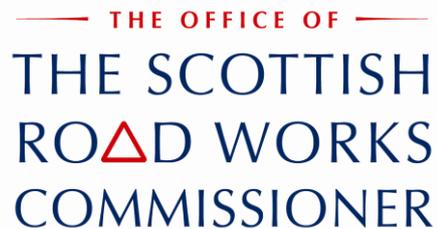


New Roads and Street Works Act 1991 as amended by the Transport (Scotland) Act 2005

Code of Practice for Dispute Resolution and Appeals



Version 1.1 – March 2011

Version History

<i>Version</i>	Date	Notes
1.0	August 2008	Version 1.0 drafted by the working party
1.1	March 2011	Revision to allow a wider range of disputes to be considered. Drafted by the Commissioner. Changes highlighted.
	October 2013	All previous changes incorporated into Code. No material changes to Version 1.1.

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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 Dispute Resolution and Appeals.

The Code of Practice sets out the procedures to be used when a dispute or appeal occurs. A recommended process to deal with hearings is contained within Road Authorities and Utilities Committee (Scotland) RAUC(S) Advice Note 18.

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

This Code of Practice was developed and prepared by a working group of RAUC(S).

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 of works in roads. If you have any comments on this code, they can be fed back through my office at enquiries@roadworksscotland.gov.uk and we will ensure that they are considered for future revisions.

A handwritten signature in black ink, appearing to read 'John Gooday', with a stylized, cursive script.

John Gooday
Scottish Road Works Commissioner

CODE OF PRACTICE FOR DISPUTE RESOLUTION AND APPEALS

CHAPTER 1 Introduction

1.1 Introduction

This Code of Practice provides a procedure to enable disputes to be resolved at a local level. Road works authorities and undertakers should always use their best endeavours to resolve disputes without having to refer them to the formal disputes or appeals procedures and ultimately to the Scottish Road Works Commissioner or a sheriff.

Section 36 of The Transport Scotland Act 2005 (T(S)A) makes provision to amend a number of sections of the New Roads and Street Works Act 1991 (the 1991 Act) to remove the requirement for the resolution of certain disputes by arbitration, and to substitute that these disputes are resolved in the prescribed manner contained in regulations. Codes of Practice should always be read in conjunction with the current regulations.

1.2 Interpretation

“Days” are calendar days for the purposes of this Code of Practice unless defined otherwise.

CHAPTER 2 Dispute procedure

2.1 Dispute Procedure

RAUC Scotland recommends that if agreement cannot be reached between a road works authority and an undertaker on any matter arising under the New Roads and Street Works Act 1991 (the 1991 Act) or any associated regulations, with the exception of any situations where a dispute procedure is provided in any other Code of Practice or RAUC(S) Advice Note, the dispute should be referred for review on the following basis.

2.2 First Stage Procedure

2.2.1 Straightforward issues

Where the two parties (including Scottish Ministers in their capacity as a road works authority for the Trunk Road network) consider that the issues involved in the dispute are relatively straightforward, the matter should be referred for review to the Area RAUC represented by one road works authority member and one undertaker member neither directly involved in the dispute itself. The Area RAUC Chair or appointed deputy will nominate the two review representatives. Area RAUCs are advised to nominate suitable members who are available to be called as representatives. A nominated member may be represented by a deputy.

Each party must make available to the review panel all financial, technical and other information relevant to the matter in dispute.

If the two nominated representatives cannot reach agreement, the issue will be referred to the Area RAUC Chair for a final decision.

The review should normally take place within 20 working days from the date of referral. It is **recommended** that the parties to the dispute should accept the result of the review as binding.

2.2.2 Complex issues

Where the parties to the dispute consider that the issues involved are of particular complexity, they should apply to RAUC(S) for a review panel of four persons, (two undertakers and two road works authority who are not directly involved in the dispute itself) who are members of RAUC(S) to review the dispute. One of the four persons will be appointed as Chair of the panel by the RAUC(S) joint Chairs. RAUC(S) is advised to nominate suitable members who are available to be called as representatives. A nominated member may be represented by a deputy.

Each party must make available to the review panel all financial, technical and other information relevant to the matter in dispute.

The review should normally take place within 20 working days from the date on which the issue is referred to RAUC(S). If the nominated representatives cannot reach a majority agreement, the issue will be referred to the RAUC(S) joint Chairs for a final decision. Should one of the RAUC(S) joint Chairs be a party to the dispute, then the Scottish Road Works Commissioner may be approached to nominate a suitably experienced member of RAUC(S) to act in their place. It is **recommended** that the parties to the dispute should accept the result of the review as binding.

2.2.3 Directions and Notice Requirements

Notwithstanding that an undertaker may wish to invoke the dispute procedure, this does not remove their duty under the 1991 Act to comply with any direction or, any requirement set out in a notice issued under the 1991 Act, with the exception of any disputes or, appeals related to the sections identified in sections 2.3 and 3.1 of this Code of Practice.

2.3 Second Stage (Escalation) procedure

2.3.1 If either party does not accept the decision of the Area RAUC as in 2.2.1 or, of RAUC(S) as in 2.2.2 above, they may refer the dispute in writing to the Scottish Road Works Commissioner where the dispute relates to one of the following sections of the (1991 Act) as amended by the Transport (Scotland) Act 2005:

- **Section 117(7) – Restrictions on works following substantial works carried out for road purposes** (withholding consent to the execution of road works following substantial works for road purposes);
- **Section 120(6) – Protected roads** (protected roads: withholding consent imposition of conditions or making of contributions);
- **Section 121(5) – Supplementary provisions as to designations of protected roads** (exercise of powers in S121 (2), (3) or (4));
- **Section 132D(2)(f) – Resurfacing: regulations** (dispute the prescribed circumstances detailed in a resurfacing notice) **NOT ENACTED**;
- **Section 133(2) – Charge for occupation of road where works unreasonably prolonged** (meaning of “reasonable period” for the purpose of charges for prolonged road works) **NOT ENACTED**;
- **Section 137A (5) – Contributions to costs of resurfacing by undertaker** (resurfacing notices to undertakers) **NOT ENACTED**;
- **Section 143(3) – Measures necessary where apparatus affected by major works** (disputes concerning major works for road purposes, major bridge works or major transport works procedures);

- **Section 155(3) – Recovery of costs or expenses** (disputes about costs and expenses);
- **Schedule 6(2)(1) – Roads with special engineering difficulties – Requirement of plan and section** (disputes concerning settling plan and section);
- **Schedule 6(12)(2) – Objection to works executed without plan and section being settled** (road works executed in a road with special engineering difficulties without settling plan and section) .

2.3.2 Such disputes should be referred to the Scottish Road Works Commissioner within 28 days of the ruling.

2.3.3 The Scottish Road Works Commissioner will then settle the dispute under the terms of Regulation 2 of The Road Works (Settlement of Disputes and Appeals against Directions) Regulations 2008.

2.3.4 If one of the parties is the Scottish Ministers, in their capacity as a road works authority for the Trunk Road network, then the dispute shall be referred to arbitration.

2.4 Unresolved Disputes

2.5.1 If either party does not accept the decision of the Area RAUC as in 2.2.1, or of RAUC(S) as in 2.2.2 above and the dispute does not meet the criteria set out in sections 2.3.1 and 3.1 of this Code of Practice, there are no further procedures available to them.

CHAPTER 3 Appeals Procedure

3.1 Instances of Appeals

The following sections of the New Roads and Street Works Act 1991 (1991 Act) as amended by the Transport (Scotland) Act 2005 provide for an appeals procedure to be set up to resolve disputes in certain areas.

- **Section 115(2A) - Directions as to the timing of road works** (appeals against directions as to the timing of road works);
- **Section 115A(5) - Power to give directions as to placing of apparatus** (appeals against directions as to placing of apparatus);
- **Section 119A(2) – Enforcement of sections 118 and 119: imposition of penalties** (appeals against the imposition of penalties);
- **Section 132D(2)(e) – Resurfacing: regulations** (the right of review or appeal against a resurfacing notice) **NOT ENACTED**;
- **Section 137A(5) – Contributions to costs of resurfacing by undertaker** (appeals against a resurfacing notice) **NOT ENACTED**;

3.2 Appeal Procedure

Before lodging an appeal, every effort should be made to resolving the issue by direct negotiation between parties. This negotiation is distinct from the appeals process.

3.3 Procedure For Appeals Against Directions Under S115 & 115A

An undertaker given directions under S115 or S115A may appeal to the Sheriff by way of summary application within 28 days of the direction having been given.

The Sheriff may dismiss the appeal or allow the appeal and quash or vary the direction.

The decision of the Sheriff is final.

3.4 Procedure For Appeals Against The Imposition Of Penalties By The Scottish Road Works Commissioner Under S119A

A road works authority or an undertaker on whom a penalty has been imposed may appeal to the sheriff by way of summary application within 28 days of the penalty having been imposed.

The sheriff may dismiss the appeal or allow the appeal and quash the imposition of a penalty or substitute for the level of penalty to a different level of penalty not exceeding £50,000.

A further appeal can be made on a point of law to the sheriff principal within 21 days.

The decision of the sheriff principal is final.