

TRANSPORT (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Road Works

50. This Part of the Act amends sections of Part IV of the New Roads and Street Works Act 1991. Part IV of the 1991 Act is attached for information with the deleted text scored out and new text inserted in italics.

The Scottish Road Works Commissioner

Section 16 Creation, appointment, status and funding of Scottish Road Works Commissioner

51. **Section 16** of the Act creates the office of a Scottish Road Works Commissioner (“the Commissioner”). The Commissioner will be appointed on terms and conditions determined by the Scottish Ministers. (4)The Commissioner is not a servant or agent of the Crown and has no status, immunity or privilege of the Crown. The Scottish Ministers can make grants to the Commissioner in respect of the Commissioner’s expenses.

Section 17 Functions of Commissioner

52. **Section 17** of the Act specifies the functions of the Commissioner. (Schedule 2 enables the Commissioner to appoint staff and makes provision about the preparation and submission of accounts). The purpose and functions of the Commissioner are:
- monitoring the carrying out of road works in Scotland by road works authorities and undertakers;
 - promoting compliance with the 1991 Act and the obligations imposed under it; and
 - promoting the pursuit of good practice by road works authorities and undertakers. “Good practice” means compliance with any code of practice issued under the 1991 Act; and, subject to that code, meeting any obligations set out in the 1991 Act and its associated codes of practice which the Commissioner thinks are required.
53. A definition for works in roads is provided at section (2) so as to include both road works and works for road purposes as defined in the 1991 Act. This ensures that works carried out in roads by both statutory undertakers and roads authorities will be caught within the Commissioner’s role in monitoring activity. The term “works in roads” covers all the activities that are required to be recorded on the Scottish Road Works Register, which will be the principal tool by which the Commissioner will monitor the carrying out of works on Scotland’s roads.

Section 18 Duty of road works authority and undertakers to provide Commissioner with information

54. **Section 18** of the Act specifies the duties of road works authorities and undertakers to provide the Commissioner with information relevant to their responsibilities for

road works. The Commissioner can require this information to be provided, providing the Commissioner needs it to fulfil the Commissioner's functions. For road works authorities and undertakers, this means information which the authority or undertaker has or can reasonably be expected to acquire – for example, details of training provision for staff involved in updating the Scottish Road Works Register. In the case of the road works authority, it might include information relating to its local road network, the use of that network by different kinds of traffic, or the effects of that use.

55. Any dispute between a road works authority or undertaker and the Commissioner as to information asked for by the Commissioner is to be settled in a manner that will be prescribed by the Scottish Ministers in regulations. Where regulations prescribe that the matter is to be settled by arbitration subsection (4) states that arbitration will be conducted as described in the 1991 Act i.e. that the arbiter will be appointed by agreement by the parties or where agreement can not be reached by the sheriff.

The Scottish Road Works Register

Section 19 The Scottish Road Works Register

56. **Section 19** of the Act substitutes section 112 ('the road works register') of the 1991 Act with section 112A and 112B. In addition to the functions set out in section 17, section 112A imposes on the Commissioner a duty to keep a register, to be known as the Scottish Road Works Register (SRWR). The SRWR must show any information required to enable the Commissioner to maintain a complete picture of road works and other works being carried out on roads. This information, and the format required for the SRWR, will be prescribed in regulations.
57. Subsection (4) enables the Scottish Ministers to require persons who are to enter information on the SRWR to pay a fee. It also enables the Scottish Ministers to require payments to the Commissioner by other persons. Subsection (5) requires any amounts received under subsection (4) to be applied by the commissioner to the keeping of the SRWR.
58. The Commissioner will make the SRWR available, at all reasonable times and free of charge, for inspection by anyone unless the information is restricted. This will assist, for instance, bus operators in planning possible changes to routes and journey times as a result of substantial and/or prolonged works. The Commissioner can also require that the information be made available to anyone with sufficient interest. The SRWR is essential for road authorities to fulfil their general duty, under section 118 of the 1991 Act, to co-ordinate road works. The reasons for restricting information (for example, national security) will be prescribed in regulations.
59. Section 112B of the 1991 Act places a duty on a road works authority to maintain and update the SRWR with:
- details of each road for which the authority is responsible as may be prescribed in regulations;
 - all proposed works (the precise details will be set out in regulations);
 - permissions granted under section 109 of the 1991 Act. (This information should include details of the apparatus and works to which the permission relates);
 - details of restrictions relating to the timing of works and the placement of apparatus in certain roads timing;
 - the start date of works;
 - the completion date of works; and
 - for each road for which a road works authority are responsible, information about road works and other works (for example, the location of skips and scaffolding)

which are carried out on the road. The Act refers to road works authorities' existing responsibilities under sections 113-115 of the 1991 Act, and the Roads (Scotland) Act 1984. The latter refers to information about skips and various other types of works on the road.

60. The content and format of information required by section 112B will be prescribed in regulations.
61. Subsection 19(2) amends section 108(2) of the 1991 Act to reflect the insertion of section 112B.
62. Subsection 19(3) amends section 113(1) of the 1991 Act to require undertakers to give advance notice of road works to the SRWR, and as a result of information being input directly to the register the relevant road works authority can access up-to-date information in order to co-ordinate road works and other works taking place on roads.
63. Subsection 19(4) introduces section 114(3A) to the 1991 Act and requires undertakers to give notice of start date of works to the SRWR, again by inputting information directly.
64. Subsection 19(5) introduces section 116(3A) to the 1991 Act and requires undertakers to give notice of emergency works to the SRWR, again by inputting information directly.
65. Subsection 19(6) amends section 117(2) of the 1991 Act to require information on the restriction of works to be entered by the road works authority into the SRWR.

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.

Resurfacing

Section 30 Power of road works authority to require undertaker to resurface road

85. **Section 30** of the Act gives road works authorities a new power to require undertakers to resurface a road in certain circumstances. It does this by introducing a new section 132A to the 1991 Act.
86. Undertakers affected by this new power are those who have given notice under section 113 or section 114 of the 1991 Act, are carrying out road works at the time the road works authority issues the requirement, or are still within the notice period for the completion of road works. The circumstances in which a road works authority can issue a notice (to be known as a resurfacing notice) will be set out in regulations, and will allow the road works authority to require a part of a road to be resurfaced which has not directly been broken up by the undertaker. Equally, the regulations may restrict the extent of the resurfacing works which undertakers are required to carry out.
87. New section 132B gives road works authorities a power to require undertakers to complete resurfacing within certain time periods. It also requires, through regulations, road works authorities to consult undertakers on required time periods, and does not allow the time period to be retrospective from the date when the notice is given. This is

to ensure that the time periods allocated to undertakers for the completion of resurfacing are reasonable.

88. New section 132C allows road works authorities to specify the materials and standards of workmanship to be used by undertakers when completing resurfacing work.

Section 31 Resurfacing: regulations and guidance

89. New section 132D to the 1991 Act makes provision for detailed regulations on resurfacing, covering the following areas:
- information to be provided in a resurfacing notice;
 - the decision making process which a road works authority should follow where more than one undertaker has been working on the same area of road, but only one will be served with notice to complete resurfacing;
 - requirements for an undertaker to give notice of any additional events in relation to resurfacing;
 - circumstances when undertakers can pay a road works authority to complete the resurfacing itself, rather than the undertaker complete it directly; and
 - appeal mechanisms and dispute resolution.
90. The Scottish Ministers are placed under a duty to consult any relevant association of undertakers prior to the making of regulations under section 132D.
91. New section 132E to the 1991 Act makes provision for detailed guidance (in the form of a code of practice) on resurfacing which road works authorities and undertakers must follow in discharging their respective duties under this part of the 1991 Act.

Section 32 Contributions to costs of resurfacing by undertaker

92. **Section 32** of the Act inserts new section 137A in the 1991 Act which sets out how contributions to the costs of resurfacing should be made. It allows both the road works authority and undertakers involved in working on an area of road to make contributions to the undertaker on which notice has been served (under new section 30) to complete a resurfacing. Details of payments, exemptions, and dispute resolution will be set out in regulations.
93. **Section 32** also provides that any costs incurred by an undertaker (including any costs of a road works authority which are borne by the undertaker) in consequence of a failure by the undertaker to comply with any duty under Part IV of the 1991 Act are to be treated as having been incurred unreasonably.
94. Subsection (3) of section 155 of the 1991 Act is amended in line with section 32.

Enforcement of 1991 Act

Section 33 Increase in penalties for summary offences under the 1991 Act

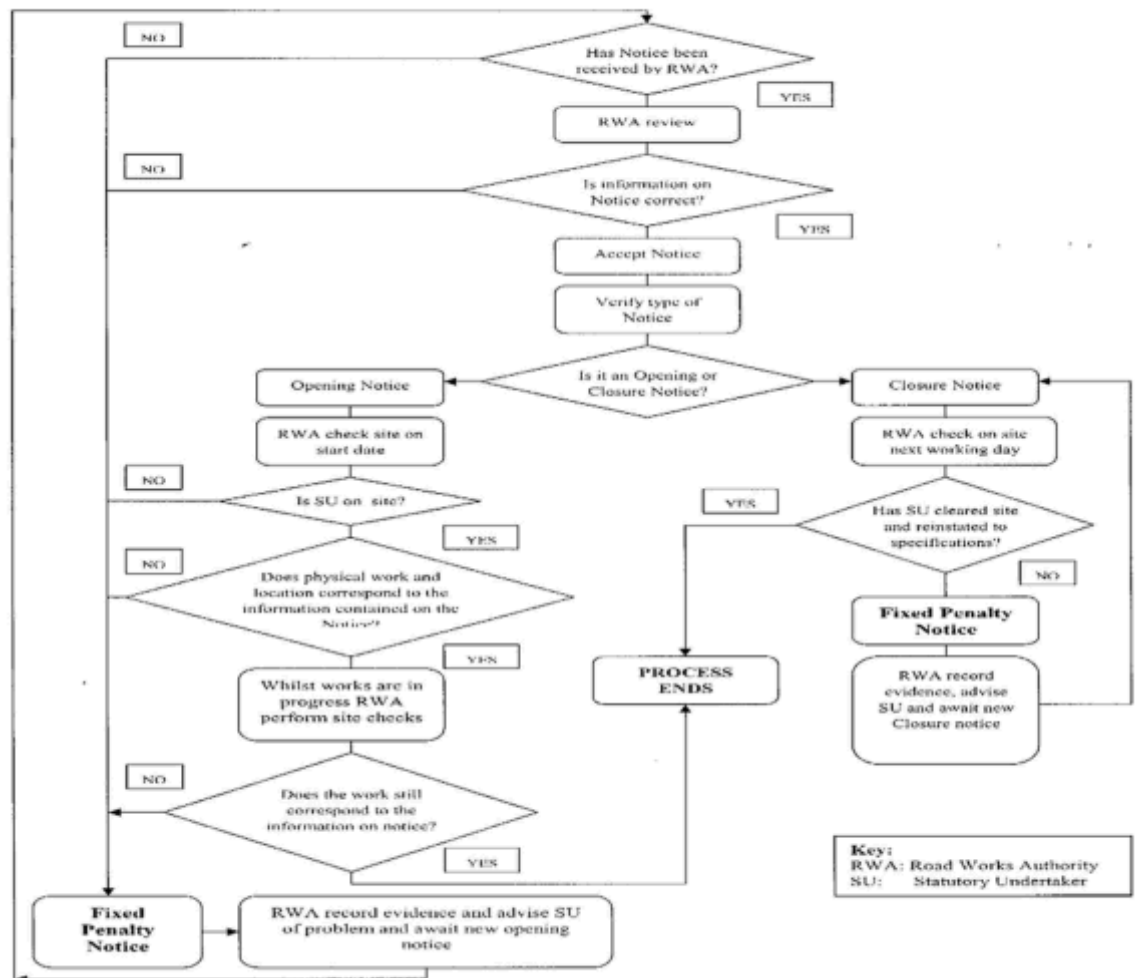
95. **Section 33** introduces an increase in penalties for offences listed in column 1, schedule 2 to the Act. Some penalties are being raised to level 4 (£2,500) and others to level 5 (£5,000).

Section 34 Fixed penalty offences

96. **Section 34** introduces new section 154A which provides for fixed penalties for certain offences as set out in schedules 4 and 5 to the Act. The table identifying the offences to which fixed penalties apply is in schedule 4 of the Act (which inserts a new Schedule 6A

to the 1991 Act). The details of how the fixed penalty system will operate are contained in schedule 5 to the Act (which inserts a new Schedule 6B to the 1991 Act).

97. Subsection (1) of section 154A of the 1991 Act provides that any offence which is listed in the first column of the new Schedule 6A to the 1991 Act is a fixed penalty offence.
98. Subsection (2) of section 154A of the 1991 Act provides that offences committed by virtue of section 166 of the 1991 Act are not fixed penalty offences. In general terms, the effect of section 166 is that in cases where an offence by a body corporate is committed with the connivance or consent, or is attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body, then that officer is also guilty of an offence and is liable to be prosecuted.
99. To aid comprehension a chart illustrating the circumstances that may lead to a fixed penalty notice being issued is shown below. The chart would apply only to offences relating to a failure to give the prescribed starting date for road works (opening notice) or a failure to give the prescribed notice for completion of a reinstatement (closure notice). Other fixed penalty offences such as failure to give the prescribed advance notice or prescribed notice for emergency works will follow a process. Similar procedures will apply when skips and scaffolding are placed on the road without the permission of the relevant roads authority.



Section 35 Civil penalties for certain offences under the 1991 Act

100. **Section 35** introduces section 154B which provides that the Scottish Ministers may make regulations that will enable road works authorities to impose penalty charges for breaches of the 1991 Act that are considered appropriate for civil enforcement.

Resolution of disputes under 1991 Act

Section 36 Method of settlement of certain disputes under the 1991 Act

101. **Section 36** introduces a new section 157A, which provides for the settlement of certain disputes in a manner to be prescribed by regulations. In the 1991 Act disputes were settled by arbitration. This section allows regulations to be made permitting the Commissioner or arbitration to settle disputes.

Enforcement of certain offences under the Roads (Scotland) Act 1984

Section 37 Fixed penalty offences under the Roads (Scotland) Act 1984

102. **Section 37** introduces new section 130A to the 1984 Act which provides for fixed penalties for certain offences as prescribed in schedules 6 and 7 to the Act. The table identifying the offences to which fixed penalties apply is in schedule 6 of the Act (which inserts a new Schedule 8A to the 1984 Act). The details of how the fixed penalty system will operate are contained in schedule 7 to the Act (which inserts a new Schedule 8B to the 1984 Act).

Section 38 Civil penalties for certain offences under the Roads (Scotland) Act 1984

103. **Section 38** introduces section 130B to the 1984 Act which provides that the Scottish Ministers may make regulations that will enable road authorities to impose penalty charges for breaches of the 1984 Act that are considered appropriate for civil enforcement.

Section 39 Consultation on regulations and codes of practice

104. **Section 39** introduces section 163A to the 1991 Act, this places a duty on the Scottish Ministers to consult prior to the making, amending or revoking of regulations or issuing, amending, revoking or approving a code of practice. Such a provision ensures that secondary legislation is informed by practitioners.