

— THE OFFICE OF —
THE SCOTTISH
ROAD WORKS
COMMISSIONER

COMMISSIONER ADVICE PAPER No.5

The Completion of Works within
Reasonable Periods and the Use of
Notices under Section 125(3) of the
New Roads and Street Works Act 1991

Version History

<i>Version</i>	Date	Notes
1.00	July 2010	
1.1	October 2010	Addition of paragraph 9 which brings the advice into line with the Code of Practice for Co-ordination.

New Text in version 1.1 Shown thus – Mary had a little lamb.

THE COMPLETION OF WORKS WITHIN REASONABLE PERIODS
AND THE USE OF NOTICES UNDER SECTION 125 OF
THE NEW ROADS AND STREET WORKS ACT 1991

1. One of the issues which gives the greatest cause for complaint from the public is when an excavation is undertaken to open a road and then work ceases for a significant period.
2. Section 125 of the Act states:

"125. Avoidance of unnecessary delay or obstruction.

(1) An undertaker executing road works which involve-

*(a) breaking up or opening the road, or any sewer, drain or tunnel under it,
or*

(b) tunnelling or boring under the road,

shall carry on and complete the works with all such dispatch as is reasonably practicable.

(2) An undertaker who fails to do so commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where an undertaker executing any road works creates an obstruction in a road to a greater extent or for a longer period than is reasonably necessary, the road works authority may by notice require him to take such reasonable steps as are specified in the notice to mitigate or discontinue the obstruction.

(4) If the undertaker fails to comply with such a notice within 24 hours of receiving it, or such longer period as the authority may specify, the authority may take the necessary steps and recover from him the costs reasonably incurred by them in doing so."

3. The purpose of this paper is to remind:
 - road works authorities that there is a facility within the Scottish Road Works Register to issue section 125(3) notices in appropriate circumstances; and
 - anyone undertaking works in roads of the need to complete their works within reasonable periods.
4. Given that an undertaker which fails to complete road works with such dispatch as is reasonably practicable commits an offence, the Commissioner would expect undertakers to ensure that before commencing road works, that they

have the necessary resources in place to allow them carry on and complete the works with all such dispatch as is reasonably practicable.

5. Where an undertaker has commenced road works and then discovers that it cannot carry on and complete the works with all such dispatch as is reasonably practicable, it should backfill and reinstate the excavation and return when it is in a position to carry on and complete the works. This is particularly important on traffic sensitive roads where the impacts on road users could be significant.
6. It should be noted that the advice at 4 and 5 above is equally applicable to roads works authorities.
7. Interrogation of Indicators 13 and 17E would suggest that the power to issue section 125(3) notice is not often used by road works authorities. In the last 12 month in Scotland 265 section 125(3) notices were issued by road works authorities. Of these, 177 (67%) were issued by a single council. The remainder were issued by 14 other councils only 4 of which were in double figures.
8. Discussions with road works authorities would suggest that many do not issue section 125 notices because they do not believe that there is a suitable sanction against undertakers which offend. Although the Act does contain sanctions, the perception is that Procurators Fiscal are generally unwilling to pursue offences under Section 125(2). Also road works authorities appear reluctant to use their powers under Section 125(4) to "...take the necessary steps.." because of the administrative burden of taking such action and then recovering their costs.
9. Where an undertaker is co-operating with the road works authority in their co-ordination duties, progress of road works should be discussed and agreed in such a way that unavoidable obstructions and delays are accommodated without the need for notices under section 125 of the 1991 Act. Notices should therefore only be issued in circumstances where co-operation is not forthcoming and excessive obstructions or delays occur without adequate explanation by the undertaker.
10. The Commissioner will keep under review the number of section 125(3) notices issued to individual undertakers. Undertakers consistently receiving high numbers of section 125(3) notices could be considered to be failing in their duty to co-operate under section 119 of the Act.

John Gooday

Scottish Road Works Commissioner
October 2010