

**To:               INFRASTRUCTURE, LAND AND ENVIRONMENT POLICY BOARD**

**On:               24 May 2023**

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**Report by:     DIRECTOR OF ENVIRONMENT, HOUSING AND INFRASTRUCTURE**

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**Heading:       Roads Enforcement Policy**

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## **1. Summary**

- 1.1     The Council has a vision to create a road network that is safe for all users, provides benefit to health and wellbeing as well as being a fundamental driver of economic regeneration through provision of access to employment, leisure and social activity.
- 1.2     This Enforcement Policy sets out the principles to be followed by officers when utilising these powers on behalf of the Council.
- 1.3     The key objectives of the Road Enforcement Policy are to:
- To ensure public safety;
  - To protect our assets on 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.
- 1.4     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 misunderstanding of the requirements, however, instances of wilful disregard should be dealt with appropriately.
- 1.5     This policy should help to ensure that infringements and infractions are dealt with proportionately, objectively and impartially across Renfrewshire.

## 2. Recommendations

It is recommended that the Infrastructure, Land and Environment Policy Board:

- 2.1 Approves the Roads Enforcement Policy as attached at Appendix 1.

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## 3. Background

- 3.1 As a Roads Authority under the Roads (Scotland) Act 1984, Renfrewshire 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. In addition, Renfrewshire Council has a duty under the New Roads and Street Works Act 1991 to ensure those working on public road do so in a safe and timely manner.
- 3.2 The Roads (Scotland) Act 1984 also requires the council to manage and maintain a List of Public Roads for its area.
- 3.3 A road includes carriageways, footways, footpaths, cycle paths and verges and a public road is a road that the Council has a duty to maintain. In the current list the term carriageway refers to the road and can be assumed to include the adjoining footway or verge unless stated otherwise.
- 3.4 Public roads are those managed and maintained by Renfrewshire Council, no matter who owns the ground on which the road has been constructed

## 4. Review

It is recognised that the environment we operate in is continually evolving and as a result we must continue to evolve as well. We will review these policies on an ongoing basis to ensure they will continue to deliver the identified improvements for our communities.

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## Implications of this Report

1. **Financial** – none.
2. **HR and Organisational Development** – none
3. **Community Planning** - none

**Empowering our Communities** – none

**Safer and Stronger Renfrewshire** – The aim of this policy is to create a road network in Renfrewshire that is safer for all users.

**A Greener Renfrewshire** – none

**Renfrewshire forum for Empowering Communities** – none

4. **Legal** – none

5. **Property/Assets** – none
6. **Information Technology** – none
7. **Equality & Human Rights** - The recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
8. **Health and Safety** – none.
9. **Procurement** – none.
10. **Risk** – none.
11. **Privacy Impact** – none
12. **CoSLA Policy Position** – none
13. **Climate Risk** – none

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**List of Background Papers** - none

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# **ROADS ENFORCEMENT POLICY**

Environment, Housing & Infrastructure

[www.renfrewshire.gov.uk](http://www.renfrewshire.gov.uk)



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# 1. Introduction

## 1.1. Legal & Policy Background

As a Roads Authority under the Roads (Scotland) Act 1984, Renfrewshire 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. In addition, Renfrewshire Council has a duty under the New Roads and Street Works Act 1991 to ensure those working on public road do so in a safe and timely manner. Infringements which may be subject to Enforcement Action are outlined in Appendix 1.

To ensure that our road network remains in a safe condition and is enjoyed by the public, and to prevent, so far as reasonably practicable, the unauthorised obstruction or encroachment on our network, this Enforcement Policy sets out the principles to be followed by officers when utilising these powers on behalf of the Council.

Compliance with this policy should help to ensure that infringements and infractions are dealt with proportionately, objectively, and impartially across Renfrewshire.

## 2. Aim of this Policy

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

- To ensure public safety;
- To protect our assets on 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 or misunderstanding of the requirements, however, instances of recklessness or wilful disregard should be dealt with appropriately.

### 3. Principles of Enforcement

The guiding principles for the enforcement work undertaken by the Roads Authority are as follows:

**STANDARDS** – The Environment, Housing & Infrastructure Service Improvement Plan sets clear performance standards that the service is required to achieve in order to demonstrate our performance. The Office of the Scottish Road Works Commissioner also monitors performance and publishes an annual report on the performance of local authorities and utilities.

**CONSISTENCY** – The Roads Authority will exercise its duties in a fair, equitable, non-discriminatory and consistent manner. While Roads Enforcement Officers must be able to exercise professional judgement, they must also take in to account any local or national guidance available.

**PROPORTIONALITY** – At all times, Officers will take enforcement action proportionate to the level of risk presented. Our Roads Enforcement Officers will work with businesses and the public to ensure they can meet legislative requirements without unnecessary expense. In certain situations, enforcement penalties are set by legislation and as such these cannot be changed.

In relation to proportionality the following factors will be considered:

- The seriousness of the breach involved,
- Any steps taken to prevent the offence or minimise the impact,
- History of compliance,
- Likelihood of recurrence of the contravention, and
- The need to deter future breaches.

**OPENNESS** – The Roads Authority provide clear and transparent information in relation to the enforcement activities carried out. Where Road Enforcement Officers decide to take enforcement action, they will ensure that the reasons are made clear and any appeal procedures are explained.



HELPFULNESS – At all times Roads Enforcement Officers will be helpful and assist with enquiries where possible. In cases where Roads Enforcement Officers are not able to assist they will ensure service users are directed to the appropriate alternative service. There may be occasions whereby we may not be able to undertake action as requested by service users, and in these instances these decisions will be fully explained.

## **4. Application of this Policy**

When deciding on the most appropriate action for an individual case, we will consider the following:-

### **4.1. Encroachment, Obstruction or Interference**

Includes, but is not limited to, any disruption to the use of the road, e.g.:-

- Vegetation overhanging the road network;
- Objects placed on carriageways, footways and verges;
- Interference with light.

### **4.2. Significant Interference**

When deciding what constitutes significant interference, consideration will be given to the following non-exhaustive factors:-

- Amount of road available for the use by the public;
- Location of the defect within the road;
- Type of road;
- Category of road;
- Amount of footfall;
- Amount of traffic;
- Nature of the interference.

### **4.3. Prioritisation Criteria**

- a) the degree of risk arising from the non-compliance;
- b) the seriousness of the contravention;
- c) the different technical means of remedying the situation;

- d) the particular circumstances of the case and likelihood of its continuation or recurrence;
- e) the general attitude of the offender to his or her responsibilities;
- f) the past history of the person(s), company or premises involved;
- g) the willingness of owners of new businesses to carry out required work;
- h) the impact of the enforcement choice in encouraging others to comply with the law;
- i) the likely effectiveness of the various enforcement measures;
- j) any legal imperatives;
- k) any legal guidance;
- l) any guidance or protocols issued by Scottish Road Works Commissioner

## 5. Risk Assessment

In order to prioritise the enforcement of encroachments, obstructions and unlawful interference of the road network, a risk assessment will be carried out. The assessment will quantify the **impact** of a risk should it occur, against the **probability** of the risk actually occurring. Both assessments are on a scale of 1 – 4, where 4 is the highest impact or probability.

### 5.1. Risk Impact

Relates to assessing the extent of damage likely to be caused should the risk become an incident:

- 1. = minor or low impact
- 2. = noticeable impact
- 3. = major, high or serious impact
- 4. = extremely high or dangerous impact

### 5.2. Risk Probability

Assessing the probability of a risk occurring

- 1. = low probability (up to 40%)
- 2. = medium probability (41 to 60%)
- 3. = high probability (61 to 80%)
- 4. = very high probability (over 80%)

Considerations that we will take into account when making the risk assessment will include but are not limited to, the type of road; the category of road; the amount of footfall; traffic volume; surrounding environs; and the location of the defect within the road.

## 6. 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

### 6.1. No Action

No action could 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.

### 6.2. 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.

### 6.3. 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.

### 6.4. 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.

The notice will include any works which are required to be carried out and the specified timescale to complete the works.

### 6.5. 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.

### 6.6. 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*.

Examples where a FPN maybe issued include:

- Failure to gain a permit to erect scaffolding over a road
- Failure to gain a permit to place a skip on the road.
- Failing to comply with any conditions specified in a permit

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.

## **6.7. Prosecution**

Renfrewshire 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 Legal 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.

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.

## **7. Illegal Erection of Signage on Street Furniture**

In line with the Roads (Scotland) Act 1984, Section 100 the Council is introducing a charge for the removal and disposal of illegal signage on street furniture.

An advisory letter will be issued to the proprietor in the first instance advising that the signage should be removed within seven days.

Failure to remove the signage within the seven days will result in the signage being removed and disposed of by the Council, and a charge of £100 will be applied per unit removed.

## **8. Legal Erection of Signage on Street Furniture**

There are some cases where erection of signage on street furniture will be permitted.

Not for profit organisations will be able to apply for consent to erect temporary signage for a maximum of 7 days. Approval to erect temporary signage on street furniture will be at the Officers discretion. For example, the location and size of the signage will be considered to ensure that it does not pose a danger to road users.

Applicants will be responsible for the removal of the signage at the end of the 7 day period. Failure to do so may result in £100 charge per unit to for removal.



## 9. Authorisation to Carry Out Enforcement

Under the Scheme of Delegated Functions the Head of Climate, Public Protection and Roads 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.*

The following have delegated authority 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.

- Infrastructure, Transportation & Change Manager
- Infrastructure & Assets Manager
- Assistant Infrastructure & Assets Manager

Accordingly, while Inspectors may issue informal warning letters, all statutory notices shall be signed and issued by:

- Infrastructure, Transportation & Change Manager
- Infrastructure & Assets Manager
- Assistant Infrastructure & Assets Manager

## 10. Policy Review

This policy is a living document and will be reviewed and updated if/when statute or national standards or best practice requires it. This policy will be reviewed after 12 months of operation and then every 3 years.

## 11. Appendix 1

### 11.1. Infringements which may be subject to Enforcement Action

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

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.
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.55C	Offences committed in relation to an environmental assessment of certain road improvement projects
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.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.91	Prevention of danger to road from nearby vegetation and fences etc. or from retaining walls being inadequate.
R(S)A s.95	Deposits of mud from vehicles on roads.
R(S)A s.96	Extraordinary expenses in repairing roads damaged by heavy vehicles etc.
R(S)A s.99	Prevention of flow of water etc. onto roads.
R(S)A s.100	Damage to Roads etc.
NRSWA s.110	Prohibition of unauthorised road works.
NRSWA s.124	Safety Measures.
NRSWA s.125	Avoidance of unnecessary delay or obstruction.
NRSWA s.126	Qualifications of supervisors and operatives.
NRSWA s.131	Powers of road works authority in relation to reinstatement.
NRSWA Schedule 6A	Fixed penalties offences under part 4.

NRSWA Schedule 6B	Fixed penalties for certain offences under part 4.
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