



Introduction

Welcome everyone and thank you for joining today's webinar. I'm Jason Halliday, the Policy and Quality Manager for the SRWC and I'll start by giving you a quick introduction into what we're aiming to cover today, before moving on to talk about these powers in some more detail.

Why are we here? As you are hopefully aware, the Commissioner has been granted new powers under the Transport Scotland Act 2019 around inspection of works.

Over the next 40-45 mins it is the aim of this presentation to brief you on the legal background to the powers, what they will mean to your organisation and how they might affect you.

We will also cover some of the duties, that you will need to comply with in order to avoid being on the receiving end of these new powers.

This will take the form of a slideshow with examples of both good and bad site practice and also practical advice on SRWR management.

I'd just like to ask that you please add your questions to the SLIDO and we will aim to answer these at the end. The QR code is displayed in the top right corner of the slide and is also in the chat. Afraid this means that we will be unable to monitor the chat or take questions during the presentation

I would also like to make it clear that this presentation has been tailored for Roads Authorities. There are a number of different subtleties between how these powers will apply to Utilities and it has been considered important to get a clear message over to Roads Authorities about what this will mean to them. It is also important to note that enforcement of these powers is solely a matter for the Commissioner. They don't add additional powers for RAs to deal with Utilities.

Next slide

Legal context

- Transport (Scotland) Act 2019
- Authorised Persons
- Compliance Notices

1) Changes introduced by the Transport (Scotland) Act (2019) grant powers to “authorised persons” to carry out various inspection functions on:

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

So the powers generally are applicable to all of the Road Works Community, although as previously noted, there are differences in how they are applied to RAs and Utilities.

2) They also allow the Commissioner to issue Compliance Notices where specific duties under NRSWA and the Roads (Scotland) Act 1984 have been breached.

Authorised Persons

- Compliance Officers (generally)
- Not a substitute for Roads Authority inspectors
- Scope of powers
- What you need to do
- Authorised Officers Code of Conduct

1) Authorised Persons must be officially designated as such and will be recorded on a register held by Transport Scotland. The Commissioner's recently appointed Compliance Officers will generally carry out this task, although other members of the Commissioner's staff may also be designated as Authorised Persons.

2) It is important to note that Authorised Persons are not a substitute for Roads Authority inspectors and do not have powers, nor duties, to stop work, make a site safe or report malpractice. The Commissioner has no duty to maintain the road and has no duty of care towards road users – this is critical difference between staff working for the Commissioner and staff working for the roads authority. The Commissioner's staff will be focused upon collection of evidence which will allow the Commissioner to establish if an offence has been committed or a duty breached. In order to allow them to do this:...

3) "Authorised persons" are allowed to:

- enter premises and work sites
- require that information is provided (specifying the format) (perhaps elaborate that it would not be permitted to provide a large data dump, rather this should be provided in a usable format/as requested).
- take copies or possession of information
- examine/test equipment

However, they can only utilise powers in specific circumstances.

- 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.

So, they won't be taking an interest in any of your other functions as roads authority, e.g. road safety inspections, winter maintenance etc.

4) You are required to provide reasonably necessary "facilities and assistance" to the authorised person. It is also an offence to obstruct, or not comply, with an "authorised person".

5) This is set out in more detail in the Authorised Persons CoC which can be found on the Publications section of the Commissioner's website.

Priorities for Year 1

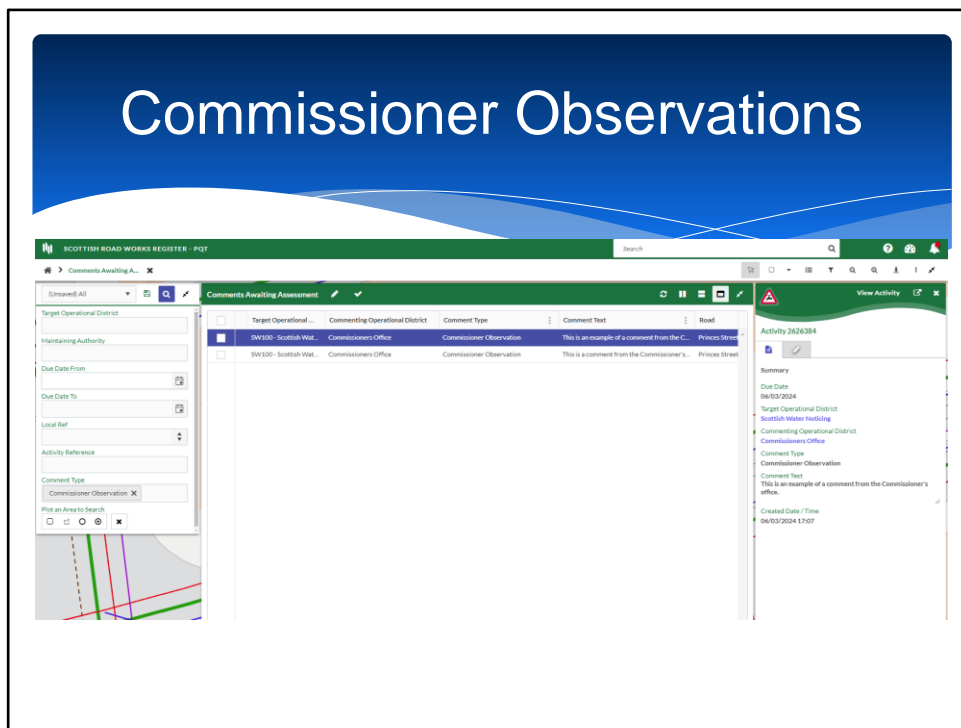
- Drive-by site observations
- Collection/analysis of footage
- Non-compliance with CoPs may result in Commissioner Observations
- Systematic failure

- 1) During their first year, Compliance Officers will focus on collection of site information, principally that in relation to Signing, Lighting and Guarding, i.e. Red Book Compliance. This is being collected using a dash cam.
- 2) They will then analyse the footage collected and identify where non-compliances with Codes of Practice have occurred.
- 3) Where this has identified a minor breach, a Commissioner Observation will be recorded on the SRWR. This will allow you to take corrective action to resolve the observed non-compliance and avoid further escalation. We will also be recording positive site observations in this way.
- 4) Where non-compliances are observed, these Commissioner Observations will be used by the Compliance Officers to establish patterns of non-compliance and, where identified, these are likely to lead to a Compliance Notice being issued.
- 5) That said, we have found instances where CNs could be issued from one day's data as a systematic failure was identified.
- 6) Use of the equipment and processes are now well embedded. Where we find non-compliance, for the time being we will email you to advise COs have been recorded on the SRWR. The expectation is that you will review these and take necessary steps to bring your organisation back into compliance. It is intended that emails advising of the recording of COs will not be sent following the end of the bedding in period. (likely to be after next RAUCS cycle)

Dashcam Example



This is an early example of a still from the footage we are collecting from the drive-by surveys. We have now added a rear facing camera and improved the picture quality. It is worth noting that our processes will see footage destroyed within 1 month of its collection – only still images will be retained.



On this slide, you can see how a Commissioner Observation appears on the SRWR.

1) These are recorded as Works Comments on a notice and will appear in Comments Awaiting Assessment. This means that you will have to proactively retrieve these from the SRWR. It would be a good idea to think about how this can be done within your organisation.

2) As previously mentioned, these will be periodically reviewed to establish if they form an identifiable pattern. Where a pattern is identified, the likely course of action will be to raise a Compliance Notice.

Compliance Notices

- What is a Compliance Notice (CN)?
- Failure to comply
- Appeals
- What can you receive a CN for?
- How are these sent?

1) Compliance Notices can be issued to both Roads Authorities and Utilities by the Commissioner where specific duties under NRSWA and Roads (Scotland) Act 1984 have been breached.

They are a legal Notice and will set out various information, namely,

- 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; and
- how to respond;

2) If you receive one, you must comply with it. Failure to comply with a compliance notice is an offence. Initially, the sanctions will be, dependent upon the type of court action taken, a £50,000 fine or an unlimited fine. In time, a Fixed Penalty Notice of a value to be determined will become available and it is anticipated that, in most cases, this will be the preferred means of dealing with failures.

It goes without saying that the Commissioner would prefer that organisations achieve compliance, rather than issuing financial penalties, especially to publicly funded bodies such as roads authorities.

3) If you receive a Compliance Notice, you'll have 21 days to appeal. This should be made to the local Sheriff, who may cancel the notice, or uphold it, and may make modifications. Whilst the appeal process is ongoing, the Compliance Notice cannot take effect and the clock is effectively stopped.

4) In addition to systematic failures identified as a result of a review of Commissioner observations, Compliance Notices can also be issued to address one-off failings of a suitably serious nature. For example, this approach could be justified in the case of Safety breaches where an identifiable danger exists to life and limb; High profile non-compliances where media or political interest exists.

5) Compliance Notices will be issued directly through the SRWR, by the authorised person who identified the issue(s), on behalf of the Commissioner. They will appear on an assessment list called "Compliance Notices Awaiting Assessment" and you will be able to provide additional information relating to the Compliance Notice through the register.

As a courtesy, they will also be sent by email to the organisation's primary and senior contacts but note that this is not a legal requirement.

It will be your responsibility to ensure that a Compliance Notice is escalated to the required level within the organisation. Failure to make senior members of staff aware of an incoming Compliance Notice won't negate the need to follow it and the timeline will remain unaltered. So, you'll need to ensure that appropriate staff training is in place on how to respond to a Compliance Notice.

Compliance Notices

SCOTTISH ROAD WORKS REGISTER - PQT

Search

Compliance Notices A...

(Unsaved) Awaiting ...

Recipient Organisation

Created Date From

Created Date To


Reference

Notice Status

Closed and Compiled (Pass)

Awaiting Commissioner Review Only?

Awaiting Recipient Review Only?



Commissioner Compliance Notices

| Created Date/Time | Organisation Name | Reference | Issued Date/Time | Recipient Reviewed? |
|-------------------|-------------------|---------------------|------------------|---------------------|
| 05/03/2024 10:53 | Scottish Water | EXAMPLEREFERENCE001 | 05/03/2024 11:03 | No |
| 08/02/2024 11:46 | Scottish Water | JHSEXAMPLEREF1 | 08/02/2024 11:50 | No |
| 08/02/2024 08:54 | Scottish Water | TESTSW123 | 08/02/2024 09:54 | No |

Page 1 25 items per page

Commissioner Compliance Notice

EXAMPLEREFERENCE001

Summary

Organisation Name

Scottish Water

Created Date/Time

05/03/2024 10:53

Issued Date/Time

05/03/2024 11:03

Notice Status

Closed and Compiled (Pass)

Recipient Reviewed?

No

Commissioner Reviewed?

Yes

Duty Breached

New Roads and Street Works Act 1991 section 114(1)

(Notice of starting date of works)

Statement Of Breach

This is an example of a "statement of breach".

Compliance Steps Required

This is an example of "compliance steps required".

Compliance Period End Date

03/07/2024

Right Of Appeal

This is an example of a "right of appeal".

Responses (2)

Attachments (2)

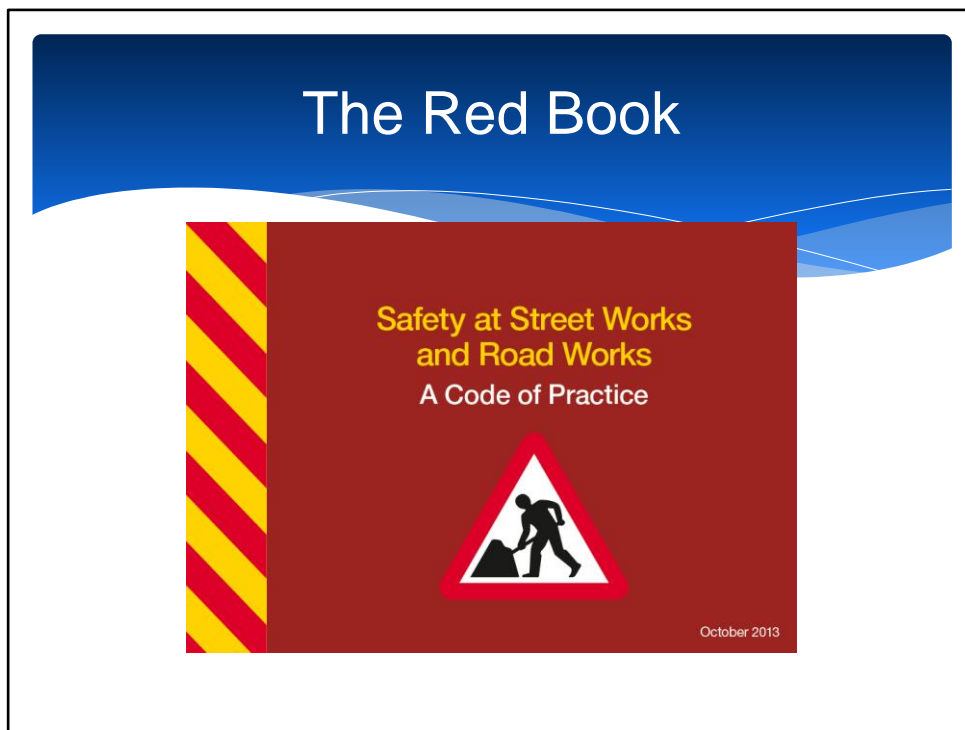
Duties subject to Compliance Notices (Roads Authority)

| No. | Legislation | Theme | Short Description |
|-----|---------------------|--------------------------------|---|
| 1 | RSA S60(1)&(3A) | Signing, Lighting and Guarding | RA duty to guard own sites in compliance with Red Book |
| 2 | RSA S61B | Signing, Lighting and Guarding | Duty on roads authority to have qualified operatives and supervisors |
| 3 | NRSWA S112B | Noticing & Gazetteer | Roads Authority Noticing, Roads Authority gazetteer |
| 4 | NRSWA S118 | Coordination | Duty to Coordinate |
| 5 | NRSWA S139 (1B) (2) | Apparatus | 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 |

Compliance Notices can be issued for breaches of certain duties under NRSWA and the Roads Scotland Act. The list of duties covered as applying to Roads Authorities are listed on this slide.

Please note that there are other duties which could attract a compliance notice but these are only applicable to undertakers.

I'll now pass over to Lindsay Henderson, who'll brief you on the practicalities of how this will affect you.



Safety at Street Works and Road Works commonly known as the 'Red Book' is a code of practice intended to help you safely carry out Signing, Lighting and Guarding (SLG) of road works on all roads except for motorways and any dual carriageway with a speed limit of 50mph or more. These situations are covered by the Traffic Signs Manual Chapter 8.

Until recently, only Road/Highway authorities in England, Wales and Northern Ireland had to comply with the red book – Scottish Roads Authorities were omitted.

Things have now changed, and as of January 2022 it is now a requirement for Scottish Roads Authorities (RA's) and their contractors to comply with the red book when undertaking works on roads – that includes carriageways, footways, verges, cyclepaths, remote footpaths etc.

For the avoidance of doubt, all undertakers and their contractors must comply with the red book when carrying out road works.

The Commissioner's office and the new compliance officers will be making this their focus in 2024/25 specifically for RA's. The reason for focusing on RAs is that our evidence to date is that there is significant non-compliance.

Next slide

What is required

1. All sites to comply with the 'Red Book' no exception
2. Operatives and Supervisors to be appropriately qualified

Failure to meet these requirements may result in a compliance notice or even a commissioner penalty

1. All works being undertaken on roads whether that be major resurfacing schemes, streetlighting, minor works such as pothole repairs or even grass cutting operations - SLG must be appropriate for the works being undertaken there will be no exception to the rules in the Red Book

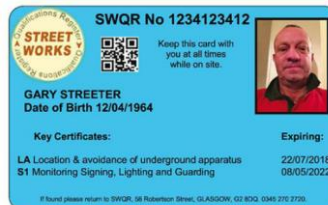
2. As of April 2023, all live road works sites must have at least one 'qualified' operative on site and be supervised by a qualified person. A qualified person is someone who holds a valid street works card which is registered with the Street Works Qualification Register (SWQR) – either operative or supervisor as appropriate. Other qualification schemes are not acceptable (eg NPORS, IEng etc).

Failure to meet these requirements could result in a compliance notice or even a Commissioner penalty if there is evidence of a systematic failure.

Street works cards



Operatives card



Supervisors card

There must be at least one operative onsite with a Street Works Qualification Register (SWQR) card, in addition there needs to be a supervisor available to attend site if required and they need a SWQR card.

Holding a SWQR card means you are a qualified operative or supervisor. Having a SWQR card means you have a prescribed qualification from legislation, to have a prescribed qualification as a Supervisor or Operative you will need the following.

Both Supervisors and Operatives need the two key certificates **LA** Location & avoidance of underground apparatus and Signing, Lighting and Guarding (**S1** (Monitoring) for Supervisors and **O1** for Operatives)

In addition, you will need at least one of the following certificates.

For Supervisors

- S2 - Monitoring excavation in the highway
- S3 - Monitoring reinstatement and compaction of backfill materials
- S4 - Monitoring reinstatement of sub-base and base in non-bituminous materials
- S5 - Monitoring reinstatement in bituminous materials
- S6 - Monitoring reinstatement of concrete slabs
- S7 - Monitoring reinstatement of modular surfaces, concrete footways

For Operatives

- O2 - Excavation in the highway
- O3 - Reinstatement and compaction of backfill materials
- O4 - Reinstatement of sub-base and base in non-bituminous materials
- O5 - Reinstatement in cold lay bituminous materials
- O6 - Reinstatement in hot-lay bituminous materials
- O7 - Reinstatement of concrete slabs
- O8 - Reinstatement of modular surfaces, concrete footways

When carrying out works it is a legal requirement for Roads Authorities to comply with the provisions of the Red Book.

It is also a requirement that obstructions such as skips and scaffolding etc. are signed and guarded to the relevant safety standard.

Where this requires that SLG is placed, operatives and supervisors should hold SWQR cards

Compliant Site Example



What we see in this photo is a site which has been properly planned and set up, pretty much in compliance with the red book.

It is a local authority resurfacing and junction improvement scheme, including street lighting works, at a busy city centre junction. The photos were taken in March 2024.

Next photo

The site has all the proper guarding in place, dedicated pedestrian facilities including ramps and temporary push buttons. Everything is tidy and safe.

Next photo

The photos were taken just after work finished but the site was similarly tidy whilst work was ongoing.

What we don't want to see



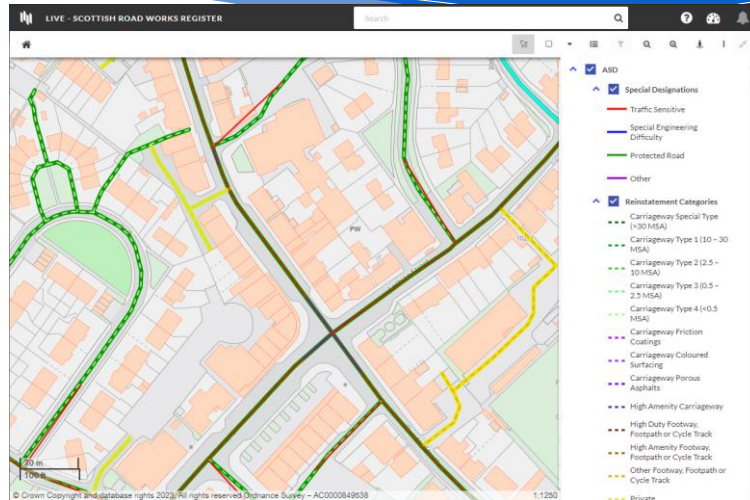
Here are a few photos of road works that would result in non compliance.

Explain each photo with reference to wording in red book real

You should be undertaking your works and ensuring that all the required SLG is in place.

One way to think about this is you expect all utility companies and their associated sub contractors to comply with the red book and if not they receive a cat A inspection failure, you must expect the same standards for all your works as well.

NRSWA S112B (Gazetteer) – What is required



Continuing with duties subject to a compliance notice, there are several relating to noticing and use of the Scottish Road Works Register.

NRSWA S112B puts two legal duties on authorities in relation to information on the register; the recording of gazetteer details and the recording of notices for works. information.

Gazetteer

The Gazetteer is made up of **Base Gazetteer** – geometry and name of all roads within each council's boundary, and **Associated Data (AsD)** – details of who maintains each road, the reinstatement categories for the surfaces and details of any special designations (such as traffic sensitivity and special engineering details)

The Gazetteer is the backbone of the register. **Every notice is referenced to a road.** As such it is important it is right.

Also be aware that there are **other parties that need to be informed of changes** to the gazetteer. For example, the Trunk Route authorities need to be informed if you plan to change details of any of the records for roads they maintain. There is also a **formal legal process** (described in the Code of Practice for the Co-ordination of Works in Roads) that

must be followed to inform interested parties, in particular the undertakers, of **any changes to special designations**.

NRSA S112B (Noticing) – What is required



Noticing S112B Part 2

Noticing requirements are the same for all notices of road works, regardless of whether or not they are carried out by an **undertaker or a road works authority**. The notice periods are the same, the mandatory information is the same. The only difference is an authority does not need to record reinstatement details.

Details of all **notice requirements** are described in the **Code of Practice for the Co-ordination of Works in Roads**.

The register will highlight where the noticing rules have not been followed as **Potential Noticing Failures**. An example would be the requirement to record works completion within 2 hours.

As well as the monitoring being carried out by Compliance Officers ,the Commissioner **monitors each authorities compliance with the noticing requirements** using reports on these Potential Noticing Failures. This data is reported to each Area RAUC meeting and **consistent failure will be picked up in the annual Performance Reviews**.

It's worth noting that the **potential noticing failures** recorded for authorities across Scotland **has been increasing**, mostly down to the **failure to provide two hour notices following completion of works**. This needs to improve.

NRSA S118 – What is required

(1) A road works authority shall use their best endeavours to co-ordinate the execution of works of all kinds (including works for road purposes) in the roads for which they are responsible—

- (a) in the interests of safety,*
- (b) to minimise the inconvenience to persons using the road (having regard, in particular, to the needs of people with a disability), and*
- (c) to protect the structure of the road and the integrity of apparatus in it*

Co-ordination

NRSA S118 requires a Road Works Authority to co-ordinate all works taking place on the roads they maintain, including undertaker works, permissions/licences granted to third parties and also traffic diverted onto their roads by adjacent authorities.

(1) A road works authority shall use their best endeavours to co-ordinate the execution of works of all kinds (including works for road purposes) in the roads for which they are responsible—

- (a) in the interests of safety,*
- (b) to minimise the inconvenience to persons using the road (having regard, in particular, to the needs of people with a disability), and*
- (c) to protect the structure of the road and the integrity of apparatus in it*

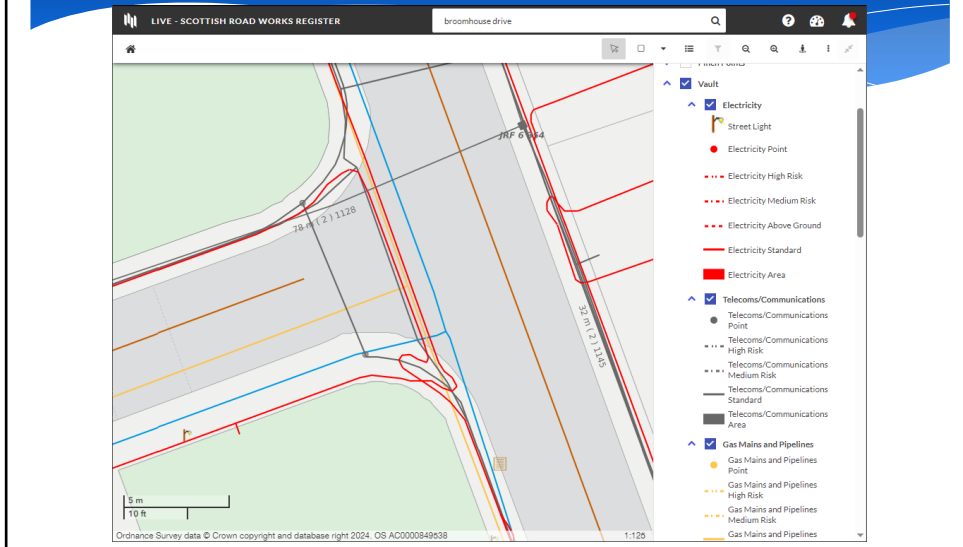
All notices of works must be reviewed (all are highlighted on the Activities Awaiting Assessment list). The **register will highlight conflicts** where works are planned in the same area at the same time. Diversion routes can also be plotted to allow advance warning of works on these routes. Issues should be highlighted and discussed at the Local Area RAUC and Area RAUC meetings. Discussion should also take place at the co-ordination meetings to minimise disruption. **Local RAUC and Area RAUC.**

As covered earlier, the **safety of any execution of all the works undertaken in the road works authority's area** is also the **authority's responsibility**; for example through the sample inspection processes the authorities carry out, ensuring all works follow the safety guidance described earlier.

Following this safety guidance will also help **ensure the needs of people with a disability are met**. For delayed works the authority has the ability to give directions to undertakers who are taking too long to complete their works.

Finally the authority has the ability to carry out **inspections on the reinstatements and the condition of any assets** in the road. The undertaker is required to resolve any defects they are responsible for.

NRSWA S138A & S139 – What is required



New requirements around asset information and the Community Apparatus Data Vault

NRSWA S138 is a new requirement to **record details of all assets installed or found after 1 April 2024** to Vault. This would **include any apparatus placed using a licence under S109**.

NRSWA S139A is a new requirement to record details of unexpected apparatus. A new SRWR notice has been added to the register, the **Unexpected Buried Object**. This notice will capture as much detail as is possible (**type, depth, geometry**) and will be available to view as part of Vault in the SRWR.

The other organisations are expected to **review these notices**, and where they recognise the asset as their own, update and **add details to their Vault submission**.

Progress to date



- Focus on Roads Authority Traffic Management
- 25 Authorities visited
- 818 Sites observed
- 247 non-compliant sites
- Pedestrian provisions and noticing failures

I am Jana Berger, and I am one of the new compliance officers along with my colleague Robert Fraser who is on the road today and can't be with us.

Since we started in earnest in March, we have visited 25 different roads authority areas and collected data on 818 road work sites concentrating on Roads Authority Traffic Management.

We have been developing the equipment and processes to allow us to carry out drive by observation. We have tested this thoroughly over the last months and will be able to carry out an increased number of observations in the future.

While most road works meet the requirements of the Red Book, however we have identified over 247 sites with sub-standard traffic management with the main issues being poor provision for pedestrians and/or a lack of guarding the works adequately. We've also identified 128 sites which did not have valid notices on the road works register.

So far Street lighting works appear to have the most issues.

Thank you for your time.



Join at
slido.com
#1677 025



Commissioner Compliance Powers

Questions?

enquiries@roadworks.scot
<https://roadworks.scot>

OFFICE OF
THE SCOTTISH
ROAD WORKS
COMMISSIONER

Thank you to everyone.

Slides will be circulated after the presentation.

I'll now hand over to Iain who'll take us through the questions on Slido.