

New Roads and StreetWorks Act 1991 - Section 81 apparatus statement

David Latham and Peter Loft Joint Chairs of HAUC England

6th January 2022

Introduction

After much debate between owners of assets in or on the highway, and Highway Authorities, the joint chairs of HAUC England have reached the agreed statement below.

Agreed HAUC England Statement

All Street Authorities and owners of assets in or on the public highway have a shared duty and interest in safeguarding the public whilst they are using the highway.

Asset owners should have an established risk-based approach for their assets that are located in or on the public highway. Details of a recommended risk based approach is set out in the in Well Managed Highway Infrastructure: A Code of Practice document dated Oct 2016, amended in Mar 2017 (WMHI), <https://ukrlg.ciht.org.uk/media/11915/well-managed-highway-infrastructure-combined-28-october-2016-amended-15-march-2017.pdf>

which should be referred to in addition to the specific legislative requirements for asset protection and maintenance.

All defective assets in or on the public highway should be assessed and remediated using the risk-based approach described in the WMHI.

Assets that have failed, which need attention or that have been interfered with by third parties should be reported by means of Street Manger (SM) in England. Those assets that have failed can be notified and administered via SM and are typically of the following types;

- Pits, chambers frames, valves, boxes, covers, grates and drainage equipment
- Cabinets, pillars, vent pipes and poles.

Those assets that have been assessed by using the guidance within the above Code and are defective will be responded to within the recommended timescales as set out in the Co ordination Code of Practice (Section 81 Defective Apparatus appendix).

This Co-Ord CoP will include and retain text in relation to the Emergency/High Risk and the non- Emergency/Low Risk categories (as at 12.2.4). There will be examples, photos etc. and a 2 hour timescale for "Emergencies" and mention of the asset owners routine maintenance regime for the remediation of "non- Emergency" scenarios.

Asset owners have the responsibility to ensure that defective apparatus notified to them is assessed and monitored such that it does not deteriorate and create a danger before it is repaired.

Where the issue presents a danger to life (e.g. explosion, overhead electricity line down, naked flames etc.) these should be reported to the utility using an emergency call centre to ensure prompt action.

Note the following:

A Highway Authority may have a special defence in action for claims against them for damages for non-repair of highway by virtue of section 58 of the Highways Act 1980 provided they can demonstrate that the authority has taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which in this case the defective apparatus relates was not dangerous for traffic.

To preserve the S58 defence, at the next scheduled routine highway safety inspection, should the defective apparatus not be repaired, the highway authority should further notify the asset owner of this and reassess whether the asset has now failed or that a reminder is required of the duty to monitor and ultimately repair the asset.

There may be other situations encountered that are associated with highway assets but that do not impact the public in travelling along the highway, usually as a result of third party interference.

These scenarios may still be reported via SM, as this is a convenient, already established communication conduit between owners of assets in the highway and those responsible for maintaining the highway (see Co ordination Code of Practice (Section 81 Defective Apparatus appendix).

| |
|--|
| <p>The SU sector will provide examples/photos etc. here. The Street Manager System will need amending to ensure for reporting purposes there is separation between sect 81 reportable issues and non Sect 81 apparatus issues.</p> |
|--|