



Midlothian

**NEW ROADS AND STREET WORKS ACT 1991 PART IV SECTION 109**

**APPLICATION FOR 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)**

**NOTES FOR GUIDANCE TO APPLICANTS**

(Paragraph numbers relate to the application form)

**1 NAME AND ADDRESS OF APPLICANTS**

The applicant must either be the owner of the property/premises to which the apparatus relates, or the owners representative. (If the owner is also the Agent or Contractor for the proposed works, then they must still complete Sections A or B of the application form)

**2 PURPOSE OF PROPOSED WORKS**

Please state the purpose of the proposed works eg lay sewer service connection, lay irrigation pipe etc.

**3 LOCATION OF PROPOSED WORKS**

Please be as precise as possible giving road name and route number (if known) including town or village name and adjacent house names or numbers. In the case of new roads give as much information as possible about adjacent or nearby roads. Please also state whether excavations will affect the verge, service strip, footway, carriageway or a combination of these.

Please note that if the road in which the works are proposed to be carried out is not a public road, (ie not the responsibility of Midlothian Council for maintenance purposes) then permission will be required from the road manager or the persons responsible for that road.

**4 COMMENCEMENT DATE AND DURATION**

Under the terms of the New Roads and Street Works Act 1991 Part IV Section 109, the Roads Authority has a duty to give not less than 10 working days notice to any other Authority or person who may be responsible for a structure in the road, or have plant or equipment in or under the road, that could be affected by your proposed works. In consideration of this, the time required to process your application, and since you will be required to liaise with undertakers before commencing work, please apply **at least** 15 working days (excluding Public Holidays) prior to the intended commencement date for the works. However you must be aware of the implications of **standard conditions** 4, 6, 7, 8 & 9 on the proposed commencement date where these conditions apply. See overleaf.

Certain roads are classified as Traffic Sensitive, or having Special Engineering Difficulties, under the terms of the Act. If your proposed works are on one of these roads it will be necessary to extend the minimum time between receipt of your application and the intended commencement date. It may also be necessary to agree alternative construction methods or specifications with you. You will be advised if these circumstances will apply and you must bear this in mind when planning your

works. It is essential that, well in advance of making an application, you make yourself aware of all these details and other details relating to traffic management, etc. It is therefore essential to discuss all aspects of the proposed works by contacting the Roads Authority.

## **5 DETAILS OF PROPOSED WORKS**

Since the Roads Authority has a duty to record the location of any apparatus laid in or under the road pursuant to Section 109, you must provide plans to support the application preferably in an electronic format (CAD / GIS) otherwise 3 hard copies of such plans to a scale, (ideally 1/500). These will be retained by the Roads Authority and one copy may be returned to show the location of the Roads Authority apparatus if applicable. They must show accurately where the apparatus will be laid in relation to the existing road layout and road features eg street lighting columns, pelican crossings etc.

## **6 DECLARATION**

### **BASIC INSPECTION FEE**

Under the terms of Section 107 and 134 of the Act, the Roads Authority has a right to charge for inspections of the works, which have been given permission under Section 109. Inspections can be done at defined stages of the works as follows:

CATEGORY A	Inspection undertaken during progress of the works
CATEGORY B	Inspections undertaken within 6 months following interim or permanent reinstatement
CATEGORY C	Inspections undertaken within 3 months preceding the end of guarantee period (24 months or 36 months for excavations deeper than 1.5 m)

The basic inspection fee covers all 3 categories. The fee, or any part thereof, is non refundable once works have commenced where permission has been granted. Should the works not commence for any good reason where permission has been granted or if permission is refused, then the inspection fee will be refunded in full.

### **ADDITIONAL INSPECTION FEES AND COSTS**

Please note that under Section 131 of the Act, the Roads Authority may undertake Investigatory works as appears to them to be necessary to ascertain whether or not the works comply with the appropriate requirements of the Act and its various Codes of Practice and Specifications. Should these investigations reveal that the works do not comply, then the Roads Authority may charge for these works and for additional inspections at the following stages:

- a) at a joint inspection to determine the nature of the failure and agree remedial works
- b) at an inspection of the remedial works in progress
- c) at an inspection when the remedial works are complete

These additional inspections are currently charged at £36 per inspection and where appropriate, the applicant will be invoiced for any such additional fee(s). The cost of any Investigatory works will be the Roads Authorities reasonable costs to undertake such things as coring or trial-holes etc. These reasonable costs will be invoiced to the applicant and will include general staff costs and overheads.

Also under the terms of Section 131 of the Act, should agreed remedial works not be undertaken within a reasonable timescale as defined by the Roads Authority, and indicated on a "Notice of Failure", then the Roads Authority may carry out the necessary works and recover the costs reasonably incurred in doing so from the applicant. Similarly, the reasonable costs incurred by the Roads Authority in attending to dangers associated with the works may be recovered from the

applicant. In exceptional circumstances, this can be done without giving notice of intent to the applicant, agent or contractor and could extend to instructing the contractor to leave the site.

#### ADVICE ON CONDITIONS RELATING TO ANY PERMISSION THAT MAY BE GRANTED

If the application is approved and permission granted, such permission will be subject to various conditions set by the Roads Authority. The conditions will be standard, but may include specific requirements in relation to the particular Road Works Permission being sought. Should the applicant wish to read or discuss the standard conditions before making a formal application, then please telephone.

**Please note the following conditions, extracted from the list of standard conditions, which the applicant should be particularly aware of before making application.**

##### **Condition No 4**

Permission to execute works will remain valid for a period of 7 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 7 day period. (It may not be necessary to pay an additional basic inspection fee where the Roads Authority has not refunded the initial payment)

##### **Condition No 6**

Permission under Section 109 of the Act does not extend to other ancillary activities such as depositing a skip, occupying the road with building materials, erecting a scaffold, erecting temporary traffic lights or Stop/Go boards, forming a footway crossing, etc. Further advice and permissions must be sought from the Roads Authority.

##### **Condition No 7**

Permission under Section 109 of the Act does not exempt the applicant from obtaining any other permission which may be required eg Planning Permission, permission to connect to sewerage drainage/water systems, etc.

##### **Condition No 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.

##### **Condition No 9**

It is essential that, well in advance of making any application, you discuss with the Roads Authority any requirement for temporary restriction to traffic by means of portable traffic signals. Separate formal application may be required.

##### **Condition No 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 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", and Chapter 8 of the Traffic Signs Manual.

**Condition 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.