



# Transport (Scotland) Act 2005

## 2005 asp 12

### PART 2

#### ROAD WORKS

##### *The Scottish Road Works Commissioner*

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

- (1) There is, by this Act, created an office, the holder of which is to be known as the Scottish Road Works Commissioner (in this Part, “the Commissioner”).
- (2) The Commissioner shall be appointed, on such terms and conditions as they determine, by the Scottish Ministers.
- (3) Those terms and conditions may include arrangements relating to the payment of pensions, allowances or gratuities to, or in respect of, persons who have ceased to hold office as the Commissioner.
- (4) The Commissioner is not a servant or agent of the Crown and has no status, immunity or privilege of the Crown.
- (5) The Scottish Ministers may make grants to the Commissioner in respect of the Commissioner’s expenses.

#### **17 Functions of Commissioner**

- (1) The Commissioner has the general functions of—
  - (a) monitoring the carrying out of works in roads in Scotland;
  - (b) promoting compliance with the 1991 Act and obligations imposed under it; and
  - (c) promoting the pursuit of good practice by those persons who have functions conferred on or permissions granted to them by or under that Act,as well as the particular functions conferred upon the Commissioner by or under that or this Act.

- (2) In subsection (1) above, “works in roads” includes road works within the meaning given by section 107(3) of the 1991 Act, works for roads purposes within the meaning given by subsection (2) of section 145 of that Act and major works for roads purposes within the meaning given by subsection (3) of that section.
- (3) The Commissioner may, for the purposes of the discharge of the general functions referred to in paragraphs (b) and (c) of subsection (1) above, assess whether the persons referred to in subsection (1)(c) above are complying with the 1991 Act and any obligations imposed on them under it and are following good practice.
- (4) In this section “good practice” means compliance with—
  - (a) any code of practice issued or approved under the 1991 Act or any direction issued under that Act; and
  - (b) subject to such codes and directions, such practice in the doing by the persons referred to in subsection (1)(c) above of what they must or may do by or under the 1991 Act as appears to the Commissioner to be desirable.
- (5) Schedule 2 provides further as to the Commissioner.
- (6) The Commissioner may do anything calculated to facilitate the discharge of any of the Commissioner’s functions.

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

- (1) A road works authority or an undertaker shall, on being required to do so by the Commissioner, provide the Commissioner with such information relevant to their respective functions and activities as the Commissioner reasonably asks for for the purposes of the performance of the Commissioner’s functions.
- (2) For the purposes of subsection (1) above, information is relevant to functions or activities if it is information which the authority or undertaker possesses or can reasonably be expected to acquire.
- (3) Where—
  - (a) a road works authority or an undertaker; and
  - (b) the Commissioner,do not agree as to whether information asked for by the Commissioner in pursuance of subsection (1) above is reasonably asked for, the matter shall be settled in such manner as may be prescribed by the Scottish Ministers by regulations.
- (4) Where regulations under subsection (3) above prescribe that a matter is to be settled by arbitration, section 158 of the 1991 Act shall apply in relation to that matter as that section applies in relation to a matter which, under Part 4 of that Act, is to be so settled.