991 Act are exempt from these requirements – the road works authority must do this on their behalf.
78. Subsection (2A) requires undertakers to comply with any direction given to them by the Commissioner in meeting the duties imposed on them by subsections (1A) and (1B), and in relation to the relevant code of practice.
79. If the Commissioner thinks that an undertaker is failing to do this, he can ask for more information from the undertaker by issuing a further direction under subsection (2B).

Section 25 Enforcement of sections 118 and 119 of the 1991 Act

80. **Section 25** of the Act repeals the current offence provision, relating to the failure of the undertaker to co-operate with the road works authority, and replaces it with a power given to the Commissioner to impose a financial penalty. It introduces section 119A allowing the Scottish Ministers by regulations to make provision in connection with the imposition by the Commissioner of penalty charges on statutory undertakers and road works authorities who have failed to comply with the duties imposed upon them, respectively, in sections 118 and 119. The circumstances in which a penalty charge can be imposed, the notification and enforcement of it, the level of charge and appeals against it will be set out in regulations.

Section 26 Qualifications of supervisors and operatives

81. **Section 26** amends section 126 of the 1991 Act to require undertakers executing road works to: notify road works authorities of the names of the qualified supervisor

and operatives (and of any previous supervisors and operatives) working on site; and provide evidence of their qualifications. The road works authority can issue a notice requiring the provision of this evidence at any time while the works are in progress, or within such period after their completion as prescribed by regulation, and the undertaker must comply with this notice.

Section 27 Duty of authorities, undertakers etc. to ensure competence of employees etc.

82. **Section 27** requires road works authorities, undertakers and other persons specified in regulations to use their best endeavours to ensure that their employees or agents who are responsible for maintaining and updating information on the SRWR are competent to perform this task.

Section 28 Duty of undertaker to notify completion of road works: form and procedure

83. **Section 28** of the Act changes the duty of undertakers to notify completion of road works following reinstatement of the road. It requires undertakers to provide notice that works have been completed, in a timescale and form to be set out in regulations. It also requires undertakers to provide this information directly to the SRWR.

Section 29 Notices requiring remedial works relating to reinstatements

84. **Section 29** makes amendments to sections 131 and 149 of the 1991 Act, to allow different notice periods for remedial works on the reinstatement of roads, sewers, drains and tunnels to be prescribed. This allows a road works authority, where reinstatement does not meet the required standard and requires remedial work which may be urgent, to shorten the minimum period for the remedial works to be completed by undertakers.