

NEW ROADS AND STREET WORKS ACT 1991 PART IV SECTION 109

SECTION 109 CONDITIONS OF PERMISSION TO EXECUTE ROAD WORKS

FOR THE PURPOSE OF

**PLACING, MAINTAINING, ADJUSTING, OR REMOVING APPARATUS IN, OR UNDER, A ROAD
(INCLUDING EXCAVATING IN OR BORING UNDER THE ROAD)**

STANDARD CONDITIONS

- 1 Submission of an application is taken as acceptance of the terms of the declaration as contained in the application form and notes for guidance.
- 2 The applicant shall indemnify the Roads Authority from and against all actions, claims, demands, costs, charges, damages, losses and expenses of whatever kind or nature which may be brought or made against them or incurred by them in respect of the negligence, omission or default of the holder of the consent or those for whom the holder is responsible arising in respect of any operation authorised by his/her consent unless due to the negligence or other breach of legal duty on the part of the Roads Authority or of any person for whom the Roads Authority is responsible.
- 3 Consent can be withdrawn by the Roads Authority where deemed appropriate.
- 4 Permission to execute road works will remain valid for a period of 3 months from the date of approval (and during the duration of the road works if commenced within this 3 month period) unless withdrawn by the Roads Authority where deemed appropriate. Further application must be made if the road works do not commence within the 3 month period. (It may not be necessary to pay an additional basic inspection fee where the Roads Authority has not refunded the initial payment).
- 5 Work shall not commence until the commencement date agreed with the Roads Authority and not before the applicant has advised the Roads Authority of his/her intention to commence. Any proposed alterations to the commencement date must be agreed with the Roads Authority.
- 6 Permission under Section 109 of the Act does not extend to other ancillary activities such as depositing a skip or erecting a scaffold etc. Further advice and permissions must be sought from the Roads Authority.
- 7 Permission under Section 109 of the Act does not exempt the applicant from obtaining any other permissions which may be required eg planning permission, permission to connect to sewerage, drainage/water supplies etc.
- 8 It is essential that, well in advance of making any application, you discuss with the Roads Authority any requirement for a temporary Notice/Order to close or restrict traffic in a road (at least 6 weeks for a closure **Order** before commencement of the works). Separate formal application will be required.
- 9 It is essential that, well in advance of making any application, you discuss with the Roads Authority any temporary restriction to traffic by means of portable traffic

signals. Separate formal application may be required.

10 Works shall be carried out in accordance with the New Roads and Street Works Act 1991, related regulations, and the following (where applicable) including amendments.

- Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters.
- Measures necessary where apparatus is affected by major works (Diversions) - a Code of Practice.
- Specification for the Reinstatement of Openings in Highways - a Code of Practice.
- Code of Practice for Inspections.
- Safety at Street Works and Road Works - a Code of Practice.
- Any other Act, Regulation or Code of Practice which is introduced by reference in any of the above. (Where applicable).

These documents are available from The Stationary Office, 71 Lothian Road, Edinburgh, EH3 9AZ. Tel 0131 622 7050.

Under the terms of Section 7.4.4 of the "Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters", the Roads Authority should ensure the applicant is made aware of his/her obligations under the New Roads and Street Works Act 1991. For this reason, the applicants attention is especially drawn to the following requirements which form part of these conditions and which are embodied in the Act, Regulations or Codes of Practice. (Note - this is not an exhaustive list of the applicants obligations under the Act but only those which the above Code of Practice suggests should be drawn to the attention of the applicant).

10(a) **Safety, Signing, Lighting and Guarding**

Under the terms of Section 124 of NRSWA 1991, the applicant must ensure that all excavations or obstructions in the road are adequately guarded and lit and that such traffic signs are placed, maintained, and where necessary operated, as are reasonably required for the guidance or direction of road users in accordance with Section 120 of the Roads (Scotland) Act 1984 (duty to have regard to the needs of people with a disability). Failure to comply with Section 124 of the NRSWA 1991 is an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

If the applicant fails to comply with these requirements, the Roads Authority may take any steps as necessary and recover reasonable costs from the applicant.

Legal requirements in relation to Safety, Signing, Lighting and Guarding are contained in "Safety at Street Works and Road Works - a Code of Practice".

10(b) **Qualifications of Operatives and Supervisors**

Under the terms of Section 126 of NRSWA 1991, the applicant must ensure, except as otherwise prescribed, that road works involving excavation in, or boring under, a road are supervised by a person having a prescribed qualification as a supervisor, and that there is on site at all times, when the works are in progress, at least one person having a prescribed qualification as a trained operative.

10(c) **Delays and Obstructions**

Under the terms of Section 125 of NRSWA 1991, the applicant must ensure that all road works involving excavation in, or boring under, a road are completed with all such dispatch as is reasonably practicable. Failure to do so is an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Where the applicant creates an obstruction in a road to a greater extent or for a longer period than is reasonably necessary, the Roads Authority may by notice require him/her to mitigate or remove the obstruction. If the applicant fails to comply with such a notice within 24 hours of receiving it, or such longer period as the Roads Authority may specify, the Roads Authority may take reasonable steps to mitigate or remove the obstruction and recover the costs from the applicant.

10(d) **Undertaker's Apparatus which might be affected**

Under the terms of Section 128 of NRSWA 1991, the applicant must take all reasonably practicable steps to give any undertaker, who may have apparatus in the road likely to be affected by the road works, reasonable facility for monitoring the execution of the works and the applicant must comply with any requirement made by the undertaker which is necessary for protecting or securing the apparatus. Failure to comply is an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Applicants must, therefore, take all reasonable steps to establish if apparatus will be affected by the road works and where such apparatus is likely to be positioned in the road. Further advice regarding this is contained in the letter of acknowledgement of receipt of application.

10(e) **Reinstatement**

Under the terms of Section 129 of NRSWA 1991, the applicant must begin the reinstatement with all dispatch. Before the end of the next working day after the day on which the reinstatement is completed (whether interim or permanent) the applicant must inform the Roads Authority. Any interim reinstatement must be made permanent as soon as reasonably practicable and in any event within 6 months from the date on which it was completed. Failure to comply with Section 129 is an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Under the terms of Section 130 of NRSWA 1991, the applicant must comply with the specification of materials to be used and the standards of workmanship to be observed. The applicant will be responsible for maintaining the reinstatement, whether interim or permanent. The guarantee period for the permanent

reinstatement will normally be 2 years for openings less than 1.5m deep and normally 3 years for openings greater than 1.5m deep. Failure to comply with Section 130 is an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Under the terms of Section 131 of NRSWA 1991, the Roads Authority may carry out such Investigatory works as appear to be necessary to ascertain whether an applicant has complied with his/her duties under Part IV of the NRSWA 1991. If such a failure is disclosed, the applicant shall bear the cost of the Investigatory works, if no failure is disclosed the Roads Authority shall bear the cost of the investigatory works. Where the applicant has failed to comply with his/her duties in relation to reinstatement, he/she shall bear the cost of

- a) a joint inspection to determine the nature of the failure and what remedial work is required
- b) an inspection by the Roads Authority of the remedial work in progress
- c) an inspection by the Roads Authority when remedial works have been completed

Where the applicant has failed to comply with his/her duties under the Act, the Roads Authority may serve Notice requiring remedial works to be undertaken within such a reasonable period as may be specified in the Notice. If the applicant fails to comply with the Notice, the Roads Authority may carry out the necessary work and recover costs from the applicant. If it appears to the Roads Authority that the reinstatement is causing a danger to road users and the applicant, agent nor contractor can be contacted or fails to offset the danger immediately, then the Authority may carry out works without notice to the applicant and may recover costs from the applicant.

10(f) **Records of Apparatus**

Under the terms of Section 5.10.9 of the "Code of Practice for the Co-ordination of Works in Roads", the Roads Authority is responsible for holding records of apparatus laid which is not subsequently adopted by a Statutory Undertaker eg gas, water, electricity etc. Where such apparatus is subsequently adopted by a Statutory Undertaker, then that Undertaker will be responsible for holding records of the apparatus from the date of adoption. The applicant must provide the Roads Authority with a copy of "as built" drawings of the apparatus as laid showing detailed information of its depth, location, purpose etc. This information is required within 2 weeks of reinstatement.

10(g) **The Needs of Disabled People**

The applicant must bear in mind the special needs of disabled people when undertaking the works in relation to safe passage/access. Special precautions are required to cater for people with impaired vision or mobility. Legal requirements can be found in "Safety at Street Works and Road Works - a Code of Practice" and in Chapter 8 of the Traffic Signs Manual.

10(h) **Laying of Apparatus**

Whenever possible, apparatus should be laid in accordance with NJUG publication No 7 (obtainable from the National Joint Utilities Group, 30 Millbank, London SW1P 4RD).

- 11 Work shall be in conformity with the plan(s) submitted with the application and as subsequently agreed with the Roads Authority.
- 12 No existing culverts, pipes, drains, ducts, cables, roadside ditches, road gullies, manholes, catchpits or other chambers or other property shall be altered without the consent of the proprietor or authority concerned.
- 13 In no case shall surface boxes, chambers or other fittings be placed within the road pavement layers, footway construction layers or roadside verge without the consent of the Roads Authority.

