

BETTER ROAD WORKS - CAN SCOTLAND LEAD THE WAY?

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Scottish Road Works Commissioner

1. INTRODUCTION

Road works often come in for a bad press and are a subject on which everyone has an opinion and a favourite horror story. However, the reality is that they are a necessary part of modern life if we, as a nation, wish to have well maintained, safe road networks, and to continue to enjoy essential services such as gas, water, electricity and telecommunications.

The question should not be the one often posed which is “**Why are there so many road works?**”, but should rather be “**How can we manage our road works better so that they don’t take so long and are less disruptive?**”

This paper reviews the recent changes in roads legislation and in particular the creation of the post of the Scottish Road Works Commissioner (“the Commissioner”), to consider if Scotland can and perhaps is, already leading the way in improving road works.

2. ROAD WORKS LEGISLATION

2.1 Key Road Works Legislation

The key road works legislation in Scotland is as follows:

- **The Roads (Scotland) Act 1984 (“R(S)A”)**
- **The New Roads and Street Works Act 1991 – Part VI - Road Works in Scotland (“NRSWA”)**
- **The Transport (Scotland) Act 2005 – Part 2 - Road Works (“T(S)A”)**

The Transport (Scotland) Act 2005 is and will continue to be supported by a number of recent and soon to be published regulations as follows:

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| The Scottish Road Works Commissioner (Imposition of Penalties) Regulations 2007 | Commenced 1 October 2007 |
| The Scottish Road Works Register (Prescribed Fees and Amounts) Regulations 2008 | Commenced 29 February 2008 |
| The Road Works (Scottish Road Works Register, Notices, Directions and Designations) (Scotland) Regulations 2008 | Commencement 1 April 2008 |
| The Road Works (Settlement of Disputes and Appeals) | Commencement 1 April 2008 |

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| against Directions) (Scotland) Regulations 2008 | |
| The Road Works (Qualifications of Supervisors and Operatives) (Scotland) Regulations 2007 | Consultation and commencement Spring 2008. |
| The Road Works (Fixed Penalty) (Scotland) Regulations 2008 | Commencement 1 October 2008 |
| The Roads (Scotland) Act 1984 (Fixed Penalty) Regulations 2008 | Commencement 1 October 2008 |
| The Road Works Resurfacing (Scotland) Regulations 2009 | Commencement 2009 |

Out of this raft of legislation the key changes are as follows:

- **Scottish Road Works Commissioner** - creation of the post of Commissioner.
- **Scottish Road Works Register** - formal legal status and Commissioner as its keeper. [Details about the Register can be found later in this paper]
- **Road works authorities to enter onto the Register proposed works and details of issues affecting roads** such as materials, skips, scaffolding etc.
- **Qualifications of supervisors and operatives** – road works authorities can check qualifications.
- **Competent staff** – roads works authorities and undertakers to ensure competence of employees.
- **Penalties for summary offences** – levels of penalties have been increased.
- **Dispute resolution and appeals process** – formal process involving RAUC(S) and the Commissioner.
- **Fixed Penalty Notices (FPNs)** – issued by road works authorities
 - Four offences (all concerned with notices) + T(S)A offences re skips, materials, scaffolding etc
 - £120 penalty on undertakers discounted to £80 if payment is made within 29 days
 - It is up to the road works authority to decide whether an offence has been committed and whether issuing an FPN is the most appropriate course of action
 - The recipient of an FPN may make representation to the road works authority in relation to the FPN
 - The road works authority may deduct monies from the FPN for the reasonable costs of operating the system

In addition

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- **Restriction following substantial road works** – the road works community has agreed that the Code of Practice should state a 3 year period after substantial road works when no further work can be undertaken, although this is not backed by legislation.
- **Resurfacing Regulations** – the regulations in relation to the power to require undertakers to resurface roads have been delayed and will be progressed later in 2008.

2.2 Legislative Differences Between Scotland And England & Wales

There are 3 key differences between the Traffic Management Act 2004 (TMA) and the Transport (Scotland) Act 2005 as follows:

- Whereas Scotland has a Road Works Commissioner taking a national strategic view, in England and Wales local councils have a traffic management duty and must appoint **traffic managers**.
- The TMA allows for the introduction of **permit schemes** to control specified works in specified streets. This allows for a range of charges of between £100 and £2,500 per day depending on the type of road and type of works. I will be keeping a close eye on the roll out and application of such permit schemes.
- The Scottish Road Works Register (a national computerised system for the transfer, retention and management of road works data) covers all of Scotland, whereas there is no such national system in England and Wales.

3. SCOTTISH ROAD WORKS COMMISSIONER

The Commissioner is an independent statutory office holder established under section 16 of the T(S)A and is accountable to Scottish Ministers and ultimately the Scottish Parliament.

3.1 Purpose of the Office of the Commissioner

To work with the road works community to oversee improvements to the

- planning,
- co-ordination; and
- quality

of road works in Scotland.

3.2 Commissioner Functions

The **general functions** of the Commissioner as set out in the T(S)A are to:

- **monitor** the carrying out of works in roads in Scotland undertaken by both road works authorities (councils for local roads and Transport Scotland for trunk roads) and statutory undertakers (utilities);
- **promote** compliance with the NRSWA and the obligations imposed under it. The NRSWA sets out the general duties of road works authorities to co-ordinate works and for statutory undertakers to co-operate with road works authorities when undertaking works;
- **promote** the pursuit of good practice by those persons who have functions conferred on them or permissions granted to them by or under the NRSWA.
- The **more specific functions** of the Commissioner include: **publish an annual report** for the Scottish Ministers on the performance of the Commissioner's functions;
- **prepare an annual account** of income and expenditure for each financial year;
- **keep a register to be known as the Scottish Road Works Register**, through which national overall performance on road works can be monitored and which will be the central tool for the planning and co-ordination of road works. Access to the register shall be made available to the public and will be achieved via an internet portal;
- **undertake a dispute resolution function** where escalation of disputes between road works authorities and statutory undertakers occurs, having not been settled by the Roads Authorities and Utilities Committee (Scotland) (RAUC(S)).

3.3 Commissioner Powers

The powers of the Commissioner include:

- do anything calculated to facilitate the discharge of any of the Commissioner's functions.
- require a road works authority or a statutory undertaker to provide the Commissioner with such **information** relevant to their respective functions and activities as the Commissioner reasonably requests.
- **provide an independent body which can impose penalties** when systematic failure of duties under the NRSWA occurs by either road works authorities or statutory undertakers.

3.4 Responsibilities of Other Parties

The title Scottish Road Works Commissioner can lead people to assume that I have responsibility for all works in roads in Scotland. This is not the case. Responsibilities for the day to day management of road works are unchanged.

The following sets out where the responsibilities for particular aspects of road works lie:

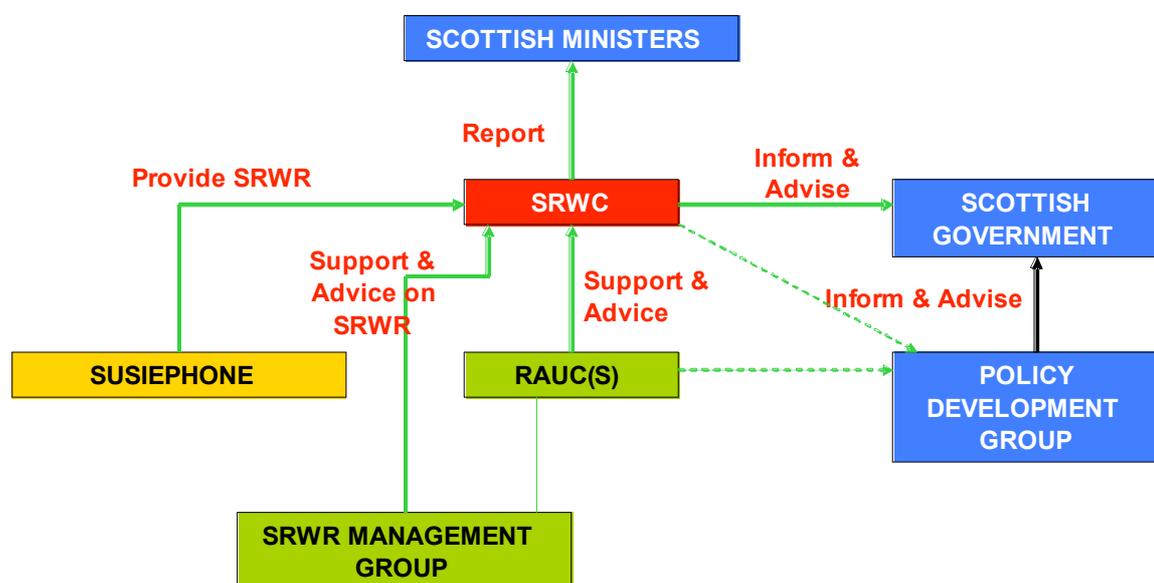
- The roads works authorities (councils for local roads and Transport Scotland for trunk roads) retain responsibility for the co-ordination of all works on roads for which they are responsible.
- The reinstatement of road surfaces remains the responsibility of the party undertaking the works. Roads works authorities have powers to inspect works to ensure that undertakers are meeting their obligations.
- The traffic management at road works (cones, signs and barriers) remains the responsibility of the party undertaking the works.
- Any decisions related to the repair and maintenance of a road shall remain with the roads authority. I shall have no role in this regard.

3.5 Summary of the Role of Commissioner

- **Full Time Strategic Focus** - It is clear that the creation of the Office of Commissioner will mean a major change to the way in which the road works community operates in Scotland. It provides a full time strategic focus on road works issues and will I hope provide a **centre of excellence** from which further good practice and legislation can be developed.
- **Monitoring** - It is clear that the first focus is on monitoring the performance of the road works community. As well as the information which will be available from the Scottish Road Works Register, I will work with the community to identify other information streams which would allow performance to be measured. It is only by collecting robust data, trended over time, that we will be able to start benchmarking performance, identifying the areas of weakness and driving through improvements.
- **Promotion** - The second clear theme is that of promotion, not only of good practice, but also of compliance with the NRSWA. The element of promoting compliance with the NRSWA is obviously closely linked to the role of monitoring performance.
- **Transparency** - I would wish to see much more transparency in the work being done by the community and its level of performance. Already there is public access to live road works information on the register and this can be viewed at www.roadworksscotland.org . I am moving forward to procure a website and propose to provide as much useful information as is possible. My Annual Report will cover not only the work which I have undertaken but, will also include the data on which performance is being judged.
- **Enforcement** – Notwithstanding that the legislation strongly focuses on monitoring and promotion of compliance, it does recognise that there may be circumstances where this does not have the required effect. Where road works authorities and undertakers appear to not be co-ordinating or co-operating respectively then, I may require information and issue directions and require progress reports. If this course of action fails, then I have powers to impose penalties up to a maximum of £50,000.

4. SCOTTISH ROAD WORKS COMMUNITY AND STRUCTURE

Whilst the road works authorities and the undertakers are the key players in the Scottish road works community, there are a number of bodies in place which have, and will continue to play a valuable role. The following diagram sets out the relationships between these bodies:



- **Scottish Ministers** – are responsible for appointing the Commissioner and for the Scottish Government.
- **Scottish Road Works Commissioner** – is required each year to give the Scottish Ministers a report on the performance of his functions. Also advises the Scottish Government on any requirements for new or amended legislation.
- **Roads Authorities and Utilities Committee of Scotland (RAUC(S))** – consists primarily of roads authorities and undertakers and provides support and advice to the Commissioner to improve the planning, co-ordination and quality of road works in Scotland.
- **Scottish Road Works Register Management Group** - assists the Commissioner (as keeper of the Register) in the development and day-to-day operational management of the Register.
- **Susiephone Ltd** – is a not for profit company with board members drawn from roads authorities and undertakers, which under an agreement with the Commissioner continues in the role of provider of the register.

- **Scottish Government** – has the responsibility for the development and procurement of any new or amended legislation required.
- **Policy Development Group** – consists of representatives from RAUC(S), SCOTS (the Society of Chief Officers of Transportation in Scotland), NJUG (National Joint Utilities Group), Scottish Government and the Commissioner. It has a remit to take a strategic overview of road works in Scotland and advise, particularly on the need for the development of new legislation or Codes of Practice.

5. SCOTTISH ROAD WORKS REGISTER

For the past two decades the Scottish road works community has worked collaboratively, starting by producing a plant protection system which it has continued to develop, culminating in the current Scottish Road Works Register; a system which is seen as being at the leading edge. This single electronic national system for the transfer, retention and management of road works data is a significant achievement.

This has contributed towards efficiencies in undertakers and road works authorities resulting in more effective partnership working. It has also provided a mechanism for improving the co-ordination of works, thereby reducing disruption and the impact on the travelling public.

Given that this system has been developed by a collaborative partnership of road works authorities and undertakers makes its delivery and ongoing improvement a doubly remarkable success. Because of this I have nominated the system for an award in the “Significant Contribution to The Industry – Product Invention and Innovation” category at the 2008 Highways and Utilities Committee annual conference.

The system produces a variety of statistical reports based on issues such as the reinstatement reports, inspection reports, notice reports and damage reports. Further work is being done to refine this data into trended KPIs and will assist both myself and the roads community in monitoring their performance and delivering improvements.

Public access to the Register can already be found at:
www.roadworksscotland.org.uk

The website provides a real-time interactive display of all current and planned works on the roads throughout the whole of Scotland.

Work is also well in hand on the development of an access portal for third party professional organisations to whom the information on planned and ongoing works within the register will provide added value to the management of their own activities. It is envisaged that bus operators, freight operators and the Office of the Traffic Commissioner will wish to have such access.

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It can be seen that the customer base of the Register is much wider than the traditional narrow focus on road works authority and undertaker activity.

6. DEFINING “BETTER” ROAD WORKS

There are 4 areas where I think that the public would wish to see the current performance improved:

- **Shorter Works Periods** – works should be continuous and take no longer to complete than is absolutely necessary.
- **Co-ordinated Works** – guidance on the distance between works and their timing should be adhered to. Care should be taken to ensure that there are no works on sensitive parallel routes or diversion routes that conflict.
- **Traffic Management** – compliance with Codes of Practice and more consideration of practical issues e.g. traffic signal timing and pedestrian movements.
- **Reinstatements** – require to be of improved quality and to have a longer life.

7. CAN SCOTLAND LEAD THE WAY?

So back to the original question – Can Scotland Lead the Way in undertaking Better Road Works? I am pleased to say that I conclude that it can and in fact in many ways already does. The following are my main reasons for coming to that conclusion:

7.1 Current Best Practice

The following are some examples where best practice has been adopted and developed in Scotland:

- **Careful Timing** – examples include:
 - the use of school holidays for major road works. Reduced traffic flows at peak hours can reduce potential congestion problems.
 - Short duration evening works in urban areas (18:30 to 22:00).
 - Avoidance of certain times. Edinburgh during the Festival. Shopping centres in the run up to Christmas. Airports at major holiday periods.
- **Lane Rental Contracts** – where the contractor is encouraged to complete the works as quickly as possible by daily bonus payments for early completion and repayment where completion is late.

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- **Maximising work when traffic management is in place** – when works are being undertaken, use of any closures to undertake, other activities e.g. inspections, gully emptying, litter picking, grass cutting and light bulb replacement.
- **Good Information** – examples include:
 - Edinburgh Tram Works – good use of the media and websites, they have a helpline and uniformed advisors at the work sites.
 - Transport Scotland uses its roadside variable message signs to advise of works.
- **Tidal Flow Traffic Management** – Transport Scotland has trialled the use of tidal flow traffic management to manage peak hour flows.
- **Use of average speed cameras at roads works sites** – Transport Scotland has led the way in the use of average speed cameras at road works sites to enforce speed limits and improve safety.
- **Mini Bridges over works** – Forth Estuary Transport Authority is considering the use of mini-bridges at the Forth Road Bridge which can span over the works and retain 2 lanes of traffic.

7.2 Scottish Road Works Register

There are 3 key issues with regard to the Register:

- **Single system** - any upgrades in functionality are enjoyed immediately by the whole user community. Service is provided to the community and so it can concentrate on its planning and co-ordination.
- **Community involvement** - The whole community has a voice in the development of the system and so it can continue to be developed to provide the functionality which the users require.
- **Robustly developed over time** – the system specification has been developed over a considerable period of time through an iterative process. It gives the backbone to the structure and framework in which the community operate the planning and co-ordination of road works.

7.3 Role of the Commissioner

The key advantages of having a Commissioner in place are:

- **Full Time Strategic Focus** - It provides a full time strategic focus on road works issues and will I hope provide a **centre of excellence** from which we can promote and develop further good practice and legislation.
- **Monitoring and reporting** – I am working closely with the community to develop KPIs which will both fairly reflect the work being undertaken and will provide data to allow organisations to improve the way in which they operate. I expect this to be a significant driver to improved

performance especially given this data will appear in my annual report and on my website.

- **Enforcement** – the power to require information, issue directions and require progress reports should encourage improved performance. As a final resort there is of course the power to issue fines of up to £50,000.

7.4 Fixed Penalty Notices

The ability of road works authorities to issue undertakers with FPNs for noticing offences and other parties with FPNs for offences related to placing of skips, scaffolding and materials should see improvements in these areas.

7.5 Road Works Community

Notwithstanding the foregoing, the main reason why I think that Scotland can lead the way towards better road works is due to the willingness of the road works community as a whole to co-operate and move matters forward. We are a relatively small country and the key players tend to meet regularly. This is a great strength which we must continue to utilise. Some examples are:

- **Legislation** – the community has shown a willingness to get involved in the development of both primary and secondary legislation as well as Codes of Practice and advice notes. It wants to be the author of its own destiny.
- **Resurfacing working group** – although it has not yet managed to develop the recommended Code of Practice because enabling primary legislation is not in place, a great deal has been completed and the gap between expectations on both sides has narrowed.
- **Utility Infrastructure Providers** – the access of such providers to the Register is being trialled through some innovating thinking and a willingness of the community to be flexible.

8. FINALLY

I would not wish to give the impression that I am seeing everything through rose tinted glasses and that everything in the garden is rosy. I recognise that there are significant challenges ahead. There remain problems with the standard of reinstatements where the annual coring programmes show persistently high failure rates. There will also be challenges in agreeing and implementing a Reinstatement Code of Practice. However, because of where we are now and as a result of the flexibility and willingness of the community to co-operate, I am confident that we can overcome these challenges and lead the way towards better road works.

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