



From mountain to sea

Enforcement of Roads and Traffic Authority Powers Manual

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1 Introduction

1.1 Legal & Policy Background

As a Local Roads Authority under the *Roads (Scotland) Act 1984*, Aberdeenshire Council is responsible for the management and maintenance of all non-trunk, public roads within its boundaries. To support this duty, the act provides the authority with various powers of enforcement. Further powers of enforcement are also conferred on the Council as a Traffic Authority under the *Road Traffic Regulation Act 1984*.

Aberdeenshire Council's *Enforcement of Roads and Traffic Authority Powers Policy* sets out the principles to be followed by officers when utilising these powers on behalf of the Council.

This *Enforcement of Roads and Traffic Authority Powers Manual* is directly referred to in the Policy and the guidance contained within this manual shall be applicable for all non-trunk roads in Aberdeenshire.

1.2 Principles of Enforcement

Aberdeenshire Council shall use their powers of enforcement to achieve the following outcomes:

- To ensure public safety;
- To protect our assets in the public road;
- To prevent unnecessary hindrance or obstruction to road users;
- To change offender behaviour;
- To undo any harm caused by non-compliance; and
- To deter future non-compliance.

In many instances these objectives can be satisfactorily achieved through a softer initial approach rather than the immediate use of statutory powers, particularly in cases of genuine ignorance of or misunderstanding of the requirements but instances of reckless or wilful disregard should be dealt with appropriately.

Enforcement action should be proportionate to the nature of the offence however there should be no benefit, financial or otherwise, to parties in choosing to ignore our conditions or documented processes for obtaining consent.

2 Enforcement Measures

Depending on the particular infringement or offence, a range of enforcement measures are available. These can include:

- No Action
 - Advice and education
 - Warning Letter
 - Statutory Notice
 - Fixed Penalty Notice
 - Prosecution
-

2.1 No Action

No action would be appropriate in the following circumstances:

- where an investigation reveals no infringement has occurred;
- where the responsible person makes a ready admission of the infringement and takes immediate steps to rectify it;
- where there are strong mitigating circumstances; or
- where there is no jurisdiction to act.

2.2 Advice and education

The provision of advice and education may be a sufficient response to very minor or technical infringements which have arisen in cases of genuine ignorance of or misunderstanding of the requirements. This approach would not be appropriate for cases of recklessness or wilful disregard.

2.3 Warning Letter

Warning letters may be issued in cases where the need to address the infringement remains, but which do not require immediate action. The letter shall explain the legal requirements for compliance, the timescale for compliance, and what action will be taken in the event of non-compliance.

2.4 Statutory Notice

The issuing of statutory notices shall be appropriate where there is:

- a clear breach of legislation;
- a history of non-compliance despite advice having been provided; or
- potential harm to the community or environment.

Section 136 of the *Roads (Scotland) Act 1984* gives requirements for the contents of such notices:

Except where and in so far as otherwise expressly provided in this Act, a notice issued or served by a roads authority under this Act regarding the doing of anything in relation to land, shall—

- a) so far as necessary and reasonably practicable give details, including the location, of the land;*
- b) so far as necessary and reasonably practicable specify the nature of any works which have to be carried out and of any requirements which have to be met;*
- c) specify any period within which the notice has to be complied with;*
- d) state any power of the authority, if the notice is not complied with, to enter the land and carry out the works specified in the notice and to recover their expenses in so doing; and*
- e) intimate any right of appeal under this Act against the notice.*

2.5 Undertake Work Necessary to Rectify Infringement

There is provision in several sections of the Roads (Scotland) Act 1984 for the roads authority to carry out works necessary to address issues arising from non-compliance and Section 141 extends this power to all other works required by notice under this act. All reasonable costs incurred should be recorded and recovered from the responsible party.

2.6 Fixed Penalty Notice

Fixed penalty notices (FPNs) may be used as an alternative to bringing a prosecution for the following offences under of the *Roads (Scotland) Act 1984*

- Section 58(1) - deposit of building materials in or erection of scaffolding over road without or other than in accordance with permission;
- Section 85(3) - deposit of builder's skip on road without permission of roads authority; or
- Section 85(3) - failure of owner of skip or other person to ensure conditions of permission complied with.

Paying the penalty imposed by a FPN discharges any liability for prosecution for the offence but does not, however, discharge the obligation to comply with the requirements to apply for permission or to comply with conditions of a permission.

A FPN for an offence may not be given more than 91 days after the commission of the offence beginning with the day of its commission.¹

Further guidance on the use of this enforcement power is given in Section 5 of the Office of the Scottish Road Works Commissioner's Code of Practice for Penalties.²

2.7 Prosecution

Aberdeenshire Council, as a specialist reporting authority, can report offences directly to the Procurator Fiscal. This approach will only be progressed, after discussion with the Council's Advice and Representation team, normally for cases where one or more of the following criteria apply:

- deliberate, negligent, or persistent breaches of legal obligations, likely to cause material loss or harm to others;
- deliberate or persistent ignoring of written warnings or formal notices;
- the endangering, to a serious degree, the health, safety or wellbeing of people, animals, or the environment; or
- when all other attempts to reach a satisfactory outcome have failed or stalled.

¹ Regulation 5 of [The Roads \(Scotland\) Act 1984 \(Fixed Penalty\) Regulations 2008](#) as amended in 2011

²

https://roadworks.scot/sites/default/files/publications/add/Code_of_Practice_for_Penalties_01_2014.pdf

The decision whether to prosecute or not rests with the Procurator Fiscal who will consider, among other things, whether prosecution would be in the public interest and if the evidence is sufficiently robust to give a realistic prospect of conviction. They will also decide if the offence is serious enough to be dealt with on indictment in *solemn proceedings* before a judge and jury or, for less serious offences, *summarily* before a sheriff or a justice of the peace. Under the *Roads (Scotland) Act 1984*, only offences under Sections 17, 22, 22A and 55C may be triable on indictment.

3 Record Keeping

All enforcement interactions should be recorded in the Confirm database under “Roads Scotland Act Enforcement Issues”. Photographs should be added as appropriate.

4 Authorisation to Carry Out Enforcement

Under the Scheme of Governance, the Head of Roads, Landscape and Waste Management Services is authorised to

...exercise the functions of the Council as local roads authority under the Roads (Scotland) Act 1984, the Road Traffic Regulation Act 1984, the New Roads and Street Works Act 1991 and the Transport (Scotland) Act 2005 and any other relevant legislation. This includes the serving of any notices, withdrawal of any notices, issue of any licences, giving any consents and generally take any necessary action on behalf of the Council in terms of the Council's functions relating to roads.

Roads Managers and Principal Officers have sub-delegated authority to

To sign, issue and serve as appropriate statutory notices on behalf of the Council under all relevant legislation applicable to the functions of their service.

Accordingly, while Inspectors may issue informal warning letters, all statutory notices shall be signed and issued by a Principal Roads Engineer or Roads Manager.

5 Infringements Which May Be Subject to Enforcement Action

Table 5.1 lists the range of infringements and offences covered by the Policy.

Our *Street Trading and Occupation of the Road* manual gives guidance on enforcement of Sections 59 and 87 while operational procedures OP10 and OP11 deal with Sections 95 and 99 respectively.

Table 5.1: Enforceable matters

Section of Act	Description
R(S)A s.13	Failure to commence or complete works for making up and maintenance of a private road by date specified in notice.
R(S)A s.17	Starting construction where a road bond is required but not provided.

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R(S)A s.18	Failure to make up footpath for adoption within agreed period
R(S)A s.21	Contravention or non-compliance with a condition imposed by a construction consent.
R(S)A s.22, 23	Constructing a new road or an extension of an existing road without construction consent; or contravening, or failing to comply with, a condition.
R(S)A s.31	Without consent, altering, obstructing or interfering with a drain or barrier.
R(S)A s.56	Works/excavation in public road without consent or in contravention of applied conditions
R(S)A s.57	Dangerous works
R(S)A s.58(1)	Deposit of building materials in or erection of scaffolding over road without or other than in accordance with permission.
R(S)A s.59	Obstruction in road without consent.
R(S)A s.60	Failures in fencing and lighting of obstructions and excavations.
R(S)A s.63	Unauthorised or unsatisfactory vehicular crossing.
R(S)A s.66	Failure to keep vaults, cellars etc under the road in good condition.
R(S)A s.67	Gates, doors etc. opening into the road.
R(S)A s.69	Stopping up of dangerous access from public road to land.
R(S)A s.83	Obstruction of view at corners, bends and junctions.
R(S)A s.85(3)	Deposit of builder's skip on road without permission of roads authority.
R(S)A s.85(3)	Failure of owner of skip or other person to ensure conditions of permission complied with.
R(S)A s.87	Unauthorised structures in road.
R(S)A s.88	Projections which impede or endanger road users.
R(S)A s.89	Accidental obstructions
R(S)A s.90	Placing bridges, beams, rails etc. over roads.

R(S)A s.90	Overhanging vegetation,
R(S)A s.92	Planting of trees etc. near carriageway.
R(S)A s.93	Dangers near a road.
R(S)A s.95	Deposit of mud from vehicles on roads.
R(S)A s.99	Flow of water or of filth, dirt or other offensive matter from, or any percolation of water through, the land onto the road.
R(S)A s.100	Damage to road including painting marks and lighting fires.
R(S)A s.101	Placing rope, wire or other apparatus in road without adequate warning.
R(S)A s.93	Ploughing unenclosed land adjoining a public road.
R(S)A s.129	Miscellaneous summary offences.
RTRA s.69	Unauthorised traffic signs.