



HIGHWAY AUTHORITIES & UTILITIES COMMITTEE

HAUC England
Advice Note No. 2014/03

**Code of Practice for Inspections:
Defects Not Causing Danger Inspections**

ENGLAND

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Note: Street and permit authorities or their respective agents are referred to throughout as 'authorities'. Undertakers or their agents are referred to throughout as 'undertakers'.

1. Background

1.1 The Highway Authorities and Utilities Committee [HAUC(UK)] recognised that the current 2002 edition of the Inspections Code of Practice (Code) is not clear regarding chargeable authority inspections associated with defective reinstatements not causing danger so agreed to produce an Advice Note to help explain the procedures. The Code will continue to undergo a revision by a new HAUC England working group which will include a clearer procedure for dealing with defective reinstatements not causing danger. This advice note should be accepted as current guidance until the revised Code is published by HAUC England. The Code will continue to be non-statutory.

1.2 The legislative basis for this advice note is the New Roads and Street Works Act 1991 (NRSWA) sections 60, 65, 71, 72, 75 and the associated The Street Works (Inspection Fees) (England) Regulations 2002 (as amended) and the Traffic Management Act 2004 (TMA) sections 58 and 59. The inspection regime is restricted by the constraints of the current primary and secondary legislation.

1.3 It is important to reiterate that the purpose of defective reinstatement inspections is to ensure that the reinstatement has been completed to the standards laid down in the version of the 'Specification of the Reinstatement of Openings in Highways Code of Practice' (SROH) in force at the time of the works.

1.4 Undertakers are reminded that, where a reinstatement is found not to comply with the SROH, then an offence may have been committed under section 71 of NRSWA. Section 60 of NRSWA includes the requirement for undertakers to co-operate with street authorities to protect the structure of the street and the integrity of the apparatus in it and they are reminded that it is essential that all defects are rectified in the timely manner detailed in this advice note in order to avoid the possible deterioration of the street structure.

1.5 Authorities and undertakers must notify each other when authorised agents are acting on their respective behalves. Authorities and undertakers are reminded that the appointment of agents does not negate their responsibilities under sections 48 and 49

of NRSWA and sections 16 and 17 of the TMA. In some cases both authorities and undertakers will be represented by authorised agents, however, ultimate responsibility for street works activities remains with the undertaker and any escalations would normally be to the undertaker's management.

1.6 To provide an audit trail and avoid unnecessary disputes it is strongly recommended that all communications between an authority and an undertaker, including photographs where necessary attached to the Works Inspection Report (WIR), are confirmed in the works comments field on the Electronic Transfer of Notices system (EToN). Further comments from the authority may be included in the site comments field of the WIR.

2. NRSWA section 72 – Powers of street authority in relation to reinstatement

2.1 Section 72 of NRSWA allows that when a reinstatement defect is detected, the undertaker shall be required to bear the cost of up to three inspections in respect to three stages in the defective reinstatement rectification process:

a) FIRST STAGE INSPECTION

The first stage is where a defective reinstatement has been identified and a joint site inspection is held to determine the nature of the failure and what remedial works are required takes place.

b) SECOND STAGE INSPECTION

The second stage is when an inspection is carried out whilst remedial works are in progress.

c) THIRD STAGE INSPECTION

The third stage is an inspection undertaken after the remedial works have been completed. This is carried out to confirm that the remedial reinstatement is compliant.

It should be noted that it may not be necessary to complete every stage in the defect reinstatement process and that stages may be omitted as determined in Section 3.

2.2 This advice note recommends that to avoid legal steps being taken by an authority against an undertaker an additional inspection be allowed when undertakers fail to complete remedial works in reasonable timescales and the notification process is recommenced. This is explained in 3.1.5.

2.3 To ensure a robust audit trail it is essential that the authority complete a Works Inspection Report (WIR) for all inspections of works carried out as evidence of work undertaken and a record of what was discussed or found on site. Following the completion of an inspection it is recommended that the WIR is sent to the undertaker via EToN within three working days or as soon as practicable. The WIR also provides the evidence required to trigger payment of an inspection.

2.4 All invoices for defective reinstatements should be supported with a copy of the appropriate WIR as evidence of completed inspections.

3. Chapter 4 of the Code of Practice for Inspections – September 2002

Please note the following sections 3, 4, 5, 6, 7, 8 and 9 replace section 4.2.2 in the 2002 edition of the Code in its entirety. For clarity the sub paragraphs are cross referenced as in 4.2.2 of the Code.

3.1 Defect notification 4.2.2 (i) and the joint site inspection 4.2.2 (ii)

The following process commences once the defective reinstatement notification and WIR have been served by the authority via EToN.

3.1.1 On finding a defective reinstatement not causing danger, the authority sends a WIR and Defect Notification to the undertaker. It will be in the interest of the authority to send these as soon as is reasonably practicable in order for the remedial works process to commence. Where an authority requires a joint site inspection they should propose a date and time for this joint site inspection with contact telephone number(s) in the free text option in the comments field in the WIR.

3.1.2 The proposed time and date of this joint site inspection should be not less than 10 working days from the date of the defect notification. The undertaker should contact the authority as soon as is reasonably practicable but in any event at least two days prior to the proposed joint inspection either accepting or proposing an alternative time and date. If the undertaker fails to respond within this timescale the authority time and date will stand. It is recommended throughout that the contact telephone number given on the WIR should be used and that all calls are logged and recorded on EToN using the works comment field.

3.1.3 A defective reinstatement and the associated remedial works can be agreed by telephone and a joint site inspection may not be required. This should be agreed in the timescales detailed in 3.1.2. However, to ensure that the extent of the remedial works required is clear to both parties or if there are network management issues, the authority may still require a joint site inspection which the undertaker is required to attend. It is anticipated that in the majority of cases this may not be necessary where the undertaker has agreed the defect and necessary remedial works. Alternatively, an authority should respond positively to an undertaker's request to hold a site meeting if the ownership is not clear or the defect is disputed. If it is agreed that a joint inspection is not required the undertaker should record this in the works comments field on EToN.

In extreme cases, if a disputed defect cannot be resolved on site, it is strongly recommended that the issue is escalated to JAG(UK) and NJUG for an independent technical review which may involve the joint chairs of the SROH working group being approached for a technical ruling.

3.1.4 Where the undertaker fails to attend this joint site inspection without having made prior contact with the authority advising that authority that the date is not suitable and agreeing alternative arrangements, the authority may contact the undertaker to ascertain why there has been no attendance or contact. In the event of the undertaker failing to attend the joint site inspection attended by the authority, the authority should send a WIR confirming attendance at the notified meeting. The authority may charge for this inspection which will also confirm the current state of the defective reinstatement.

3.1.5 The failure of the undertaker to respond to the Defect Notification is regarded as a serious offence under NRSWA and it is important that the procedures outlined in this guidance are followed in order to avoid legal action being instigated against the undertaker. Where an undertaker fails to respond to the Defect Notification and fails to attend the joint site inspection outlined in 3.1.2 or fails to comply with 3.1.4, then it is strongly recommended that the authority recommence the defects not causing danger procedure at 3.1.1 and that the undertaker responds in the timescales indicated to avoid further action being carried out by the authority. If the undertaker further fails to respond the escalation process in 3.3 should be followed.

3.1.6 The cycle in 3.1.4 should not be repeated more than once prior to escalating as detailed in 3.3. If the undertaker fails to respond or take appropriate action after recommencing the repeat cycle in 3.1.5, then the escalation process detailed in 3.3 should be followed.

However, this principle will not apply if it is shown that the failure to respond was due to an EToN malfunction of either or both the respective Street Works systems.

3.1.7 To ensure the audit is complete, all contact should be documented through EToN including the contact details in the WIR description field or Works Comment.

3.1.8 A first stage inspection fee is only payable if the authority attends an arranged joint site inspection on site.

3.2 Remedial works

3.2.1 The undertaker should carry out the agreed remedial works within 10 working days of the date of the joint site inspection or date of the agreement of the defect unless it is mutually agreed to extend this period. Notices shall be served or permit applications made confirming the estimated start date of the remedial works and notice periods adhered to unless an early start has been agreed as required by the current Code of Practice for the Coordination of Street Works and Works for Road Purposes and Related Matters.

3.2.2 If following the agreement of the defect, the undertaker fails to give notice or make a permit application to carry out the remedial works within 10 working days or the agreed timescales, and makes no further contact with the authority, the authority may either:

a) send a Defect Notification to recommence the defects not causing danger procedure again at 3.1.1 and 3.1.4 subject to the requirements of 3.1.6; or

b) take action under section 72 (3) or (4) of NRSWA and carry out the necessary works and recover the costs reasonably incurred in doing so. Before carrying out the works the authority should give the undertaker at least one working day's notice stating the reasons for taking action. This should be via an EToN works comment. The undertaker is responsible for the subsequent reinstatement guaranteeing the reinstatement as new works as per the SROH.

3.3 Escalation

If the undertaker fails to follow the guidance outlined in 3.1.2, 3.1.5 and 3.1.6, then it is strongly recommended that the authority escalates the failure to co-operate to senior management. To assist authorities it is recommended that undertakers nominate a single point of contact for defective reinstatement escalations.

Senior management is expected to respond to the authority within 5 working days to agree the appropriate remedial action that they propose to take. If no response is received after 10 working days, the authority may consider repeating the procedure from 3.1.1; or taking action under 3.2.2 (b); or commencing legal proceedings.

Where an undertaker fails to follow the guidance in 3.3, the authority may consider contacting the HAUC England Joint Chairs for further escalation.

3.4 In progress inspection (iii)

3.4.1 This is only carried out once a remedial works notice has been sent / permit application approved or contact made by the undertaker in the case of non-notifiable works. To ensure that an in progress inspection can be carried out whilst works are being undertaken it is essential that the undertaker contacts the authority by telephone as soon as practicable confirming the day and approximate time that they will be on site to ensure that the authority visit coincides with works actually being undertaken. If the day or time notified varies the undertaker should inform the authority as soon as practicable:

a) Where an authority visits the site prior to works commencing but after the start date notified, or when the works have been cancelled but prior to being notified, a second stage inspection may be charged. Due to noticing timescales the notice could be cancelled after the works are due to start therefore it is important that the undertaker keeps the authority updated in order to avoid an unnecessary site visit and associated fee.

b) Where an authority visit occurs during works in progress this will be a chargeable second stage inspection. If during this inspection the reinstatement is

found to be defective or the signing, lighting and guarding is found to be inadequate, the operatives should be informed so that the necessary remedial action can be carried out. The WIR should record the defect or inadequacies and the rectification action taken on site. In this instance, the next inspection will be a third stage inspection as outlined in 3.4.1 c).

c) Where an authority visit occurs after the approximate time given and the reinstatement has been completed then this will be the equivalent of a chargeable third stage inspection (2.1(c)); this replaces the in progress inspection. If the remedial reinstatement fails to comply, then the third stage inspection WIR will record this and a new Defect Notification should be issued recommencing the process at 3.1.1.

4. Notification 4.2.2 (iv)

Once remedial works are completed, a Works Closed notice must be served on the authority. This will prompt the authority to undertake a chargeable third stage inspection (2.1(c)) unless already carried out as in 3.4.1(c). Note that EToN systems will not automatically generate the completion inspection unless it is generated through the sample inspection procedures.

If the remedial reinstatement is found to be defective at any of the inspection stages a WIR and Defect Notification should be sent to the undertaker recommencing the process at 3.1.1 and, in respect to 3.1.6, this will be considered the initial inspection.

5. Reporting to HAUC England

Where an undertaker continues to perform unsatisfactorily in following this guidance, the authority should consider contacting the HAUC England Joint Chairs for further escalation.

6. Completed works inspection 4.2.2 (v) – superseded by (4).

7. Seventeen day inspection 4.2.2 (vi) - removed.

8. Further inspection 4.2.2 (vii) - removed.

9. Further inspection 4.2.2 (viii) – removed.

10. Authority carries out remedial work 4.2.2 (ix) and (x) – superseded by 3.3.

END