

## Transport Strategy and Analysis

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By email

Date:  
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Dear Mr McNicoll

### **EDINBURGH TRAM INQUIRY - NEW ROADS AND STREET WORKS ACT 1991 CODE OF PRACTICE CONCERNING DIVERSIONARY WORKS**

Thank you for your letter dated 24 June 2021, to Hugh Gillies, Director of Roads at Transport Scotland. As this matter concerns overall road works policy, it lies within my remit as the Director of Transport Strategy and Analysis to respond to the questions you have posed, and I have been passed your correspondence in that capacity.

#### **Question 1: Would you be able to give an indication of where matters currently stand as regards review of the Code of Practice issued under section 143(2) of the New Roads and Street Works Act 1991 (Measures Necessary where Apparatus is affected by Major Works (Diversionary Works) (“the Code”))?**

The Department for Transport have responsibility for producing and publishing this Code, which applies UK wide. I am pleased to confirm that the Department for Transport, supported by industry bodies, the Roads Authority and Utility Committee (Scotland) (“RAUC(S)”), the Highway Authority and Utility Committee for England and Wales and the Northern Ireland Department of Infrastructure, operating together as (‘HAUC UK’), convened a working group to review this Code of Practice in April 2021. RAUC(S) is the umbrella group for road works in Scotland, comprising Scottish roads authorities, utility firms with statutory rights to undertake works in the road, and the Scottish Road Works Commissioner.

Transport Scotland and Aberdeenshire Council represent Scottish interests on the group. The group has so far met twice, with further monthly meetings arranged until the end of the year. So far, the group has discussed the mechanisms necessary to provide a UK wide code in a devolved area, the need to first provide an electronic version of the current version of the Code in order to consult on changes (as the document is only available in out of print hard copy) and the need to update the arbitration process, which has been altered by later legislation. It is anticipated that a new draft of the Code may be available by 2022.

The outline of the group’s remit includes the following:

*“It is [the groups] intention to conduct the review in a transparent and inclusive way, working with the devolved governments in delivering a framework for change balancing the needs of asset owners, authority project delivery and public purse burdens. Ensuring the Code provides clarity,*

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*fairness and consistency for all parties involved in works. It is clear this is a sizeable task and completion may be 18 months in terms of an agreed document”.*

*“1. Set up a review task group from within the industry to deliver a review of the COP.  
[Completed in April 2021]*

*2. Produce an electronic version of the existing code and together with the HAUC Advice note from 2010, circulate to the industry setting out the review plan and guiding all concerned to use the current document and asking for feedback from the industry as a way of getting buy in to the review and the desire to support the Infrastructure needs of the UK. [Complete by July 2021]*

*3. Review Group to deliver a task plan setting out process and review milestones, including target review and COP publish date. [Originally intended to be complete by October 2021]*

**Question 2: Is the group giving active consideration to any revised Code making specific provision relating to tram works?**

I confirm that Transport Scotland have raised this issue at the most recent meeting of the group. At this stage, it seems the group see no need for making a specific reference to tram works in the revised Code, on technical grounds.

In the Code, tram works currently sit within the ‘Major Transport Works’ grouping, alongside works to docks, piers, canals, railways and harbours. It is anticipated that the revised Code may follow the same grouping. Initial discussions within the group on this topic suggest the revised Code will not provide more detail on any individual work types (tram, docks, roads etc.) on the basis that the process should be the same for all kinds of major transport work, and that further detail about the aims of the project is not relevant to the relocation costs of the asset owner.

**Question 3: Is the working group considering whether redundant underground apparatus might be addressed in any revised Code?**

The group intends to keep the base principles of the current Code in place for the new revision, and follow largely the same structure and scope with updated text for the changes which have occurred since it was first published.

The Code applies to assets which are providing a current service (“live”) and assets which are no longer in commission (“abandoned”). Abandoned or redundant in this context means ‘not providing a supply’, rather than no longer maintained or no longer the responsibility of the body which laid them. It is anticipated the revised Code would apply equally to live and abandoned assets. It is also intended that the revised Code would outline, separately for the four nations, what the reporting process should be when there is a failure to adhere to those principles, either in a specific dispute or through general non co-operation. In Scotland this will fall largely to the Scottish Road Works Commissioner.

The separate issue of unidentified buried objects, where no owner can be found at all, is currently handled in Scotland via Advice Note 25<sup>1</sup>. These are fairly rare, and in many cases the ‘UBO’ is removed as part of the works through necessity. It is possible UBOs may form part of the later discussions of the group.

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<sup>1</sup> <http://roadworks.scot/sites/default/files/publications/add/RAUC%28S%29%20Advice%20Note%2025.pdf>

**Question 4: Are you aware of any other issues being considered by the working group that could address challenges experienced in the construction of the tram line in Edinburgh?**

The working group has considered whether there are any general issues with the current version which might be addressed to encourage adherence to the Code. One of the first points noted by the group is that, despite its age, large portions of the Code remain fit for purpose. An issue appears to arise however, in the opinion of the group, in relation to accessibility. The Code was only ever available in hard copy via Her Majesty's Stationary Office and, as it is now out of print, access is limited. While there are poor quality photocopies in circulation, and pre-owned hard copies available from online booksellers, the group considers it likely that lack of access to the Code may have prevented some organisations from using it fully or even being aware of it at all. To this end the group's first action was to create a 'word document' version of the printed Code, ready to circulate to the wider roadworks community for comment. This is currently due to be completed before November 2021. The working party intend to make the Code accessible electronically and have identified its lack of electronic format as being a potential source of confusion.

The current procedure for disputes, including those arising from Section 142 of the New Roads and Street Works Act 1991, is detailed for Scotland in the Dispute Resolution and Appeals Code 2011. The working group intends to make specific reference to this document in the revised Code. The expectation is that this route to resolution would be used if required in the event of a dispute arising. The group considers it would be beneficial if all organisations operating in Scotland's roads could be encouraged to make themselves aware of the Dispute Resolution and Appeals Code 2011 and to make use of the dispute resolution procedure where appropriate.

I hope that this is helpful to you



**Alison Irvine**  
Director, Transport Strategy and Analysis