

— OFFICE OF THE —

SCOTTISH ROAD WORKS COMMISSIONER

Commissioner Advice Paper 9 – Roads (Scotland) Act Sections 60, 60A and 61B

Introduction

Changes introduced by the Transport (Scotland) Act 2019 set out certain requirements that roads authorities must comply with. One way to demonstrate compliance with the statutory requirements is to follow the practical guidance set out in the Safety at Street Works and Road Works: A Code of Practice (the Red Book). It also requires that operatives and supervisors hold Street Works Qualification Register (SWQR) cards. This paper will provide clarification on how roads authorities can meet these requirements.

Red Book Compliance

Legal context

Section 60(3A) of the Roads (Scotland) Act 1984 (as amended by Section 115(2) of the Transport (Scotland) Act 2019) provides that:

“Where the roads authority places or deposits anything on a road so as to cause an obstruction, or executes works in a road, they must comply with the requirements in paragraphs (a) to (d) of subsection (1)”

These requirements are, in brief, that the carrying on of works, obstructions and excavations have appropriate signing, lighting, protection and guarding, for the purposes of making them immediately visible to oncoming traffic, preventing danger to traffic, regulating traffic or warning of traffic danger

The Transport (Scotland) Act 2019 also inserted a new Section 60A(1) into the Roads (Scotland) Act 1984, which provides that:

“The Scottish Ministers may, for the purposes of section 60, and following consultation with such persons as they consider appropriate, issue or approve codes of practice giving practical guidance as to the matters mentioned in that section.”

Section 60A(2) provides that:

“If (and in so far as) a person complies with such a code of practice, the person is to be taken to comply with the requirements imposed on the person by section 60(1) or, as the case may be, (3A).”

Section 60A(3) provides that:

“A failure to comply with such a code of practice is evidence of a failure to comply with the requirements imposed on the person by section 60(1) or, as the case may be, (3A).”

When it was last published in 2013, the Scottish legal framework did not allow for a safety Code of Practice which was applicable to roads authorities. The introduction of this new S60A along with the introduction of clause 60(3A), which came into effect in January 2022, permits Scottish Ministers to issue or approve a Code of Practice which would be applicable to roads authorities in Scotland. The intention to also use Safety at Street Works and Road Works: A Code of Practice (the Red Book) for this purpose was confirmed as part of the Parliamentary process in 2018/2019. The new legislation requires that any new Code be published “As soon as reasonably practicable after it is issued or approved”. In this case, the DfT were formally advised of the change in legislation in 2022, and they have confirmed that page 8 of the Red Book will be amended to reflect this change as part of the 2024 review of the Red Book. As the document is published by UK Government, it has not been possible to update this part of the Red Book separately.

Sections 60A (1) and (2) can be taken to mean that compliance with the approved code of practice (the Red Book) shows that roads authorities have met their obligations under Section 60(1) or 60(3A). A failure to comply with the approved code of practice (the Red Book) shows that roads authorities have failed to meet their requirements under Section 60(1) or 60(3A).

What does this mean for me?

When carrying out works on roads, it is a legal requirement for Roads Authorities to comply with the provisions of the Red Book. It is also a requirement that other obstructions are signed and guarded in compliance with the Red Book.

The Red Book is not applicable to works on high speed (with a speed limit of 50 mph or more) dual carriageways or motorways. However, S60(3A) still applies and so roads authorities must still properly sign and guard their works on such roads. Guidance on this is contained within Chapter 8 of the Traffic Signs Manual.

It should be noted that “road” can include carriageways, footways, footpaths, cyclepaths, and verges – it includes any way (other than a waterway) over which there is a public right of passage. The definition of “works” includes, as regards any road, making an alteration; breaking up or opening it; construction or laying anything under it; building anything into it; or carrying out any other operations of a like nature. The Commissioner’s opinion is that works could include road activities such as installation of equipment (e.g. bins, cycle racks, air quality monitors, EV charging points etc), tree felling, vegetation clearance and any similar activity.

Failures under Section 60(3A) may lead to a Compliance Notice being issued (as per S153A New Roads and Street Works Act 1991).

Other persons carrying out works e.g. Section 56 permission holders and those placing obstructions such as skips and scaffolding etc. should carry these out to the relevant safety standard, in accordance with the requirements set out in S60(1) of the Roads (Scotland) Act 1984. A failure to comply with these requirements would constitute an offence under S60(3) of the Roads (Scotland) Act 1984.

Qualified supervisors and operatives

Legal context

Section 61B of the Roads (Scotland) Act 1984 (as inserted by Section 116 of the Transport (Scotland) Act 2019) provides that:

“(1)... any person (including a roads authority) executing—

(a) works (other than road works within the meaning of section 107(3) of the New Roads and Street Works Act 1991) in or on a road or works which otherwise involve a person placing or depositing anything on a road so as to cause an obstruction—

(i) to which the requirements of section 60(1)(b) or (c) apply, and

(ii) which involve the placing of lights, fences, barriers or signs on a carriageway,

(b) works in a road which involve—

(i) breaking up the road, or any sewer, drain or tunnel under it, or

(ii) tunnelling or boring under the road, and

(c) works to subsequently reinstate the road”

(2) The person executing the works must secure that—

(a) the execution of the works is supervised by an individual having a prescribed qualification as a supervisor, and

(b) there is on site at all times when any such works are in progress at least one individual having a prescribed qualification as a trained operative”

This can be taken to mean that roads authorities and any other person who carries out those works specified are required to ensure that at least one qualified operative is on site at all times whilst works are in progress and that works are supervised by a qualified supervisor. The only exception to this provision is that it does not apply to an undertaker executing road works, meaning someone who has a statutory right or permission under S109 of the New Roads and Street Works Act 1991 to execute the road works in question (as set out in S107 of the New Roads and Street Works Act 1991). NB. In the case of undertakers, S126 of the New Roads and Street Works Act 1991 prescribes qualification requirements for supervisors and operatives.

Section 61B(9) provides that:

“The Scottish Ministers may by regulations make provision for the purposes of this section, including provision—

(a) specifying circumstances in which the duties in subsection (2) do not apply to a person executing works in a road,

(b) specifying—

(i) circumstances in which more than one trained operative must be on site at all times when work is in progress, and

(ii) the number of trained operatives that must be on site in those circumstances,

(c) about the approval of bodies conferring qualifications (and the withdrawal of such approval),

(d) about the circumstances in which a qualification may be conferred,

(e) about the form of any evidence to be issued by an approved body to certify or otherwise show that a qualification has been conferred on an individual.”

This allows Scottish Ministers to make regulations which detail the requirements for trained operatives and supervisors. The applicable regulations which describe this are The Road Works (Reinstatement Quality Plans, Qualifications of Supervisors and Operatives and Miscellaneous Amendments) (Scotland) Regulations 2023.

Regulation 6 provides that:

“(1) For the purposes of section 61B(2)(a) of the Act, a person has a prescribed qualification as a supervisor for a type of work (S) listed in schedule 1 if that person is qualified in—

(a) S, and

(b) the following additional types of work—

(i) S1 – monitoring of signing, lighting and guarding, and

(ii) LA – location and avoidance of underground apparatus.

(2) For the purposes of section 61B(2)(b) of the Act, a person has a prescribed qualification as a trained operative for a type of work (T) listed in schedule 2 if that person is qualified in—

(a) T, and

(b) the following additional types of work—

(i) O1 – signing, lighting and guarding, and

(ii) LA – location and avoidance of underground apparatus.

(3) For the purposes of paragraphs (1) and (2), a person is qualified in a type of work if, in respect of that work—

(a) an approved body has issued a certificate of competence showing that the person has been assessed by an approved assessment centre as having the required level of competence, or

(b) a competent authority has issued a certificate of recognition stating that the person meets the requirements of regulation 29(1) (conditions for recognition) of the 2015 Regulations,

and the certificate is registered in the approved register.”

This is taken to mean that, in order to hold the required prescribed qualification for a supervisor, you require:

- S1 – monitoring of signing, lighting and guarding;
- LA – location and avoidance of underground apparatus; and
- Any of the modules S2-S7 contained in Schedule 1 that pertain to the works being supervised.

Also, in order to hold the required prescribed qualification for an operative, you require:

- O1 –signing, lighting and guarding;
- LA – location and avoidance of underground apparatus; and
- Any of the modules O2-O7 contained in Schedule 1 that pertain to the works being undertaken.

In both cases, the absolute minimum would therefore be three modules.

Regulation 8(1) of The Road Works (Qualifications of Operatives and Supervisors) (Scotland) Regulations 2017, as amended by Regulation 5 of The Road Works (Scottish Road Works Register Fees and Miscellaneous Amendment) Regulations 2024, provides that:

“The bodies approved for the purpose of issuing certificates of competence are—

- (a) The Scottish Qualifications Authority,*
- (b) The City and Guilds of London Institute,*
- (c) The CABWI Awarding Body,*
- (d) Lantra,*
- (e) Highfield Qualifications, and*
- (f) EUIAS”*

What does this mean for me?

When carrying out works on roads (except where set out above), it is a legal requirement for Roads Authorities to have at least one qualified operative on site at all times whilst works are in progress and that works are supervised by a qualified supervisor. These requirements also apply to other persons carrying out works e.g. Section 56 permission holders and those placing other obstructions.

The prescribed qualification is the Street Works Qualification Register card.

Supervisors require to hold the blue supervisor card and complete modules S1, LA and any other modules S2-S7 that are appropriate to the work being supervised. They must hold a minimum of three modules.

Operatives require to hold the yellow operative card and complete modules O1, LA and any other modules O2-O7 that are appropriate to the work being undertaken. They must hold a minimum of three modules.

Award of the certificates of competence associated with these modules can only be carried out by the SQA, City and Guilds, CABWI, Lantra, Highfield Qualifications and EUIAS. Training centres must be accredited through one of these awarding bodies.

Failure to comply with these requirements is an offence under Section 61B(7) Roads (Scotland) Act 1984. Failures under Section 61B may also lead to a Compliance Notice being issued.

The Health and Safety Executive (HSE) remain an enforcing body at all works sites, which are also 'work places' as defined by the Health and Safety at Work Act 1974. The Commissioner and HSE have committed to working cooperatively in these areas of common interest. The HSE can consider compliance with the foregoing requirements during enforcement action under Health and Safety legislation.

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