

“Review of the Office and Functions of the Scottish Road Works Commissioner” – a report Jim Barton B.Sc C.Eng MICE FCIHT, and the response of the Scottish Government

No	Consultant’s Recommendation	Scottish Government Response			
		Accept	Is legislation required for proposed action	Comments	To be taken forward by
1	Consider introducing Fixed Penalty Notices for failure to properly identify traffic management requirements, actual start dates, failure to properly provide requests for extensions and failure to repair defective apparatus	Yes in principle	Yes	Not averse to extension of FPN regime. Will need to consider in extending the regime, what other reforms are necessary to improve on the current model.	Transport Scotland
2	Roads authorities should develop a common understanding of the circumstances under which a Potential Noticing Offence should be converted into an FPN. Road Authorities should consider setting this understanding down as a protocol.	No – Use existing alternative	No	Potential to revise Road Authority and Utilities Committee for Scotland (“RAUC(S)”) Advice Note 16 of April 2011 to take account of FPN requirements and use this existing mechanism to get further consistency among Road Authorities.	
3	The cost of FPNs should be increased in line with inflation.	Yes – accept that FPNs need to increase but not persuaded mere indexation is sufficient	Yes	Supportive of increase of level of FPNs, however not in the manner recommended. Report focusses on covering the admin costs of the process rather than the deterrent or punitive value of any fixed penalty regime. Need to consider risk that FPNs on their own just become another cost of doing business. Deterrence in reality in this sector comes from reputational risk.	Transport Scotland
4	The SRWC should continue to develop a more focussed approach to using the outputs from the SRWR to stimulate discussion at local, area and national meetings with the aim of encouraging improved and more consistent performance. Summary outputs should be circulated ahead of RAUC(S) meetings; these outputs should be the same or similar to those reported quarterly and annually	Yes – recommendation is supportive of an existing initiative of the SRWC.	No	Already being taken forward by the SRWC	SRWC

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5	The SRWC should establish a Working Group, which should include representatives of the wider stakeholder group, to consider possible changes to the SRWR which might allow a better public facing aspect to be delivered without threatening the original purpose of the Register. The Group should report in time for any agreed changes to be incorporated into the next contract for SRWR support services.	Yes – recommendation is supportive of an existing initiative of the SRWC.	No	Already being taken forward by the SRWC	SRWC
6	Any changes to the noticing requirements for the start and finish of works required as a consequence of Rec 1 should be reviewed and changes made where appropriate.	Yes	Yes	Agree that actual start, end dates, works clear, and works closed, should be recorded in the register within a reasonably short period of time. A reasonable starting point for any consultation might be to record this information within 2 hours, and the end date by close of the next working day.	Transport Scotland
7	The guarantee period for reinstatement should be extended to ensure that any defect that is the result of the reinstatement will manifest itself within the period of guarantee. The existing procedures for administering the current guarantee period should be reviewed and adjusted as required to ensure that they remain fit for purpose.	Yes – but qualified	No	Propose that a proportionate, practical, increase is applied to the guarantee period. Do not believe that extension of the guarantee period to 10 years (or anything approaching that) is feasible/deliverable. The Scottish Ministers are minded to consult on a single 6 year guarantee period for both deep and shallow excavations	Transport Scotland

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8	Those undertaking road works should be required to produce and operate quality plans that set out the proposed method of investigation, excavation and reinstatement. The plans should include proposals for testing of materials and workmanship and should be updated with records of those test results. The quality plans should be made available to the roads authority for inspection and audit as required.	Yes – but qualified	No	It is difficult to define what a quality plan might entail. Ministers will invite RAUC(S) to devise a system of quality plans within 1 year.	RAUC(S) / Transport Scotland
9	FPNs should be introduced for Category A, B and C inspection failures.	Yes – on Category A inspection failures only	Yes	Failures on Category B & C inspections should be dealt with through any extended guarantee period. Agree Category A inspection failures could be subject to FPN but only after a reasonable period of time is allowed to rectify the defect identified.	Transport Scotland
10	The level of sample inspections should be increased to provide assurance that all works are being properly undertaken. As a starting point, the 10% level at each of category A, B and C should be increased to 50% and thereafter adjusted up or down depending on performance.	No	No	Measures first need to be taken to ensure that roads authorities act consistently across Scotland.	
11	The SRWC and RAUC(S) should discuss with Transport Scotland and/or Scotland Excel the merits of procuring all coring via a national framework contract.	No – but qualified	No	Don’t see much merit in this recommendation. However, as the consultant links this to the development of Quality Plans we suggest that this item is also remitted to RAUC(S) to consider alongside that issue.	RAUC(S)

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12	The review into the cost of inspections in Scotland needs to be concluded as soon as possible. As a first step, the inspections working group should, as a matter of urgency, review the evidence collected as part of the Highways Authority and Utilities Committee (HAUC)(UK) review to determine the extent to which it might be an appropriate basis for the Scottish review. If it is determined not to be appropriate, the group should report the reasons for this to the national RAUC(S) meeting.	Yes	No	The SRWC/RAUC(S) will be invited to consider the HAUC(UK) data.	SRWC/RAUC(S)
13	Any enhanced system of inspection and enforcement should be applied consistently across all of those working on the road network.	Yes	Yes	<p>We think there are areas where the regulatory regime should apply equally to both utilities and roads authorities:-</p> <ul style="list-style-type: none"> • coordination - provision of advance notice; • safety – Code of Practice – “Safety at Street Works and Road Works” to be applied to all road works (road authority and utility); • training - road authority operatives and supervisors to be trained in Signing, Lighting and Guarding (SLG), and location and avoidance of plant etc 	Transport Scotland

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14	Consideration should be given to the level of fines available to the Commissioner in the light of the 2013 Consultation responses to determine whether an increase (to £200k) is appropriate.	Yes – but qualified	Yes	<p>Not convinced that the answer lies in an increase in the level of penalty. Believe the deterrent/punitive value question must be coupled with reputational risk/damage. No plans to increase Commissioner penalty, but it would be helpful to provide for some means of escalation for repeat or serious offenders. Believe SRWC should be given power to report offenders to the Scottish Ministers and publicise this fact.</p> <p>More generally there is a need to look at the SRWC powers to issue directions. The scope to issue directions should be widened and there should be consequences/penalties for non-compliance.</p>	Transport Scotland
15	The SRWC and RAUC(S) should engage with CECA to consider whether there would be merit in developing a Considerate Contractor scheme and, if so, what it might look like and how it could be incorporated into future utility contracts. The way in which road works are signed should be reviewed as part of this process to ensure that they are clear and consistent and provide the public with information about who is carrying out the works and why the works are needed.	Yes	No		SRWC/RAUC(S)

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16	The SRWC and RAUC(S) should engage with CECA to consider how best to develop a training and possible accreditation scheme for operatives that would ensure that all operatives engaged with the public appropriately.	No, but qualified	No	Believe existing mechanisms are better placed to deal with this such as adding an element to the existing qualification “Signing Lighting and Guarding” on how to engage with public effectively. Will invite RAUC(S), HAUC(UK) to consider.	RAUC(S) HAUC(UK)
17	The SRWC should review how he wishes to track enquiries and/or complaints that come into his office but which are then passed onto others for action.	Yes – recommendation is supportive of an existing initiative of the SRWC	No	Already being taken forward by the SRWC	SRWC
18	The SRWC, RAUC(S) and Transport Scotland should discuss how the resources of the Scottish Road Research Board might be utilised to support a more flexible but robust process to support innovations in the way that road works might be delivered.	No	No	There are existing RAUC(S) mechanisms to deal with innovation and ways to formalise this within the Specification for Reinstatement of Openings in the Road (“SROR”). If these are not working then RAUC(S) should be invited to consider making necessary changes.	RAUC(S)
19	The SRWC should seek to engage with the industry regulators to explore how they might take a closer interest in the way that road works are delivered.	No – but qualified	No	We are not convinced there is much of a need for the SRWC to engage generally with industry regulators day to day. However the implementation of the EU Directive on the roll out of super-fast broadband raises a need for the SRWC to engage with Ofcom on their respective powers for dispute resolution to ensure there is no overlap.	SRWC

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20	The Scottish Government should explore different ways of supporting the SRWC that would reduce the administrative burden on the Commissioner whilst maintaining his/her independence	Yes	No	The SRWC believes resourcing issues are largely historic, that resourcing position is currently a settled one, and adequate for existing tasks/functions. We are investigating the option of NDPB equivalent status with the Civil Service Commissioners to provide greater flexibility on staff movements both into and out of the organisation.	Transport Scotland / SRWC
21	The SRWC, Transport Scotland and RAUC(S) should engage with the Improvement Service to develop a pilot project through one or more of the Regional Clusters aimed at grouping roads authorities together to deliver back office and inspection services more effectively and efficiently	Yes	No	To be considered as part of the wider work on the review of roads maintenance.	Transport Scotland