



Transport (Scotland) Act 2005

2005 asp 12

PART 2

ROAD WORKS

Miscellaneous

20 Directions as to timing of road works

- (1) Section 115 of the 1991 Act (directions as to timing of road works) is amended in accordance with subsections (2) to (6) below.
- (2) In subsection (1)—
 - (a) in paragraph (b) at the end there is added “or on certain days (or at certain times on certain days)”; and
 - (b) after “the times” there is inserted “or days (or both)”.
- (3) After that subsection there is inserted—

“(1A) If it appears to a road works authority—

 - (a) that subsisting road works are causing or are likely to cause serious disruption to traffic, and
 - (b) 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.”.
- (4) After subsection (2) there is inserted—

“(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.”.
- (5) After subsection (3) there is inserted—

“(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.”.

(6) In subsection (4), for “may” there is substituted “shall”.

21 Directions as to placing of apparatus in roads

(1) After section 115 of the 1991 Act there is inserted—

“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
- (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.”.

- (2) In section 116 of the 1991 Act (notice of emergency works in roads), in subsection (1), the word “or” is repealed and after “works”, where first occurring, there is inserted “or section 115A (power to give directions as to placing of apparatus)”.

22 Restriction on works following substantial road works

- (1) In section 117 of the 1991 Act (restriction on works following substantial road works)

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- (a) in subsection (1)—
- (i) for “twelve months” there is substituted “such period”; and
 - (ii) at the end there is inserted “as may be prescribed.”;
- (b) in subsection (6), at the beginning of paragraph (b) there is inserted “if convicted of an offence under this subsection,”; and
- (c) at end there is inserted—

“(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.”.

- (2) In section 114 of the 1991 Act (notice of starting date of works), in subsection (2), after “works” there is inserted “or in cases where the undertaker has been given notice under section 117(1)”.

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

- (1) Section 118 of the 1991 Act (road works authority’s duty to co-ordinate road works etc.) is amended in accordance with subsections (2) to (5) below.

- (2) After subsection (2) there is inserted—

“(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)—

- (a) assist the Commissioner in complying with the duty imposed by subsection (1) of section 112A (as read with subsection (2) of that section), and
- (b) keep that information under surveillance.”.

- (3) In subsection (3), after “co-ordination”, there is inserted “and the specific duties imposed by subsections (2) to (2B)”.

- (4) After that subsection there is inserted—

“(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).”.

- (5) In subsections (4) and (5), for “Secretary of State”, in each place where it occurs, there is substituted “Commissioner”.

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

- (1) Section 119 of the 1991 Act (undertakers' duty to co-operate) is amended in accordance with subsections (2) to (4) below.

- (2) After subsection (1) there is inserted—

“(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)—

- (a) assist the Commissioner in complying with the duty imposed by subsection (1) of section 112A (as read with subsection (2) of that section), and
- (b) keep that information under surveillance.

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

- (3) After subsection (2) there is inserted—

“(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.”.

- (4) After subsection (3) there is inserted—

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

25 Enforcement of sections 118 and 119 of 1991 Act

- (1) Subsection (3) of section 119 of the 1991 Act (which subsection makes it an offence for an undertaker executing road works to fail to use best endeavours to co-operate with the road works authority and other undertakers) is repealed.

- (2) After that section (which requires undertakers to co-operate with road works authorities and others in the execution of road works) there is inserted—

“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,
 - (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.”

26 Qualifications of supervisors and operatives

- (1) Section 126 of the 1991 Act (qualifications of supervisors and operatives) is amended in accordance with subsections (2) to (5) below.

- (2) After subsection (1) there is inserted—

“(1A) A road works authority may (unless the case is one excepted from subsection (1)) by notice require an undertaker executing road works—

- (a) to notify them of the name of—
 - (i) the person who is currently the qualified supervisor required under subsection (1), and
 - (ii) each person who has previously been the qualified supervisor so required, and
- (b) to provide them with such evidence of the requisite qualification of the person or, as the case may be, each person named as may be prescribed.”

- (3) After subsection (2) there is inserted—

“(2A) A road works authority may (unless the case is one excepted from subsection (2)) by notice require an undertaker executing road works—

- (a) to notify them of the name of—
 - (i) a person whose presence on site at any time specified in the notice (being a time when the works were in progress) enabled the undertaker to comply with his duty under subsection (2), or
 - (ii) each person whose presence on site during the progress of the works enabled the undertaker to comply with his duty under subsection (2), and
- (b) to provide them such evidence of the requisite qualification of the or, as the case may be, each person named as may be prescribed.

Status: This is the original version (as it was originally enacted).

(2B) A notice under subsection (1A) or (2A) may be given at any time while the works are being executed or within such period after their completion as may be prescribed.

(2C) The undertaker shall comply with a notice under subsection (1A) or (2A) within such period and in such way as may be prescribed.”.

(4) In subsection (3), for “or (2)” there is substituted “, (2) or (2C)”.

(5) In subsection (4), after paragraph (b) there is inserted “and

(c) the form of any document to be issued by an approved body to certify or otherwise show that a qualification has been conferred on any person.”.

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

After section 126 of the 1991 Act there is inserted—

“126A Duty of authorities, undertakers etc. to ensure competence of employees etc.

Each of the authorities and other persons set out in the first column below shall use their or, as the case may be, his best endeavours to ensure that each of that authority’s or, as the case may be, that person’s employees or agents whose duty it is to carry out for that authority or person a function conferred on that authority or person by or under an enactment set out relative to that authority or person in the second column below is competent to perform that duty—

A road works authority	Section 112B(1) and (3) of this Act; section 18 of the Transport (Scotland) Act 2005 (asp 12) (duty to provide Scottish Road Works Commissioner with certain information).
A roads authority	Section 112B(4) to (7) of this Act.
An undertaker	Sections 113(1), 114(1) and 116(2) of this Act; section 18 of the Transport (Scotland) Act 2005 (asp 12) (duty to provide Scottish Road Works Commissioner with certain information).”.

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

In section 129 of the 1991 Act (duty of undertaker to reinstate road after road works)—

- (a) in subsection (3), for “inform the road works authority” there is substituted “give the required notice”;
- (b) in subsection (4), for “notify the road works authority” there is substituted “give the required notice”;
- (c) after subsection (5) there is inserted—

“(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.”.

29 Notices requiring remedial works relating to reinstatements

(1) In section 131 of the 1991 Act (powers of road works authority in relation to reinstatement of roads)—

- (a) in subsection (3), for “of not less than 7 working days” there is substituted “, not being shorter than such period as may be prescribed,”; and
- (b) after that subsection there is inserted—

“(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.”.

(2) In section 149 of the 1991 Act (which, among other things, enables the authorities responsible for sewers, drains and tunnels to require their reinstatement)—

- (a) in subsection (2), for “of not less than 7 working days” there is substituted “, not being shorter than such period as may be prescribed,”; and
- (b) after that subsection there is inserted—

“(2A) Different minimum periods may be prescribed under subsection (2) for different descriptions of remedial works; and cases may be so prescribed in which no minimum period applies.”.