

— OFFICE OF THE —

SCOTTISH ROAD WORKS COMMISSIONER

Commissioner Advice Paper 12 - Route to Legally Place and Maintain Apparatus

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Introduction

When an organisation wishes to place or maintain apparatus in a road in Scotland there are two avenues open to legally carry out the road works required to do so.

The first is with explicit permission of the relevant road works authority. The authority may grant permission for an organisation to place and maintain its apparatus in their road.

The second is if there is legislation that gives an organisation a statutory right to place apparatus, then it is considered an “undertaker” as described in the New Roads and Street Works Act 1991. The status of “undertaker” grants the right to place apparatus in the road, but also comes with responsibilities for an organisation considered as such.

Please note that any organisation which places apparatus without a statutory right to do so, or permission from the relevant road works authority, would be committing an offence.

Permission to Place Apparatus

An organisation wishing to place apparatus in the road can apply to the relevant road works authority to do so. The authority may grant them permission to do so under section 109 of the New Roads and Street Works Act 1991. This licence is often referred to as “a S109 permission”.

When granting such a permission the authority may also place conditions on such a permission such as the payment of fees, situations in which permission would be withdrawn and indemnification of the authority to any claims arising from anything outwith the

permission. It is also worth noting that the authority has the right to refuse to grant such a permission.

Once an organisation is given permission, it must abide by most of the duties expected of an undertaker as described in the next section. The authority will normally ensure the organisation complies with these duties.

One of the exceptions to the above would be the use of the Scottish Road Works Register. The road works authority who grants permission is required to register details of the works and details of the location of the apparatus placed as part of the administration of the permission.

Rights and Duties of an undertaker

An organisation is considered an “undertaker” where there is legislation which grants it a statutory right to place or maintain apparatus in, on, or under a road. These rights are most commonly granted when licences are granted by Ofcom (for telecommunication purposes) or by Ofgem (for transport of electricity or gas). Other legislation does exist that bestows this status, and the Commissioner will work with organisations to review such legislation if needed.

It is important that an organisation considered an undertaker is aware that it also has duties bestowed upon it by the New Roads and Street Works Act 1991. An organisation (or any contractor carrying out road works on their behalf) has a duty to comply with all obligations described in the current Scottish legislation and RAUC(S) agreements when carrying out road works. Failure to comply with these could lead to punitive action taken against the organisation, including financial penalties imposed by the Scottish Road Works Commissioner.

The commissioner’s website contains a list of all legislation, codes of practice, advice and guidance that must be followed when working in Scotland. Of particular interest are the [Code of Practice for the Co-ordination of Road Works](#), the [Safety at Street Works and Road Works – A Code of Practice](#) and the [Code of Practice for Reinstatement Quality Plans](#) which lay out the primary duties an undertaker must comply with.

Undertakers are expected to attend local co-ordination meetings and Area RAUC(S) meetings on a regular basis to ensure that they are meeting their duty to co-operate. More information on RAUC(S) is available at: [Roads Authorities & Utilities Committee \(Scotland\)](#).

As an undertaker, an organisation must make use of the Scottish Road Works Register to share details of future road works. The register can also be used to share information about the organisation's assets, which can help prevent damage by other organisations when they undertake works.

Each undertaker has a legal requirement to pay towards the funding of the Scottish Roads Works Register through fees described in legislation. These fees are described in the [Prescribed Fees and Amounts Regulations 2008](#) and the [Prescribed Fees Regulations 2022](#). In summary the charges are broken down into an Amount, based on the number of council areas the undertaker works in, and a Fee based on the number of notices issued the previous year. The Amount is £2,500 for organisations who are in between 1 and 5 council areas, £5,000 for organisations who are in between 6 and 10 council areas and £10,000 for organisations who are in more than 10 council areas. The Fee is dynamic and changes depending on the number of notices issued and the estimated cost of providing the register for the year in question.