

EAST AYRSHIRE COUNCIL AND SOUTH AYRSHIRE COUNCIL

**NEW ROADS AND STREET WORKS ACT 1991 (“the Act”)
PART IV SECTION 109**

STANDARD CONDITIONS OF PERMISSION TO EXECUTE 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 The applicant must have signed and accepted the terms of the declaration contained within the application form and accepts the terms of the declaration and notes for guidance.
- 2 The applicant shall indemnify the East Ayrshire Council or the South Ayrshire Council (hereunder called “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- 3 Consent can be withdrawn by the Roads Authority.
- 4 Permission to execute works will remain valid for a period of up to 10 working days* from the intended commencement date for the works, unless withdrawn by the Roads Authority where deemed appropriate. Further application must be made if the works do not commence within the 10 day period. (It may not be necessary to pay an additional basic inspection fee where the Roads Authority has not refunded the initial payment) * A working day is defined as a day other than a Saturday, Sunday, Christmas Day, Boxing Day, New Year’s Day or 2nd of January.
- 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. The Roads Authority must be advised of any alterations to the commencement date at least 10 days,(excluding public holidays and weekends) before the revised start date.
- 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 e.g. planning permission, permission to connect to sewerage, drainage/water supplies etc.
- 8 It is essential that as part of 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 **Road Closure Order** before commencement of the works). A separate formal application will be required and a fee is payable.

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The application form for a Road Closure / Temporary Traffic Restriction Order, together with fee information can be found on the Ayrshire Roads Alliance website at <https://www.ayrshireroadsalliance.org/Permits/Temporary-traffic-regulation-orders.aspx>

- 9 It is essential that as part of the application, you discuss with the Roads Authority any temporary restrictions to traffic by means of portable traffic signals. Separate formal application is required from the Roads Authority and a fee is payable.

The application form for a portable traffic signal permit together with fee information can be found on the Ayrshire Roads Alliance website at <https://www.ayrshireroadsalliance.org/Permits/Temporary-traffic-signal-permit.aspx>

- 10 Works shall be carried out in accordance with the New Roads and Street Works Act 1991, Transport (Scotland) Act 2005, related regulations, and the following (where applicable) including amendments.

- Code of Practice for the Co-ordination of Works in Roads.
- Measures necessary where apparatus is affected by major works (Diversionary Works) - a Code of Practice.
- Specification for the Reinstatement of Openings in Roads - 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 to download from Legislation and Guidance Section of the Office of the Scottish Roadworks Commissioner’s website (<https://www.roadwork.scot>).

Under the terms of the "Code of Practice for the Co-ordination of Works in Roads", 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 applicant’s 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 applicant’s 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 (£1,000) on the standard scale.

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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 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 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 them 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.

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10(e) Reinstatement

Under the terms of Section 129(4) 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 on the form provided within one day of making the reinstatement. 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 (£ 1,000) 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 (£ 1,000) 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 their 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 their duties in relation to reinstatement, they 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

When a carriageway or footway is disturbed unless the Roads Authority is notified in writing of any paving defects, including any kerb defects, before the excavation is carried out, it will be assumed that the same is in good order and the holder of the consent shall be held responsible for any defects found after the restoration of the opening.

Where the applicant has failed to comply with their 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, or contractor cannot 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.

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10(f) **Records of Apparatus**

Under the terms 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 e.g. gas, water, electricity etc. Where such apparatus is subsequently adopted by a Statutory Undertaker, then that Statutory Undertaker will be responsible for holding records of the apparatus from the date of adoption.

The applicant must provide the Roads Authority with 2 copies of “as built” drawings of the apparatus as laid showing detailed information of its depth, location, purpose etc. This information should be provided in an electronic Geographical Information System (GIS) format and is required within 2 weeks of reinstatement.

10(g) **The Needs of People with Disabilities**

The applicant must bear in mind the special needs of people with disabilities 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".

10(h) **Laying of Apparatus**

Whenever possible, apparatus should be laid in accordance with Street Works UK guidance available from their website - <http://www.streetworks.org.uk>.

- 11 Work shall be in accordance with all documents submitted with the application and as subsequently agreed with the Roads Authority.
- 12 No existing apparatus e.g. culverts, pipes, drains, ducts, cables, roadside ditches, road gullies, manholes, catch pits 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 or footpath construction layers or roadside verge without the consent of the Roads Authority.
- 14 It is the responsibility of the applicant to obtain details of Statutory Undertakers’ plant which may be affected by their planned road works. This information can be obtained by contacting the Dial before you Dig Service on 08000 231 251 at least **3 working days** before intend works start date.