



Traffic Management Act 2004

2004 CHAPTER 18

PART 4

STREET WORKS

Enforcement

40 Increase in penalties for summary offences under 1991 Act

- (1) The maximum fine for each offence under a provision of the New Roads and Street Works Act 1991 (c. 22) (in this Part referred to as “the 1991 Act”) listed in column 1 of the table in Schedule 1 is increased from level 3 on the standard scale to the level specified for that provision in column 3 of the table.
- (2) Accordingly, in each provision so listed, for “level 3” there is substituted “level 4” or “level 5” (as specified in column 3 of the table).
- (3) In section 70(6) of the 1991 Act, for the words from “to a” to the end there is substituted—
 - (a) in the case of an offence consisting of a failure to comply with subsection (3) or (4A), to a fine not exceeding level 4 on the standard scale; and
 - (b) in any other case, to a fine not exceeding level 5 on that scale.”
- (4) In section 74(7B) and 74A(11) of the 1991 Act (maximum fine for offences in regulations in respect of failure to comply with notice requirement) for “level 3” there is substituted “level 4”.
- (5) In section 88(6) of the 1991 Act (failure to comply with duties relating to street works affecting the structure of a bridge) for the words from “to a” to the end there is substituted—
 - (a) in the case of an offence consisting of a failure to take all reasonably practicable steps to comply with subsection (5)(a), to a fine not exceeding level 4 on the standard scale; and

(b) in any other case, to a fine not exceeding level 5 on that scale.”

41 Fixed penalty offences

(1) After section 95 of the 1991 Act (offences) there is inserted—

“95A Fixed penalties for certain offences under this Part

- (1) Any offence under this Part relating to any street works which is listed in the first column of Schedule 4A (and described in general terms in the second column) is a fixed penalty offence for the purposes of this Part.
- (2) Offences listed in that Schedule which are committed by virtue of section 166 (offences by bodies corporate and Scottish partnerships) are not fixed penalty offences.
- (3) The Secretary of State may by order modify that Schedule so as to provide for offences under this Part relating to any street works to become (or cease to be) fixed penalty offences.
- (4) Such an order may not be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.
- (5) Schedule 4B (which makes provision about fixed penalties for fixed penalty offences) has effect.”

(2) In section 106 of that Act (index for Part 3), the following entry is inserted in the appropriate place—

“fixed penalty offence	section 95A(1)”.
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(3) After Schedule 4 to that Act there is inserted Schedules 4A and 4B as set out in Schedules 2 and 3 to this Act.

Co-ordination of works by street authority

42 Duty of street authority to co-ordinate works

- (1) Section 59 of the 1991 Act (general duty of street authority to co-ordinate works) is amended as follows.
- (2) In subsection (1) after “purposes)” there is inserted “and the carrying out of relevant activities”.
- (3) In subsection (2) after “works)” there is inserted “or relevant activities”.
- (4) After subsection (6) there is inserted—

“(7) In this section “relevant activities” means any activity, other than the execution of works in the street or the use of the street by traffic (including pedestrians), which—

- (a) involves the temporary occupation or use of space in a street;

- (b) is subject to regulation by the street authority by virtue of provision made by or under any Act other than this Act; and
- (c) is prescribed by regulations made by the Secretary of State.”

Direction-making powers

43 Directions relating to timing of street works

- (1) Section 56 of the 1991 Act (power to give directions as to timing of street works) is amended as follows.
- (2) In subsection (1)—
 - (a) in paragraph (b), after “at certain times” there is inserted “or on certain days (or at certain times on certain days)”;
 - (b) after “the times” there is inserted “or days (or both)”.
- (3) After subsection (1) there is inserted—

“(1A) Where it appears to a street authority—

 - (a) that subsisting street 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 (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, his failure is attributable to a direction under this section.”

44 Directions as to placing of apparatus

In the 1991 Act, after section 56 there is inserted—

“56A Power to give directions as to placing of apparatus

- (1) Where—
 - (a) an undertaker is proposing to execute street works consisting of the placing of apparatus in a street (“street A”),
 - (b) placing the apparatus in street A is likely to cause disruption to traffic, and
 - (c) it appears to the street authority that—
 - (i) there is another street (“street B”) in which the apparatus could be placed, and
 - (ii) the conditions in subsection (2) are satisfied,

the authority may by direction require the undertaker not to place the apparatus in street A (but may not require him to place the apparatus in street B).

- (2) The conditions referred to in subsection (1)(c) are that—
- (a) disruption to traffic would be avoided or reduced if the apparatus were to be placed in street B;
 - (b) placing the apparatus in street B 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 street A.
- (3) A direction under this section may be varied or revoked by a further such direction.
- (4) The procedure for giving a direction under this section shall be prescribed by the Secretary of State.
- (5) The Secretary of State may by regulations make provision for appeals against directions under this section, including provision as to the persons who may determine appeals and the procedure to be followed on an appeal.
- (6) An undertaker who executes works in contravention of a direction 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, his failure is attributable to a direction under this section.
- (8) The Secretary of State may issue or approve for the purposes of this section a code of practice giving practical guidance as to the exercise by street authorities of the power conferred by this section; and in exercising that power a street authority shall have regard to the code of practice.”

Records and information

45 The street works register

- (1) Section 53 of the 1991 Act (the street works register) is amended as follows.
- (2) In subsection (1)—
- (a) after “respect to” (in the second place they appear) there is inserted “(a)”; and
 - (b) at the end there is added “; and
 - (b) such descriptions of—
 - (i) apparatus placed, or proposed to be placed, in the street,
 - (ii) builder’s skips (within the meaning of section 139 of the Highways Act 1980 (c. 66)), or of building materials, rubbish or other things deposited, or proposed to be deposited, in the street; or
 - (iii) scaffolding or other structures which are erected, or proposed to be erected, in the street,
 as may be prescribed.”
- (3) After subsection (4) there is inserted—

“(4A) In subsection (4) “central register” means a register covering the areas of two or more street authorities.”

(4) After subsection (5) there is inserted—

“(5A) In particular the Secretary of State may require a street authority to share information in their possession with a person appointed to keep a central register which discharges the duties of that authority under this section.”

46 Records of location of apparatus

(1) Section 79 of the 1991 Act (records of location of apparatus) is amended as follows.

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

“(1A) An undertaker may, except in such cases as may be prescribed, include in his records under subsection (1) a record of the location of any item of apparatus belonging to him which is not required to be so included, stating the nature of the apparatus and (if known) whether it is for the time being in use.”

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

“(2A) Regulations under subsection (2) which alter the form or manner in which the records are to be kept may apply to records made before (as well as records made after) the alterations take effect.”

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

“(3A) In subsections (2) to (3) the references to an undertaker’s records are to the records kept by him under subsection (1) (including anything included in those records by virtue of any provision of this Act or any other enactment).”

47 Duties relating to the location of unexpected apparatus

(1) Section 80 of the 1991 Act (duties where person finds unidentified apparatus) is amended as follows.

(2) In subsection (1) for “made available by the undertaker” there is substituted “kept by the undertaker under section 79(1) and made available by him”.

(3) After subsection (1) there is inserted—

“(1A) Subsection (1) has effect subject to such exceptions as may be prescribed.”

(4) For subsections (2) and (3) there is substituted—

“(2) Where a person executing works of any description in the street finds apparatus which does not belong to him and is unable, after taking such steps as are reasonably practicable, to ascertain to whom the apparatus belongs, he shall comply with such requirements (if any) as may be prescribed for the purpose of securing that he—

- (a) makes and keeps a record of the location of the apparatus and (so far as appears from external inspection) its nature and whether it is in use; and
- (b) informs the street authority or any other person of those matters.

- (2A) Regulations under subsection (2) may make provision—
- (a) as to the form and manner in which records are to be kept;
 - (b) as to the form and manner in which, or the time at or by which, information is to be given; and
 - (c) for records which are to be kept by undertakers to be included in the records kept by them under section 79(1).”
- (5) In subsection (4) for “(2)” there is substituted “any requirement imposed on him by regulations under subsection (2)”.
- (6) After subsection (4) there is added—
- “(5) The Secretary of State may by regulations make provision for and in connection with the keeping (whether by the Secretary of State or a person with whom he has made appropriate arrangements) of a register of information recorded by undertakers in pursuance of a requirement imposed under subsection (2).
- (6) Regulations under subsection (5) may make provision about the inspection of the register by any person having authority to execute works of any description in the street or otherwise appearing to the person responsible for keeping the register to have a sufficient interest.”

48 Duty to inspect records

After section 53 of the 1991 Act (the street works register) there is inserted—

“53A Duty to inspect records

- (1) The Secretary of State may make provision by regulations requiring an undertaker proposing to execute street works of a prescribed description to inspect prescribed statutory records before commencing the street works.
- (2) The regulations may provide for the manner in which an inspection of any statutory records is to be carried out.
- (3) The regulations may prescribe evidence which may be relied on by the undertaker to demonstrate that he has carried out an inspection required by the regulations.
- (4) The regulations may in particular require the undertaker—
 - (a) to be in possession of prescribed evidence before commencing the street works; and
 - (b) to produce, in such manner as may be prescribed, prescribed evidence to the street authority either at the request of the authority or at or by such time as may be prescribed.
- (5) The regulations may provide for the cases or circumstances in which a requirement under subsection (1) or (4) does or does not apply.
- (6) The regulations may create a summary offence, punishable with a fine not exceeding level 5 on the standard scale, in respect of any contravention by an undertaker of a requirement of the regulations.

- (7) In this section “statutory record” means any register or other record kept in pursuance of a requirement imposed by—
- (a) an enactment; or
 - (b) a licence or other instrument having effect under or by virtue of an enactment.”

Miscellaneous

49 Notices of street works

- (1) In section 54 of the 1991 Act (advance notice of certain works)—
- (a) in subsection (3) for “contain such” there is substituted “state the date on which it is proposed to begin the works and shall contain such other”;
 - (b) after subsection (4) there is inserted—
 - “(4A) If an undertaker who has given advance notice under this section has not, before the starting date specified in the notice, given to the street authority a notice under section 55 in respect of the works, he shall within such period as may be prescribed give to that authority a notice containing such information as may be prescribed.
 - (4B) An advance notice under this section shall cease to have effect in relation to the proposed works (so that subsection (1) applies again in relation to the works) if those works are not substantially begun before the end of such period beginning with the starting date specified in the notice as may be prescribed, or such further period as the street authority may allow.
 - (4C) Different periods may be prescribed under subsection (4B) for different descriptions of works.”
- (2) In section 55 of that Act (notice of starting date of works) after subsection (7) there is inserted—
- “(8) If a notice under this section ceases to have effect the undertaker shall, within such period as may be prescribed, give a notice containing such information as may be prescribed to those to whom the notice under this section was required to be given.
 - (9) An undertaker who fails to give notice in accordance with subsection (8) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.”
- (3) In section 93 of that Act (works affecting level crossings or tramways) in subsection (2) for “(7)” there is substituted “(9)”.

50 Qualifications of supervisors and operatives

- (1) Section 67 of the 1991 Act (qualifications of supervisors and operatives) is amended as follows.
- (2) After subsection (1) there is inserted—

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

- (a) to notify them of the name of—
 - (i) the person who is currently the qualified supervisor required by 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 each person named as may be prescribed.”

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

“(2A) A street authority may (unless the case is one excepted from subsection (2)) by notice require an undertaker executing street 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 in subsection (2); and
- (b) to provide them with such evidence of the requisite qualification of each person named as may be prescribed.

(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 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.”

51 Restriction on works following substantial road works

(1) Section 58 of the 1991 Act (restriction on works following substantial road works) is amended as specified in subsections (2) to (8).

(2) In subsection (1), for the words “twelve months” there is substituted “prescribed period”.

(3) In subsection (2), after “prescribed” there is inserted “form and” and for “three months” there is substituted “such period as may be prescribed”.

(4) In subsection (3) after paragraph (e) there is inserted “and

- (f) any other person of a prescribed description;”

(and the word “and” after paragraph (d) is omitted).

- (5) In subsection (4), for paragraphs (a) and (b) there is substituted “within such period as may be prescribed”.
- (6) In subsection (6), at the beginning of paragraph (b) there is inserted “if he is convicted of an offence under this subsection”.
- (7) In subsection (7), for “by arbitration” there is substituted “in the prescribed manner”.
- (8) After that subsection there is inserted—
 - “(7A) Regulations under subsection (7) may in particular make provision for the question referred to in that subsection to be settled—
 - (a) by arbitration;
 - (b) by a person designated by the Secretary of State on appeal by the undertaker.”
- (9) In section 55 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 58(1),”.

52 Restriction on works following substantial street works

- (1) After section 58 of the 1991 Act there is inserted—

“58A Restriction on works following substantial street works

Schedule 3A shall have effect.”

- (2) After Schedule 3 to that Act there is inserted Schedule 3A as set out in Schedule 4 to this Act.
- (3) In section 57 of that Act (notice of emergency works)—
 - (a) in subsection (1) after “works)” there is inserted “or paragraph 2(1)(d) or 3(1) of Schedule 3A (notification of proposed works or directions as to timings of works)”;
 - (b) in subsection (2) after “is” there is inserted “(or would, but for paragraph 2(6) of Schedule 3A, be)”.
- (4) In section 64 of that Act (traffic-sensitive streets) in subsection (1) after “works)” there is inserted “or paragraph 2 of Schedule 3A”.
- (5) In section 74 of that Act (charge for occupation of highway where works unreasonably prolonged) in subsection (3)(b) after “date)” there is inserted “or notification under paragraph 2(1)(d) of Schedule 3A (notification of proposed works)”.
- (6) In section 88 of that Act (provisions relating to bridges) in subsection (4) after “date)” there is inserted “, or making a notification under paragraph 2(1)(d) of Schedule 3A (notification of proposed works),”.
- (7) In section 89 of that Act (provisions relating to sewers) in subsection (2) after “date)” there is inserted “, or making a notification under paragraph 2(1)(d) of Schedule 3A (notification of proposed works),”.

53 Notices requiring remedial works relating to reinstatements

- (1) In section 72 of the 1991 Act (powers of street authority in relation to reinstatement)—
- (a) in subsection (3), for “of not less than 7 working days” there is substituted “, not being less than such period as may be prescribed,”; and
 - (b) after subsection (3) there is inserted—

“(3A) Different minimum periods may be prescribed under subsection (3) for different descriptions of remedial works; and cases may be prescribed in which no minimum period applies.”
- (2) In section 90 of the 1991 Act (powers of street authority in relation to reinstatement of sewers, etc.)—
- (a) in subsection (2), for “of not less than 7 working days” there is substituted “, not being less than such period as may be prescribed,”; and
 - (b) after subsection (2) there is inserted—

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

54 Duty to notify street authority of reinstatement

- (1) Section 70 of the 1991 Act (duty of undertaker to reinstate) is amended as follows.
- (2) After subsection (1) there is inserted—

“(1A) The reinstatement required by subsection (1) may be permanent or interim.”
- (3) For subsections (3) and (4) there is substituted—

“(3) He shall within 7 working days from the date on which the reinstatement is completed give notice to the street authority of that completion—

 - (a) stating whether the reinstatement is permanent or interim; and
 - (b) giving such other information about the reinstatement as may be prescribed.

(4) If the reinstatement is interim, he shall complete the permanent reinstatement of the street as soon as reasonably practicable, and in any event within 6 months from the date on which the interim reinstatement was completed.

(4A) He shall, within 7 working days from the date on which the permanent reinstatement required by subsection (4) is completed, give notice to the street authority of that completion, giving such other information about the reinstatement as may be prescribed.

(4B) The Secretary of State may by regulations modify the period specified in subsection (3), (4) or (4A).”

55 Power of street authority to require undertaker to re-surface street

- (1) After section 73 of the 1991 Act there is inserted—

“Re-surfacing

73A Power to require undertaker to re-surface street

- (1) In prescribed circumstances, the street authority for a street may by notice (a “re-surfacing notice”) require an undertaker within subsection (2) to execute such re-surfacing works in the street as may be specified in the notice.
- (2) An undertaker is within this subsection if—
 - (a) he has given notice under section 54 or 55 of, or made a notification under paragraph 2(1)(d) of Schedule 3A in respect of, proposed street works,
 - (b) he is executing street works, or
 - (c) he has, within such period ending with the giving of the notice as may be prescribed (or if no period is prescribed, at any time), executed street works,and the works will involve, involve or (as the case may be) involved the breaking up of any part of the street.
- (3) The works specified in the re-surfacing notice may relate to any part of the street (including any part not, and not to be, broken up by the undertaker); but regulations may restrict the extent of the works that may be so specified.
- (4) The re-surfacing notice relieves the undertaker to the extent (if any) specified in the notice of his duty under section 70 to reinstate the surface of the street; but regulations may restrict the circumstances in which and the extent to which undertakers may be relieved of that duty.
- (5) The street authority may by notice to the undertaker vary or withdraw a re-surfacing notice; but regulations may restrict the circumstances in which notices may be varied or withdrawn.
- (6) A street authority may give a re-surfacing notice notwithstanding that the authority (in any capacity) are under a duty to undertake any of the works specified in the notice.
- (7) In this Part—
 - “re-surfacing notice” has the meaning given by subsection (1);
 - “re-surfacing works” means any works relating to the replacement of the surface of any part of a street;
 - “surface” includes a paved surface.
- (8) The reference in subsection (2)(c) to the execution of street works is a reference to the execution of such works after the commencement of this section (whether or not regulations under it have been made).

73B Power to specify timing etc. of re-surfacing

- (1) A re-surfacing notice may require an undertaker to—
 - (a) execute the works specified in the notice in stages so specified;
 - (b) begin the execution of those works (or any stage of them) at or by a date and time so specified;

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- (c) execute those works (or any stage of them) at times or on days (or at times on days) so specified;
 - (d) complete the execution of those works (or any stage of them) by a date and time so specified.
- (2) The Secretary of State may by regulations make provision restricting, in some or all cases, the power to include requirements within subsection (1), including provision that—
- (a) requires a street authority to consult an undertaker before a prescribed description of requirement is included in a notice;
 - (b) provides that any date specified in a notice for the beginning, execution or completion of works shall not be earlier than a prescribed period from the date on which the notice is given.

73C Materials, workmanship and standard of re-surfacing

- (1) An undertaker who has been given a re-surfacing notice shall, when executing the works specified in the notice, 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 new surface conforms to such performance standards as may be prescribed, for the prescribed period after completion of the works.”
- (2) In section 106 of that Act—
- (a) after the entry for relevant authority (in relation to street works) there is inserted—

“re-surfacing notice	section 73A(7)
re-surfacing works	section 73A(7)”;

- (b) after the entry for street works licence there is inserted—

“surface	section 73A(7)”.
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56 Re-surfacing: regulations and guidance

After section 73C of the 1991 Act there is inserted—

“73D Re-surfacing: regulations

- (1) The Secretary of State may make regulations supplementing sections 73A to 73C.
- (2) The regulations may in particular—
 - (a) make provision about the information to be contained in a re-surfacing notice (including the way in which re-surfacing works are to be described);

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- (b) prescribe, for cases where a re-surfacing notice may be given to more than one undertaker, the matters that a street authority shall take into account when selecting the undertaker to whom the notice is to be given;
 - (c) impose a requirement on an undertaker, in prescribed circumstances, to give notice to the street authority of a prescribed event;
 - (d) prescribe circumstances in which an undertaker may elect to make a payment to the street authority instead of executing the works specified in a re-surfacing notice, and make provision about the calculation of the amount of such payments;
 - (e) confer a right of review or appeal against a re-surfacing notice or any requirement contained in it, and may make provision about the period within which and manner in which any such right may be exercised and about the determination of appeals and the persons who may determine them;
 - (f) require disputes of a prescribed description (including disputes as to the existence of circumstances prescribed under section 73A(1)) to be determined in such manner and by such persons as may be prescribed;
 - (g) apply any provisions of this Part or the Highways Act 1980 (c. 66), with or without modifications, in relation to works specified in a re-surfacing notice (and provide that for those purposes the works are to be treated as street works or works of any other description).
- (3) The regulations may provide that where a re-surfacing notice has been served on an undertaker, the street authority may (in such circumstances and to such extent as may be prescribed) by notice relieve any other undertaker within section 73A(2) of his duty under section 70 to reinstate the surface of the street.
- (4) The regulations may create in respect of any breach of a requirement imposed by a re-surfacing notice or of the duty imposed by section 73C, or any contravention of the regulations, an offence punishable on summary conviction—
- (a) where the offence consists of a failure to give a notice in accordance with the regulations, with a fine not exceeding level 4 on the standard scale;
 - (b) in any other case, with a fine not exceeding level 5 on the standard scale.
- (5) The first regulations under this section or any of sections 73A to 73C shall not be made unless a draft of them has been laid before and approved by a resolution of each House of Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

73E Re-surfacing: guidance

- (1) The Secretary of State may, for the purposes of sections 73A to 73D (including regulations under those sections), issue or approve a code of practice giving practical guidance as to the exercise of powers and the discharge of duties under those sections.
- (2) In exercising those powers and in discharging those duties, street authorities and undertakers shall have regard to the code of practice.”

57 Contributions to costs of re-surfacing by undertaker

(1) After section 78 of the 1991 Act there is inserted—

“78A Contributions to costs of re-surfacing by undertaker

- (1) Where a street authority has given a re-surfacing notice to an undertaker (A)—
- (a) the authority shall pay to A a proportion, calculated in the prescribed manner, of the costs reasonably incurred by A in executing the works specified in the notice;
 - (b) an undertaker to whom subsection (2) applies shall pay to A a proportion, calculated in the prescribed manner, of those costs.
- (2) This subsection applies to an undertaker if—
- (a) he has, after the commencement of this section (whether or not regulations under it have been made) and before the completion of the works specified in the notice, executed street works which involved the breaking up of any part of a street, and
 - (b) the works specified in the notice include the re-surfacing of that part of the street.
- (3) The Secretary of State may by regulations prescribe exceptions to the duty imposed by subsection (1)(b).
- (4) The payments referred to in subsection (1) shall be made in such instalments and manner, and within such period of such event, as may be prescribed.
- (5) The Secretary of State may by regulations make provision—
- (a) requiring a street authority, within such period of such event as may be prescribed, to give to an undertaker to whom subsection (2) applies a notice containing such information as may be prescribed;
 - (b) requiring a street authority to pay to an undertaker to whom it has given a re-surfacing notice such sum as he has been unable to recover under subsection (1)(b) on account of the insolvency of an undertaker;
 - (c) requiring disputes of a prescribed description (including disputes as to whether subsection (2) applies to an undertaker) to be determined in such manner and by such persons as may be prescribed.
- (6) For the purposes of this section, any costs incurred by an undertaker (including any costs of a street authority which are borne by the undertaker) in consequence of a failure by the undertaker to comply with any duty under this Part shall be treated as having been incurred unreasonably.
- (7) The Secretary of State may by regulations make provision requiring undertakers to make payments to a street authority where—
- (a) the authority has given a re-surfacing notice to an undertaker,
 - (b) that undertaker has exercised a right, conferred by regulations under section 73D, of the sort mentioned in subsection (2)(d) of that section, and
 - (c) the authority has carried out any of the works specified in the notice.
- (8) The power in subsection (7) includes power to make provision corresponding to provision that may be made under subsections (1) to (5).

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- (9) Regulations under this section may make different provision for cases where an undertaker mentioned in subsection (1) or (7) has made, or is liable to make, a payment under section 78.
- (10) The first regulations under this section shall not be made unless a draft of them has been laid before and approved by a resolution of each House of Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) In subsection (5)(b) “insolvency”—
 - (a) in relation to a company, has the meaning given by section 247(1) of the Insolvency Act 1986;
 - (b) in relation to an individual, includes the approval of a voluntary arrangement under Part 8 of that Act.”
- (2) In section 96 of the 1991 Act, in subsection (3), after “street” there is inserted “or 78A (contributions to costs of re-surfacing by undertakers)”.

58 Inspection fees

- (1) In section 72 of the 1991 Act (powers of street authority in relation to reinstatement) after subsection (2) there is inserted—
 - “(2A) The Secretary of State may prescribe a fee in respect of a prescribed description of inspection mentioned in subsection (2).

If he does so that subsection has effect, in relation to that description of inspection, as if for “he shall bear the cost of” there were substituted “he shall pay the prescribed fee in respect of”.
 - (2B) The power to make different provision under subsection (2A) for different cases includes power—
 - (a) to make different provision for different descriptions of street authority or undertakers;
 - (b) to prescribe different fees by reference to the nature or extent of the inspection, the place where it is carried out and such other factors as appear to the Secretary of State to be relevant.”
- (2) For section 75 of that Act (inspection fees) there is substituted—

“75 Inspection fees

- (1) The Secretary of State may make provision by regulations requiring an undertaker to pay to the street authority the prescribed fee in respect of—
 - (a) all inspections carried out by the authority of his street works; or
 - (b) such inspections of those works as may be prescribed.
- (2) The regulations may—
 - (a) require undertakers to make payments in respect of inspections anticipated to take place within a prescribed period; and
 - (b) make provision for the striking of an account between an undertaker and a street authority and the making of any necessary payment or repayment.

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

- (3) The power to make different provision under this section for different cases includes power—
 - (a) to make different provision for different descriptions of street authority or different descriptions of undertakers (including descriptions framed by reference to their previous performance);
 - (b) to prescribe different fees by reference to the nature or extent of the excavation or other works, the place where they are executed and such other factors as appear to the Secretary of State to be relevant.
- (4) The reference in subsection (3)(a) to the previous performance of an undertaker is to the performance of the undertaker, during such period as may be prescribed, as respects such description of his duties under this Part as may be prescribed.
- (5) The regulations may require disputes of any prescribed description to be determined by arbitration.
- (6) Nothing in this section applies to inspections in respect of which the undertaker is obliged to bear the cost, or pay the prescribed fee, under section 72(2) (inspections consequent on failure to comply with duties as to reinstatement).”

59 Guidance about inspections

After section 73E of the 1991 Act (as inserted by section 56 above) there is inserted—

“Inspections

73F Guidance about street authority inspections

- (1) The Secretary of State may issue or approve guidance to street authorities about any matter relating to the exercise by them of any power to carry out inspections of street works.
- (2) In exercising their powers to carry out such inspections a street authority shall have regard to any guidance issued or approved under this section.
- (3) In this section any reference to inspections includes the carrying out of investigatory works.”