

**New Roads and Street Works Act 1991
Roads (Scotland) Act 1984
as amended by
Transport (Scotland) Acts 2005 and
2019**

Code of Practice for Penalties

Version 1.5

February 2024



Version History

Version	Date	Notes
1.00	August 2008	Consultation Draft published by Scottish Government following approval by the RAUC(S) Penalties Working Group.
1.1	February 2010	Minor change made by Raymond Elliot following instruction from the Policy Development Group on 7 December 2010. This corrects an error to ensure consistency with the associated regulations.
1.2	March 2011	Minor change made by Raymond Elliot in preparation for the coming into force of new amendment fixed penalty regulations. Appendix H omitted whilst being reworked.
	October 2013	All previous changes incorporated. No material changes made from Version 1.2.
1.3	January 2014	Appendix H updated by Renée Statt to reflect change from 60 to 91 days.
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1.5	February 2024	Updates to legislation references throughout document. Minor amendments to terminology to make differentiate between non-compliance with legislation and the specific compliance notice process. Clarification of potential for a Commissioner Penalty for a one-off failure. Additional sections (various places but mainly 2.11-2.15) added to address introduction of Compliance Notices

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FOREWORD

As the Scottish Road Works Commissioner, two of my main statutory functions are to promote compliance with the New Roads and Street Works Act 1991 and to promote good practice. I am therefore very pleased to promote and endorse this Code of Practice for Penalties.

The Code of Practice sets out the procedures to be used when penalties are imposed by the Commissioner on undertakers or road works authorities which fail to comply with their duties. It also sets out the procedures to be used when road works authorities issue fixed penalty notices under the New Roads and Street Works Act 1991 and roads authorities issues them under the Roads (Scotland) Act 1984.

Although the primary legislation and the subsequent regulations set out the general framework for the use of penalties, it is the Code of Practice which sets in place the practical details which will allow the process to work.

This Code of Practice was developed and prepared by a working party of the Road Authorities and Utilities Committee (Scotland).

This Code of Practice exists to serve the needs of the Scottish road works community as it strives to improve its performance in the management and co-ordination of works in roads.



Elspeth King
Scottish Road Works Commissioner

CODE OF PRACTICE FOR PENALTIES

Application

Section 16 of The Transport (Scotland) Act 2005 (T(S)A) makes provision for the appointment of a Scottish Road Works Commissioner who can impose penalties.

Section 34 of T(S)A 2005 inserts section 154A and Schedule 6A and 6B into the New Roads and Street Works Act 1991 (NRSWA). This provides for certain offences under Part IV of NRSWA to become fixed penalty offences and includes exemptions for road managers.

Section 37 of T(S)A 2005 inserts section 130A and Schedule 8A and 8B into the Roads (Scotland) Act 1984 (R(S)A). This provides for certain offences under the R(S)A to become fixed penalty offences.

Sections 35 and 38 of T(S)A 2005 insert section 154B and section 130B respectively into NRSWA and R(S)A. These sections make provision for Civil Penalties for certain offences. The Scottish Ministers do not intend to enact regulations at this time to support these sections; therefore they are not dealt with in this Code of Practice (CoP).

Whilst the T(S)A or NRSWA or R(S)A do not make any provision for the Scottish Ministers to issue or approve a CoP for penalties, the Roads Authorities and Utilities Committee (Scotland) (RAUC(S)) and the Scottish Government have agreed that it would be prudent to have a non-statutory code covering aspects of penalties including fixed penalty notices.

The Scottish Road Works Commissioner

“The Commissioner has the general function of:

- 1. monitoring the carrying out of works in roads in Scotland*
- 2. promoting compliance with the 1991 Act and obligations imposed under it; and*
- 3. promoting the pursuit of good practice by those persons who have functions conferred on or permission granted to them by or under the Act, as well as particular functions conferred upon the Commissioner by or under that Act or the T(S)A.”*

Chapter 2 explains the duties and responsibilities of the Commissioner with respect to penalties.

The New Roads and Street Works Act 1991

Section 34 of the T(S)A 2005 inserts section 154A and schedules 6A and 6B into NRSWA. This provides for certain offences under Part IV of NRSWA to

become fixed penalty offences and enables regulations to be made in relation to them.

Road managers are exempt from the provision of the Act giving road works authorities (RWA) the powers to issue fixed penalty notices (FPNs).

Roads (Scotland) Act 1984

Section 37 of the T(S)A 2005 introduced Schedules 8A and 8B and the additional section 130A to the R(S)A.

These new schedules stipulate that road authorities may issue fixed penalties for certain offences committed in contravention of section 58(1) and 85(3) of the R(S)A.

Commencement

The T(S)A 2005 received Royal Assent on 05 August 2005. The following Commencement Orders brought into force:

- Sections 16 to 17 (Creation and Functions of the Scottish Road Works Commissioner) on 10 October 2005 (2005/454);
- Sections 25 (Penalties under S118 and S119) on 1 October 2007 (2007/409);
- Section 33 and Schedule 3 (Increase in summary offences under NRSWA) on 1 April 2008 (2008/15); and
- Section 34, 37 and Schedules 4, 5, 6 and 7 (Fixed Penalty Notices) on 1 October 2008 (2008/15).

The Scottish Ministers have by regulations made provision for exempting road managers (as defined in S108(4) of NRSWA), as prescribed in regulation 3 of The Road Works (Fixed Penalty) (Scotland) Regulations 2008, from the issuing of FPNs.

The T(S)A 2019 received Royal Assent on 15 November 2019. The following Commencement Order brought into force:

- Sections 110 and 111 (The Transport (Scotland) Act 2019 (Commencement No. 7) Regulations 2023) on 1 April 2024.

CHAPTER 1

Introduction

1.1 Overview

Part IV of NRSWA and sections 58 and 85 of the R(S)A details a range of statutory duties and obligations and the offences associated with failing to comply with them. All of these offences can be prosecuted by the procurator fiscal. The T(S)A 2005 inserts new sections and schedules into NRSWA and the R(S)A that provide for certain offences under part IV of NRSWA and sections 58 and 85 of the R(S)A to become fixed penalty offences. The Scottish Parliament has introduced the system in respect of Scotland and the Road Works (Fixed Penalty) (Scotland) Regulations 2007 have been made accordingly.

The Scottish Road Works Commissioner (the Commissioner) will monitor the fixed penalty scheme.

The overall objective is to improve the quality of information entered in the Scottish Road Works Register (SRWR) and make the process of enforcement more effective. This improvement in quality of information in the SRWR will assist in co-ordinating activities on the road network. Additionally, the introduction of Compliance Notices will allow the Commissioner to intervene where an undertaker, road works authority or roads authority fails in the carrying out of their duties. It will also allow the Commissioner to intervene in a way designed to resolve the problem which has arisen, rather than the person merely being issued with a fine.

This Code of Practice offers practical advice and information on the operation of penalties and the fixed penalty scheme and was initially prepared by the Scottish Government in association with the Roads Authorities and Utilities Committee (Scotland) (RAUC(S)). Subsequent amendments have been made by the Commissioner.

Fixed Penalties imposed by roads authorities shall be recorded on the SRWR.

1.2 Scottish Road Works Register

Promoters of road works and works for road purposes are required to ensure that the correct information is included in notices placed on the SRWR. Basic information about all roads in Scotland is held on the SRWR. Road works authorities must ensure that this information is kept up-to-date on a regular basis.

It is in the interest of all parties that this system is run constructively with the co-operation of both undertakers and road works authorities.

Where a road works authority or undertaker fails to comply with their duty of co-ordination and co-operation respectively under sections 118 or 119 of NRSWA, the Commissioner has the power to apply penalties, as described in Chapter 2.

1.3 New Roads and Street Works Act 1991

Part IV of NRSWA details a range of statutory duties and obligations and the offences associated with failing to comply with them. All of these offences can be pursued via legal proceedings. T(S)A 2005 introduced a new section 154A and new schedules 6A and 6B into NRSWA, enabling fixed penalties to be given for certain offences relating to undertakers' duties and obligations under Part IV of that Act.

At present four offences under Part IV can be dealt with by fixed penalties.

A fixed penalty notice means a notice offering undertakers the opportunity of discharging any liability to conviction for a designated offence by payment of a penalty. A fixed penalty notice will only be given to the undertaker promoting the works and not to any of their agents and/or contractors. It is the responsibility of undertakers to comply with their statutory duties and obligations under Part IV of NRSWA.

Co-operation is vital for ensuring that the information is provided and enables the road works authorities to carry out their co-ordination and planning duties. Undertakers should follow the processes set out in the Code of Practice for the Co-ordination of Works in Roads.

1.4 Roads (Scotland) Act 1984

The R(S)A details certain duties and obligations and offences associated with failing to comply with them. These offences can be pursued via legal proceedings. The T(S)A 2005 section 37 inserted Schedule 8A and 8B enabling fixed penalties to be issued by roads authorities for certain offences committed in contravention of section 58(1) and 85(3) as read with (4) of the R(S)A.

These two offences detailed in Schedule 8A of the R(S)A can be dealt with by fixed penalties.

CHAPTER 2

The Scottish Road Works Commissioner

2.1 Legislation

Section 25 of the T(S)A 2005 inserts section 119A of NRSWA as follows:

“119A Enforcement of sections 118 and 119: imposition of penalties

(1) The Scottish Ministers may, by regulations, make provision for or in connection with,

(a) the imposition by the Commissioner of penalties on road works authorities and undertakers who fail to comply with duties imposed on them by sections 118 and 119 respectively,

(b) the payment of such penalties.

(2) The regulations may include provision for or in connection with-

(a) the notification and enforcement of penalties,

(b) the level of penalties,

(c) appeals against the imposition of penalties including the appointment of persons to hear and determine such appeals”

These provisions came into force on 1 October 2007 under The Scottish Road Works Commissioner (Imposition of Penalties) Regulations 2007.

Section 111 of the T(S)A 2019 inserts section 153G of NRSWA as follows:

“153G Failure to comply with a compliance notice

(1) If a person to whom a compliance notice has been issued fails, without reasonable excuse, to comply with the notice, the person commits an offence.

(2) Where a person to whom a compliance notice has been issued fails to take any step required by the notice, the person does not, by reason of that failure, commit an offence under subsection (1) if—

(a) the person takes other steps to—

*(i) stop breaching the duty in respect of which the notice was issued, or
(as the case may be)*

*(ii) ensure that the duty in respect of which the notice was issued will not
be breached in future, and*

*(b) the Commissioner notifies the person in writing that those steps are
acceptable for the purposes of complying with the notice.*

(3) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine not exceeding £50,000,

(b) on conviction on indictment, to a fine.”

These provisions come into force on 1 April 2024 under The Transport (Scotland) Act 2019 (Commencement No. 7) Regulations 2023.

2.2 Penalties for failures under Sections 118 or 119

The imposition of penalties by the Commissioner is applicable to road works authorities and undertakers who regularly and continually fail in their duties to co-ordinate and co-operate respectively. It is not intended that a one-off failure in duty would automatically lead to the imposition of a penalty. However, there may be exceptional circumstances where the Commissioner considers it necessary to impose a penalty in the case of a one-off failure. (See Appendix E).

The level of the penalty shall be set by the Commissioner but [The Scottish Road Works Commissioner \(Imposition of Penalties\) Amendment Regulations 2021](#) provide that this cannot exceed a maximum of £100,000. Payment of such penalty is to be made within 36 days of the issue of such penalty.

2.3 Information acquired by Commissioner

The Commissioner may require and receive reports and/or information to determine whether or not there is a likelihood of a failure to comply with sections 118 and or 119 by the road works authority or undertaker.

The Commissioner will monitor the performance of both the road works authorities and the undertakers in carrying out the duties in compliance with sections 118 and 119 respectively.

2.4 Failure to comply with S118 of NRSWA

The Commissioner may consider there has been a failure to comply with section 118 by a road works authority if they fail in their general duty to co-ordinate the

execution of works of all kinds (including works for road purposes) in the roads for which they are responsible. The Commissioner will consider the systems in place to ensure that works are co-ordinated with the aim of ensuring the interests of safety, minimising the inconvenience to persons using the road and protecting the structure of the road and the apparatus in it. Examples may include but are not limited to:

- a) the required information is not entered onto the SRWR;
- b) there is an overuse of the emergency or urgent categories of work;
- c) work is not completed with such dispatch as is reasonably practical;
- d) employees or agents are not competent; or
- e) they fail to respond to requests for information or fail to attend meetings.

2.5 Failure to comply with S119 of NRSWA

The Commissioner may consider there has been a failure to comply with section 119 by an undertaker if they fail in their general duty to co-operate with the road works authority and other undertakers as regards the execution of road works. Examples may include but are not limited to:

- a) the required information is not entered onto the SRWR;
- b) they fail to comply with reasonable conditions applied by the road works authority;
- c) work is not completed with such dispatch as is reasonably practical;
- d) there is an overuse of the emergency or urgent categories of work;
- e) employees or agents are not competent; or
- f) they fail to respond to requests for information or fail to attend meetings.

2.6 Investigations by Commissioner

The Commissioner will monitor the performance of both the road works authorities and undertakers in carrying out their duties in compliance with sections 118 and 119 respectively. Where the indicators or other sources of information lead the Commissioner to believe that there might be a case of non-compliance, he is likely to require the road works authority or undertaker, to provide additional information and evidence to allow him to determine whether or not there has been non-compliance.

2.7 No evidence of failures under Sections 118 or 119

Where the Commissioner considers there is no or minimal evidence of failures under Sections 118 or 119, no penalty shall be applied and the Commissioner shall write to all affected parties explaining his reasons for his decision.

2.8 Evidence of failures under Sections 118 or 119

Where the Commissioner considers that a failure to comply has occurred, he shall write to the road works authority or undertaker setting out the evidence collected and shall also either:

- (i) request an action plan for improvement from the non-compliant organisation and thereafter agree the details of the action plan, the improvements sought and the timescales for delivery; or
- (ii) propose that the organisation take such steps as he considers appropriate, stating the details of the improvements sought and the timescales for delivery.

2.9 Procedure for Implementation

If within the time period for that improvement the Commissioner is not satisfied that the sufficient improvement has been achieved, a notice may be dispatched to the chief officer or equivalent of the road works authority or undertaker, at their registered office, applying a penalty. The notice will state the powers being used and detail that there has been non-compliance with statutory requirements. Additional information and evidence may be attached to the notice in support. The notice will state the level of the penalty, to who it is to be paid, the method of payment and the date by which it is to be paid.

The notice will also set out the procedure for appealing against the penalty.

2.10 Appeals against penalties for failures under Sections 118 or 119

These are dealt with in Chapter 6 of the Code of Practice for Dispute Resolution and Appeals.

2.11 Compliance Notices

Section 153A of 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 (Appendix F).

2.12 Commissioner observations

Where cases of non-compliance, that do not amount to a systematic failing, are observed, the option to record a Commissioner observation on the SRWR can be utilised. 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.

2.13 Evidence thresholds

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.

2.14 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 £50,000
- Upon conviction, an unlimited fine
- A Fixed Penalty Notice (value to be determined)

A full list of the sanctions available to the Commissioner are provided in Appendix G.

2.15 Appealing against, variation of and withdrawal of 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.

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.

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.

CHAPTER 3

The Fixed Penalty Notice Scheme

3.1 An Overview

In this chapter reference to a road works authority should be read as roads authority when the fixed penalty notice (FPN) is one under the R(S)A.

An FPN offers the opportunity of discharging any liability to conviction for an offence by payment of a fixed penalty charge. An FPN may be given by an officer of the road works authority, for any of the offences listed in 4.3 and 5.3.

An FPN for an offence may not be given more than 91 days after the day on which the offence is committed.

It is up to the road works authority to decide:

- a) whether an offence has been committed; and
- b) whether the giving of an FPN is the most appropriate action.

The period for payment of the penalty is 36 calendar days beginning with the day on which the FPN is given. Information pertaining to the penalty amount is contained in Appendixes A and C and within the relevant regulations. The roads works authority may extend the period for full payment of the penalty in any particular case if it considers it appropriate to do so.

A discounted amount is payable instead, if payment is made before the end of the period of 29 calendar days beginning with the day on which the notice is given. If the last day of the discounted period does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day.

If the full penalty or the discounted amount, as appropriate, is paid then no further proceedings can be taken for that offence. If the penalty is not paid within the period for payment then it remains open to the road works authority to recover the penalty from the undertaker responsible using sheriff officers or pursue a summary offence through the court system. No proceedings for the offence may be commenced until the end of the period for payment of the penalty.

The recipient of an FPN may make representations to the road works authority in relation to an FPN. Further information about this is given in Section 6.1.5 and appendix H.

All the FPNs are currently offences under NRSWA and R(S)A which if pursued, could be referred to the procurator fiscal for prosecution. The FPN scheme does not impose new obligations, but rather provides a mechanism to improve observance of the requirements of Part IV of NRSWA and the R(S)A.

3.2 Money Received from Fixed Penalties

The road works authority may deduct from the fixed penalties received under Schedule 6B of NRSWA and under Schedule 8B of the R(S)A the reasonable costs of operating the scheme under which they are paid. The road works authority shall remit the net proceeds to the Scottish Ministers. The funds, in turn, shall be passed to the Scottish Consolidated Fund.

Road works authorities must be able to demonstrate that the costs of running the fixed penalty notice scheme are reasonable and that the net proceeds after deducting those costs are being correctly applied. Local authority accounts are published on an annual basis, are audited by the Accounts Commission and may be monitored by the Commissioner.

CHAPTER 4

Fixed Penalty Notices under NRSWA

4.1 Legislative Powers Applicable to NRSWA

Schedule 6B of NRSWA as amended by the T(S)A 2005 provides that:

- "1 (1) An authorised officer of a road works authority may, if having reason to believe that a person is committing or has committed a fixed penalty offence, give that person a fixed penalty notice in relation to that offence.*
- (2) In this Schedule "fixed penalty notice" means a notice offering a person the opportunity of discharging any liability to conviction for a fixed penalty offence by payment of a penalty.*
- 2 A fixed penalty notice for an offence may not be given after such time relating to the offence as may be prescribed."*

These provisions came into force on 1 October 2008 under The Road Works (Fixed Penalty) (Scotland) Regulations 2008.

4.2 Retrospective Registrations and Fixed Penalties

The object of the FPN regime is to improve the quality and timeliness of undertakers notices. Although it would be possible for a road works authority to adopt a strategy of issuing an FPN for every offence, this is unlikely to have the desired effect. Many offences will only come to light if the undertaker makes a late registration of works.

Further problems arising from this type of failure can be minimised if the undertaker registers the prescribed information retrospectively on the SRWR.

Undertakers are required to register the information as soon as reasonably practicable after becoming aware of an omission or failure. It should be noted that the Commissioner will view seriously any systematic non-registration of retrospective works with the aim of avoiding FPNs.

It is reasonable to expect the authority to act with due dispatch if a fixed penalty notice is to be given. A fixed penalty notice for an offence may not be given more than 91 days after the day on which the offence was committed.

If a retrospective registration includes information that should have been provided in more than one notice relating to the same road opening (for instance advance notice, notice of starting date and notification of reinstatement), RAUC(S) recommends that only **one** FPN should be issued in relation to that opening, as long as all outstanding information is supplied at the time of the retrospective registration. However, if further offences are committed in relation to later stages, additional FPNs could be issued.

If the offence is discovered by the road works authority (for instance from a roads authority inspection) before the retrospective registration of the notice, RAUC(S) recommends that an FPN for each offence committed should be issued.

The SRWR is set-up to generate NRSWA potential FPNs, however it will be for the road works authority to validate the penalty before issuing.

4.3 Circumstances for Giving an FPN

The circumstances under which an FPN can be given under NRSWA (see 4.6) involve the failure to give a statutory notice or notification at the prescribed time. An FPN can be issued on every occasion when an offence is committed. In terms of the Act this will occur on each occasion when a stage of the work is commenced without the required notice being given. If two successive notices are missing for the same job then two offences have been committed. If the works extend over two roads then two notices should have been sent and two offences may have been committed. However it is not mandatory to issue a fixed penalty on every occasion when an offence is committed. Where an offence has been discovered, it is at the discretion of the road works authority to either ignore the offence, issue an FPN, or pursue a summary offence through the court system.

Where there is evidence of a systematic and persistent offence of the same type, these should be the subject of FPNs. These should also be reported to the Commissioner for the possible imposition of S119 penalties.

Under the Act, an undertaker proposing to undertake works must notify all required recipients in accordance with the legislation. Although the unique reference number will be the same throughout the various phases, each subsequent notice must contain the prescribed information, or as much information that is available at the time of submission, to be valid.

Therefore, failure to comply with any section in the course of any works could result in the issue of an FPN for which non-compliance has been discovered.

It is important to note that generally no offence will have been committed until works have commenced and/or progressed. Issuing a section 113 and/or 114 notice that may contain either inaccurate or incomplete prescribed information is not an offence in itself but if it remains so when the works starts, then it becomes an offence.

S129(4) provides for an FPN to be issued for failure to complete interim to permanent reinstatement within the prescribed period. If the undertaker still fails to complete the permanent reinstatement after receipt of the FPN the road works authority may instigate the defect regime or, carry out the permanent reinstatement and recover it's reasonable costs under S131 of NRSWA.

If an early start has been agreed then an FPN should not be issued under S113 or S114.

4.4 The Retrospective Scenario of Non-compliance

In a worst case scenario, if works have been discovered to have taken place to completion (without notices being issued) and were of the size or duration that would require to be classed as Major Works, four offences have possibly been committed:

- Section 113 – Failure to issue an advance notice as prescribed;
- Section 114 – Failure to issue a notice of start date as prescribed (i.e. Follow-up Notice);
- Section 129 – (interim) Failure to issue a notice completion of interim reinstatement; and
- Section 129 – (permanent) Failure to issue or complete a notice within a 6 month period.

As stated previously, it is at the discretion of the road works authority to either:

- issue a single FPN for a specified offence; or
- issue FPNs for all offences; or
- pursue a criminal conviction through the court system (this is quite a potential liability as section 113 and 114 are a Level 4 fine (£2,500) and section 129 a Level 5 (2 x £5,000) giving a total potential fine of £15,000).

Whether or not FPNs are issued or paid this can be used as part of collective evidence of systematic and persistent non-cooperation for the Commissioner to potentially deal with.

4.5 The Phased Scenario of Non-compliance

In the scenario when works have commenced and non-compliance is discovered in either sections 113 or 114, or both if applicable to the works, an FPN can be issued for the section, or sections that have been offended against. If the works have progressed after the section 113/114 FPNs have been issued and the section 129 compliance has not been followed, a further FPN can be issued as a consequence.

4.6 Non-payment and withdrawal

If an FPN has been issued for an offence and has **not** been withdrawn voluntarily or as a result of a hearing, and has not been paid within the prescribed time allowed, the issuing authority can:

- a) Recover the penalty from the undertaker responsible using sheriff officers; or
- b) Pursue a summary offence through the court system. In these circumstances the FPN is treated as withdrawn.

If the FPN is withdrawn for any other reason by the road works authority or through the hearing process, court action cannot be pursued.

If the road works authority elects to use the court for a summary offence initially, the FPN option is foregone as a consequence.

If the road works authority elects to report persistent and/or systematic offending to the Commissioner, any offences discharged by the undertaker via payment of any FPNs, or previously subjected to court action, can be used as evidence after the event.

4.7 Fixed Penalty Offences under Part IV of NRSWA (see APPENDIX H)

GENERALLY FOR AN OFFENCE TO OCCUR THE WORKS MUST HAVE COMMENCED

Each offence is related to a notice, each notice has a unique Ref No. but as the works progress is served under section 113, 114 or 129 therefore a separate offence may potentially be committed for one notice Ref No. under each section 113, 114 or 129.

Where the works extend to a second or further road there will be further unique notices for each road which will be treated individually with regards to offences and any potential FPN.

SECTION 113 (ADVANCE NOTICE OF CERTAIN WORKS ETC.)

Offence	Brief description	Duties and obligations
An offence under section 113(5)	Failure to comply with duties under section 113 (advance notice of certain works etc.)	<p>In certain cases prescribed in regulations, prescribed periods of advance notice shall be entered into the SRWR by an undertaker proposing to execute road works.</p> <p>Each notice shall state the date on which it is proposed to begin the works and contain other prescribed information.</p> <p>After giving advance notice under section 113 an undertaker shall comply with the requirements prescribed in regulations, or imposed by the road works authority, as to the providing of information and other procedural steps to be taken for the purpose of co-ordinating the proposed works with other works of any description proposed to be executed in the road.</p>
Practical examples and guidance on potential offences under section 113 are shown below		
Works Type	Potential Offence	FPN applicable
Major works Standard works or Minor works in Traffic Sensitive Roads	No notice received	Y
	Co-ordination requirement specified by the RWA in response to the notice not followed under section 113(4) of NRSWA	Y
	Inadequate notice period without early start application	Y
	Incorrect notice details as defined in the regulations	Y

Only one FPN may be issued for each individual notice under section 113, this will normally be the 1st offence identified
 Examples are contained under regulation 4 of the Scottish Road Works Register, Notices, Directions and Designations Regulations 2008.

SECTION 114 (NOTICE OF STARTING DATE)

Offence	Brief description	Duties and obligations
An offence under section 114(5)	Beginning to execute works in contravention of section 114 (notice of starting date)	<p>In relation to certain types of road works an undertaker shall give prescribed periods of notice stating the date on which it is proposed to begin the works and containing other prescribed information.</p> <p>This notice shall be served on any other relevant authority and any other person having apparatus in the road, which is likely to be affected by the works, and a copy be entered into the SRWR in order to inform the road works authority.</p> <p>The undertaker shall not begin the works without notice or before the end of the notice period without the consent of those to whom notice is required to be given.</p>

Practical examples and guidance on potential offences under section 114 are shown below

Works Type	Potential Offence	FPN applicable
Major works	No notice	Y
Standard works	Wrong road notified *	Y
Minor works with excavation	Works start outside start date [early or late] without agreement	Y
Minor works without excavation	Incorrect notice details as defined in the regulations	Y
Remedial works or Urgent works in any road		

Where works types require both a section 113 & 114 notice an offence can occur under both sections 113 & 114. RAUC(S) recommends that only the section 114 FPN is issued so long as the undertaker registers the works. If the road works authority discovers the offence then RAUC(S) recommends that an FPN is issued for each offence

Only one FPN may be issued for each individual notice under section 114, this will normally be the 1st offence identified

* there is no offence for notifying road A and working in road B, however there is an offence for working in road B without a notice

SECTION 116 (NOTICE OF EMERGENCY WORKS)

Offence	Brief description	Duties and obligations
An offence under section 116(4)	Failure to give notice in accordance with section 116 (notice of emergency works)	<p>Where emergency works are of a kind which would require a notice of starting date under section 114, an undertaker executing such works shall give notice stating his intention or, as the case may be, the fact that he has begun to execute the works.</p> <p>The notice shall also contain such other information as may be prescribed in regulations.</p> <p>The notice shall be given as soon as reasonably practicable, and in any event within two hours (or such other period as may be prescribed), to the persons to whom a notice of starting date would be required to be given under section 114 (<i>see above</i>).</p> <p>This notice shall be served on any other relevant authority and any other person having apparatus in the road, which is likely to be affected by the works, and a copy be entered into the SRWR in order to inform the road works authority.</p>
Practical examples and guidance on potential offences under section 116 are shown below		
Works Type	Potential Offence	FPN applicable
Emergency	No notice	Y
	Wrong road notified *	Y
	Incorrect notice details as defined in the regulations	Y
	Notice submitted late	Y
	Works don't fit emergency definition §	N
<p>Only one FPN may be issued for each individual notice under section 116, this will normally be the 1st offence identified</p> <p>* there is no offence for notifying road A and working in road B, however there is an offence for working in road B without a notice</p> <p>§ Once the correct works type is known the offence will be under section 113 or 114 for working without a notice, not under section 116</p>		

SECTION 129 (FAILURE TO COMPLY WITH REQUIREMENTS TO GIVE NOTICE OF COMPLETION OF REINSTATEMENT)

Offence	Brief description	Duties and obligations	
An offence under section 129(6) consisting of a failure to comply with subsection (3) or (4)	Failure to comply with requirements to give notice of completion of reinstatement	<p>Section 129(1) imposes a general duty on the undertaker by whom road works are executed to reinstate the road.</p> <p>The undertaker shall, before the end of the next working day after completion of the reinstatement enter into the SRWR a notice containing such information as may be prescribed.</p> <p>The undertaker shall also state whether the reinstatement is permanent or interim.</p> <p>If it is interim, he shall complete the permanent reinstatement of the road as soon as reasonably practical and in any event within six months (or such other period as may be prescribed) from the date on which the interim reinstatement was completed: and he shall give the required notice when he has done so.</p>	
Practical examples and guidance on potential offences under section 129 are shown below			
Works Type	Section	Potential Offence	FPN applicable
Reinstatement	129 (3)	No notice following reinstatement completion	Y
		Notice arrives late	Y
		Incorrect notice details as defined in the regulations	Y
	129(4)	Interim to permanent not completed within 6 months [or agreed timescales]	Y
		No notice following reinstatement completion	Y
		Notice arrives late	Y
		Incorrect notice details as defined in the regulations	Y
<p>Only one FPN may be issued for each individual notice under section 129, this will normally be the 1st offence identified. A separate offence will be committed under section 129 each time a reinstatement is completed e.g. one interim, one permanent.</p> <p>Actual inspection units have to be provided within 7 days in compliance with the Co-ordination Code of Practice.</p>			

EXAMPLES OF NRSWA ACTIVITIES DESCRIBED IN THE COORDINATION CODE OF PRACTICE WHERE FPNs CANNOT BE APPLIED WHEN THE CODE IS NOT FOLLOWED

Works Type	Code of Practice Failure
Actual Start Notice	Notice arrives late Incorrect information
Registration of reinstatement details	Notice arrives late Incorrect information
Signing & Guarding of works	Site does not comply with CoP Site is dangerous
Reinstatement of undertakers works	Reinstatement does not comply with CoP Reinstatement is dangerous

CHAPTER 5

Fixed Penalty Notices under the Roads (Scotland) Act 1984

5.1 Legislative Powers Applicable to R(S)A 1984

Schedule 8B of the R(S)A as inserted by the T(S)A 2005 provides that:

“(1) An authorised officer of a roads authority may, if he has reason to believe that a person is committing or has committed a fixed penalty offence, give that person a fixed penalty notice in relation to that offence.

(2) In this Schedule “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for a fixed penalty offence by payment of a penalty.

A fixed penalty notice for an offence may not be given after such time relating to the offence as may be prescribed”

These provisions will come into force on 1 October 2008 under The Roads (Scotland) Act 1984 (Fixed Penalty) Regulations 2008.

5.2 R(S)A Fixed Penalty Offences : Action by Roads Authority

When a roads authority becomes aware of a fixed penalty offence under section 58 or section 85 of the R(S)A, they should make reasonable enquiries to ascertain the person responsible for occupying the road for the deposit of building materials, erecting staging or scaffolding projecting over part of the road or depositing a builders skip on the road.

On identifying the person responsible, the roads authority should request that a retrospective application be submitted by that person. This application should provide full information about the applicant and the road occupation requested. If the application is acceptable, the roads authority will normally grant permission for the road occupation to continue. If permission is granted, then the roads authority must enter the information onto the SRWR in accordance with any applicable regulations made under section 112B of the NRSWA.

If permission is not granted or no application is received, then it is recommended that the roads authority should enter such details of the unauthorised road occupation as are available to them on the SRWR.

Whether or not permission is granted for continuing occupation of the road, the roads authority may issue a fixed penalty notice in relation to the earlier unauthorised occupation. A fixed penalty notice will not be issued more than 91

days after the unauthorised occupation of the road.

5.3 Fixed Penalty Offences under R(S)A 1984 (see APPENDIX I)

Offence	Brief description	Duties and obligations
An offence under section 58(1)	Deposit of building materials in, or erection of scaffolding over a road, without or other than in accordance with permission	A person who without the written permission of the roads authority in conducting operations for the construction, repair, maintenance or demolition of any building, occupies, for the purpose of depositing materials or otherwise in connection with those operations, a part of the road, whether public or private, or erects staging or scaffolding which projects over the road, commits an offence.
An offence under section 85(3) as read with section 85(4)	Deposit of builders skip on road without permission of roads authority Failure of owner of skip or other person to ensure conditions of permission complied with	An owner of a skip or other person taking responsibility, who requires to deposit a builders skip on a road, shall: <ul style="list-style-type: none"> a) not occupy the road without written permission of the roads authority; b) comply with the conditions required in the permission. An owner of a skip who requires to deposit a builders skip on a road, shall <ul style="list-style-type: none"> c) ensure skip is clearly and indelibly marked with its owners name and with his telephone number or address.

5.4 Building Materials, Staging or Scaffolding

5.4.1 Legislation

Section 58(1) and (2) of the R(S)A states:

“A person who without, or otherwise than in accordance with, the written permission of the roads authority, in conducting operations for the construction, repair, maintenance or demolition of any building, occupies for the purpose of depositing materials or otherwise in connection with those operations, a part of a road, whether public or private, or erects staging or scaffolding which projects over a part of a road, commits an offence.

Such permission as is mentioned in subsection (1) above may be granted either unconditionally or subject to such conditions, including conditions as to the duration of the permission, as may be specified therein; and notwithstanding anything in any enactment or in any rule of law, a person who complies with the permission (including the conditions) does not by the occupation or erection in respect of which the permission is granted commit an offence.”

5.4.2 Fixed Penalty Offences and Notices under R(S)A

Schedule 8A of the R(S)A (inserted by T(S)A 2005) specifies fixed penalties for the following offence under section 58(1):

“Deposit of building materials in or erection of scaffolding over part of a road without or other than in accordance with permission.”

Roads authorities may therefore issue an FPN on anyone who occupies the road for depositing building materials or erects staging or scaffolding in connection with the construction, repair, maintenance or demolition of any building for the following offences:

- (a) no permit for depositing of any building materials in a road;
- (b) no permit for erecting staging or scaffolding over a road;
- (c) failure to comply with conditions specified in the permit.

5.5 Builders' Skips

5.5.1 Legislation

Section 85(1) to (5) of the R(S)A states:

“(1) A builders' skip shall not be deposited on a road without,

- (a) The written permission of the roads authority; and*
- (b) Its being clearly and indelibly marked with its owner's name and with his telephone number or address.*

(2) Such permission as is mentioned in subsection (1) (a) above may be granted either unconditionally or subject to such conditions as may be specified in the permission; and the conditions may in particular relate to the siting and lighting of the skip, the care of the contents of the skip and the removal of the skip at the end of the period of permission.

(3) An owner of a skip who uses it, or causes or permits it to be used, on a road in contravention of this section commits an offence.

(4) In proceedings for an offence under subsection (3) above it shall be a defence, except in relation to a contravention of subsection (1)(b) above, to prove that some other person undertook the responsibility of complying with the permission or condition contravened, and that the offence was committed without the consent or connivance of the owner; and that other person may be charged with and convicted of the contravention as if he were the owner.

(5) In this section and in section 86 of this Act, "builders' skip" means a container designed to be carried on a road vehicle and to be placed on a road for the removal and disposal of builder's materials, rubble, waste, household and other rubbish or earth."

5.5.2 Fixed Penalty Offences and Notices under R(S)A

Schedule 8A of the R(S)A (inserted by T(S)A 2005) specifies fixed penalties for the following offence under section 85(3):

*"Deposit of builder's skip on road without permission of roads authority.
Failure of owner of skip or other person to ensure conditions of permission complied with"*

Roads authorities may therefore issue an FPN to either:

- (a) the owner of skip, or
- (b) another person who undertook the responsibility for obtaining the permission and/or complying with the conditions in that permission.

and for the following offences:

- (a) no permit for depositing of skip on a road;
- (b) failure to comply with conditions specified in the permit.

Only the owner of the skip may be issued with an FPN for the offence of:

- (c) skip not clearly or indelibly marked with its owner's name and with his telephone number or address.

5.6 Matters Related to all R(S)A FPNs.

5.6.1 Exemptions

Roads authorities cannot give an FPN under the R(S)A on undertakers for depositing building materials, erecting staging, scaffolding and skips in connection with their road works properly notified under NRSWA. Any occupation by undertakers, for materials, erecting staging or scaffolding and skips, should be within the working space in accordance with the Safety at Street Works and Road Works Code of Practice. Any offences resulting from non-compliance under this Code of Practice can be pursued under existing NRSWA legislation.

5.6.2 Extending the Period for Payment

If the last day of the period specified in 3.1 does not fall on a working day, the 29 consecutive day period of payment of discounted amount is extended until the end of the next working day but cannot be extended further by the roads authority.

5.6.3 Removing or Repositioning of Builders' Skips Causing Danger or Obstruction

An FPN may be given under section 85(3) for placing a skip without permission or failing to comply with the conditions in the permission, but that section contains no requirements to rectify the problem e.g. remove the skip. S86 (2) of R(S)A can be used in conjunction with the FPN to have the skip removed or repositioned and recover any costs.

CHAPTER 6

Fixed penalty Notice

6.1 General

In this chapter reference to a road works authority should be read as roads authority when the FPN is one under the R(S)A

In paragraph 3 (1) of both schedule 6B of NRSWA and schedule 8B of R(S)A it states that:

“A fixed penalty notice shall identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence.”

In addition paragraph 3 (2) states that:

“A fixed penalty notice shall also state:

- (a) The amount of the penalty and the period within which it may be paid;*
- (b) The discounted amount and the period within which it may be paid;*
- (c) The person to whom and the address at which payment may be made;*
- (d) The method or methods by which payment may be made;*
- (e) The person to whom and the address at which any representations relating to the notice may be made;*
- (f) The consequences of not making a payment within the period for payment.”*

6.1.1 The Fixed Penalty Notice

The form of the FPN is prescribed in the regulations and is reproduced within this guidance (see Appendices A and C) and includes information about the road works authority and the offence. Part B of the notice includes information about payment of the penalty.

6.1.2 Serving the Fixed Penalty Notice

FPNs issued to undertakers should normally be issued by electronic communications through the SRWR. FPNs issued in respect of skips and scaffolding are to be maintained on the SRWR but may be issued using the postal service or delivery by hand.

If the SRWR is used to give an FPN, then, unless the contrary is proved, service of the notice is deemed to be effected at the time when the SRWR records satisfactory completion of the transmission. If after three attempts (duly recorded by the person giving the notice) to effect service (using each available method of electronic communication), service cannot be effected then the notice should be served as soon as practicable upon the person to whom it is addressed by the other means provided for in the regulations.

The road works authority can also give the FPN by delivering it to the person to whom it is addressed, leaving it at his proper address, by sending it by first class post to the offender at that address or by any other agreed means.

For service of an FPN in these circumstances the proper address is the postal address given by the undertaker to the road works authority for those purposes, the registered or principal offices of a company or the last known address of such person.

6.1.3 Contents of and Evidence for FPN

An FPN form shall be completed as per Regulations. A detailed FPN audit system should be kept by road works authorities. A site photograph of the offence with a date stamp is recommended for skips and scaffolding.

6.1.4 Payment of the Fixed Penalty Notice (see Appendices A and C)

Part B of the FPN sets out the methods by which payment of a fixed penalty may be made. There are a number of electronic payment options, accessible by using the Bankers Automated Clearing services (BACS), "on line" via the road works authority's web site (if available), by post, in person or by telephone. The facility to use all standard credit/debit cards may be available.

The road works authority is responsible for completing Part B so as to provide full details in relation to all available methods of payment. Road works authorities are encouraged to discuss with undertakers how payment is to be made in practice to ensure that the process works as smoothly as possible.

It is important that the road works authority is informed about which fixed penalties are being paid and at which level.

For payment via BACS, the recipient of an FPN must ensure that payment is accompanied by a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number (discounted or full). It is in everyone's best interests that this remittance advice is processed expeditiously.

When paying by post or in person, the payment must be accompanied by a list of the FPN numbers covered by the payment and the amount being paid in relation to each number (discounted or full).

When paying by telephone, the recipient must quote full details of the FPN numbers in respect of which payment is being made and the amount being paid in relation to each number (discounted or full).

If the recipient decides to pay the penalty in person or by telephone, it is their responsibility to contact the road works authority to find out the office opening hours. If the undertaker wishes to pay using a credit/debit card, the road works authority needs to be consulted in good time as to whether the card is one that is accepted in accordance with its standard procedures.

A fixed penalty notice under the NRSWA will be issued to the undertaker promoting the works and not to their contractor. It is therefore the responsibility of the undertaker to ensure payment of the fixed penalty.

Where payment of an FPN is to be made either by BACS or by cheque due allowance shall be made by the organisation or individual responsible for making that payment for the processing of that payment.

6.1.5 Representations and Hearings

An FPN must include details, including the address, of the person to whom any representations relating to the notice may be made. The road works authority must consider any representations made by or on behalf of the recipient and decide in all the circumstances whether to withdraw the fixed penalty notice (see Appendices B & D).

The recipient of an FPN has the right to request a hearing, so long as this is done before the expiry of the period for payment of the penalty. In order to do this, written notice must be given to the person named on the notice to whom payment may be made at the address specified. The road works authority must notify the procurator fiscal of the request for a hearing. The delivery of the notice requesting a hearing has the effect of stopping the clock on the period for payment of the fixed penalty. This restarts if appropriate on the date on which the person who requested the hearing is notified of the decision reached at the hearing. However, it should be noted that the clock does not stop on the period of payment for the discounted amount.

As a formal hearing is likely to involve additional overheads for both parties involved, it is strongly recommended that both parties should make a full disclosure of their evidence in relation to the alleged offence as early as possible. This will provide an opportunity for an agreement to be reached on the substantive facts of the case. This may enable a decision to be reached by the recipient to pay the fixed penalty notice or the road works authority to withdraw it, rendering the formal hearing unnecessary.

If it is not possible to reach agreement, then the formal hearing will go ahead.

Whether or not a hearing has been held, if the road works authority withdraws an FPN it must repay any money already paid by way of penalty and no proceedings may be commenced or continued against the recipient of that FPN for the offence in question. However, a prosecution may be commenced in relation to an offence for which a fixed penalty notice has been issued but neither paid nor withdrawn. In this case the FPN is deemed to have been withdrawn but the prosecution stands.

6.1.6 Further Action where Fixed Penalties are Unpaid

Where a fixed penalty remains unpaid after the expiry of the period for payment and has not been withdrawn then there are two ways in which the matter may be pursued further. The road works authority may write to the procurator fiscal requesting that proceedings be commenced in relation to the offence. If such proceedings are commenced, then the fixed penalty notice is treated as withdrawn. Alternatively, the penalty can be enforced. The penalty can be

enforced in the same way as a court judgement without actually having to go to court to obtain that judgment i.e. sheriff officers could recover the penalty from the person refusing to pay. There is then the opportunity for the person subject to the unpaid FPN to apply to the sheriff for a declaration that the FPN is not enforceable on the ground that either the fixed penalty was paid in time or a request for a hearing has been made and no hearing has been held within a reasonable time.

6.1.7 Record of Fixed Penalty Process on SRWR

The SRWR should hold a full audit trail for each FPN. This should include the following:

- The information listed in Appendix A for each notice issued
- The information listed in Appendix B for each notice of withdrawal
- The date and amount of each payment made or enforced
- The date and amount of each repayment made following a notice of withdrawal
- The date of receipt of each request for a hearing
- The decision reached at each hearing and date on which it is received by the person requesting the hearing
- Date of commencement of proceedings in relation to the offence from which the notice is treated as withdrawn

A unique number identifying this fixed penalty notice within the authority.

APPENDIX A – NRSWA Fixed Penalty Notice

<p>* (* Insert Road Works Authority name)</p>	<p>FIXED PENALTY NOTICE NEW ROADS AND STREET WORKS ACT 1991 / (Section 154A and Schedules 6A and 6B)</p>	<p>FIXED PENALTY NOTICE Number: </p>
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PART A

<p>Contact Tel No.</p>	<p>Works Ref No. * <i>SRWR</i> Road Works Authority No. * (*To be left blank where the offence relates to works in respect of which no notice has been given.)</p>
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<p>TO:</p>	<p>DATE OF THIS NOTICE: (dd/mm/yy)</p>
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ADDRESS: →

Undertakers are asked to provide, where possible, an electronic address as well as the postal address. If the undertaker fails to provide a postal address then the fixed penalty notice should be served in accordance with the options set out in the regulations.

OFFENCE CODE: (See Part B) **(NB: Only one offence code per fixed penalty notice)**

LOCATION: (including USRN)

Insert relevant offence code from Part B

DETAILS AND DATE OF OFFENCE:

This box needs to specify reasonable particulars of the circumstances alleged to constitute the offence and should be expanded if required.

1. I am giving you this notice, further to section 154A, Schedule 6B to the New Roads and Street Works Act 1991, to offer you the opportunity of discharging any liability to conviction for this offence by payment of a fixed penalty.

2. This means that no legal proceedings will be commenced for the offence if, subject to paragraph 3, the fixed penalty of **£120** is paid (See Part B) within the period of **36** days beginning with the date of this notice.

3. Instead of paying the amount referred to in paragraph 2, liability to conviction for the offence may also be discharged if the discounted amount of **£80** is paid within the period of **29** days beginning with the date of this notice. **(NB: If the last day of this period does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day (See Paragraph 5(3) of Schedule 6B)).**

4. If the discounted amount is not paid within the period set out in paragraph 3, as extended where relevant, liability to conviction for the offence may only be discharged thereafter by payment of the fixed penalty within the period set out in paragraph 2. Should you then fail to pay the fixed penalty within that period, legal proceedings for the offence may be commenced against you.

5. Any representations that you wish to make in relation to this notice may be addressed to _____ at identifying the fixed penalty notice number stated above.

NAME OF AUTHORISED OFFICER (in block capitals):

.....

<p>These should be different officers</p> <p>.....</p>	<p>DATE:</p> <div style="border: 1px solid black; padding: 5px; margin-left: 100px;"> <p>Representations in writing should be made to this officer. The Authority should provide full contact details.</p> </div>
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PART B		
* (* Insert Road Works Authority name)	<u>HOW TO PAY</u> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> This must correspond to the number given in Part A </div>	FIXED PENALTY NOTICE Number:
ELECTRONICALLY – by the Bankers Automated Clearing Services (BACS). Payment should be made to , Sort Code , Account Number . Payment must be accompanied by a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number.		
“ON LINE” - please visit our web site at: .		To be left blank if On Line payment is not available
BY POST - by making your cheque payable to and sending it to . Payment must be accompanied by a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number. A receipt will be sent on request.		
IN PERSON – to at between 9.00am and 4.30pm on any day on which the office is open for business. Any cheque should be made payable to . Payment may be made by debit or credit card if the card is one that is accepted by the Road Works Authority in accordance with its standard procedures. Payment must be accompanied by a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number. A receipt will be provided on request.		
BY TELEPHONE – by contacting at on between 9.00am and 4.30pm on any day on which the office is open for business. Payment may only be made by using a debit or credit card that is accepted by the Roads authority in accordance with its standard procedures. You must state the fixed penalty notice number of each notice in respect of which payment is being made and the amount being paid in relation to each number. A receipt will be sent on request.		

OFFENCE CODES AND DESCRIPTION		
<i>(By reference to the New Roads and Street Works Act 1991)</i>		
CODE	OFFENCE UNDER	BRIEF DESCRIPTION
01	s.113(5).	Failure to comply with duties under s.113 (advance notice of certain works, etc.).
02	s.114(5).	Beginning to execute works in contravention of s.114 (notice of starting date).
03	s.116(4).	Failure to give notice in accordance with s.116 (notice of emergency works).
04	s.129(6) consisting of a failure to comply with subsection (3) or (4).	Failure to comply with requirements to give notice of completion of reinstatement.

APPENDIX B – Notice Withdrawing Fixed Penalty Notice

* <i>(*Insert Road Works Authority name)</i>	NOTICE WITHDRAWING FIXED PENALTY NOTICE NEW ROADS AND STREET WORKS ACT 1991 / (Section 154A and Schedules 6A and 6B)	FIXED PENALTY NOTICE Number:
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TAKE NOTICE that the fixed penalty notice numbered as above is hereby WITHDRAWN .
NAME OF AUTHORISED OFFICER <i>(in block capitals)</i>
DATE

A unique number identifying this fixed penalty notice within the authority.

APPENDIX C – R(S)A Fixed Penalty Notice

*	FIXED PENALTY NOTICE ROADS (SCOTLAND) ACT 1984 (Section 130a and Schedules 8A & 8B)	FIXED PENALTY NOTICE Number:
(* Insert Roads authority name)		
PART A		
Contact Tel No.	Works Ref No. * SRWR Roads authority No. * (*To be left blank where the offence relates to works in respect of which no notice has been given.)	
TO:		DATE OF THIS NOTICE: (dd/mm/yy)
ADDRESS:	Permission applicants are asked to provide, where possible, an electronic address as well as the postal address. If the Permission applicant fails to provide a postal address then the fixed penalty notice should be served in accordance with the options set out in the regulations.	
OFFENCE CODE: (See Part B) (NB: Only one offence code per fixed penalty notice)		
LOCATION:	Insert relevant offence code from Part B	
DETAILS AND DATE OF OFFENCE:		
	This box needs to specify reasonable particulars of the circumstances alleged to constitute the offence and should be expanded if required.	
<p>1. I am giving you this notice, further to section 130a, and Schedules 8A and 8B to the Roads (Scotland) Act 1984, to offer you the opportunity of discharging any liability to conviction for this offence by payment of a fixed penalty.</p> <p>2. This means that no legal proceedings will be commenced for the offence if, subject to paragraph 3, the fixed penalty of £120 is paid (See Part B) within the period of 36 days beginning with the date of this notice.</p> <p>3. Instead of paying the amount referred to in paragraph 2, liability to conviction for the offence may also be discharged if the discounted amount of £80 is paid within the period of 29 days beginning with the date of this notice. (NB: If the last day of this period does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day (See Paragraph 5(3) of Schedule 8B)).</p> <p>4. If the discounted amount is not paid within the period set out in paragraph 3, as extended where relevant, liability to conviction for the offence may only be discharged thereafter by payment of the fixed penalty within the period set out in paragraph 2. Should you then fail to pay the fixed penalty within that period, legal proceedings for the offence may be commenced against you.</p> <p>5. Any representations that you wish to make in relation to this notice may be addressed to _____ at identifying the fixed penalty notice number stated above.</p>		
NAME OF AUTHORISED OFFICER (in block capitals):		
DATE:		Representations in writing should be made to this officer. The Authority should provide full contact details.
These should be different officers		

PART B		
* (* Insert Road Authority name)	<p style="text-align: center;"><u>HOW TO PAY</u></p> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;"> This must correspond to the number given in Part A </div>	<p style="text-align: center;">FIXED PENALTY NOTICE</p> Number:
<p>ELECTRONICALLY- by the Bankers Automated Clearing Services (BACS). Payment should be made to , Sort Code , Account Number . Payment must be accompanied by a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number.</p>		
<p>“ON LINE”- please visit our web site at: To be left blank if On Line payment is not available</p>		
<p>BY POST- by making your cheque payable to and sending it to . Payment must be accompanied by a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number. A receipt will be sent on request.</p>		
<p>IN PERSON – to at between 9.00am and 4.30pm on any day on which the office is open for business. Any cheque should be made payable to . Payment may be made by debit or credit card if the card is one that is accepted by the Roads authority in accordance with its standard procedures. Payment must be accompanied by a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number. A receipt will be provided on request.</p>		
<p>BY TELEPHONE – by contacting at on between 9.00am and 4.30pm on any day on which the office is open for business. Payment may only be made by using a debit or credit card that is accepted by the Roads authority in accordance with its standard procedures. You must state the fixed penalty notice number of each notice in respect of which payment is being made and the amount being paid in relation to each number. A receipt will be sent on request.</p>		

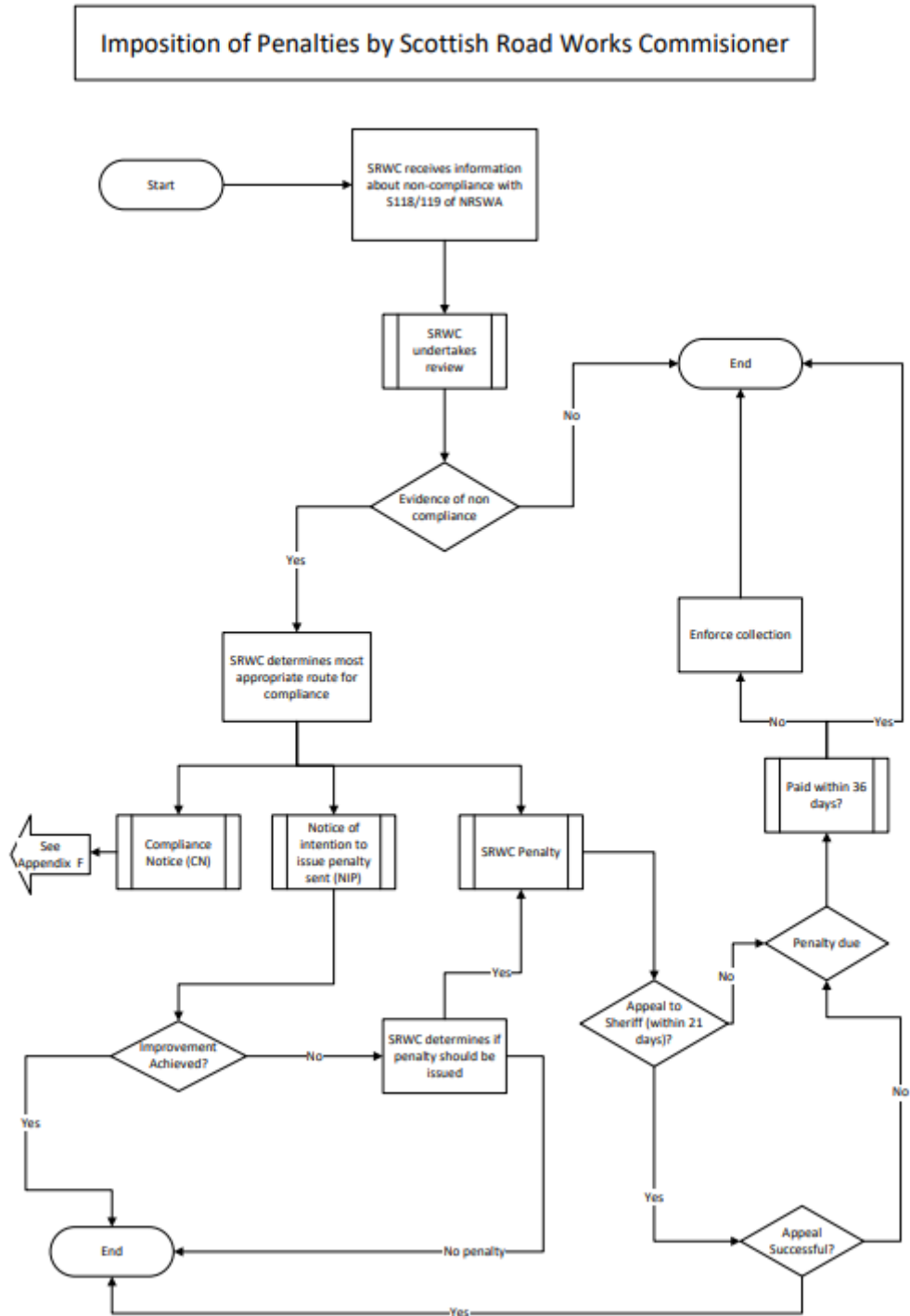
OFFENCE CODES AND DESCRIPTION		
<i>(By reference to the ROADS (SCOTLAND) ACT 1984)</i>		
CODE	OFFENCE UNDER	BRIEF DESCRIPTION
01	s.58(1).	Deposit of building materials in or erection of scaffolding over a road without or other than in accordance with permission
02	s.85(3) as read with (4)	Deposit of building skip on road without permission of roads authority
03	s.85(3) as read with (4)	Failure of owner of skip or other person to ensure conditions of permission complied with

APPENDIX D – Notice Withdrawing Fixed Penalty Notice

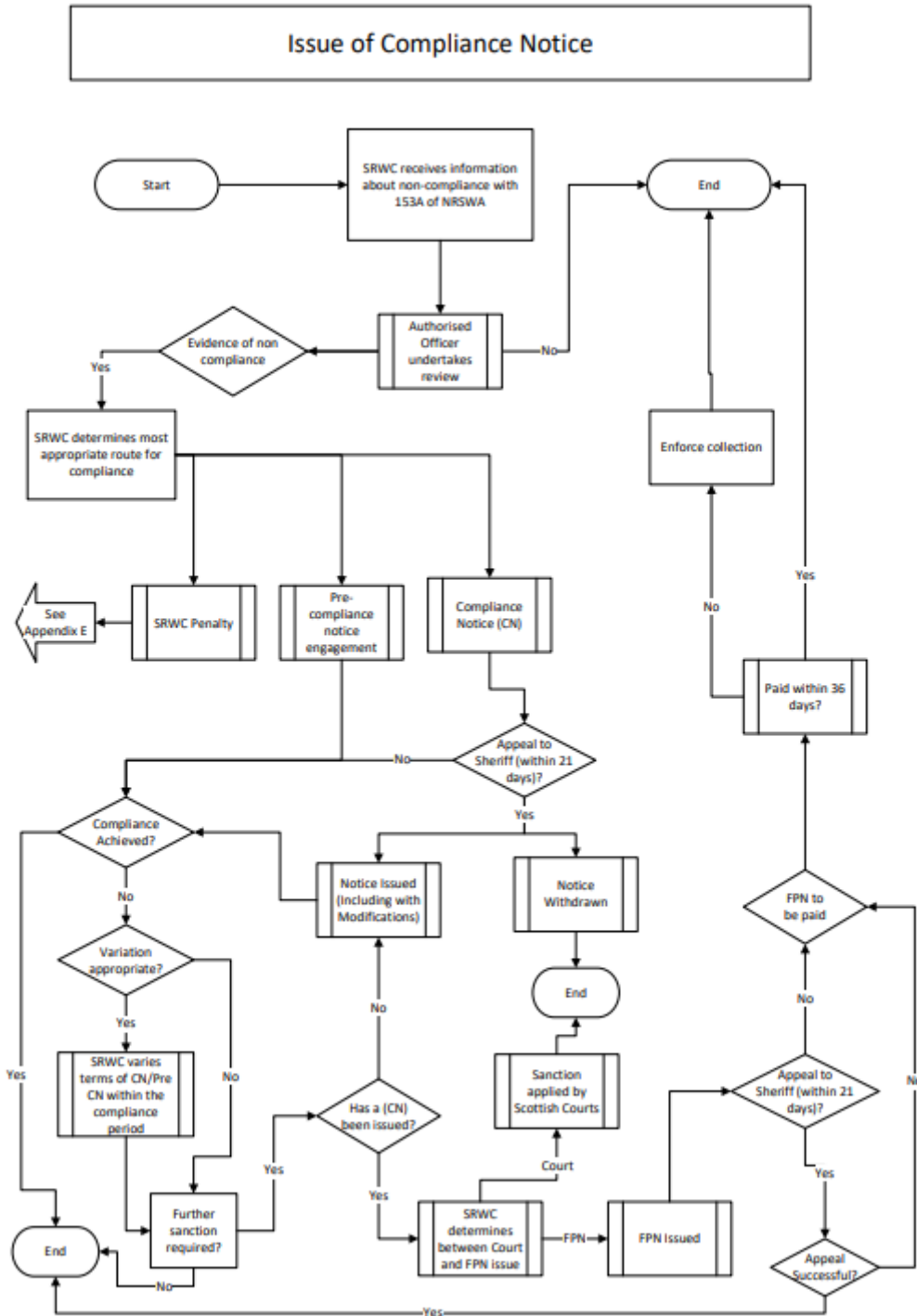
<i>(* Insert Road Authority name)</i>	NOTICE WITHDRAWING FIXED PENALTY NOTICE ROADS (SCOTLAND) ACT 1984 (Section 130a and Schedules 8a & 8b)	FIXED PENALTY NOTICE Number:
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TAKE NOTICE that the fixed penalty notice numbered as above is hereby WITHDRAWN .
NAME OF AUTHORISED OFFICER <i>(in block capitals)</i>
DATE

APPENDIX E – Commissioner Imposition of Penalties



APPENDIX F – Issue of Compliance Notice



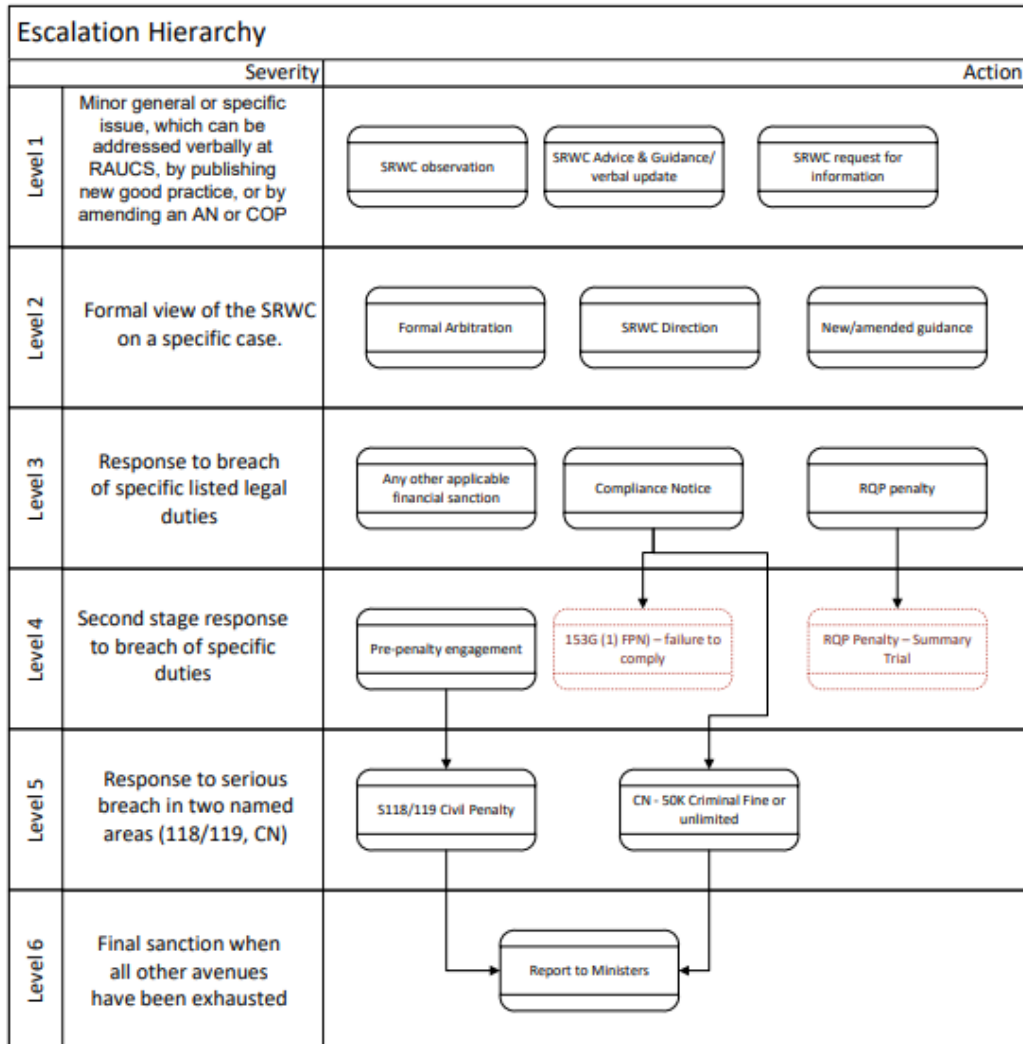
NB. FPNs for compliance purposes are yet to be enacted.

APPENDIX F – List of offences for which Compliance Notices can be issued

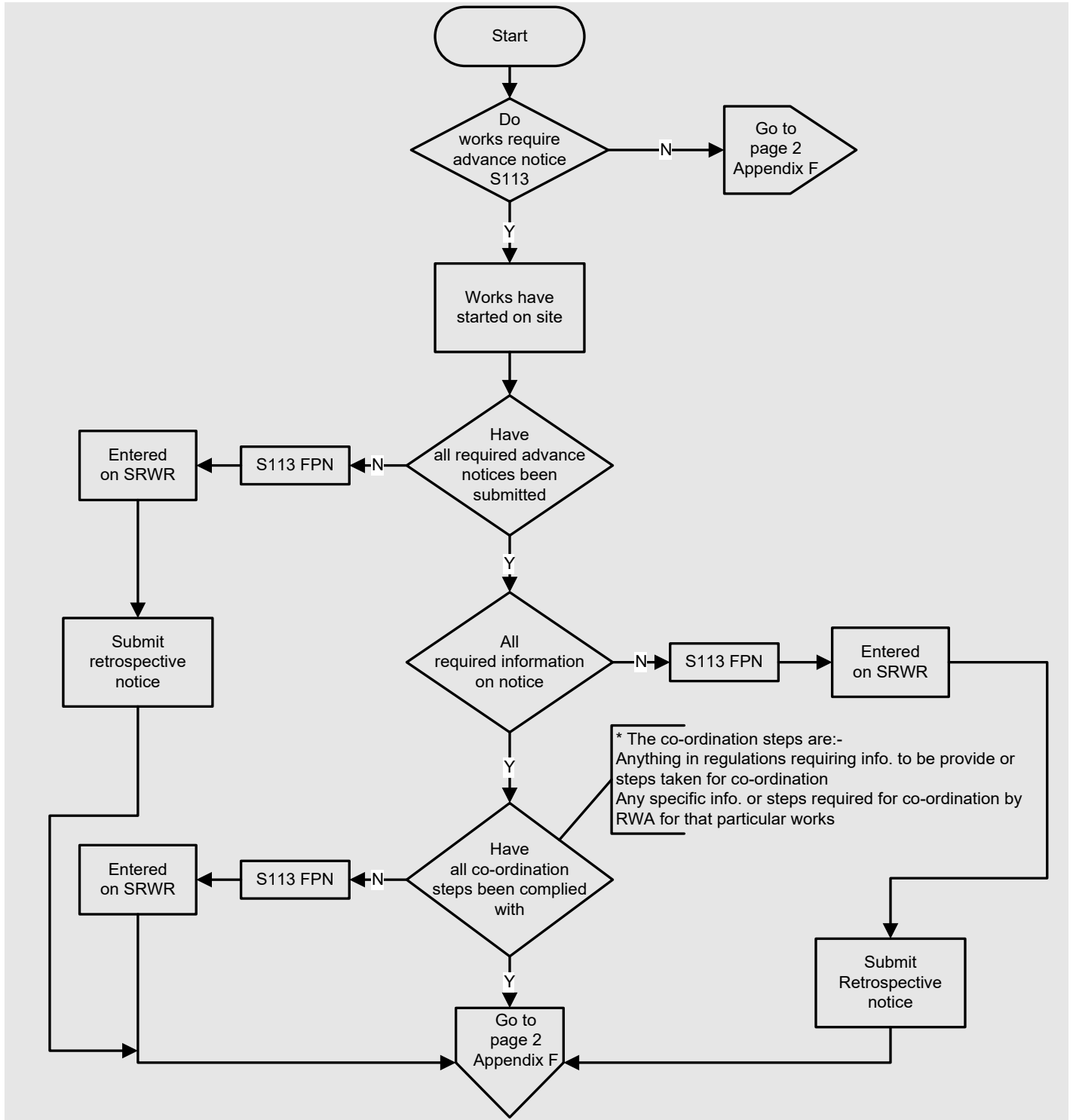
No.	Legislation	Theme	Applies to	Short Description
1	RSA S60(1)&(3A)	Signing, Lighting and Guarding	Roads Authorities	RA duty to guard own sites
2	RSA S61B	Signing, Lighting and Guarding	Roads Authorities	Duty on roads authority to have qualified operatives and supervisors
3	NRSWA S112B	Noticing & Gazetteer	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
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.

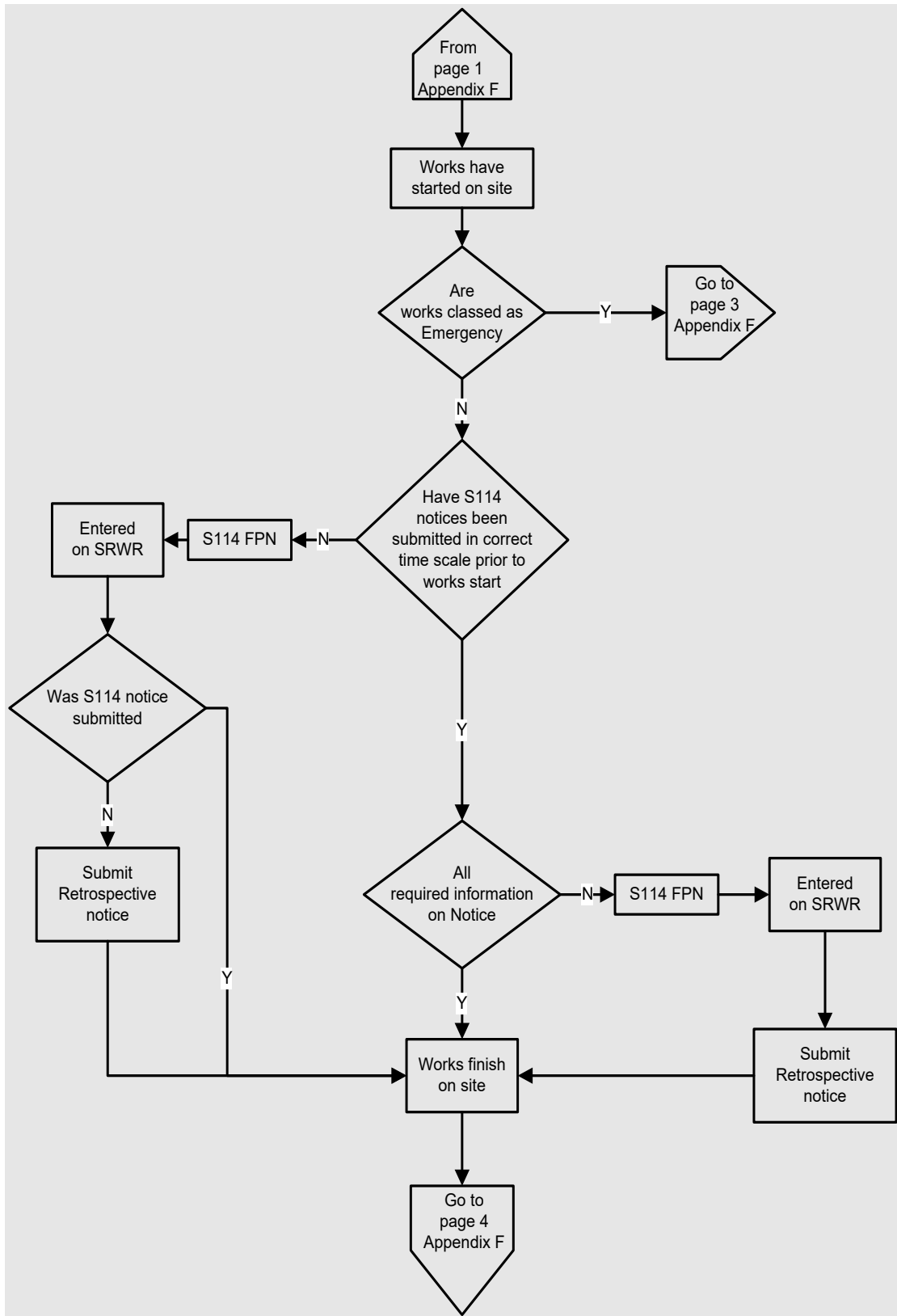
APPENDIX G – Sanctions for failure to comply with a Compliance Notice



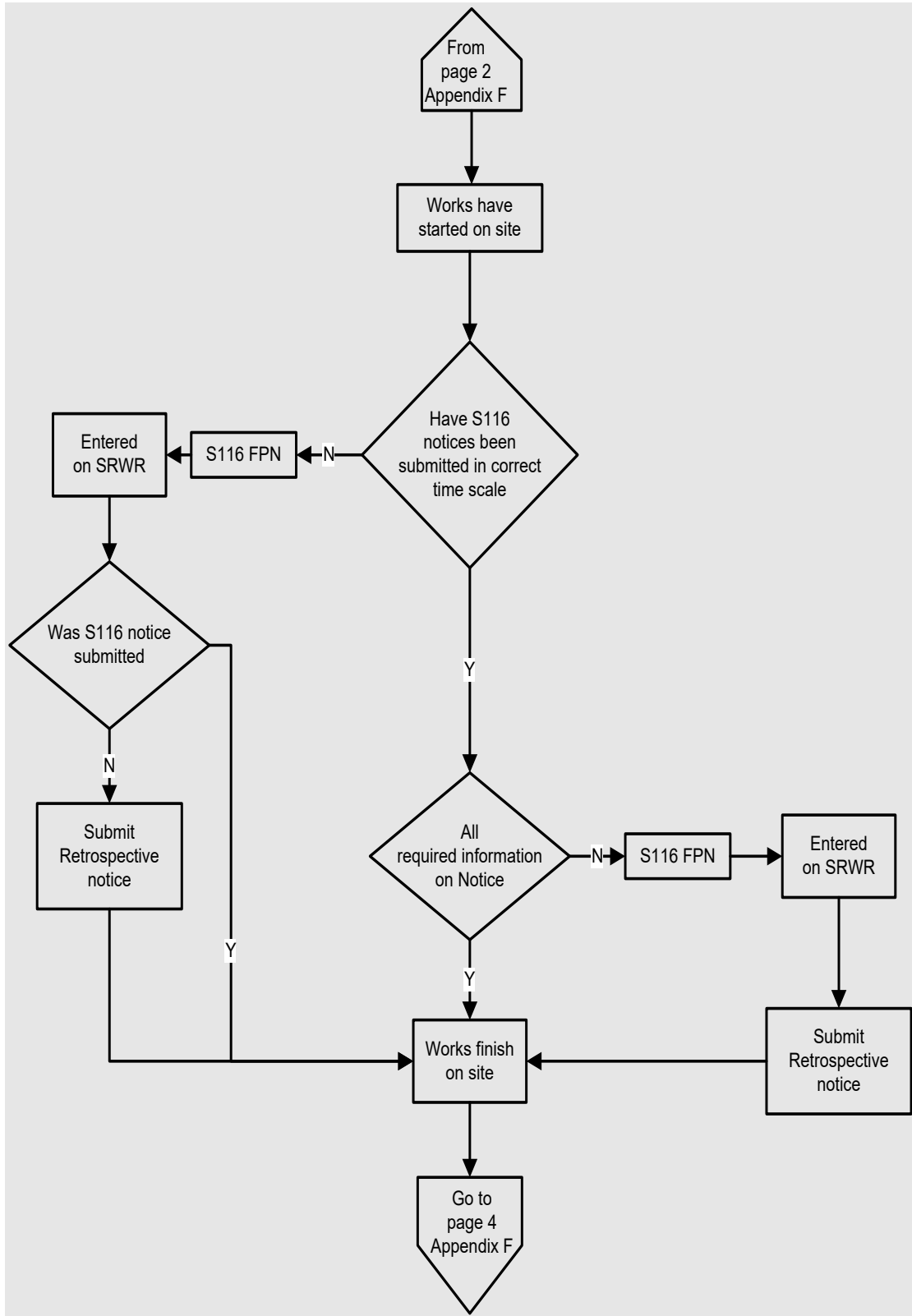
APPENDIX H – RWA Identification of FPN process for NRSWA



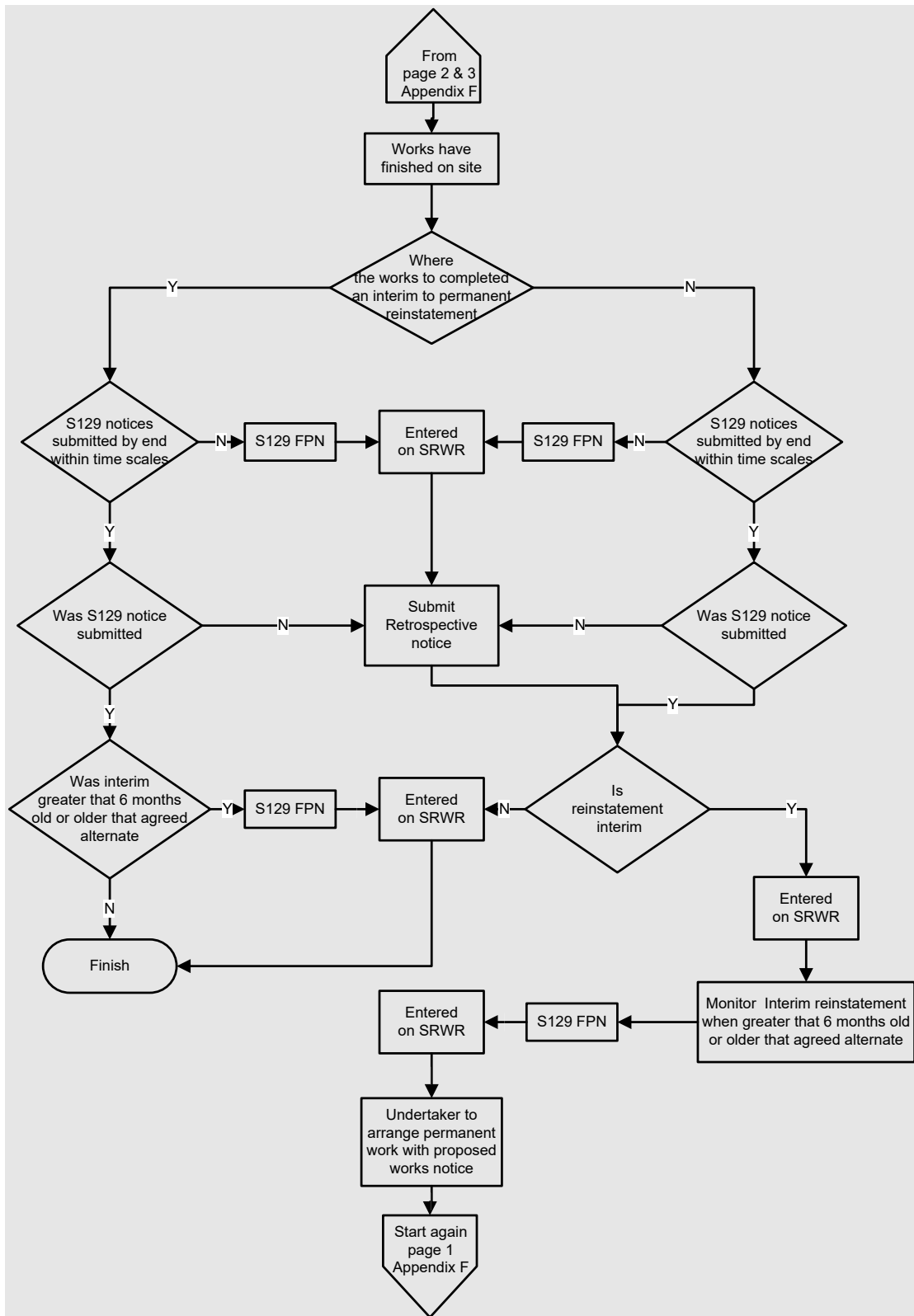
APPENDIX H – Page 2



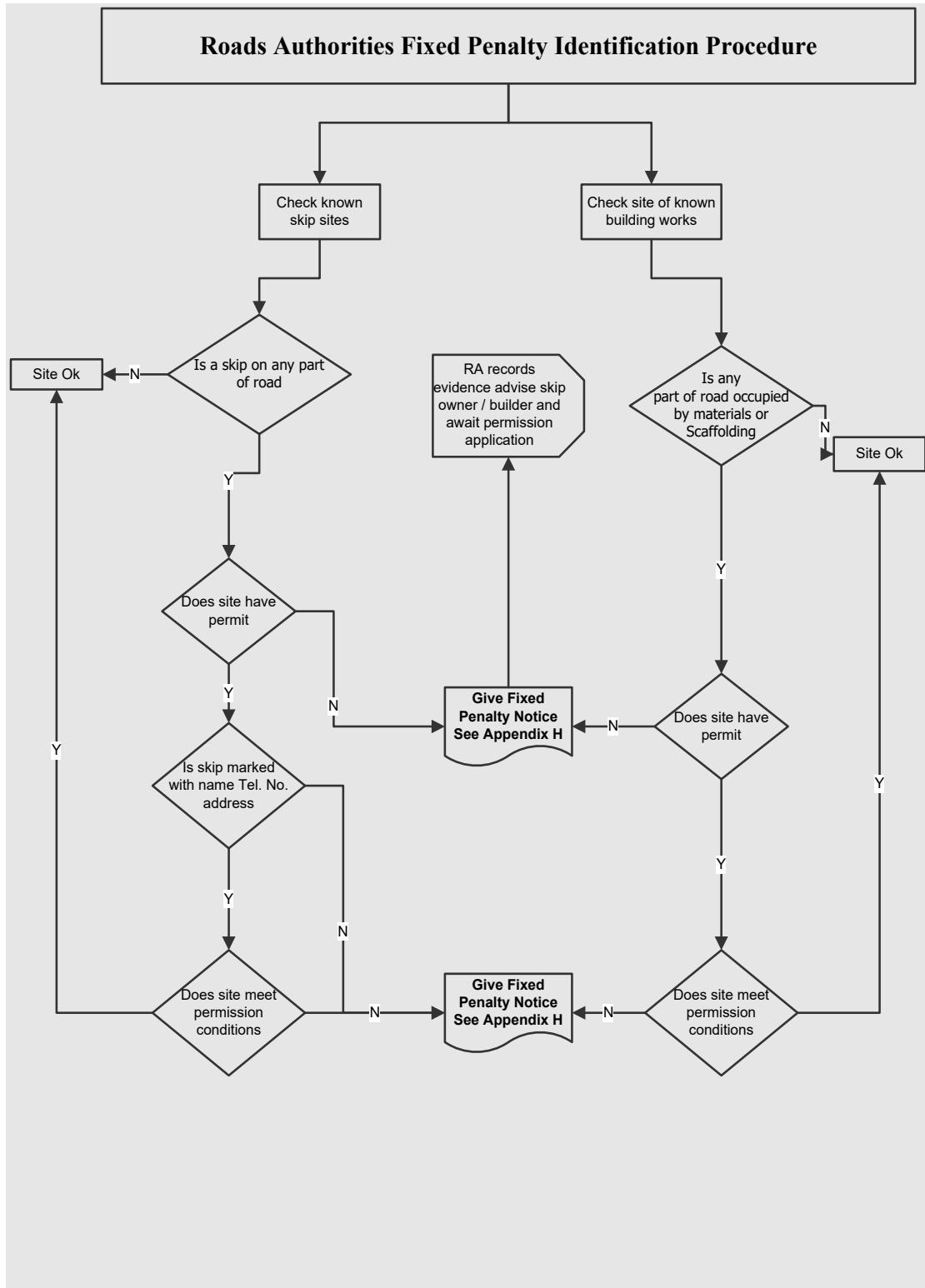
APPENDIX H – Page 3



APPENDIX H – Page 4



APPENDIX I – RA Identification of FPN process for R(S)A



APPENDIX J – RWA Issuing FPN NRSWA and R(S)A process

