

PRESS RELEASE

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FIVE UTILITY COMPANIES PENALISED FOR FAILURE TO COMPLY WITH SCOTTISH ROAD WORKS LEGISLATION

The Scottish Road Works Commissioner has issued penalties totalling £83,500 to five utility companies for failing to comply with their statutory obligations when placing cables and pipes in roads.

These failings were identified by the latest Scottish National Coring Programme in which cores were taken to confirm that the correct materials, layer depths and compaction were used in the bituminous layers of excavations.

In December 2017, the Commissioner wrote to six utility companies advising that he was considering penalising them due to their poor performance. He gave companies the opportunity to submit representations detailing any mitigating factors.

Having considered their responses, the Commissioner decided that penalties should be issued against five of the six companies. The values of the penalties which have been issued are as follows:

Openreach	£50,000 (maximum)
Virgin Media	£16,000
Telefonica	£8,000
Vodafone	£8,000
Energetics	£1,500

The Commissioner has powers to issue penalties up to a maximum of £50,000 where a utility company has failed to comply with duties to co-operate with roads authorities. The value of the above penalties take into account the rate of failure below 80% and the overall number of road works undertaken by the company to estimate the potential degree of harm caused. Previous performance, including penalties for similar failures, and the mitigation provided by each company, particularly where recent data was able to show improvement, were also taken into account in determining the level of penalty.

The companies penalised have failed in their duties under section 119 of the New Roads and Street Works Act 1991. They have also failed to comply with the Specification for the Reinstatement of Openings in Roads (SROR).

Angus Carmichael, Scottish Road Works Commissioner said:

“Organisations with statutory powers to lay apparatus in Scotland’s public roads must comply with legislation for reinstating their excavations. As undertakers, these companies have statutory rights which allow them to place, inspect and maintain their apparatus under the road. However, these rights come with obligations set out in the New Roads and Street Works Act 1991. Compliance with these duties is essential to protect the road network across Scotland. Failed reinstatements reduce the serviceable life of the road, leading to further road works to replace the failed sections, additional costs to roads authorities and unnecessary disruption and inconvenience to road users.

“I am extremely disappointed that the performance of a number of utility companies has declined since the previous National Coring Programme. In particular, companies operating in the telecommunications sector, and specifically Openreach, who were penalised £38,500 in 2012 and £30,000 in 2014 for similar failings. Despite ongoing engagement with senior management in Openreach performance has deteriorated from a pass rate of 72% to a pass rate of 69%. In view of their continuing poor performance, which demonstrates no improvement, I have no option other than to apply the maximum penalty available to me of £50,000 on this occasion.

Virgin Media who were penalised at a failure rate of 63% in 2012, improved their performance significantly to 86% in 2014, but have fallen to 76% in the latest programme.

The performance of Vodafone, Telefonica and Energetics is also unacceptable and in need of early improvement.

Whilst the telecommunications sector continue to perform badly, it is encouraging that the major Water, Gas and Electricity companies achieved pass rates of around 90%, maintaining their 2014 performance levels and demonstrating that improvement is possible and can be maintained.

In 2015, road works undertaken across Scotland by these failing companies totalled 40,764 against 96,243 utility company road works registered. At an average failure rate of 30% of 40,764, this suggests that the legacy left by the five companies penalised totals 12,229 failed reinstatements. This is completely unacceptable and I hope these penalties serve as a clear warning to organisations.

All organisations penalised have provided assurances that processes are being modified to demonstrate early improvement. My office will continue to scrutinise their performance closely.”

NOTES FOR NEWS EDITORS

Angus Carmichael took up the post of Scottish Road Works Commissioner in September 2015 and has over 40 years experience in this sector.

The post of Commissioner was established under the Transport (Scotland) Act 2005 to improve the planning, co-ordination and quality of road works throughout Scotland. The Commissioner monitors performance and promotes good practice across both utility companies and roads authorities (Councils for local roads and Transport Scotland for the trunk road network).

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