

The Highland Council

**Transport, Environment and Community Services Committee
16 May 2013**

Agenda Item	14
Report No	TEC 47-13

Strategic Consultation on Works on Scottish Roads

Report by the Director of Transport, Environment and Community Services

Summary

This report invites Members to approve the Council's response to the consultation which the Minister for Transport and Veterans tasked the Scottish Road Works Commissioner to consider as part of the Scottish Roads Maintenance Review.

1. Background

- 1.1 The Scottish Road Works Commissioner was appointed in 2007 to monitor works in roads and promote good practice.
- 1.2 The underlying legislation is the New Roads and Streetworks Act 1991, as modified by the Transport (Scotland) Act 2005 and most of the issues in the consultation concern amendments to this legislation.
- 1.3 The most important questions consider:
 1. the introduction of a levy on public utility companies, to offset the cost to roads authorities of making good long term damage to roads caused by utility excavations.
 2. An increase in the period following resurfacing in which road authorities can impose restrictions on utility excavations.
 3. An increase in the length of time for which utilities must guarantee their reinstatements.
 4. The introduction of lane rental schemes so that utilities are charged for the length of time they occupy the road for roadworks.
 5. Fines for sub-standard reinstatements and inadequate signing and guarding.
 6. An increase in the level of penalty the Commissioner can impose on both utilities and road authorities.
 7. Making digital record keeping mandatory.
 8. Permitting road authorities to place an embargo on utility works on specified dates.
- 1.4 There are numerous other questions which relate to the administration of the Scottish Road Works Register.
- 1.5 Details of the Consultation can be found at:

<http://www.transportscotland.gov.uk/strategy-and-research/publications>.

2. Utility Contributions to Repairs to Long Term Damage to Roads

- 2.1 Road authorities have long believed that long term damage is done to roads when utility companies excavate them to install apparatus and this has been confirmed by recent research by URS (Scott Wilson) and the Transport Research Laboratory (TRL)
- 2.2 The research has not yet established the true value of the damage or the length of the network which is affected and TRL have been commissioned to investigate further.
- 2.3 The Commissioner suggests a contribution rate of between £11 and £76 per square metre of excavation but the statistical justification for this is not established.
- 2.4 Whilst welcoming the principle of payment it is not felt appropriate to suggest a value without further research.

3. Increase in Period after Resurfacing when Utility work can be Restricted

- 3.1 The statutory period is one year at present and an extension to three years is recommended.

4. Increase in the Guarantee Period for Reinstatements.

- 4.1 At present the guarantee period is 2 years for most reinstatements and 3 years for deep excavations.
- 4.2 This is not considered long enough. Road authorities should be able to rely on better quality work and an increase to 5 and 6 years for standard and deep excavations respectively is suggested.

5. Introduction of Lane Rental Schemes

- 5.1 This proposal is particularly welcome. Highland Council recommended the introduction of lane rental in its response to consultation on the 2005 act but it was not introduced at that stage.
- 5.2 A charge per day should encourage utilities to complete their works in as short a time as possible. This is seen as much more likely to reduce the time taken by road works than the alternative of allowing the road authority to charge a utility only when they can prove that works are “unreasonably prolonged.”

6. Fines for Sub-Standard Reinstatements and Inadequate Signing and Guarding.

- 6.1 Fixed penalty notices (FPNs) can already be issued for certain offences of an administrative nature such as failure to give adequate notice of proposed works.

6.2 The extension of FPNs to technical and safety defects is particularly welcome and control of these issues through penalties is considered to be of more benefit to the public than the current offences

7. Increase in the level of Commissioner Penalties

7.1 The present level is £50,000 and applies to both road authorities and utilities.

7.2 Whilst an increase may be a deterrent to utilities from failing to apply the act there is also the risk that a penalty may be imposed on the road authority.

7.3 Unlike a utility, a road authority cannot pass on charges to its customers or take them from its profits so this suggestion is not supported.

8. Making Digital Record Keeping Mandatory

8.1 There have been huge developments in digital technology since the introduction of the Act and there is no doubt of the benefits of digital records to both road authorities and utilities.

8.2 Unfortunately the Council has only about 5% of its records of underground street lighting cables digitised and an even lower percentage of its drains.

8.3 Whilst recognising the long term benefits it must be noted that a statutory requirement for digital records would place a significant financial burden on the Council and would take several years to complete. The Council does not have the resources available to take on this work, and any mandatory requirement would create a budget pressure.

9. Embargoes on Utility Works

9.1 The ability to prevent utility works on specified dates would be a welcome addition to road authority powers.

9.2 This would allow the Council to take into account the economic effect of road works on the local economy and would give it the power, for example, to ban works which interfered with important local festivals or sports events, or which affected town centre trade in the approach to Christmas.

9.3 Such powers would have to be used cautiously as it must be recognised that utility work may also have a benefit to the local economy, for example the installation of superfast broadband.

10. Council's Response to the Consultation

10.1 The Council's proposed response to the full consultation can be found at **Appendix A.**

11. Implications

11.1 There are no financial implications arising directly from this report, however

the outcome of the Consultation could have financial implications for the Council.

11.2 There are no legal implications arising from this report.

11.3 There are no climate change implications arising from this report.

11.4 There are no equalities implications arising from this report.

11.5 There are no equalities implications arising from this report.

12. Recommendation

12.1 Members are invited to approve the Council's response to the strategic Consultation on Works in Scottish Roads, as set out in **Appendix A**.

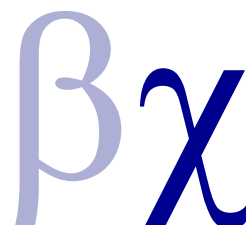
Designation: Director of Transport, Environmental and Community Services

Date: 2 May 2013

Author: Richard Guest

Bus and Local Transport Policy
Transport Policy

Victoria Quay, Edinburgh EH6 6QQ



Your ref:

Our ref:

5 April 2013

Roads Authorities and Utility Companies
operating in Scotland and other interested parties

Dear Sir/Madam

STRATEGIC CONSULTATION ON WORKS IN ROADS

Responding to this consultation paper

We are inviting written responses to this consultation paper by Friday 5 July 2013

Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:

WorksonRoads@transportscotland.gsi.gov.uk

or

Strategic Consultation on Works on Scottish Roads
Transport Scotland
Area 2D North
Victoria Quay
Edinburgh
EH6 6QQ

We would be grateful if could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** attached to this letter as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available on the Transport Scotland web site.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach various decision. We aim to issue a report on this consultation process within 3 months after the closing date for the consultation.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Transport Scotland, Area 2D North, Victoria Quay, Edinburgh, EH6 6QQ
E-mail: WorksonRoads@transportscotland.gsi.gov.uk

Yours faithfully

Joanne Gray

STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

Response Sheet

Views Sought	
01	What contribution do you consider should be introduced? What are your reasons for coming to this view?
	Highland Council does not consider it appropriate to suggest a level of contribution on the evidence available at present and would like to see more research. We agree that utility excavations reduce the life of the roads in which they take place but the proportion of the network affected has not been established with sufficient accuracy. Any value of contribution set at the present time would be an arbitrary figure.

Views Sought	
02	Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?
	Yes we would like to see the statutory period of restriction increased to three years in line with the voluntary period agreed within the roadworks community. Longer restrictions should encourage better forward planning of large scale works and do not prevent emergency and urgent work from taking place. Longer restrictions would reduce disruption to traffic and preserve the high ride quality of the new surface for longer, as well as delaying the long term damaging effect of excavations.

Views Sought	
03	What is an appropriate level of inspection for utility company road works where a fee can be charged by the roads authority? Please can you explain your answer?
	It is important that utility companies retain a responsibility for the quality of their own reinstatements. There is a danger that an increase in inspections by the road authority will simply lead to utilities relying on the road authority to alert them to sub-standard work, instead of monitoring their own works. The present sample size should be sufficient to identify which companies are failing to perform adequately.

04	Should the arrangements for inspection fees be changed, and could this include a performance element?
	Of greater concern to the Highland Council is that the flat rate charged does not cover actual costs of inspection in an area with a long network length and a high proportion of rural roads, where travelling time is a significant factor in total cost. The charging regime for defect inspections should be increased rather than for sample inspections, so that a utility will only incur high inspection costs if it has a high rate of defects.

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	A longer guarantee period should encourage better backfill and higher quality but there are practical difficulties in identifying reinstatements after a long period, particularly in the busiest urban areas where there are numerous excavations. In order to enforce longer guarantee periods, consideration should be given to mandatory permanent on-site marking of reinstatements so that there can be no doubt as to who is responsible for a particular reinstatement, years after the event. Guarantee periods of 5 and 6 years would be welcome if steps are taken to improve records sufficiently to permit identification after these periods.

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	It is difficult for a road authority to specify what is or is not a reasonable time period for a utility to complete its works. The road authority is not aware of the technical difficulty or constraints of the work, which can affect both the planned time taken and, if unexpected difficulties are encountered, the actual time. Nor will the road authority be aware (unless it inspects every day) whether the utility leaves the works unattended for a period of time. A better solution would be a lane rental approach, where the utility has to pay a daily rate for occupation of the road and so has a vested interest in ensuring works are completed as soon as possible. There are also issues of compatibility with the requirements of industry regulators. The issue needing control is trenches left open with no work going on but proving that this is the case when only 10% of works are inspected during the works phase is an unacceptable burden for road authorities.

Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	Permit schemes appear to be an unnecessary layer of bureaucracy when utilities mostly have statutory rights to excavate. Lane rental is considered a better method of controlling access.

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	Highland Council strongly supports the introduction of lane rental, as indeed it did during consultation on the 2005 Act. Lane rental should not be confined to traffic sensitive areas under the strict definition of the act but should apply at least to all strategic roads. Delay on strategic roads can have a deterrent effect on tourist travel in particular, which is a critical economic factor in areas such as the Highlands. The introduction of lane rental is considered to be the best tool to encourage utilities to keep their occupation of the road to a minimum. We do not agree with the view that lane rental would only provide benefits on the most heavily trafficked parts of major Scottish cities.

Views Sought	
09	Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?
	Yes. The three offences in sections 110, 124 and 130 are considered to be more important than the more academic offences of failures in the noticing system. It seems ludicrous that there is no financial penalty for sub-standard reinstatements, considering the long term damage to the road which can ensue. Similarly, inadequate signing, lighting and guarding have a road safety consequence which should be punishable.

Views Sought	
10	Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.
	Yes. Failure to rectify defective reinstatements and apparatus, particularly street ironwork, is probably the biggest frustration felt by

	road authorities. Notices of defective ironwork seem to be routinely ignored. The legislation places an undue burden on the road authority to keep the road safe until such time as the utility takes action. Summary offences for failures to rectify defective reinstatements and apparatus are strongly supported.
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Views Sought	
11	Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?
	Yes, an increase in line with inflation would be logical. The level of penalty should be sufficient to deter lack of compliance and should exceed the cost of obtaining the appropriate permit or consent for Roads (Scotland) Act offences.

Views Sought	
12	What maximum level of penalty do you consider is required to ensure that it can influence the behaviour of utility companies and roads authorities which do not comply with their duties? Should this be increased in line with inflation e.g. consumer price index?
	From a road authority point of view the level of maximum penalty is considered to be adequate to influence behaviour but an increase in line with inflation would be logical.

Views Sought	
13	Do you agree that the definitions of co-operate and co-ordinate in sections 118 and 119 be revised as proposed? Please provide the reasons for your view.
	It is agreed that the definitions in section 118 and 119 are unduly restrictive. Failure to comply with any duty under the Act, Regulations and statutory codes of practice would be acceptable reasons for a penalty. However the suggested revision to include “such practice as appears to the SRWC to be desirable” is not acceptable. It is far too vague and does not, as claimed, add any clarity to the legislation. Both road authorities and utilities have a right to be able to interpret from the legislation itself the standard of conduct which is expected of them.

Views Sought	
14	Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.

	<p>Whilst the Code of Practice is well intentioned there are practical difficulties in its interpretation on roads of sub-standard width. Strict application of the code would result in a far greater number of road closures where the specified safety zones are not achievable. Road closures in themselves increase the level of risk to road users when they are diverted onto diversionary routes which are often of an inferior standard to the road which is closed. Diversionary routes in the Highlands can add hundreds of miles to journeys and can have a devastating effect on the local economy. Road authorities should be able to undertake a risk assessment to balance the danger to road workers with the dangers to traffic using diversionary routes.</p>
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Views Sought	
15	<p>Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR? Please provide the reasons for your view.</p>
	<p>This proposal would be a significant financial burden on road authorities, particularly if made retrospective. Mandatory recording of new installations only would be a lesser burden. If made mandatory there would need to be a sufficient time allowed to comply. Five years would be an absolute minimum. Whilst conversion of existing records from paper to digital can be achieved relatively straightforwardly, one should not underestimate the quantity of apparatus for which there is no record at all. Extensive site survey work would be required to form a complete record.</p>

Questions	
16	<p>Do you agree that section 61 of the Roads (Scotland) Act 1984 be repealed and section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reasons for your view.</p>
	<p>Yes. The two pieces of legislation effectively duplicate each other. Section 109 of NRSWA is superior because it requires record keeping. Any revision should take into account the need to record Sustainable Urban Drainage Scheme features such as swales as well as more traditional apparatus. Features such as swales are not always obvious to the untrained eye and their function could easily be impaired by installation of other apparatus.</p>

Views Sought	
17	<p>Do you agree that the designation of “major road managers” be created? Please provide the reasons for your view.</p>

	This is not an issue in the Highland area but the proposal appears sensible.
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Views Sought	
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18	What are your views on the 3 month advance notice period for major works?
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	The three month notice period should be retained for major works. This allows road authorities to have some influence over the timing of works which would be lost if only 7 days' notice were given, for example it is often possible by negotiation to take into account of the economic effect of works on the local economy, avoiding disruptive works at the height of the tourist season.
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19	Do you consider that the requirement to provide advance notice for works on non traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?
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	No. The definition of traffic sensitive applies to very few roads in the Highland area so the removal of the advance notice requirement on non-traffic sensitive roads would have a devastating effect on our ability to co-ordinate works.
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Views Sought	
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20	Should the early start procedure be a statutory requirement?
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	Yes, for compatibility with the code of practice. It is detrimental to effective co-ordination if agreement to early starts where there is no good reason to delay, can put a utility in breach of the regulations.
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Views Sought	
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21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
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	It is agreed that this proposal will deter the use of the "urgent works" category simply as a means of avoiding statutory notice periods.
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Views Sought	
22	Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?
	One has to ask, why is this required? It is the road authority which has the duty of managing co-ordination and by definition it already knows about its own works and their state of completion. These additional statutory notices will not add any value or assist or improve co-ordination of works.

Views Sought	
23	Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?
	Yes. It is inappropriate to require road authorities to place notices for works with no or minimal excavation and it does not aid co-ordination in any way.

Views Sought	
24	Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?
	Yes. This would improve the road authorities knowledge of actual disruption to traffic and would help co-ordination.

Views Sought	
25	Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.
	We would prefer notices to be lodged the same day, especially for traffic sensitive roads. It would permit better journey planning and is particularly relevant to bus operators.

Views Sought	
26	Is the current requirement for works closed notices to be lodged by the end of the next working day a reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?

	Yes, works closed is less critical than actual start because the effect is to reduce delay, not to increase it.
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Views Sought	
27	Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike? If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.
	No. The existing validity periods allow a useful amount of flexibility for all parties. Knowing the actual start is more critical than narrowing down the window of the proposed start.

Views Sought	
28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
	No. The road authority does not possess the technical knowledge to assess whether utility works can reasonably be completed within an imposed duration. The duration of works would be better controlled by lane rental.

Views Sought	
29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	Yes. This would permit control over works which interfered with important local festivals, key tourist events such as the Scottish Open Golf or events such as the Olympic Torch, as well as the more obvious Christmas period.

Views Sought	
30	Do you agree with the definition of a working day given above?
	Yes.

Views Sought	
31	Please identify any further issues which should be addressed that you think could contribute towards improving the way in which works in roads are managed and undertaken.
	There should be compatibility between (or at least a recognition of

	<p>the significance of the difference between) notice periods under NRSWA and the statutory notice periods for road closures, which may be longer. Works which require a road closure require significantly more planning for diversionary routes and their effect on public transport timings as well as the publication of temporary traffic orders. Suspension of one-way orders and other traffic control measures may also be required and it may be this which governs the practical earliest start date, rather than the NRSWA notice period. There should also be investigation of the compatibility between the requirements of industry regulators such as Offwat and Offcom who may impose time periods on provision of a service which cannot legally be achieved if NRSWA notice periods are to be achieved.</p> <p>The accuracy of identifying excavation locations on notices and the accuracy of reinstatement measurements is a long way short of ideal and can lead to problems in identifying who is responsible even for recent reinstatements as well as those approaching the end of the guarantee period. Accuracy in reinstatement measurements would become critical if they are to be used in the calculation of a fee for long term damage.</p>
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Views Sought	
32	<p>Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.</p>
	<p>Methods of permanently identifying the responsible utility for reinstatements on site.</p> <p>Acceptance by utilities of readily available instruments to non-destructively measure reinstatement thickness.</p> <p>Agreement on methods to measure the adequacy of trench backfill. Poor backfill rather than poor surface course reinstatement is responsible for the majority of cases of settlement and long term damage.</p>

Views Sought	
33	<p>Please outline the potential impact of any additional costs.</p>
	<p>The most significant cost which the proposals would have on road authorities would be the mandatory use of the Vault to record road authority apparatus such as drains and street lighting cables. This would be a pressure on roads budgets which are already stretched. Unlike utilities, road authorities do not have the option of passing costs on to their clients.</p>

STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

The Highland Council

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Guest

Forename

Richard

2. Postal Address

Highland Council, TEC Services, Glenurquhart Road, Inverness

Postcode IV3 5NX

Phone

Email

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No