OFFICE OF THE
SCOTTISH ROAD WORKS COMMISSIONER

Authorised Persons- Code of Conduct

Introduction

The Scottish Road Works Commissioner (the Commissioner) is an independent public official established under Section 16 of the Transport (Scotland) Act 2005, whose duty it is to "oversee improvements to the planning, co-ordination and quality of road works in Scotland".

The public has a high expectation of those employed by public bodies and the way in which they should conduct themselves. All staff undertaking duties on behalf of the Commissioner must meet those expectations by ensuring that their conduct is above reproach.

In order to meet this expectation, at all times, authorised persons will act in accordance with The Seven Principles of Public Life (also known as the Nolan Principles). These are: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. Further details can be found at:

The Seven Principles of Public Life - GOV.UK (www.gov.uk)

Legislative context

The Transport (Scotland) Act 2005, as amended by Section 110 of the Transport (Scotland) Act (2019) grants powers to "authorised persons" to carry out various inspection functions on:

- Undertakers;
- Road Works Authorities; and
- Roads Authorities

The powers granted by Section 18A (1) of T(S)A 2005 to "authorised persons" allow them to:

- enter premises and work sites
- require that information is provided (specifying the format)
- take copies or possession of information
- examine/test equipment

Section 18A (2) prescribes that inspection functions can only be used in specific circumstances. These are to establish whether:

- an offence has been committed under the New Roads and Street Works Act (NRSWA) 1991;
- a duty under section 118 or 119 of NRSWA has been breached; or
- a duty under section 60(3A) or 61B of the Roads (Scotland) 1984 Act has been breached.

Section 18A (2) also requires that reasonably necessary “facilities and assistance” be provided to the authorised person.

Section 18D makes it an offence to obstruct, or not comply, with an “authorised person”.

Applicability

These powers can only be exercised by those designated as “authorised persons”. A register of “authorised persons” will be maintained by the Scottish Ministers. It is anticipated that, in most cases, the Commissioner’s Compliance Officers will most frequently utilise the powers available. However, other members of staff may also be designated as “authorised persons”. The terms of this code of conduct will apply equally to all designated as such.

Training/Qualifications

All Compliance Officers will complete the SWQR Supervisors qualification. It will not be necessary to hold the qualification at recruitment, however it is expected that this will be achieved within a reasonable period thereafter. Absence of the qualification will not prevent Compliance Officers from carrying out any of the activities outlined in this Code, or exercising any other statutory powers.

Scope of powers

It is important to note that “authorised persons” are not the same as roads authority inspectors, nor a replacement for such inspectors. They do not have powers, nor duties, to stop work, make a site safe or even report malpractice.

They will, however, exercise their powers to collect information and evidence (which may include entering premises and sites). This evidence will then be used to ascertain if an offence has been committed or a duty has been breached. Compliance Officers, other “authorised persons” and the Commissioner are protected under Section 18E from civil or criminal liability when exercising powers.

Entering premises

Notification

Unless it is required to enter premises at short notice as a result of a specific immediate concern, the organisation’s primary and senior contacts will be notified in advance by email. Should access be withheld, or considered likely to be withheld, authorised persons may utilise warrant powers to gain access.

Preparation for visit

Prior to entering premises, information may be obtained from the SRWR. Additional information may be requested from the organisation as appropriate.

Authorised Persons will generally bring the following equipment with them:

- Writing equipment
- Laptop
- SRWC/authorised person identification
- Mobile phone (with camera)
- Relevant basic PPE

They may, however, require to exercise their powers that reasonably necessary facilities and assistance be provided. This may include (but is not limited to) provision of specialist PPE, or access to scanning or photocopying equipment, as well as access to computer systems/electronic records etc. They will also have powers to request and remove original documents.

In the event of a scheduled visit, organisations should give thought to the type of facilities and assistance that might be requested and ensure that these are made available.

Reference should be made to the Commissioner's Lone Working Policy. Where risk is evaluated to be unacceptably high, a lone visit should not take place.

Attendance at premises

The authorised person(s) will present themselves at the main entrance of the building in question, unless it has been agreed otherwise to use an alternative entrance. They will display identification that identifies them as an employee of the Scottish Road Works Commissioner and as an authorised person. An appropriate member of staff should meet them within short order of them arriving.

During the visit, comprehensive notes will be taken. The authorised person may request that information is provided. It is an offence to obstruct, or not comply, with an authorised person. As such all efforts should be made to ensure that the information requested is provided. Organisations should provide the information in the most useful form possible for the purposes required. The authorised person may also stipulate the format in which the information is to be provided. It should also be noted that this information can be removed from the premises in question.

Examples of good practice may be recorded as well as deficiencies. Any deficiencies will be noted together with, where appropriate, recommendations or suggestions, depending on severity. Whenever possible, deficiencies will be communicated as they are identified, in order to avoid surprises and to afford the organisation the opportunity to respond at the time.

Conduct

The person carrying out the visit is representing the SRWC. At all times, conduct will be professional and appropriate. Such visits may be a stressful experience for staff of organisations, especially for junior staff, so efforts to put people at their ease are normally appreciated and often yield better results.

Conclusion of visit

The authorised person(s) will, where appropriate, summarise the results of the visit and agree interim findings with organisation staff. The authorised person(s) will take with them any copies of information they required, and where original documents/photographs etc are required, a receipt will be provided to the organisation. These originals will be returned once no longer required for the investigation. They will agree next steps and thank all staff for their co-operation before leaving.

Post visit

Following completion of the visit, all information collected will be assessed and a report written up in full as soon as possible.

There are a number of likely outcomes, which are summarised below:

- No significant issues identified and no action required.
- Some issues identified, with action required. In this case a formal response is required within 7 days, identifying proposed remedial actions (including timescales). The organisation's response will then be considered to determine whether it is acceptable. In some circumstances it may be appropriate to re-visit in order to verify that remedial actions have been completed.
- Major issues identified requiring significant intervention. These are likely to result in a Compliance Notice being issued. Please see following section relating to this.

The Commissioner will send a draft copy of the report to the primary and senior contacts for any comments on factual accuracy. Once the organisation has commented, any valid changes will be made prior to providing the primary and senior contacts with the final version of the report. The report will then be filed on the Commissioner's ERDM system.

Road works sites- monitoring and entering

Notification

No advance notification will generally be given of an intention to monitor or enter a road works site. An exception to this is where the Commissioner identifies that there are specific technical or safety constraints associated with monitoring or entering a site that would necessitate support from the organisation in question. In such cases, the organisation's primary and/or senior contacts will be notified as far in advance as practically possible by phone or email.

Preparation for visit

Authorised Persons will generally bring the following equipment with them:

- SRWC/authorised person identification
- Mobile phone (with camera)
- Dashcam
- Relevant basic PPE

Monitoring from vehicles

In order to maximise output from limited resource and minimise risk to staff, the Commissioner may undertake monitoring of road works sites from moving vehicles. This will be achieved by use of a dashcam, which will collect footage of sites. This activity will generally be undertaken by a Compliance Officer, working alone.

In most cases, staff will drive a pre-determined route, although will have agency to divert from it where they observe sites of interest that they consider are worthy of further investigation. Routes are generally developed on the basis that there are known road works on them, although there may be instances where it is desirable to visit an area where the number, or extent of works is not known. An example of this may be where an organisation is suspected of not correctly registering all of their works.

Footage will be analysed retrospectively to identify sites of interest. Compliance Officers do this as soon as practically possible (working to a target of 2 working days) following collection. Both positive and negative observations are then made and recorded.

The remaining footage will generally not be retained beyond the 30 day period noted in the Data Protection Risk Assessment for this activity unless specifically required. Any footage or still photos retained are anonymised, in line with the Data Protection Impact Assessment. Site details will be cross-checked with the SRWR to confirm compliance with the Coordination Code of Practice and an assessment made of compliance with Safety at Street Works and Road Works: A Code of Practice. This information will be recorded and used to identify trends and patterns.

Where necessary, anonymised footage will be shared with the organisation responsible. Where major or systematic failings are identified, these are likely to result in a Compliance Notice being issued. Please see Compliance Notice section for further information.

Entering road works

The authorised person(s) will identify themselves to site staff and request to speak to the person responsible for the site. They will display identification that identifies them as an employee of the Scottish Road Works Commissioner and as an authorised person.

They may require that reasonably necessary facilities and assistance are provided. This may include (but is not limited to) provision of specialist PPE, or explanation or demonstration of specialist equipment.

During the visit, photographs and notes will be taken. The authorised person may request that information, such as SWQR cards, or job packs are provided. It is an offence to obstruct, or not comply, with an authorised person. As such all efforts should be made to ensure that the information requested is provided.

Examples of good practice may be recorded as well as deficiencies.

Where deficiencies are of a suitably serious nature, i.e. where a risk to life and limb exists, the Authorised Person will contact the Commissioner’s Office as soon as safely possible to report their findings. The person receiving the call will contact the organisation responsible

for the works and provide details of the deficiencies observed. A script summarising likely Authorised Persons interactions is provided in Appendix A.

Conduct

The person carrying out the visit is representing the Commissioner. At all times, conduct will be professional and appropriate.

Conclusion of visit

The authorised person(s) will, where appropriate, summarise the results of the visit and notify site staff of immediate conclusions/concerns. They will thank site staff for their co-operation before leaving.

Post visit

Information gathered will be analysed and used in a similar way as that collected from drive-by site observations.

Compliance Notices and Commissioner Observations

Introduction

The New Roads and Street Works Act 1991 (as amended by Section 111 of the Transport (Scotland) Act 2019 makes provision for the Commissioner to issue Compliance Notices where specific duties under NRSWA and Roads (Scotland) Act 1984 have been breached (see table below).

No.	Legislation	Theme	Applies to	Short Description
1	RSA S60(1)&(3A)	Signing, Lighting and Guarding	Roads Authorities	RA duty to guard own sites
2	RSA S61B	Signing, Lighting and Guarding	Roads Authorities	Duty on roads authority to have qualified operatives and supervisors
3	NRSWA S112B	Noticing & Gazetteer	Roads Authorities	Roads Authority Noticing, Roads Authority gazetteer
4	NRSWA S113(1) and (4)	Noticing	Utilities	Utility Advance Noticing
5	NRSWA S114(1)	Noticing	Utilities	Utility Noticing
6	NRSWA S114A(2)	Noticing	Utilities	Utility start times
7	NRSWA S116(2)	Noticing	Utilities	Utility emergency works Noticing
8	NRSWA S118	Coordination	Roads Authorities	Duty to Coordinate

No.	Legislation	Theme	Applies to	Short Description
9	NRSWA S119	Cooperation	Utilities	Duty to Cooperate
10	NRSWA S124(1)(2)	Signing, Lighting and Guarding	Utilities	Duty to Guard own Sites
11	NRSWA S126(1)(2)(2C)	Signing, Lighting and Guarding	Utilities	Duty to have qualified operatives and supervisors
12	NRSWA S129(1,2,3,4,5)	Noticing, Reinstatement	Utilities	Duty to close the notice, Duty to reinstate ASAP, Duty to turn an interim perm in 6 months.
13	NRSWA S130 (1) (2)	Reinstatement	Utilities	Duty to meet the SROR
14	NRSWA S139 (1B) (2)	Apparatus	Roads Authorities and Utilities	Duty to update the register with details of wrong or missing plant, Duty to update your own records if notified of wrong or missing plant
15	NRSWA S140 (1)	Apparatus	Utilities	Duty to keep apparatus to the satisfaction of the RA regarding the structure and integrity of the road.

Commissioner observations

Where cases of non-compliance, that do not amount to a systematic failing, are observed, Commissioner Observations are recorded on the SRWR

Sites that can be considered high risk or have a very large number of failings will be evaluated by the Commissioning Group. The Group will review the dash camera footage and decide whether the failures are sufficient for the site or sites to qualify as a Site of Particular Concern (SoPC). Depending on the severity of the concerns, the organisation will either be placed on Enhanced Monitoring, or referred to the Commissioner for consideration of issuing a Compliance Notice or penalty.

In addition, Commissioner observations will be periodically reviewed to establish if these form an identifiable pattern. Where such is found, the likely course of action will be to raise a Compliance Notice. The thresholds at which this will take place will be decided on a case-by-case basis, but will take all factors into consideration.

What is considered to be sufficient evidence?

It is considered that Compliance Notices will be issued to address both:

1. Systematic failings, i.e. those where a pattern of non-compliance is identified. These are likely to arise as a result of a review of Commissioner observations;

2. One-off failings of a suitably serious nature.

In the case of the former, it would be expected that evidence of a significant number of non-compliances be provided. As with Commissioner observations, the evidence threshold will be decided on a case-by-case basis, but will take all factors into consideration.

In cases where a suitably egregious breach of duties is identified it may be appropriate to issue a Compliance Notice without consideration to other works/activities carried out by an organisation. Again, this will be determined on a case-by-case basis, but examples of where this course of action could be justified include:

- Safety breaches where an identifiable danger exists to life and limb;

- High profile non-compliances where media or political interest exists.

Format of a Notice

Compliance Notices themselves must contain specific information, by law. This includes;

- when the notice was issued;
- which duty has been breached;
- what you must do to either stop a current breach or prevent a future one,
- how you appeal the Notice;
- what the timeline is for action/response;
- how to respond; and
- They can also include additional information at the discretion of the Commissioner.

Issuing a Notice

Prior to issuing a Notice, the Commissioner will meet with the organisation in question to explain his concerns. This will also give the organisation in question an opportunity to make any representations they consider to be appropriate.

Compliance Notices will be issued directly through the SRWR, and also by email to the organisation's senior contact.

It is the responsibility of the receiving party to ensure that a Compliance Notice is escalated to the required level within the organisation. Similarly to FPNs, a member of staff directly using the register not making a senior member of staff aware of an incoming Compliance Notice does not negate the need to follow it, nor alter the timeline. It is the duty of each organisation to ensure staff are adequately trained on how to respond to a Compliance Notice.

Appealing against a Compliance Notice

Recipients of a Compliance Notice have 21 days to appeal to the Sheriff in the area concerned if they wish to contest the terms of the notice. The Sheriff may cancel the notice, or uphold it, either with or without modifications. In such cases, the Compliance Notice cannot take effect until the appeal is withdrawn or determined by the sheriff.

Variation of a Compliance Notice

Compliance Notices may be varied so as to extend the compliance period.

This must take place, by issuing a notice in writing to the person that received the original notice, before expiry of the compliance period

Withdrawal of a Compliance Notice

Compliance Notices may be withdrawn at any time before the steps outlined in the notice are completed. This is done by issuing a notice in writing to the person that received the original notice.

In such cases, the notice is to be treated as if it had never been issued.

Assessment of responses to Compliance Notices

Where received, responses will initially be reviewed by the person who issued the notice. They will assess the response and make a recommendation to the Compliance Officer Commissioning Group whether it is acceptable or not. Each case will be considered on its merits and a joint recommendation made by the group to the Commissioner on whether or not the response indicates that the organisation is likely to achieve the desired compliance within the notified timescale.

Record keeping

As well as being issued through the SRWR, Compliance Notices, and other information pertaining to them, will be stored in the Commissioner's ERDM (Electronic Records Data Management) system.

Failure to comply with a Compliance Notice

Failure to comply with a compliance notice is an offence, which can be subject to various financial penalties, which are detailed as follows:

- Upon summary conviction, a fine of up to £50000
- Upon conviction, an unlimited fine
- A Fixed Penalty Notice (value to be determined pending review)

A recipient of a notice should comply with all of the steps set out in the notice. However, it is acknowledged that there may be alternative steps that can be taken to prevent further breaches from occurring. Where alternatives are identified by the recipient, these should be discussed and, if appropriate, agreed with the Commissioner. In such cases, agreement will then be indicated in writing. Where this approach is followed, no offence is committed.

Restrictions on issuing Compliance Notices

Where a 'live' Compliance Notice is in force, another notice should not be issued for the same type of breach or non-compliance.

Similarly, in cases where a breach is subject to criminal proceedings, a Compliance Notice should not be issued. However, where a Compliance Notice has been issued, this does not preclude other sanctions or observations from being made.

Monitoring compliance with a Compliance Notice

Shortly before the end of the compliance period, the Commissioner will meet with senior representatives of the organisation in question. Details of how compliance with the Compliance Notice will be measured will be agreed. In most cases, this will be measured by a programme of observations of the organisation's works. In the event that details of this cannot be agreed, the Commissioner will retain the right to decide the format.

Following completion of the compliance period, monitoring will take place. In order to allow the organisation to respond quickly to findings, Commissioner staff will feedback the results of this to an agreed contact by the end of the following working day.

Upon completion of monitoring, the Commissioner will consider the results of this, prior to convening a meeting with representatives of the organisation being monitored. Results will be discussed and, where appropriate, the Compliance Notice updated as having been complied with.

Appendix A

Road works – summary of likely interactions with site staff

Introduction- The authorised person(s) will identify themselves to site staff and request to speak to the person responsible for the site. They will display identification that identifies them as an employee of the Scottish Road Works Commissioner and as an authorised person.

Prescribed qualifications- the authorised person may request that Street Works Qualification Register (SWQR) cards be provided for checking.

Where deficiencies are identified, the authorised person may advise the person responsible for the site in order to allow them to take remedial action. This will not extend to giving detailed instruction on how to bring site into compliance.

Where Signing, Lighting and Guarding deficiencies are of a suitably serious nature, i.e. where a risk to life and limb exists, the Authorised Person will advise the person responsible for the site of their findings and inform them that these will be reported to their organisation as soon as possible.

The Authorised Person will thank site staff involved for their co-operation.

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