

Strategic Consultation – Works on Scottish Roads – Respondent list

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Living Streets is the national charity that stands up for pedestrians. With our supporters we work to create safe, attractive and enjoyable streets where people want to walk.

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

27th June 2013

Dear Joanne Gray,

Thank you for the opportunity to comment on the Strategic Consultation on Works on Scottish Roads.

Living Streets Scotland is the national charity that stands up for pedestrians. With our supporters we work to create safe, attractive and enjoyable streets, where people want to walk. Our arguments and evidence led to such milestones as the introduction of 30mph speed limits and the driving test in the 1930s, the green cross code in the 1970s, and 20 mph zones in the 1990s.

1. What contribution do you consider should be introduced? What are your reasons for coming to this view?

We are disappointed that the analysis of Contributions to Costs of Making Good Long Term Damage has only considered the impact on carriageways. Damage from works carried out on the footway creates major hazards for vulnerable pedestrians and the consequences of a trip can be severe, particularly for older people. We would strongly argue that such a scheme must be widened to encompass footways, where around 180,000 square metres of reinstatement is undertaken each year. We support the principle of utility company contributions and believe a clear framework and contribution rate must be put in place at the same time for footways as for carriageways. The contribution rate for footways should clearly be sufficient to make good the costs of the long term damage.

Our other points are made against Question 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.

Firstly, we would seek clarity over what guidance will apply for road/street works in Scotland: specifically will 'Safety at street works and road works: a code of practice' still be applicable when a new version of that document is published this year? As part of this consultation exercise, we believe that clarity should be provided, for roads authorities and the affected pedestrians, on how works are managed and undertaken on the footway. Specifically:

- We believe that the current minimum width of 1m for pedestrians on the footway or on a temporary carriageway route is inadequate, particularly for disabled people and should be increased.
- We believe that greater use can be made of temporary footway boards to cover excavations to minimise the disruption for pedestrians, as long as the needs of wheelchair users are taken into account.

Living Streets Scotland
Thorn House, 5 Rose Street, Edinburgh EH2 2PR
Tel 0131 243 2645
scotland@livingstreets.org.uk www.livingstreets.org.uk/scotland

Living Streets (The Pedestrian Association); Company Registration No 5388400
Registered Charity No 1100446 (England and Wales) and 50039603 (Scotland).

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Living Streets is the national charity that stands up for pedestrians. With our supporters we work to create safe, attractive and enjoyable streets where people want to walk.

- The provision of footway ramps to enable wheelchairs and prams to negotiate kerbs successfully should be given higher profile with penalties for non-compliance.
- We believe that greater responsibility needs to be taken both to minimise diversionary route lengths for pedestrians and to signpost routes around roadworks for pedestrians
- We believe that, where it is required to switch off pedestrian crossing lights, it is not acceptable to simply mount a 'crossing not in use' sign. We believe that temporary signalised crossing facilities should be provided, particularly where vulnerable pedestrians will be using the route such as near schools.

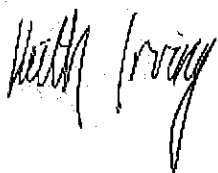
Secondly, we would seek clarification of the role that the Roads For All Forum work has contributed to this consultation. In particular, we are surprised that there is no mention of responsibilities under Equalities legislation in this consultation document.

Finally, we understand that the *New Roads and Street Works Act 1991 - Code of Practice for the Co-ordination of Road Works and Works for Road Purposes and Related Matters*, which came into force on 1 October 2012, are being kept under review by The Scottish Road Works Commissioner and that suggestions should be forwarded regarding the code. We would take this opportunity to suggest that roads authorities should have greater powers to place embargoes wherever there is:
"evidence that the roads on which the embargo would be placed would be subject to additional [pedestrian] traffic pressures."

We are concerned that, given that pedestrian traffic data is collected infrequently, in comparison to motor traffic data, the 'evidence bar' should not be set too high. There can be good reasons for a roads authority placing an embargo, such as when an event will lead to mass pedestrian movements, without there being pedestrian count data to back this up.

If you wish further information, please don't hesitate to contact me.

Yours sincerely,



Keith Irving
Head of Living Streets Scotland

Living Streets Scotland
Thorn House, 5 Rose Street, Edinburgh EH2 2PR
Tel 0131 243 2645
scotland@livingstreets.org.uk www.livingstreets.org.uk/scotland

Living Streets (The Pedestrian Association): Company Registration No 5388409
Registered Charity No 1106146 (England and Wales) and SC039806 (Scotland)



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

Comments by Ivar Christensen

IvarHC@gmail.com

27 June, 2013

Views sought by the Scottish Road Works Commissioner are in bold.
Comments are in blue.

1.7 It is suggested that such a general contribution scheme might operate as follows: Utility companies would pay a contribution on all road openings based on the area of the opening.

1. What contribution do you consider should be introduced? What are your reasons for coming to this view?

COMMENT

The unintended consequence will be smaller reinstatements, when a larger reinstatement is often required. The responsibility for remedial repairs would also fall to the roads authority, and the necessary traffic management would be a further inconvenience to the travelling public. The suggestion would be for the utility companies to do proper reinstatements the first time. For example plane 300mm asphalt either side of the trench, use control density fill (foamed concrete), full panel reinstatements, etc...

1.13 The current legislation allows for a one year period after a road has been resurfaced before it can be excavated again by a utility company. The Scottish road works community has recognised that this period is too short and has voluntarily adopted a 3 year period. It is proposed that the 3 year period be adopted into legislation.

2. Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?

COMMENT

A five year moratorium following resurfacing would reflect the investment made by the ratepayers and would give the roads authority justification for full panel reinstatements within the moratorium.

3. 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?

COMMENT

The roads authority should make provisions within their own budget for utility inspections. The roads authority should not be in the position of trying to recover costs from the utility carrying out the work, as it leads to conflict of interest and lack of independence.

4. Should the arrangements for inspection fees be changed, and could this include a performance element?

COMMENT

The arrangements for inspection fees should be scrapped and the roads authority should act independently.

1.20 The current guarantee periods after utility company works are completed is currently 2 years and 3 years for deeper excavations. Given that road reinstatements are expected to have a service life of 20 years or more, it is proposed that the guarantee periods could be increased from 2 years and 3 years up to 5 years and 6 years for deeper excavations. Evidence on this issue has been sought as part of the consultation for the Code of Practice – Specification for the Reinstatement of Openings in Roads.

5. Do you agree that such increased periods be introduced? What are your reasons for coming to this view?

COMMENT

The period should not be reduced for shallow excavations, as the unintended consequence will be for utilities to make shallow excavations. However increased periods should be introduced.

6. Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.

COMMENT

It will be difficult to establish whether something is 'unreasonably' prolonged. The utility companies are best positioned to determine the works duration themselves however as with any excavations, unknown apparatus will lead to delays. The lane rental proposals would be a better solution.

7. Scottish Ministers would welcome views on the introduction of permit schemes.

COMMENT

The existing Scottish Road Works register already provides the roads authority with opportunities to object to works, or request for further information (i.e. traffic management details). The introduction of permit schemes would lead to bureaucracy and delays.

8. Scottish Ministers would welcome views on the introduction of lane rental schemes.

COMMENT

This is an excellent idea. It provides a market-oriented solution whereby the value of road space is related to the lane rental charge. It will motivate utility companies to finish quickly and open the road to the travelling public. It will also motivate them to do the job properly the first time. It will also lead to co-operation between the utilities and sharing work zones, meaning less delay and inconvenience to the travelling public. The roads authority will have more time to spend on road repairs rather than monitoring utility works.

9. Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?

COMMENT

Yes, there should be an extension. Too often the roads authority raises a penalty notice only for the penalty to be refused on the basis that the roads authority had no right to raise the notice.

10. Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.

COMMENT

Yes, there should be new summary offences. The roads authority has the responsibility to respond to the public when road works lead to delays and inconveniences, therefore the roads authority should be able to raise penalty notices. However, penalty notices should be used as a last resort.

11. Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?

COMMENT

Fixed penalty notice amounts should be increase to reflect the value of the road, as it relates to the travelling public. The consumer price index is not necessarily the best measure of inflation as it can be changed to suit central bank policy agendas; however the amount should take into consideration the lane rental amounts if these are enacted.

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?

COMMENT

The Commissioner's recommendation is good as it will get the attention of executives at the utility companies, who can then take steps to make sure they do not receive penalties.

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.

COMMENT

Yes.

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.

COMMENT

Yes, it's important for the roads authority should operate by the same rules as anyone else.

15. 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.

COMMENT

Yes, greater transparency will be useful.

16. 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.

COMMENT

Yes, the responsibility for record keeping should lie with the owner of the apparatus. The roads authority may not know whether apparatus is redundant or changed.

17. Do you agree that the designation of "major road managers" be created? Please provide the reasons for your view.

COMMENT

No, individual road frontagers should still have access to the Road Works Register in line with transparency in government.

18. What are your views on the 3 month advance notice period for major works?

COMMENT

3 months advance planning is reasonable for major road works. Too often, utility companies program their works based on squad availability resulting in back-to-front planning.

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?

COMMENT

No, however the notice period could be reduced.

20. Should the early start procedure be a statutory requirement?

COMMENT

Yes, it will provide clarity however care should be taken to avoid bureaucracy.

21. What are your views on making noon the following day a statutory requirement for commencing urgent works?

COMMENT

Yes, this proposal makes sense. If works are truly urgent they will be commenced without delay.

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?

COMMENT

Yes, the roads authority should operate by the same regulations as the utility companies.

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?

COMMENT

Yes, for example in the city centre it's common for footway trips to be reported which require a quick response, involving no or minimal excavations. These operations involve minimal disruption to the public.

24. Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road

COMMENT

Yes.

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.

COMMENT

No, the current requirement should be strengthened for traffic sensitive routes. For example the roads authority may learn of road works at 7am but may not have details until noon. This can be problematic especially for the morning peak traffic times.

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?

COMMENT

No, on traffic sensitive roads the works closed notice should be lodged by the end of the working day. The advantage would be in considering another application to use the road space; the disadvantage would be in the administrative burden on the organisation that raised the notice.

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.

COMMENT

Yes.

28. Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?

COMMENT

Yes, however the lane rental proposals would be a better solution. As long as the lane rental amounts reflect the value of the road to the travelling public, this would be enough. The roads authority relies on the utility company for information about works duration and problems encountered during the works.

29. Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?

COMMENT

No, the existing voluntary arrangement seems to work fine.

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

COMMENT

Yes.

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.

COMMENT

Full panel reinstatements would preserve the road structure and provide better ride quality. If a utility or roads authority has to make excavations within 5 years of road resurfacing, full panel reinstatements and control density fill (foam concrete) should be required. A requirement for a permit for street cuts within the five year moratorium would allow the roads authority to make the conditional approval as detailed above.

32. Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.

COMMENT

Nearly every piece of ironwork in the carriageway is failing or has failed and been repaired. A precast concrete manhole surround, 150mm in width, would go a long way to reducing failures. These are common in the US.

After excavation and backfill, the asphalt should be planed out 300mm on either side of the trench, and reinstated with full depth asphalt, compacted in layers.

When excavations are made within 1200mm of other excavations or kerbs, the full width of asphalt should be planed and reinstated.

33. Please outline the potential impact of any additional costs.

COMMENT

Given the value of the road asset, the proposals for reinstatements would be reasonable.

Bus and Local Transport Policy
Transport Policy

Victoria Quay, Edinburgh EH6 6QQ
T: 0131-244 7057
Joanne.gray@transportscotland.gsi.gov.uk



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

Your ref:

Our ref:

5 April 2013

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

If you have any queries contact Raymond Elliot in the Scottish Road Works Commissioner's office on 0131 244 9938.

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:

Name: Joanne Gray

Address: 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	<p>What contribution do you consider should be introduced? What are your reasons for coming to this view?</p>
	<p>Utility Companies should contribute more than 25% of the cost of making good long term damage to our roads.</p> <p>Research has confirmed that excavation and reinstatements do cause long term damage to roads, even if the reinstatement is carried out to current specifications.</p> <p>In the long term the additional whole life costs are borne by roads authorities. The introduction of a utility company contribution towards this cost would represent a transfer of part of the cost to the organisation causing the damage.</p> <p>Further research should be undertaken to establish suitable contribution rates for long term damage caused by excavations within the road. This should consider all parts of the road: carriageway; footway and verge.</p>

Views Sought	
02	<p>Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?</p>
	<p>Yes. The current voluntary restriction is seen to work well, therefore, the 3 year carriageway restriction following resurfacing should be adopted into legislation.</p>

Views Sought	
03	<p>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?</p>
	<p>The current inspection regime of during works and at the end of the guarantee period provides a certain measure of performance management, allowing defects to be identified and rectified.</p> <p>However, it would be better to increase the percentage of Sample C inspections from 10% to 100%. Under current R(S)A 1984 Section 21 road adoptions of new developments, 100% of the asset is inspected prior to the end of the agreed maintenance period. This practice works well and should be introduced for utility reinstatements.</p>



04	Should the arrangements for inspection fees be changed, and could this include a performance element ?
	Yes. Increase number of sample inspections if the utility is falling below the 90% pass rate for coring. All reinstatements the following year should be inspected and the roads authority reimbursed for this.

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	Yes. The life expectancy of a new surface is designed to last 20+ years and this should be no different to reinstatements.

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	<p>The introduction of a charge for occupation of the road where work is unreasonably prolonged is likely to introduce further administration on roads authorities. The costs of which are likely to be considerable.</p> <p>It is our experience that works usually over run because of engineering difficulties and trying to charge in these circumstances would prove contentious.</p> <p>An alternative suggestion would be for RAUCS to investigate and produce an Advice Note which could assess wider use of Section 125 and fixed penalties.</p>



Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	<p>As in 6 above, the introduction of permit schemes would have the potential to impose considerable additional administrative burden on roads authorities.</p> <p>There is no evidence to suggest that the scheme currently in England would provide added value in Scotland.</p>

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	<p>As in 7 above, there is a potential for increased administrative burden due to their complicated nature.</p> <p>Whilst their use may be of benefit on some roads, it would be more complicated within a city environment due to restrictions on 24hr working. e.g. There are few locations within the city that are not residential in nature. Many parts of the city centre are also residential.</p>

Views Sought	
09	Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?
	<p>Yes. The FPN should be subject to a review. There are a number of anomalies and there is little incentive to improve.</p> <p>The level of fine and reasons for penalty should be reviewed. The review could also include, for example, other R(S)A offences and perhaps for continued failure to repair defective reinstatements.</p>

Views Sought



10	<p>Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.</p>
	<p>Yes.</p> <ul style="list-style-type: none"> • <i>Misclassification of works as urgent or emergency to circumvent longer planned work notice periods.</i> This should already incur a fixed penalty offence under section 114. There would, therefore, appear to be little purpose in creating a new offence. • <i>Not noticing "actual start" notices by the due time (should actual start notices become a legal requirement.</i> Making actual start notice a legal requirement would be consistent with comparable existing requirements. Failure to issue the notice by the due time should result in a fixed penalty notice. • <i>Failure to rectify a defective reinstatement within a reasonable period.</i> Stronger enforcement powers would assist roads authorities in this regard. The introduction of a new fixed penalty would, therefore, be welcomed.

Views Sought	
11	<p>Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?</p>
	<p>Yes. Fixed penalty notices should rise in line with CPI/RPI to ensure that they remain a suitable deterrent .</p>

Views Sought	
12	<p>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?</p>
	<p>Yes. The level of fine that the SRWC can impose is low compared to the utility regulators, but the reputational damage is great. However, the maximum penalty that the SRWC can impose should be increased to £200,000 from £50,000 which is reasonable and it should increase in line with CPI/RPI.</p>



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.
	Yes. Sections 118 and 119 of NRSWA should be revised to align more closely with the T(S)A intention of ensuring that roads authorities and utility companies did what the act required 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.
	Yes. The Code of Practice for Safety at Street Works and Road Works should be mandatory for anyone working on a road. This consistent approach would improve safety at road works for operatives and road users.

Views Sought	
15	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.
	Yes. This would bring added value and safety benefits to both utility companies and roads authorities with apparatus recorded on VAULT. This may prove more onerous for some and it is suggested that a transition period of 5 years is allowed to fulfil this duty.



Questions	
16	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.
	Yes. Section 61 of R(S)A should be repealed in order that RAs use Section 109 of NRSWA for permitting the installation of private apparatus. GCC have been participating in a RAUCS working group developing SRWC's Advice Note 23 to promote the use of S109.

Views Sought	
17	Do you agree that the designation of "major road managers" be created? Please provide the reasons for your view.
	Yes. Where other bodies manage significant roads infrastructure then they should be subject to the same regulations of the SRWR.

Views Sought	
18	What are your views on the 3 month advance notice period for major works?
	<p>The current situation of 3 months notice for major works on traffic sensitive roads works well, with the use of early starts, where appropriate. Notice of major works on non traffic sensitive roads could be reduced to 1 month.</p> <p>Notwithstanding the above, details of the location of planned major works should be placed on the register as early as possible in order to maximise the opportunity for co-ordination. The three month advance notice period is generally helpful in achieving this. However, some issues have been experienced when programming major capital works where an external contractor is to be appointed.</p>



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?
	No. The requirement to provide advance notice for works on non traffic sensitive should be maintained. It would be very difficult to co-ordinate works if this requirement was removed.

Views Sought

20	Should the early start procedure be a statutory requirement?
	Yes. The early start procedure should be a statutory requirement, with an FPN for any breaches.

Views Sought

21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	Urgent works should be commenced by noon the following working day – some utilities current use of “urgent” for most of their repairs is unreasonable. Many have been aware of these defects for weeks prior to them programming the work.



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?
	Yes. Road authorities should follow the same noticing rules as utility companies.

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. Regulations should be introduced for minor works involving minimal or no excavation and roads authorities should have the same flexibility as utility companies.

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. Actual start notices should be made a legal requirement.

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.
	Yes. Recording actual starts by noon the following day is acceptable. Where the works involve special engineering difficulty then pre registering may be an alternative option.

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?
	<p>Yes, but with limitations.</p> <p>Recording works closed notices by the end of the next working day is practical.</p> <p>However, there may be benefit of notifying the works are closed on traffic sensitive routes in a real time environment – but this may be one for the future.</p> <p>Some roads authorities do have difficulty in closing works during local public holidays and some flexibility in this respect should be investigated.</p>

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. It is debatable that any benefit gained from reducing the validity period would be outweighed by an increase in noticing activity.

Views Sought	
28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
	Yes. However, discussion regarding the duration of major works is a normal part of the co-ordination process. It is surely better to complete works within the programmed duration than having a dispute when the utility company fails to complete work by a date imposed upon them by the roads authority.

Views Sought	
29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	No. The current system of voluntary embargoes works well and the proposed embargo for Glasgow 2014 is supported by the utility companies. There is no need to give RAs statutory powers.

Views Sought	
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30	Do you agree with the definition of a working day given above?
	Yes. The proposed definition of a working day is acceptable. However, as noted in 26 above, the SRWC must take into account that some organisations still take public holidays when considering noticing failures.

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.
	The consultation has been comprehensive.

Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.
	Many of the utility companies are using innovative techniques: trenchless technologies; micro tooling; vacuum excavations etc. These techniques are welcomed and should be used on a more widespread basis.

Views Sought	
33	Please outline the potential impact of any additional costs.
	The main cost implication arising from the proposals would be the transfer of some of the cost of the long term damage to roads arising from utility excavations. This would reduce the financial burden on roads authorities.



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

Glasgow City Council

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

Clegg

Forename

Jim

2. Postal Address

LES, Exchange House, 231 George Street, Glasgow

Postcode G1 1RX

Phone 0141 287 9466

Email: jim.clegg@glasgow.gov.uk

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



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

20

Response Sheet

Views Sought	
01	What contribution do you consider should be introduced? What are your reasons for coming to this view?
	The level of contribution recommended should be in the order of 5-10% on a rising scale. This would enable the Utility Companies to adapt to a contribution scheme.

Views Sought	
02	Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?
	Based on Road Authorities preparing 1-3 year programmes 3 year period should be adopted as the period of restriction. This would alert Utility Companies and enable them to carry out major works prior to major resurfacing.

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?
	Inspections during the works should be increased to 30%. Maintain 10% inspection level for 6 months after reinstatement and increase to 100% at end of maintenance period. These levels would ensure adequate inspection of surfacing prior to Road Authorities Maintenance responsibilities being taken on.

04	Should the arrangements for inspection fees be changed, and could this include a performance element?
	If the levels of inspections are raised to those suggested in response to Q3 this would be considered adequate.



Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	This could be considered; however, due to current budget restraints road reinstatements no longer provide a service life of 20 years or more. It is also worth noting that periods of maintenance for road maintenance schemes are still only 2 years.

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	Dundee City Council has not experienced many cases of works that have been unreasonably prolonged and therefore there is no requirement for a charge for occupation in this part of the network.

Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	Permit schemes would have the potential to impose considerable administrative costs on Roads Authorities. Currently, there is no requirement for the introduction of permit schemes.



Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	Not required for low volume traffic roads. Needs further consideration on which body sets the maximum time for completion.

Views Sought	
09	Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?
	<p>The current scope of the fixed penalty scheme leaves a bit of a gap in the enforcement regime. Fixed penalties are generally available for the lowest level of offence, whilst prosecution is a viable option for the highest level of offence. This leaves many offences in the middle that are outwith the scope of the current fixed penalty scheme but not sufficiently serious to justify the cost of a prosecution. An extension of the fixed penalty system would help to address this.</p> <p>As an example, if a third party applies for and is granted permission to place apparatus in the road but fails to give the correct notice of start date, they can be issued with a fixed penalty notice under Section 114. However, if they do not bother to apply in the first place and just go ahead without permission, then they cannot be issued with a fixed penalty notice as their offence comes under Section 110 which is outwith the fixed penalty scheme. There are many other examples, and a comprehensive review of possible extensions to the scheme would be worthwhile.</p> <p>Specific comments in relation to the 3 potential fixed penalty offences listed in the consultation are as follows:</p> <ul style="list-style-type: none"> • Section 110 – this would meet all the requirements for a new fixed penalty offence and address the current anomaly described above. • Section 124 – although there would be occasions when it would be beneficial for a fixed penalty to be issued by a roads authority for a minor signing, lighting and guarding offence by a utility company, a possible complication is that this would prevent subsequent prosecution by the police or the Health and Safety Executive if the offence were to have serious consequences. • Section 130 – when the provisions of the New Roads and Street Works Act were first introduced, it was agreed by both roads authorities and utility companies that defect inspections should be charged a double the rate for other inspections. Subsequent reviews reduced this to the same rate as for other inspections. The introduction of a fixed penalty for not reinstating excavations in accordance with the specification would reinstate the original intention of a disincentive for poor reinstatement performance.



Views Sought	
10	<p>Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.</p> <p>Comments on the proposed new summary offences are as follows:</p> <ul style="list-style-type: none"> • Misclassification of works as urgent or emergency to circumvent longer planned work notice periods – this would already be a fixed penalty offence under Section 114 as it would involve starting work without giving the prescribed notice. There would, therefore, appear to be little purpose in creating a new offence. • Not noticing "actual start" notices by the due time (should actual start notices become a legal requirement) – if actual start notices were to become a legal requirement then it would be consistent with comparable existing requirements if failure to issue the notice by the due time were to be a fixed penalty offence. • Failure to rectify a defective reinstatement within a reasonable period – this is a particular area where stronger enforcement powers would assist roads authorities. It is in the public interest for defects to be rectified promptly and under the present regime roads authorities sometimes have difficulty in getting utility companies to respond within a reasonable time. The introduction of a new fixed penalty, would, therefore be welcomed. • Failure to rectify defective utility company apparatus within a reasonable timescale. – this is another particular area where stronger enforcement powers would assist roads authorities. It is in the public interest for defects to be rectified promptly and under the present regime roads authorities sometimes have difficulty in getting utility companies to respond within a reasonable time. The introduction of a new fixed penalty would, therefore, be welcomed.

Views Sought	
11	<p>Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?</p> <p>Yes - to maintain the deterrent value FPNs should be increased in line with inflation.</p>



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?
	Most large utility companies and roads authorities would probably regard the reputational damage of receiving a penalty from the Scottish Road Works Commissioner as more serious than the financial loss. However, it is agreed that an increase in the current maximum of £50,000 might be useful as a potential escalation if an organisation were to be seen to ignore an initial penalty. The availability of an increased penalty would not be unreasonable, especially for repeated offences.

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.
	Dundee City Council would support the Commissioners suggestion as it promotes clarity. However, the third part appears to be a little to open to be brought into legislation.

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.
	Yes. It would provide consistent safety standards across the Community. It would reduce any anomalies across utility companies and roads authorities for any prosecutions.

Views Sought



15	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.
	While there is considerable benefit to this proposal the onerous task and financial burden of identifying and surveying all assets, then develop digitized records etc mean there should be adequate lead-in time for the work to happen which is likely to be in excess of 10 years.

Questions	
16	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.
	No. Where plant is installed and will be adopted / maintained by a utility company, Section 61 of RSA should be used. Only where the plant remains the responsibility of the installer should Section 109 of NRSWA be used.

Views Sought	
17	Do you agree that the designation of "major road managers" be created? Please provide the reasons for your view.
	Designation of "major road manager" (for major airport/seaport operations) is not required at this stage in this part of the network.



Views Sought	
18	What are your views on the 3 month advance notice period for major works?
	In principle, it is beneficial for details of the location of planned major works to be placed on the register as early as possible in order to maximise the opportunity for co-ordination. The 3 month advance notice period is generally helpful in achieving this.

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?
	Roads may only be designated as "traffic sensitive" if they carry particularly high traffic flows. Works on such roads have the potential to cause substantial disruption and so it is appropriate that advance notice should be required. However, substantial disruption can also be caused on roads that do not qualify as "traffic sensitive" if they involve a closure with a lengthy diversion route. It is, therefore, appropriate to retain the advance notice requirement to cover such cases.

Views Sought	
20	Should the early start procedure be a statutory requirement?
	Yes. The existing voluntary early start procedure has been working well and therefore it should be placed on a statutory footing.

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	The current standard of recording urgent works within 2 hours of commencement is more appropriate for urgent works.

Views Sought	
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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?
	There are 2 reasons for requiring information on works to be placed on the SRWR. One is to facilitate the co-ordination of works and the other is to provide roads authorities with information on excavations and reinstatements in roads by utility companies. Where information relates to co-ordination, for example timing and location of works, then roads authorities and utility companies should be required to place the same information on the register and to the same timescale. Where information relates to excavations and reinstatements, for example areas locations and dates of reinstatements then it should only be required from the utility companies.

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 – regulations should be introduced.

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 – regulations should be introduced.

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.
	Yes – the current requirements are causing no issues, and are reasonable to all parties.

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. The existing arrangements are reasonable to all parties. In addition works closed notices to be notified directly to Network Manager

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 current validity period should be retained for most works to give allowance for investigatory works, identifying defects as well as the effects of weather on works and flexibility for plant and labour resources.

Views Sought	
28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
	No – roads authorities cannot determine the actual time required for utility works and this may lead to health and safety issues, working longer hours, overnight working etc which would go against the principle of co-ordination and accountability.

Views Sought	
29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	Yes – major sporting events, visits by VIPs, long planned charity events etc have the potential to be seriously disrupted by utility works. Such events also use the



	road asset and are an important part for the communities that we serve.
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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.
	The current consultation is very comprehensive and no further issues have been identified.

Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.
	No potential innovations identified at this stage.

Views Sought	
33	Please outline the potential impact of any additional costs.
	It is probable that any additional costs to be met from the utility company would be recovered from the service customer and any additional cost to be met from the roads authority would be recovered from the public.



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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

Dundee City Council

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

O'Neill

Forename

John

2. Postal Address

Dundee House, 50 North Lindsay Street, Dundee

Postcode DD1 1LS

Phone 01382 434000

Email john.oneill@dundeecity.gov.uk

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

STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

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Response Sheet: Scottish Water

Views Sought	
01	<p>What contribution do you consider should be introduced? What are your reasons for coming to this view?</p> <p>Scottish Water is of the view that caution is required before a levy is introduced. Our basis for this conclusion has two elements.</p> <p>Firstly we are of the view that the evidence necessary to justify a levy requires further consideration and at this stage is not robust enough. The consultation notes that the URS-Scott Wilson report reached the view that there is potential for compliant reinstatements to reduce the service life of a road. However that report also notes that "there is some evidence that good workmanship can eliminate or reduce the negative impact" of the reinstatement and that a "laboratory study reported that as long as a trench is reinstated correctly and in accordance with specifications, sustained sound performance is likely to be achieved throughout the design life of the pavement". In summary, in our view, the URS-Scott Wilson report does not provide a robust enough basis on which to justify the introduction of a levy. The consultation also refers to a recent TRL report. That report is based upon reinstatements that have passed a National Coring Programme. The National Coring Programme is not a full measure of compliance with reinstatement specifications. Hence some, and possibly all, of the issues observed by TRL could be attributed to the application of the Specification for the Reinstatement of Openings in Roads (SROR) rather than a reinstatement per se. That reinstatements carried out to the current and previous editions of the SROR do not cause damage to the roads is a conclusion of TRL itself in two other reports - TRL572 and TRL573. The TRL report therefore, in our view, also does not provide a robust enough basis on which to justify the introduction of a levy.</p> <p>Secondly, we consider that for Scottish Water any introduction of a levy for damage to roads from reinstatements should not be considered in isolation from the other costs associated with maintaining roads. In particular we note that while road drainage is a road works authority responsibility in most built up areas the majority of road drainage flows are conveyed and treated by Scottish Water – a service that Scottish Water does not charge road works authorities for. In 2008 the Scottish Government estimated that the costs of providing this service were £100m a year. Scottish Water's view is that any steps to take a more cost reflective approach for road openings should also encompass the costs of managing roads drainage.</p>



Views Sought	
02	<p>Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?</p> <p>In principle Scottish Water is content with this proposal. However, we would require that the current exemptions agreed in the Chapter 6 of the Code of Practice for the Coordination of Works for Roads, March 2013 should remain in place and that Scottish Water is not prevented from meeting its statutory duties in any way.</p> <p>Scottish Water also believes that, should the three year restriction become a statutory requirement, the advance notice period required prior to substantial works for road purposes should be increased to 6 months and that early starts should not be applicable to these works. This will ensure that sufficient time is available to all utilities to investigate any apparatus and adequately assess its condition. Where work is identified at this stage time is also required to plan, fund and complete any required works.</p>

Views Sought	
03	<p>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?</p> <p>The current sample inspection regime and guarantee period allows for 30% of all works to be inspected throughout the three phases. This level of inspections provides adequate statistical information about the quality of Statutory Undertakers works and performance.</p> <p>The current statutory position is that in addition to the sample inspection regime three inspections are chargeable under S131 of NRSWA. The Code of Practice for Inspections and Advice Note 4 allows for additional inspections to be charged in recognition of the costs to road works authorities for carrying out inspections of works. Scottish Water does not believe there is any justification for either increasing this further or for this to become statutory. However, current practice should be improved such that where any inspections are chargeable evidence should be provided in all cases that a physical inspection of the site has taken place, i.e. photos and site report. This should prevent inspections being recorded where it is clear from systems that remedial works have not been carried out and it is unclear that a further site inspection has been carried out by the road works authority.</p>

04	<p>Should the arrangements for inspection fees be changed, and could this include a performance element?</p>
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	<p>No, Scottish Water considers that NRSWA already allows for the recovery of reasonable costs incurred by roads authorities. Any increase in inspection fees would need to be justified through evidence that there has been an increase in reasonable costs incurred by road works authorities. An annual review of inspection costs is carried out by RAUCs and is already covered by current regulation.</p> <p>The current Code of Practice for Inspections requires that utilities meet a target of 90% compliance in each inspection type. This performance requirement is supported by the requirement for improvement plans through which additional inspections by road works authorities can be carried out to prove improved performance.</p>
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Views Sought	
05	<p>Do you agree that such increased periods be introduced? What are your reasons for coming to this view?</p> <p>No. Transport Scotland Inspection policy (Scottish Surfacing Board) requires that inspections are carried out on a bi-annual basis. Transport Scotland state that the majority of structural defects will manifest themselves within the first two years of a works being completed.</p> <p>Scottish Water believes that there is a misunderstanding of the cause of failure and types of defects. Defects can be either performance defects or latent defects. Latent defects being where the reinstatement has not been completed in accordance with the Specification for the Reinstatement of Openings in Roads (SROR) in force at the time the reinstatement was completed and performance defects being related to the performance of the materials used in completion of the reinstatement.</p> <p>If a defect is a performance defect there is an element of usage and wear and tear in the cause of these defects. Extending the guarantee period would require that products such as surface marking materials are required to last for the whole guarantee period. However, these products themselves have guarantee periods of two years.</p> <p>If defects reported are latent defects, where the reinstatement has not been carried out in accordance with the SROR in place at that time, the guarantee period is deemed never to have started. As such, there is no requirement to increase the guarantee period to ensure that these defects are repaired.</p>



	There is no empirical evidence that a significant number of defects manifest themselves following the current two or three year guarantee period. Any extension of the guarantee period would result in significant costs to utilities through changes required to framework contracts and on commercial costs due to potential increase in the risk element of rates.
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Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	<p>Scottish Water considers that there is strong evidence that in Scotland the road works authorities and undertakers are coordinating their works to ensure that work is not unreasonably prolonged.</p> <p>Furthermore, it is evident from the introduction of such charges in England and Wales, that there has been a deterioration in relationship between the Highways Authorities and Utilities, which has consequences for both coordination and cooperation.</p> <p>If the intention of this proposal is to reduce occupation of the road, Scottish Water's view is that this will be better achieved through improving working practices and, if necessary, revision of Section 125 notices. To bolt on a new charging scheme, with all the associated administrative costs, rather than review and revise the existing regulatory mechanisms, does not appear to be in line with regulatory best practice.</p>

Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	<p>Scottish Water agrees with analysis and conclusions of the Scottish Road Works Commissioner.</p> <p>As set out in the consultation, road works authorities already have powers to place restrictions as to the timing of undertaker's works and to direct undertakers to complete works that appear to be taking longer than necessary. Given this, and that there are potentially significant administrative costs associated with the introduction of such a scheme, we consider that the Commissioner's recommendation not to introduce permit schemes is supported by the evidence.</p>



Of particular concern to Scottish Water is how a permit system might impact on its legal rights and obligations to access, operate and maintain the public water supply and sewerage network on a planned and unplanned basis.

As Scotland's Statutory Water and Sewerage Authority, Scottish Water is duty bound to provide a sufficient supply of wholesome water from its mains and communication pipes, and provide sewers for effectually draining domestic sewage, surface water and trade effluent, and to ensure their continual operation.

In line with these duties, Scottish Water is obliged to carry out such necessary inspection, maintenance, repair and renewal of the public water supply and sewerage infrastructure. Scottish Water requires 24 hour access to its water and sewerage infrastructure for normal operational purposes such as operating valves and lifting manhole covers to facilitate the continual provision of public water supply and sewerage services. In addition Scottish Water requires special accelerated access to its apparatus in emergency situations. Any process which would inhibit such access (e.g. written permission from a third party) would cause delays and additional costs to an essential service.

Scottish Water's rights to lay, construct and thereafter take access to inspect, maintain, repair and renew its water and sewerage infrastructure are derived from Statute (primary legislation: the Water (Scotland) Act 1980, the Sewerage (Scotland) Act 1968 and the New Roads and Street Works Act 1991) and/or by Servitude (agreement or positive prescription).

Any restriction or interference with these rights could compromise Scottish Water's ability to perform its statutory duties and would likely affect the operation of the public water supply and sewerage networks, cause inconvenience to the public and have serious consequences for public health.

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	Scottish Water considers that the same arguments apply as for the introduction of permit schemes – i.e. that road works authorities already have powers to place restrictions as to the timing of utility works to direct undertakers to complete works that are taking longer than necessary. There are also potentially significant administrative costs associated with the introduction of such a scheme. Our conclusion is therefore that the



	<p>evidence does not support the introduction of scheme.</p> <p>Scottish Water is also concerned that providing such a direct financial incentive to finish works may adversely impact on health and safety.</p>
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Views Sought	
09	<p>Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?</p> <p>Scottish Water notes that S110 failures are currently covered by issuing a S113 and / or S114 fixed penalty notices for starting works without a notice. As such there is no requirement to extend fixed penalty notices specifically for S110 failures.</p> <p>S124 and S130 are managed through the inspection regime. Scottish Water considers that, in line with regulatory good practice, an analysis of the costs and benefits of extending fixed penalty notices to these offences needs to be undertaken before any decision can be taken.</p> <p>Scottish Water also believes that this would increase the regulatory burden on businesses.</p>

Views Sought	
10	<p>Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.</p> <p>Scottish Water has no issue, in principle, with the misclassification of works as urgent or emergency to circumvent longer planned work notice periods or with not noticing 'actual start' notices by the due time being offences dischargeable by fixed penalties. However, in line with regulatory good practice, we would expect to see an analysis of the costs and benefits of taking this action. We note that no evidence has been provided that these issues are having a material impact on the coordination of road works.</p> <p>Scottish Water does not agree that failure to rectify a defective reinstatement within a reasonable period and failure to rectify defective utility company apparatus within a reasonable timescale should be summary offences which can be discharged through fixed penalty notices. This is because road works authorities already have regulatory tools under</p>



	NRSWA - i.e. to serve notice that remedial works have not been completed, intention to complete works themselves and the ability to recover reasonable costs for doing so. Again, in line with regulatory good practice, we would expect to see an analysis of possible options for tackling the issue identified that includes reforming the existing regulatory tools. Only once this has been complete can a view be reached on introducing new summary offences.
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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?
	Scottish Water has no issue with the increase in penalty amounts. There should also be a consistent approach relative to the levels of fines in other areas of road management e.g. parking tickets, bus lane offences etc.

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?
	<p>It is Scottish Water's view that the current level of penalty is sufficient. Sections 118 and 119 of NRSWA place a general duty on road works authorities to co-ordinate works and a general duty on undertakers to co-operate. However, failure by a road works authority or undertaker to observe the obligations imposed by these sections does not give rise to criminal liability.</p> <p>Scottish Water notes that there is a considerable difference between the maximum fine levels, imposable by the Scottish Courts, in respect of criminal offences under NRSWA (i.e. £5,000) and the new level suggested for the Scottish Road Works Commissioner's penalties and, in respect of summary offences, the maximum imposable by the Scottish Courts is currently £50,000.</p>

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.
	Scottish Water considers that Points 1 and 2 in the proposed definition are reasonable. However we are concerned that point 3 is too discretionary and that there needs to be formal guidance on this to ensure that there is a consistent and reasonable approach to the regulation of road works. The definition suggested in point 3 could result in both road works authorities



and statutory undertakers being unclear on what needs to be complied with and what is desirable.

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.

Yes, Scottish Water agrees that the Code of Practice for Safety at Street Works should become mandatory for road works authorities. Contractors working for both parties are unclear on what applies and when. Customers are confused about what standards should be expected from any organisation working on the road.

Views Sought

15 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.

Yes, Scottish Water agrees that digital records of apparatus should be held by statutory and licensed undertakers. Scottish Water also agrees that it is best practice that this information should be made available to road works authorities and undertakers through hosting of the data on the Scottish Road Works Register (SRWR) but that at this stage, this should not be a statutory requirement. Further development of the SRWR would be required to ensure that there is adequate security of undertakers and road works authority data, that this is held separately from information that may be publicly available under S112 of NRSWA and that there are appropriate control of access permissions to ensure that that data is only accessed by authorised persons under S138 of NRSWA. In this respect a Code of Practice on Security and access to Plant Information would be required.

Questions

16 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.

Yes, Scottish Water agrees that S61 of the Road (Scotland) Act 1084 should be repealed. S109 gives road works authorities more protection and control over works being carried out by non statutory undertakers and allows for the inspection regime to be applied to these works.

Views Sought



17	Do you agree that the designation of “major road managers” be created? Please provide the reasons for your view.
	Scottish Water's view is that this would only benefit road works authorities who would not have to enter S109 permissions onto the Scottish Road Works Register. We would also be concerned that this would potentially provide access to our plant information where this would otherwise have been restricted.

Views Sought	
18	What are your views on the 3 month advance notice period for major works?
	The three month notice period is too long for programming and planning purposes. Estimating start dates this far in advance is difficult as they are affected by changes in our programme and other unforeseen delays over the course of the three month period. The result of relying on the three month advance notice period for major works has increased the number of early starts required to meet programme requirements and customer expectations, and reduced meaningful data and coordination on the register.

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?
	No, removing the requirement for advance notice based on traffic sensitivity will result in more complexity, more confusion, and reduced compliance and coordination. This requirement should remain.

Views Sought	
20	Should the early start procedure be a statutory requirement?
	The provisions for this need to be clearly set out and are already included in statute under S114 of NRSWA. If the intention here is that the Code of Practice for Coordination of Works for Roads becomes a statutory code of Practice, this document should be revised and agreed through RAUCs.

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	Scottish Water is satisfied that the current requirements allow the required flexibility to manage works appropriately. There will be circumstances under which urgent works to repair leaks will require to be planned due to



	complex network operations that require planning, pressure management to protect the network and to minimise disruption to customers.
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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?
	<p>Yes, Scottish Water agrees that legislation should be introduced requiring that road works authorities provide the same information as undertakers and to the same timescales.</p> <p>Scottish Water agrees that there should be parity in both the noticing requirements and safety requirements of noticing but that there should also be parity in performance management of these issues including the inspection regimes and reporting of defects on the road and road works authority apparatus such as gullies.</p>

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?
	Road works authorities should have the ability to record minor works on the Scottish Road Works Register. However, there would need to be clarity on the circumstances under which this can be used.

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, Scottish Water believes that this will further improve compliance and coordination of works.

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.
	The current arrangements are reasonable and should remain in place. Although the SRWR operates between working hours, works can begin at any time throughout the day including after 4.30pm or at the weekend. These works can only be recorded the next working day. We also have to take cognisance of working in remote areas of Scotland where



	transmission of data can be problematic.
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Views Sought	
26	<p>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?</p>
	<p>The current arrangements are reasonable and should remain in place. Although the Scottish Road Works Register operates between working hours, works can be completed at any time throughout the day including after 4.30pm or at the weekend. These works can only be recorded the next working day. We also have to take cognisance of working in remote areas of Scotland where transmission of data can be problematic.</p>

Views Sought	
27	<p>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.</p>
	<p>Scottish Water does not agree that the validity period should be reduced to a maximum of 2 days. This will adversely impact of the programming of works by reducing flexibility in the management of works. Flexibility in works is required to meet customer expectations and to deliver works efficiently. No evidence has been provided that the current validity periods are causing delays or other issues with coordination of road works. The Scottish Road Works Register allows for self coordination through highlighting potential conflicts between works at the proposed works stage. This, also, would have a major impact on the meaningful usage of the Three Month Notice.</p> <p>It is also noted that the validity period for works in England and Wales is 5 working days.</p> <p>Scottish Water agrees that the current validity period should also apply to road works authorities.</p>

Views Sought	
28	<p>Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?</p>



	<p>No, Scottish Water believes that road works authorities are not well placed to assess the required duration of repair/ maintenance/ replacement of utility apparatus. Undertakers are best placed to determine the required duration based on networks, customers, engineering difficulty, commercial constraints etc.</p> <p>Road works authorities can closely monitor utilities and already have regulatory powers under S.125 of NRSWA that can be utilised if they consider that works are not being undertaken with all reasonable dispatch. Again, in line with regulatory best practice, before any new regulatory instruments are introduced Scottish Water would expect to see a cost benefit analysis of all the available options, including revising the existing regulatory tools.</p>
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Views Sought	
29	<p>Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?</p> <p>While Scottish Water has a statutory right to maintain its apparatus it works closely with road works authorities and strives to accommodate all the voluntary embargoes that are put in place.</p> <p>We are not aware of voluntary embargoes not being adhered to and no evidence is presented that they have not been. We therefore question why statutory powers are required.</p>

Views Sought	
30	<p>Do you agree with the definition of a working day given above?</p> <p>Restricting the time for a notice to be given to 16:30 to count as that working day appears to be unnecessarily restrictive and will continue to cause potential Fixed Penalty Notices in the Scottish Road Works Register with no way of managing this to maintain compliance.</p>

Views Sought	
31	<p>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.</p> <p>1. Codes of Practice/ Advice Notes- Scottish Water notes that there are Codes of Practice and Advice notes that require review. These are :</p> <ul style="list-style-type: none"> - Code of Practice for Dispute Resolution and Appeals- this code allows for disputes related to failed inspections to be heard by a



panel drawn from the area RAUC and RAUCs Scotland. However, if agreement cannot be reached between the co chairs or the decision is not accepted by both parties there is no further recourse to resolve these disputes.

- RAUCs Advice Note 18: Fixed Penalty Notice Hearing Process- where fixed penalty notices are disputed a hearing can be called by the road works authority. However, the panel is drawn from Local Authority staff and there is no right to appeal this decision, leaving issues unresolved.

Scottish Water would support the review of these documents to ensure that these are fit for purpose.

2. Apparatus- Scottish Water believes that there needs to be clarity on the definition of apparatus and apparatus inspections recorded under S140 of the 1991 Act. S81 of NRSWA is only deemed to relate to surface apparatus such as covers in England and Wales. Scottish Water supports this definition of apparatus and cannot accept inspections reporting suspected leaks, sewer surcharges etc without evidence in line with the current provision of S140 of the 1991 Act. These reports should follow the accepted and documented process of reporting to Scottish Water's contact centre. This will also ensure consistency in the treatment of all utilities under NRSWA.

3. The Road Works (Qualifications of Supervisors and Operatives) (Scotland) Regulations- Scottish Water notes that the DfT recently advised that The Street Works (Qualifications of Supervisors and Operatives) (England) Regulations 2009 will not be revoked. Scottish Water would support the review of the Scottish regulations to ensure there are consistent training and accreditation standards throughout the UK for operatives and supervisors working on roads.

4. Reinstatement quality and performance- Scottish Water notes that many of the issues identified the reinstatements reviewed in the URS- Scott Wilson and TRL reports were performance and not latent defects. This shows that the reinstatements were completed in accordance with the Specification for the Reinstatement of Openings in Roads and that the issues were related to quality of work. There has been considerable improvement in the quality of reinstatements since the reinstatements reviewed in the URS- Scott Wilson and TRL reports were completed. It is Scottish Water's view that improved reinstatement quality should be considered as part of any discussion on potential long term damage.

5. Road Classification- Scottish Water believes that there should be a review of road categories currently held on the gazetteer to ensure



	compliance with the definitions of road categories contained within section 1 of the Specification for the Reinstatement of Openings in Roads. Evidence of the road categories should be made available to undertakers on request.
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Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.
	None

Views Sought	
33	Please outline the potential impact of any additional costs.
	Scottish Water notes that the potential costs of the impact of these proposals would be significant, potentially totalling several million pounds per annum. The wide ranging nature of the proposals contained within this consultation and lack of cost benefit analysis to support these, have meant that these proposals are too wide to cost accurately within the timeframe allowed by the consultation. Scottish Water is currently carrying out a detailed cost impact on relevant parts of the proposals and we are happy to share this information following its completion.



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

Scottish Water

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

HARVIE-CLARK

Forename

TOM

2. Postal Address

Castle House

8 Castle Drive

Carnegie Campus

Dunfermline

Postcode KY11 8GG

Phone 0845 601 8855

Email

tom.harvie-
clark@scottishwater.co.uk

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

(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



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

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



Bus and Local Transport Policy
Transport Policy

Victoria Quay, Edinburgh EH6 6QQ
T: 0131-244 7057
Joanne.gray@transportscotland.gsi.gov.uk



22

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

Your ref:

Our ref:

5 April 2013

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

If you have any queries contact Raymond Elliot in the Scottish Road Works Commissioner's office on 0131 244 9938.

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:

Name: Joanne Gray

Address: 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	<p>What contribution do you consider should be introduced? What are your reasons for coming to this view?</p> <p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>None - NJUG does not believe that a utility contribution towards long-term damage of any kind is warranted. This is for a number of reasons. Firstly, NJUG questions the validity of the URS Scott Wilson report, which has been used as the basis for some of the proposals in the consultation. NJUG believes that this commissioned desk-top report does not present any new evidence or provide additional conclusions, but serves merely as a literature review of previously published reports and old outdated research.</p> <p>NJUG also believes that some of the reports reviewed in the URS Wilson Report and specifically the evidence on long-term damage is fundamentally flawed.</p> <p>NJUG therefore, does not feel that assumptions can be made on the impact of utility reinstatements on Scottish roads based on the existing evidence, and does not accept many of the findings laid out in the URS Scott Wilson report.</p> <p>With this in mind, NJUG seeks greater clarity and understanding of all the reasons for road degradation, and would welcome sight of the data used by the Scottish government in devising its proposals. There are many factors that can contribute to road degradation including extreme weather conditions, volume and type of traffic that passes over the road, the original quality of road construction and materials used, and the quality and level of road maintenance, as well as quality and quantity of road works. NJUG does not feel that all of these factors have been appropriately considered. NJUG is willing to cooperate in any study looking into the reasons for road degradation, as it has done in the past.</p> <p>NJUG would also to point out that a considerable portion of works on Scottish roads are completed by Scottish Water. Therefore, any charge incurred by Scottish Water would ultimately be a cost incurred by the Scottish taxpayer, given that Scottish Water is a statutory corporation and accountable to the public through the Scottish government, rather than a privatised utility.</p> <p>NJUG believes that the introduction of a utility contribution to long term damage would also have a direct and unavoidable impact on consumer costs, with one of our utility members estimating a 40% increase in the cost of consumer connections.</p>



Additionally, Scottish government's proposals would have a significant impact on utility companies' capital investment programmes. The economic regulators have a statutory duty to protect the consumer and therefore balance the amount of money they allow utilities to recover through utility bills for capital investment programmes and operational expenditure, with the cost to consumer bills.

A utility contribution based on any of the ranges proposed would have a dramatic effect on either a) the need to significantly increase the amount of money allowed for each company to spend on asset investment activity, with the resultant increase in utility bills, or, more likely, b) the regulatory settlements would not increase substantially (if at all), but, as the unit costs of each works would increase, there would be a decrease in the number of works each utility would be able to complete. This will have a direct impact on the construction industry, leading to a reduction in the number of jobs within the sector, which contradicts the Scottish and UK governments' primary goal of driving economic growth and creating jobs.

With reference to Paragraph 1.16 of the Consultation document, the Scottish government states that the national failure rate of 6 month reinstatement inspections is 8.9%, meaning that 91.1% of inspections were found to be fully compliant. Accepting that failure rates can sometimes vary depending on the road and authority area and coring analysis interpretation, NJUG questions the necessity and effectiveness of a blanket charge across all works, and would strongly advocate that if the Scottish government insist on introducing a contribution to long-term damage, that they look at a targeted approach, focusing on those areas that widely deviate from the national average and those utilities whose reinstatement record is not as good as the average.

However, voluntary initiatives that have been agreed through RAUC(Scotland) with higher targets each year, have delivered a real improvement in reinstatement quality, with Improvement Plans in place to deliver further improvements. NJUG strongly believes this current approach should be continued in preference to any further regulatory measures.

In summary, placing additional costs on the general public during such difficult economic times, however unpalatable, will become inescapable for utilities, if these measures are pursued.

One of the Scottish government's key priorities (and the English, Welsh and Northern Irish governments), is the need to stimulate growth in the economy. **NJUG believes that the introduction of a long term damage contribution will negatively impact on measures to drive economic growth.** This would result in the cost of connections for new housing developments and commercial developments rising; initiatives such as the roll-out of high-speed broadband being hindered by escalating costs; and less investment in utility networks to deliver the safe, secure and reliable services that underpin the Scottish and UK economies. We therefore strongly urge the Scottish government to not implement these proposals.

Detailed Comments on the Data and Assumptions Used for Long-



Term Damage

In addition to the high level points above, NJUG would like to make the following specific detailed comments on the assumptions made in the Transport Scotland Consultation document and the referenced Technical Reports.

The Transport Research Laboratory (TRL) PPR386 Report, reported a 17% service life reduction based on findings in only 38 sites (across the UK), using information from an earlier TRL Report [No. 573 (c.2003)], which reviewed reinstatements completed circa.1994.

An approximate method to calculate 'reduction in service life' was adopted under the TRL 573 Report, which was derived using the Falling Weight Deflectometer (FWD) readings within the Highways Agency's Deflectograph interpretation method.

Utilities expressed reservations at the time, over relying on just 38 sites as a basis of moving forward proposals for long term damage. This was formalised in a Paper from Virgin Media's Alan Rainford presented to the HAUC(UK) National Conference of 2008. Points set out in this Paper substantially remain to be debated by the road works industry:

- This Transport Scotland Consultation has used the 17% service life reduction figure, implying that 17% of annual road maintenance spend is used to repair utility reinstatements. NJUG wishes to challenge this assumption on the basis that a) the original figure, based only on 38 sites, is highly questionable, and b) road works authorities can require utilities to put right any defective works at their own cost, and should therefore not need to use their road maintenance budgets to repair any defective utility reinstatements.
- In respect of the URS Scott Wilson Report which underpins this consultation, NJUG would make the following comments:
 1. URS Scott Wilson consulted stakeholders to augment their desktop review, however, no utilities were invited to participate.
 2. The Report concludes there is only limited evidence linking reduction in service life to trench reinstatements, and NJUG would question the applicability of International reports, where there are many different factors affecting road longevity and the general environment is very different.
 3. The Report also highlighted that all data in TRL Reports is for England only and therefore not necessarily relevant to Scotland.
 4. The Report Identified joint sealing as a key weakness, but the SROR is in place to review / strengthen this [see also footnote below]).
 5. The Report recommended further research.
- The TRL PPR651 Report (McHale) for the Scottish Road Works Commissioner:
 1. The methodology used in the Report adopted roads maintenance inspection criteria without apparent cross-reference to SROR compliance parameters – examples:
 - (i) Joint cracking (permissible crack widths – *the SROR*



accepts cracks up to 2.5mm before remedials are required [see also footnote below]).

- (ii) Step depression -NJUG questions whether the measurement was outside the SROR Intervention limits?
 - (iii) Crowning / depression - NJUG questions whether these were outside of SROR Intervention limits?
2. NJUG suggests that the Inspection Panel marking may therefore be unrepresentative of the standards expected under the SROR.
3. Zone of Influence – issues:
- (i) The only discernible visual measurement used to identify the effects of any weakness / movement in the surrounding zone of influence was a recording of cracking in the carriageway.
 - (ii) Approximately 1 in 6 sites were recorded as having some evidence of cracking in the surrounding carriageway - this low number appears to undermine the principle of a zone of influence, used under TRL PPR386 to 'inflate' the overall square metreage costs of long-term damage.
4. TRL established an Inspection Panel – this was independent of utilities, which is regrettable (although NJUG did have some degree of representation in all TRL reports in England).
5. The Report identified joint sealing as a key weakness - as above, the SROR is place to review / strengthen this [see also footnote below].
6. Findings:
- (i) The Report draws out that urban and city areas appeared worse than rural and semi-urban (should the Scottish government insist on pursuing a long-term damage contribution, this would need to be reflected, rather than a blanket approach, although NJUG continues to strongly believe that no utility contribution towards long-term damage is warranted).
 - (ii) The Report suggests all reinstatements continue to deteriorate over time. This is not proven in the trial work. All that is shown is a snapshot of the range of reinstatement conditions for reinstatements of different ages.
 - (iii) The general condition of the existing surround carriageways remote from the reinstatements is not captured. NJUG's experience is that the quality of the surrounding roads is often poorer than the utility reinstatement, and would therefore suggest that:
 - (a) An assessment at the time of visiting the sites would have been useful, in order to gauge whether general road maintenance was required.
 - (b) This is a key plank of the SROR, in that utilities are not expected to exceed the condition of the general surrounds, at the end of the Guarantee Period, as, in essence it is a function of betterment.
7. Additional Comments:
- (i) There is no reflection in either the URS Scott Wilson Report or this consultation, that acknowledges Audit Scotland's Reports regarding the Road Authorities preparing Asset Management Plans, i.e. utilities really do not know how



- well, or not, the Road Authorities are generally maintaining their assets, in order to scale the 17% figure.
- (ii) Yet the Maintaining Scotland's Roads (Audit Scotland, 2011) Report highlighted that the overall maintenance backlog on roads in Scotland is £2.25 billion, of which £1.54 billion relates to roads in local Road Authority control. No indication was given of the timeframe over which this might be expected to be recovered, but the backlog figures were compared with those reported for England and Wales by way of the annual ALARM Reports - issued by the Asphalt Industry Alliance (AIA). This comparison showed the headline backlog cost per kilometre in Scotland to be circa 40% greater than that reported for 2010 in England and Wales. Therefore, in essence, the baseline condition of roads in Scotland appears to be poorer than that in England and Wales.
 - (iii) Additional earlier reporting also supports the long-term existence of a road maintenance backlog:
 - (a) Scottish Road Maintenance Condition Survey (SRMCS) reports from 2002.
 - (b) State of the Scottish Road Network Report of 2009 issued by the Society of Chief Officers for Transport in Scotland (SCOTS).

Footnotes:

1. Joint issues / cracks and related failures predominate. However, S12 of the SROR has excellent, yet under-used repair techniques. NJUG believes that these could be considered (potentially at 5 years) as a medium offer from Utilities (*i.e. NJUG would much prefer to set up a scheme where utilities return after 5 years and undertake joint repairs, rather than:*
 - a. Make wholesale surface course repairs, or
 - b. Make the payments noted in the Consultation.

Highway and Road Authorities have previously prevented utilities using overbanding on their reinstatements. Irrespective of skidding issues, utilities have been generally prevented from applying early-life edge protection, which TRL advocated in previous reinstatement-related research. Resolving this issue may help reduce the risk of future reinstatements failing.

Views Sought

02 Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?

Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:

Yes. NJUG agrees that the period of restriction following resurfacing should be changed. The Scottish road works community already acknowledges that a 1 year restriction period is too short and a 3 year voluntary period has therefore been adopted. These measures would



merely transpose what is done already into legislation. As currently operated on a voluntary basis, NJUG would support this transposition to a legislative basis on the understanding that any new restriction period should be subject to certain exemptions for things such as new service connections, urgent and emergency works.

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?

Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:

NJUG does not believe that there should be any general increase in the inspection levels for utility works that road authorities can charge. The current 30% inspection level is a high sample which gives an extremely strong indication of quality.

Additionally, road works authorities already have the ability to inspect all parts of road works if they feel it necessary but can only charge for those detailed.

As previously highlighted, effective voluntary measures are already in place which has led to a sustained improvement up to a current level of a 91.1% compliance rate nationally. Where there are variations, and the reasons for these variations have been understood, NJUG advocates a more focussed and targeted approach tailored to the needs of each individual case. Utilities are already committed to a voluntary target of 90% compliance for the current coring programme, and support the targeted additional inspections that apply to utilities issued with an Improvement Plan. However, NJUG believes that conversely, consideration should be given to reducing inspections on high performing utilities (see Q4).

NJUG would also like to highlight that the inspections proposals within this consultation document ignore the current performance-based Inspections Code of Practice, which was agreed by RAUC(Scotland), and also fails to recognise the Improvement Plans currently in place for poor performers, with utilities and road authorities working together to drive up standards, including utilities paying for additional inspections.



04	Should the arrangements for inspection fees be changed, and could this include a performance element?
	<p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>Yes. As highlighted in Q3 above, NJUG believes that the current arrangements for inspection fees should be changed and incorporate a reduction in the level of inspections and therefore fees for high performers, and in turn, incorporate additional inspections for those identified as poor performers. Improvement Plans and an Inspections Code of Practice are already in place to promote and foster good performance amongst utilities and road authorities.</p> <p>NJUG strongly believes that additional regulation is unnecessary, particularly when voluntary measures already in place are proving so effective, but that a change to the existing regulation (as suggested above) could deliver even greater improvements, further incentivising good performance.</p>

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	<p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>No. NJUG does not believe that any increase in the Guarantee Period should be introduced. There is no evidence available to suggest that any reinstatement that has not failed after 2 or 3 years is likely to fail after 5 years or beyond. Even though the likelihood of any failure after 2 and 3 years, or 5 years is very small, utilities and contractors will be forced to plan, and therefore hold funds for these liabilities regardless. Any increase in the Guarantee Period for utility works would therefore see a significant increase in costs to utility companies for no justifiable reason. In addition, if utility companies decide to pass on the liability to contractors, as is likely to happen, this will in turn be reflected in increased contractor prices and regrettably lead to consumer prices going up.</p> <p>Alongside the financial liability that would be incurred by utilities, NJUG also has concerns regarding the increased guarantee period and accountability. With different companies and authorities digging up the road at different time, overly complex 5 and 6 year guarantee periods will lead to questions being raised over who is actually liable in the event of a failure.</p> <p>In addition to the above high-level comments, NJUG would like to make the following detailed points on the 5 Year Guarantee Period:</p> <ol style="list-style-type: none"> 1 Reinstatement design life has remained at 20-years since SROR 1st Edition (1992).



- 2 The SROR 3rd Edition Consultation called for evidence to be provided in support of an extension to the current 2 / 3 year period.
- 3 NJUG asks what evidence was received in the SROR Consultation responses, and could it be made available?
- 4 General Comments:
 1. The Department for Transport (DfT), by way of the SROH 3rd Edition (England) Consultation, similarly sought supporting data to justify an increase in the Guarantee Period to 5 years. A small number of responses were received, but there was no overwhelming body of evidence to justify the increase.
 2. NJUG asks whether there is any supporting data that shows the rate of deterioration of reinstatements between end-year 2 and end-year 5, as NJUG members' experience is that there is no deterioration of compliant reinstatements between 2 and 5 years.
 3. NJUG asks whether the Inspections Code of Practice will be amended?
 4. NJUG also asks whether the annualised Sample Inspection payments to Road Authorities will be re-evaluated over the first 5 year period – i.e. a 'loss' in income to Road Authorities, through cash flow adjustments as a result of Stage C Sample Inspections (and payments) delayed to year 5. This was a key reason English Highway Authorities were against the 5 year Guarantee Period, similarly proposed under the SROH 3rd Edition (England) Consultation questions in 2009.
 5. In 2009, NJUG made a number of key points regarding the proposal for a 5 year Guarantee Period. The majority of points remain substantially unchanged and are yet to be debated by the road works industry (no new data forthcoming from Roads or Highways Authorities). Key points:
 - (i) Impact upon commercial liability - the simple question here is "if any Employer of Contractors asks for an increase to the Guarantee Period, will that affect the contracted rates?" *Accepting that sub-Contractor operating models predominate across the construction industry (roads and utilities), one 'link' in the cost-chain will bear the cost of increased contract liability arising from an increased Guarantee Period. Most probably it will be the first sub-Contractor working for the utility's main, or Tier 1, Contractor. An increase in the Guarantee Period will merely escalate costs for council tax and utility bill payers, and further impact the construction industry. Whilst an increase of the Guarantee Period may well instigate a review of working practices, there is no evidence that it would bring about any improvements, or that such improvements would outweigh the additional costs to the industry.*

Expected improvements driven by an increased Guarantee Period.

Views Sought

06 Scottish Ministers would welcome views on the introduction of a



	charge for occupation where work is unreasonably prolonged.
	<p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>NJUG requests sight of the data that led to the conclusion that Section 133 of the NRSWA is needed, given that Paragraph 2.3 of the consultation suggests that unreasonably prolonged utility works have been '<i>a limited problem</i>' with only 11 formal notices having been issued under Section 125 in the last 12 month period. Indeed, NJUG data shows that 99% of works across the whole of the UK were completed on time during 2012. The statement in 2.4 that, "<i>the Commissioner considers that works are often not undertaken with all such dispatch as is reasonably practicable</i>" needs qualification, supported by data. Utilities are already incentivised, either through their regulatory settlements or customer demand / competition, to work efficiently. Contractors are also under commercial pressure to complete works in a safe manner but as quickly as possible.</p> <p>Therefore, NJUG would question the justification and value of introducing a Section 133 overstay charge when Paragraph 2.7 of the consultation recognises that only around 2% of over-running utility works in Scotland have been recorded in the last 12 months.</p> <p>Utilities already regularly undertake works on an extended hours basis, for example working 7 days a week on busier streets, in agreement with road authorities and taking into account environmental considerations, safety, and operational and practical requirements.</p> <p>Additionally, NJUG would point out that utilities and road works authorities do already agree the duration of works in advance of them taking place, and utilities have the knowledge and expertise to know the length of time a job will take, but should be expected to justify that to authorities.</p>

Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	<p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>NJUG believes that the existing NRSWA 1991 noticing provisions in Scotland coupled with the cohesive and constructive approach to undertaking road works co-ordinated through RAUC(Scotland), provide sufficient powers and co-operation to manage both road authorities and utility works.</p> <p>From NJUG's experience of permit schemes in England there is no current evidence of significantly reduced disruption caused by road works or improved co-ordination of works (as referenced in Paragraphs 2.10 & 2.12). Yet, permit schemes have resulted in considerably increased</p>



costs (millions) to utilities in paying the permit fees. These costs are passed on to consumers, either through direct connection quotes, or allowed by the economic regulators, as permit fees become a normal cost of undertaking road works. In some cases, in particular within London, there is a significant reduction in productivity and efficiency due to onerous conditions placed on utilities. For example, the London Borough of Kensington and Chelsea has imposed limits on the length of gas or water pipes that can be inserted inside old pipes, resulting in the need for extra excavations, which increases the disruption, extends the total duration of the project and increases the environmental impact – leading to a 30%+ reduction in productivity.

Other permit conditions, by definition, prolong the duration of works. As well as increasing disruption, they also increase utility costs, which are ultimately passed through to the consumer, who allow a level of efficiently incurred costs incurred as a result of a change in legislation.

To date, there has been no English Government review (as acknowledged in Paragraphs 2.15) of permit schemes to assess how effective they are. Thus, NJUG supports the Commissioner's decision not to recommend the introduction of permit schemes at this time (Paragraphs 2.15). However, if at a subsequent date the Scottish government did decide to introduce permit schemes, NJUG commends the recently published Department for Transport (DfT) guidance, which now emphasises the need to focus on only the busiest traffic-sensitive strategic roads, and goes some way to reduce the costs and impact on utilities and authorities (given that permit schemes must apply equally to both utility and authority works), it being imperative to support the government's economic growth initiatives, including broadband rollout and economic regeneration, such as housing, retail and industrial development.

Views Sought

08 Scottish Ministers would welcome views on the introduction of lane rental schemes.

Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:

NJUG is yet to be convinced that lane rental will deliver substantial additional benefits over and above the myriad of existing legislation, regulation and voluntary initiatives already available to manage street works. NJUG's view is that greater consistency and effectiveness in implementing the myriad of existing legislative, regulatory and voluntary measures would deliver the same objectives at much less cost to utilities, road works authorities and their customers.

Road works authorities under NRSWA 1991 sections 121, 122 and 123, along with associated regulations and section 115, already have the power to restrict working hours and durations during traffic-sensitive periods on strategic roads.



However, if lane rental were to be introduced, NJUG would be committed to continuing to work constructively with Scottish government Ministers and officials to seek to develop and implement a scheme that is fair, robust, workable and minimises the burden on utilities and their customers. Through our experience working DfT, Transport for London and Kent County Council in developing and implementing the two trial schemes in England, NJUG believes that any lane rental scheme should be:

Fair and equitable: Paragraph 2.17 states that 'a lane rental scheme would require utility companies to a daily charge for the duration of their works'. The schemes adopted and currently operating by TfL and Kent County Council ensure that both utilities and local authorities pay any lane rental charge, not just utility companies as is suggested in this consultation.

Whilst NJUG remains unconvinced that lane rental will deliver significant additional benefits over the myriad of legislation already available for road works authorities to manage road works, we believe that if the Scottish government chooses to use lane rental as an additional tool to reduce disruption, then inclusion of road authority works must be a mandatory requirement. Given that road works authority works currently registered on the Scottish Road Works Register (SRWR) account for approximately 27% of works in the street, managing them is equally important¹. The actual volume of works carried out is believed to be nearer 50% of all road works (similar to elsewhere within the UK) but not all authorities currently register all registerable works.

Targeted: As has been highlighted in Paragraph 2.17, NJUG believes that any new lane rental scheme needs to be focused on only the very busiest roads, where the volumes of traffic per hour is greater than that justifying a road as "traffic-sensitive", and any works would cause very significant congestion – and - only applied to cities / towns where there a significant number of those roads.

Operated on an incentivised and avoidable basis – NJUG advocates that any lane rental scheme must incentivise all works promoters to seek to avoid the lane rental charge by avoiding the busiest times by either working out of hours or outside the busiest seasons or times (such as school term times) or returning the road to service during the busiest times by use of innovative techniques such as plating, where safe, practical and operationally possible to do so. However, it should be noted that the Transport for London (TfL) lane rental scheme originally acknowledged that there is a doubling of the risk of operative fatalities when working at night. NJUG therefore suggests that if lane rental is progressed in Scotland, a more robust and appropriately applied traffic-sensitivity declaration, that includes added flexibility over the time of year works take place e.g. outside school term time; in the run-up to Christmas; and outside summer holidays (such as the Kent Lane Rental Scheme (KLRS), is preferable to a scheme that just incentivises a wholesale move to out of hours working. The existing legislation already allows this.

About avoiding disruption - not generating revenue – If the roads subject to lane rental are carefully selected, and small in number, a successful outcome would be that the lane rental scheme generates no or minimal revenue because it would have delivered a change in behaviour so that works promoters don't work during the busiest times. However, any revenue raised should be ring-fenced and invested into the development of new approaches that reduce disruption (as is the case in the TfL and KLRS schemes).

¹ The fifth Annual Report of the Scottish Road Works Commissioner 2011-2012



The whole premise of making charges avoidable, as the Scottish Government acknowledges in Paragraph 2.17, is that road works can be moved from the busiest times to evenings or overnight. However, as well as safety considerations, the potential for Environmental Health Officers (EHOs) to prevent or restrict out of hours working due to noise constraints could significantly hamper this objective and have a major impact on operational efficiency, extending durations and increasing costs e.g. in London, EHOs have prevented work in some roads after 11pm and yet in order to avoid the lane rental charge, works promoters have to only commence works after 8pm – leaving only a 3 hour window for works, which can extend the duration by up to 3 times or more, causing less disruption for the travelling motorist but greater inconvenience for those living or running businesses in the surrounding area.

Finally, **NJUG** believes that more effective and consistent use of the range of existing legislation / regulation and voluntary measures by road works authorities and utilities will deliver the same or greater benefits at much less cost to the utility consumer and council tax payer.

We therefore urge Scottish Ministers to delay considering any introduction of lane rental schemes in Scotland until a full cost benefit analysis is undertaken on the trial lane rental schemes that are being operated in London (TfL) and Kent.

NJUG believes that a lane rental scheme should not even be contemplated until everyone has a full understanding of the trial schemes' strengths and weaknesses and whether it delivers any additional benefits over existing legislation, and at what cost. Additionally, in England, local authorities are only permitted to operate a lane rental scheme once they've demonstrated evidence that a permit scheme has not produced the desired results i.e. local authorities must have been operating a permit scheme for at least 2 years. Considering the Scottish Road Works Commissioner does not recommend the introduction of permit schemes at this time (Paragraph 2.15), NJUG believes that lane rental should not be considered in Scotland at this time.

Views Sought

09 Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?

Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:

No. NJUG does not support the proposal to extend the range of summary offences dischargeable by fixed penalty notices (FPNs). In respect of the suggested areas to which FPNs could be extended, NJUG believes that there are already suitable existing measures that road works authorities can use to address non-compliance:



Section 110 – prohibition of unauthorised road works – provides road works authorities with the ability to prosecute utilities who do not notify authorities of their works.

Section 124 – signing, lighting and guarding failure – allows road works authorities to prosecute utilities for signing, lighting and guarding non-compliances, and NJUG believes that once the revised Safety Code of Practice is finalised, its launch could provide a real catalyst for re-emphasising the importance of correct signing, lighting and guarding through RAUC(Scotland).

Section 130 – Not reinstating excavation in accordance with the specification – allows road works authorities to tackle poorly reinstated excavations, and indeed the Scottish Road Works Commissioner and RAUC(Scotland) already have in place effective Improvement Plans that are delivering year on year improvements in the quality of reinstatement, with higher percentage targets set each year.

NJUG therefore believes there is no value in introducing FPNs for these offences, and experience across Great Britain has shown that some authorities use FPNs to supplement income, leading to numerous challenges and negotiations over spurious FPNs. Extending the range of offences will simply exacerbate this problem, and could detract from the very positive and collaborative approach between road works authorities and utilities fostered under the guidance of the Scottish Road Works Commissioner and RAUC(Scotland).

To prove a latent defect, a road works authority must produce evidence of wrong doing. The cost associated with this is reimbursable and significant in magnitude, and therefore NJUG does not believe that an FPN is the right mechanism for such an issue.

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.

Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:

No. NJUG's views on the specific offences suggested are similar to our views in Question 9:

Misclassification of works as urgent or emergency to circumvent longer planned work notice periods – No. NJUG does not believe this to be a substantial problem and would welcome sight of any data on whether this is a widely adopted approach by works promoters i.e. the proportion of Notices where works promoters misclassify works as urgent or emergency to get around the notice periods for major works as a percentage of total works, and split by road works authority and utility road works.



However, if there are individual cases with a particular works promoter, then the individual work promoter and road works authority(ies) should seek to resolve, if necessary with support from the Commissioner.

In respect of “Not Noticing “actual start” notices by the due time (should actual start notices become a legal requirement)”, NJUG would highlight that this is already a legal requirement in England and Wales and offences rarely occur. NJUG therefore has no objection to the addition of mandatory Actual Start Notices.

Failure to rectify a defective reinstatement within a reasonable period – No. Road works authorities already have adequate measures under NRSWA 1991 to which they have recourse, including the road works authority rectifying the defective reinstatement themselves and charging the utility if they haven't put it right within a reasonable period. **NJUG suggests that any persistent problems can be dealt with by RAUC(Scotland) under the Inspections Code of Practice**

Failure to rectify defective utility company apparatus within a reasonable time – No. Road works authorities already have adequate NRSWA 1991 measures to which they have recourse to encourage utilities to rectify defective utility company apparatus. Equally, it is not in a utility's interest to leave its apparatus defective for any length of time.

As is generally the case within Scotland, NJUG believes the emphasis should be on road works authorities and utilities communicating with each other and working together to drive up standards, and rectify any quality issues or non-compliances as effectively and quickly as possible.

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?

Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:

No. NJUG does not support any increase in FPN levels. NJUG's own performance figures indicate that only 2% of the total number of Notices has attracted an FPN which is subsequently paid. The current level of charges is acting as an effective deterrent, as, the quality and timeliness of Noticing is at 98% compliance. There is therefore no justification for any increase in the FPN level, as the current level is driving a high level of performance.

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?
	<p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>As above, given the high level of utility compliance in terms of timeliness and quality of Noticing (98% compliance) NJUG does not believe that any increase in the level of penalty is warranted.</p>

Views Sought	
13	<p>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.</p>
	<p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>No. NJUG believes that the existing definitions of “co-operate” and “co-ordinate”, if used effectively, are right and appropriate. The suggested amendment is very open-ended and could be used inappropriately without suitable safeguards.</p> <p>NJUG believes that any proposed change should be agreed with and through RAUC(Scotland), and ideally discussed within HAUC(UK). But in preference, NJUG believes that the Scottish Road Works Commissioner and RAUC(Scotland) could deliver even greater results through raising the level of proactive co-ordination and co-operation by:</p> <ul style="list-style-type: none"> • Incentivising road works authority managers to reduce disruption through each authority agreeing individual targets for reducing the number of days overall occupation of the road (such as in Staffordshire County Council where the Traffic Manager has a target each year). <p>Continuing to promote earlier Advance Planning, through the sharing of utility and road works authority plans up to two years in advance, thereby allowing easier flexing of works to facilitate joint occupation or sequential working.</p>

Views Sought	
14	<p>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>
	<p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>Yes. NJUG strongly believes that there should be one safety standard across the UK applying to all those working on the road. The general public do not care who undertakes the work in the road, they just want works completed safely, efficiently (including as quickly as</p>



	<p>possible) and at lowest feasible cost to the council tax payer or utility consumer.</p> <p>NJUG also believes that given that 27% of registered works in the road and overall around 50% of activities are completed by road works authorities, parity of treatment for all those undertaking works in the street would lead to a considerable improvement in the safety and quality of works, and reduced disruption.</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>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>Yes. NJUG agrees that it should be made mandatory for all utility companies and road works authorities to hold digital records, as this would enhance the safety of operatives and the public, as well as aiding the planning of works. However, NJUG believes that a move towards digital records should be undertaken on a long-term phased basis, in order to minimise additional costs for utilities and road works authorities. With VAULT already in operation in Scotland, the road works sector should work together to use it to move towards digital records over an agreed period of time.</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>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>Yes. NJUG agrees with repealing S61 and revising S109(2), as we believe that it is extremely important that as much relevant data as possible on utility and authority apparatus is held on a central register, irrespective of who has carried out the works. The Scottish Road Works Commissioner and RAUC(Scotland) are currently investigating this issue. Record keeping is of vital importance to both utilities and road works authorities, in particular in respect of safety, effective planning and efficient undertaking of works.</p>

Views Sought



17	Do you agree that the designation of “major road managers” be created? Please provide the reasons for your view.
	<p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>Yes. NJUG supports the proposal to establish a designation of “major road managers”, but believes that ‘major road managers’ should relate to roads where a minimum number of works are undertaken e.g. number of works undertaken in a calendar year is above a level which then justifies the ‘major road manager’ having access to the Scottish Road Works Register (SRWR).</p>

Views Sought	
18	What are your views on the 3 month advance notice period for major works?
	<p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>As currently defined, those undertaking major works have to give 3 months’ notice. NJUG recognises that to deliver effective co-ordination, road works authorities appreciate as much notice of all works as possible, and especially of major works. However, sometimes the requirement to give 3 months’ notice for certain types of customer-driven works, like commercial connections, presents difficulties for utilities who are required to connect customers or enhance their services within specified time limits. Utilities often have little advance notice themselves of the customer service contract to supply a new service. Therefore, a more broad-ranging option is proposed of one month for certain types of customer-driven work and three months for long-term planned works.</p> <p>For several years, NJUG has been encouraging utilities and authorities to informally share plans for major gas, water mains and electricity cable replacements and for all major road resurfacing or maintenance programmes, up to two years in advance. NJUG believes that this informal approach earlier in the process allows for meaningful co-ordination by road authorities and flexing of works by utilities to allow for joint occupation or sequential working, thereby reducing the overall duration of works.</p>

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?
	<p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>No. In order for road works authorities to co-ordinate major planned works</p>



	<p>and be aware of smaller scale works which could still have an impact on the surrounding community, and which may necessitate the postponement of works on other roads to avoid unnecessary disruption, NJUG does not believe that advance notice of such works on non traffic-sensitive roads should be removed.</p> <p>However, NJUG does recommend a return to one month of notice of major works on non traffic-sensitive roads, as this would still allow local coordination without being overly burdensome on utilities and road works authorities.</p>
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Views Sought	
20	<p>Should the early start procedure be a statutory requirement?</p> <p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>Yes. Provided this it is based upon an agreed RAUC(Scotland) Advice note, NJUG supports the early start procedure being a statutory requirement.</p>

Views Sought	
21	<p>What are your views on making noon the following day a statutory requirement for commencing urgent works?</p> <p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>No. Whilst NJUG agrees that by definition, there should be a degree of urgency to commence any works defined as “urgent”, NJUG would prefer to retain the existing definition of urgent works necessary to repair a primary network failure or restore / prevent a loss of service to customers. There are times when temporary fixes may be required (to ensure safety of the network and the public e.g. venting of gas escapes or other temporary measures particularly on traffic-sensitive roads), which are necessary to return the road to service, whilst securing the necessary specialist apparatus or materials to effect a permanent repair or reinstatement. This does not mean that the works are not urgent, but that the excavation phase may be delayed until the permanent works can take place and be completed without delay i.e. it may not be beneficial for a gas escape to be fully excavated if the necessary replacement apparatus or repair could not be completed without specialist materials or equipment, which is not always immediately available due to the age of some gas (and water) mains.</p> <p>For consistency, NJUG suggests that the existing definition is retained but that the importance of communicating to the road works authority when actual excavation works are due to start is stressed to all works promoters, and agreement is reached with them on the appropriate course of action</p>



	(taking into account the impact on safety, practical, operational and disruption).
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Views Sought	
22	<p>Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?</p>
	<p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>Yes. This legislation would greatly aid co-ordination, enhance co-operation and enable much better data analysis to assess the effectiveness of both existing and future legislation and voluntary initiatives.</p> <p>Indeed, the general public do not differentiate between road authority and utility works, and so it would make sense for all works to be required to provide the same information to the same timescales. The more rigorous information the road works community has at its disposal, the better informed the Scottish government and the Commissioner will be in formulating any future road works policy, legislation or voluntary initiatives through RAUC(Scotland).</p>

Views Sought	
23	<p>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?</p>
	<p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>Yes. The flexibility to not notice works involving no or minimal excavation on non traffic-sensitive roads is valuable for both utilities and road works authorities, reducing the administrative burden for both. NJUG supports the approach taken in the February 2010 Road Works Commissioner Advice Note, and so NJUG agrees that any regulation should provide flexibility whilst ensuring parity of treatment for road authorities and utilities.</p>

Views Sought	
24	<p>Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?</p>



	<p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>Yes. NJUG supports the introduction of regulations to require road works authorities and utilities to enter actual start notices on the Scottish Road Works Register (SRWR), as this will greatly aid co-ordination of works by road works authorities and management of their road networks, as well as providing greater certainty to utilities of who else is working on or in the vicinity of the road(s) on which they are planning to work or are currently working.</p>
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25	<p>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.</p>
	<p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>Yes. NJUG believes that the existing requirement for actual start notices to be lodged by noon the following day for all works, achieves a sensible balance between ensuring certainty that the works have commenced, and making sure information on the SRWR is as up to date as possible. Of course, the noon next day deadline should act as a backstop and wherever possible all works promoters should aim to confirm the actual start of works as soon as possible, and where they are working in particularly busy roads unexpectedly we would urge them to telephone the road works authority to alert them of their works before submitting the formal actual start notice.</p>

Views Sought	
26	<p>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?</p>
	<p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>Yes. NJUG believes that the existing requirement for works closed notices to be lodged by the end of the next working day, achieves a sensible balance between ensuring certainty that the works have finished, and making sure information on the SRWR is as up to date as possible. Of course, the close of play next day deadline should act as a backstop, and, wherever possible, all works promoters should aim to confirm that works have closed as soon as possible.</p>

Views Sought	
27	<p>Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike?</p>



	<p>If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.</p>
	<p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>No. NJUG does not believe that the validity period should be reduced to a maximum period of two days at this time, because there are many reasons which may delay the actual start of works by a few days such as emergency or urgent works, plant failure, reinstatement material availability in the event of unexpected works, parked vehicles and difficult site conditions, all of which can unexpectedly delay programmed completions.</p> <p>Durations should be mutually agreed and wherever possible bespoke noticing should be utilised, i.e. the work elements should drive the job duration – these include complexity, length involved, road category etc. Driving every individual job would create an enormous administrative burden with requests for extensions continually being sought. Some utility companies use algorithms to determine durations, based on a range of factors. These include emergency or urgent works, plant failure, reinstatement material availability and difficult site conditions, all of which can unexpectedly delay programmed completions. The validity period allows utilities (and road works authorities) to rearrange work schedules at short notice which is the reality of carrying out road works, and some flexibility is necessary to allow for slippage, without which there would be a need to issue new notices, which would be administratively onerous and potentially confusing for road works authorities receiving them.</p>

Views Sought	
28	<p>Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?</p>
	<p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>No. Utilities are best placed to determine the duration of works on their networks in order to perform them safely and efficiently and taking into account network and engineering requirements and commercial constraints. Undue pressure to reduce durations to an unsustainable level with the imposition from road works authorities of 'maximum periods within which works must be completed' (Paragraph 5.25) could potentially lead to decreased safety and quality and the need to return at a later date, effectively increasing overall works durations (as we have seen occur in some cases within permit and lane rental schemes in England). However, utility and road works authorities should seek to agree reasonable duration to minimise unnecessary occupation of the carriageway.</p> <p>Maximum durations will not reduce site time but merely increase the number of phases required to complete works</p>



Views Sought	
29	<p>Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?</p> <p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>No. NJUG does not believe road works authorities should be given statutory powers to impose embargoes on works for reasons other than traffic disruption. Utilities undertake road works for four main reasons – safety, security of supply, connecting new customers or enhancing existing customers' supplies, or diverting apparatus for major transport or urban regeneration projects. Utilities are investing billions of pounds to deliver safe and secure utility services which underpin the UK economy. They are therefore a major contributor to economic growth in their own right and through providing essential utility services for new houses and businesses. Therefore, having statutory powers to impose embargoes on utility works could have very significant negative consequences.</p> <p>NJUG's strong preference would be for road works authorities and utilities to continue to, or start to share plans of major works and upcoming events in order to facilitate planned voluntary embargoes on roads when necessary. The road works community has a long and proud track record in managing the flexing of works, and complying with voluntary embargoes, including during pre-Xmas and New Year periods and major events, such as the Commonwealth Games and Edinburgh festival. NJUG believes that this should continue without the need for embargoes to be placed on statutory footing.</p>

Views Sought	
30	<p>Do you agree with the definition of a working day given above?</p> <p>Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:</p> <p>No. NJUG strongly believes that the definition of "<i>working day</i>" in section 157(2) of NRSWA should remain as it is, with a definition for bank holiday exclusions. NJUG is not sure whether the statement that '<i>many organisations now do not take bank holidays</i>' (Paragraph 5.27) refers to all businesses or is referring to utilities / road works contractors, and so we would welcome sight of the evidence that supports this statement.</p>

Views Sought	
31	<p>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.</p>



Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:

NJUG's firm view is that the greatest benefits in terms of driving up standards and reducing disruption can be achieved by road works authorities and utilities working together to co-ordinate works and thereby reduce the number of overall days occupation, as well as continuing the very positive collaborative approach under RAUC(Scotland), working with the Commissioner, to drive up standards e.g. Improvement Plans for reinstatement.

This, coupled with more effective and consistent use of the myriad of existing legislation and regulation, will deliver the Scottish government's objectives of improved standards and reduced disruption, without impacting on growth or unnecessarily pushing up utility consumers' bills or prices for connection.

Given that around 50% of activities on the road are undertaken by road works authorities themselves (albeit not all road works authority works are yet recorded), NJUG believes that applying existing legislation and regulations to road authority works will deliver a considerable benefit, and bring parity of treatment, which will further enhance the collaborative approach of RAUC(Scotland).

The HAUC(UK) and RAUC(Scotland) Codes of Conduct for road and street works are excellent vehicles for enhancing road works in Scotland.

Views Sought

32 Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.

Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:

One of the ways in which NJUG encourages its members to demonstrate new innovations within the industry is through its annual NJUG Awards. The Awards attract submissions across 6 categories and entries are judged by an expert independent panel, and represent best industry practice revolving around the NJUG Vision for Street Works:

1. Safety is the number one priority
2. Utilities deliver consistent high quality
3. Utilities work together and in partnership with local authorities and contractors to minimise disruption
4. Utilities keep the public informed on all aspects of works
5. Utilities maximise the use of sustainable methods and materials
6. Damage to the underground assets is avoided

All of the Award winning case studies can be found on the NJUG website as examples of the road works sector delivering innovative practice in the



ways road works are managed and undertaken.

Examples of award-winning case studies leading to improved coordination and reduced duration, include:

Dudley Town Centre

South Staffordshire Water, National Grid Gas and Western Power Distribution worked together in partnership with Dudley Council to carry out a co-ordinated, 18 month programme of combined utility works for approximately 40 streets within the town centre.

The Kinver Project (Staffordshire)

A major collaboration between numerous promoters resulted in six individual sets of works taking place at the same time reducing an estimated 20 week project to only 7 weeks of co-ordinated works. This was delivered against a backdrop of Staffordshire's Traffic Manager being incentivised to reduce occupation of the road by 365 days over the year when the works took place.

Borough High Street

Collaborative working in Borough High Street, Southwark, London saved more than a whole year in work days, compared with the estimated total time required for carrying out the gas, water and electricity projects separately.

Examples of award-winning innovations increasing safety and quality include:

Scottish Community Apparatus Data Vault (VAULT)

VAULT - the system in Scotland that stores records of both road authority and utility electronic underground apparatus on the Scottish Road Works Register (SRWR) and makes it available to those organisations which require access to this information, thus increasing safety when digging in the road.

Laing O'Rourke Mobile Works Management System

Photo-driven hand held devices allow real time transparency of site activities, resulting in improved record keeping, increased 2-way communication with site, and web portal access to client, customer and highways. The works management system has seen a 15% increase in on-site productivity, a 70% reduction in Section 74 overstay charges and 85% reduction in Fixed Penalty Notices pro-rata.

Other elements could include better ways of working (Core and Vacuum Machines), but NJUG believes that legislation needs to be more easily relaxed or implemented flexibly to allow change – the SROR does not allow swift change to use new coring methods or changing specifications (rapid cure concrete), thus innovation can be stifled through red tape.

Other NJUG Innovation Initiatives

NJUG is also promoting innovation from suppliers who provide goods, services, materials or equipment that support one or more of the NJUG Vision for Street Works, by the creation of NJUG Affiliates. Affiliates can



present innovations at Regional NJUG Street Works Fora held around Great Britain, and at NJUG Good Practice Workshops, the most recent of which was held at Balfour Beatty Utility Solutions Ltd.'s training centre in Nottingham, bringing together utilities, contractors, traffic management suppliers, authorities and training experts to share best and poor practice on traffic management.

Views Sought

33 Please outline the potential impact of any additional costs.

Virgin Media is an executive member of NJUG and fully supports the response below compiled in conjunction with NJUG:

NJUG is unable to accurately quantify the costs of many of the proposals included in this consultation, as the costs would vary widely depending on the scope and scale of the eventual proposals and the way in which they are implemented.

For instance, permit schemes that apply to all works and all roads result in a far greater increase in utility and authority costs than those that have focused on just the busiest roads. Equally, those permit schemes with onerous conditions have increased costs and reduced productivity / efficiently, much more than those schemes which have fewer and less onerous conditions e.g. limiting the length of new gas or water pipes being inserted within old pipes without an excavation to 50 metres instead of the normal 100 metres (to limit the amount of car parking suspended at any one time) has reduced efficiency by 30+%.

Equally, the approach in which any lane rental scheme is developed will greatly vary the costs to all works promoters. A scheme which incentivises a wholesale move towards out of hours working will have higher costs than a scheme which also incorporates variations in seasons / times of year. For out of hours working utilities are typically seeing a 25% uplift in labour costs, which they would have to pay in order to avoid the lane rental charge if a lane rental scheme is so designed.

Equally, without environmental health officers engagement in the development of any schemes, works promoters have seen the number of hours available for work each day reduced dramatically e.g. to avoid a lane rental charge in London a works promoter must not work before 8pm in the evening and yet some EHOs are preventing works after 11pm, which leaves only 3 hours to do works. This increases the duration of works exponentially.

As explained earlier in our submission, any introduction of a contribution towards long-term damage would not only increase the unit cost of works dramatically, but would reduce the volume of asset investment works utilities (gas, water, and electricity) would be able to undertake within their regulatory settlements), the cost of implementing Scottish government initiatives such as high-speed broadband, and the cost of new connections for businesses and domestic customers. This will have a significant



negative impact on growth, jobs and the Scottish economy.

Overall, NJUG believes that the existing myriad of legislation, coupled with the constructive and collaborative working of the road works community under RAUC(Scotland) and the Commissioner, and the NJUG and RAUC(Scotland) voluntary initiatives provide road works authorities with all the powers they need to manage their own and utility road works.

Before introducing any further measures NJUG urges the Scottish government to undertake a robust cost benefit analysis of any areas they wish to consider further, including with input from utilities and roads authorities, as well as working with the Scottish Road Works Commissioner and RAUC(Scotland) in continuing the already in place programme of improvement.



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

Virgin Media

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

Ostheimer

Forename

Mark

2. Postal Address

Unit 3, Chelsea Trading Estate, Heron Road, Sowton, Exeter, Devon

Postcode EX2 7LL

Phone 07776 170689

Email

mark.ostheimer@virginmedia.co.uk

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



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

Response Sheet: Stirling Council

Views Sought	
01	<p>What contribution do you consider should be introduced? What are your reasons for coming to this view?</p> <p>Various independent investigations have shown that even good reinstatements shorten the design life of a road. This confirms what is already generally accepted within the roadwork's community that the current practice and specification used to excavate and reinstate roads lead to long term damage. It is reasonable to expect that the Undertakers responsible for this reduction in design life should compensate the asset maintainer for the loss sustained. A transfer of the cost of reinstating the road asset from the asset maintainer to the organisation that caused the damage is appropriate. As an incentive there should be benefits to those who continually prove their works are of sufficient quality that it minimises damage.</p> <p>However, there is an issue with using a standard fee based on the square areas of reinstatement obtained from the SRWR. There is currently no statutory requirement for Undertakers to enter reinstatement information on completion of works. It is purely a code of practice requirement. Reinstatements are not always entered correctly and the process is open to abuse. Also, there is no fixed penalty for failing to enter the information or any escalation through RAUCS for individual cases. Until reinstatement details are a statutory requirement or there is some penalty for not entering accurate details on a site by site basis, an automated contribution couldn't work and would unfairly penalise those organisations who faithfully record accurate details.</p> <p>Cost contributions should be used as a lever to encourage and give incentive/discounts to Undertakers who achieve high quality reinstatements by adopting higher standards than the current sub-standard specification used for Undertaker reinstatements. This could be based on a sample regime. Also the potential financial benefits could encourage Undertakers to make use of modern innovative methods to reduce the areas affected and the time kept with the road openings, to a minimum.</p> <p>Contribution to resurrect damage done to road assets:</p> <p>The 17% figure should be used, as the independent study showed a 17% reduction in the design life of the road. Although this reduction was based on all reinstatements regardless of quality, I would support a measure which gave a discount or removed the charge altogether for Undertakers with a high performance rate. The introduction of reductions/rebates would focus the incentive to get it right first time, produce quality reinstatements and reduce the need to revisit openings.</p>

Views Sought	
02	<p>Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?</p>
	<p>The current voluntary three-year period of restriction adopted by the road works community in Scotland appears to be working reasonably well. However, in order to remove the current inconsistency between the legislation and the Code of Practice, the RAUCS agreed timescale of three years (carriageway) and one year (footway) should be brought into primary legislation.</p> <p>In addition there should be an agreed reinstatement criteria that applies to works that require an opening during the restriction under the status of "customer driven" or "urgent/emergency".</p>

Views Sought	
03	<p>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?</p>
	<p>The number of inspections where a fee can be charged is now based on the length of time the works take to complete. Since the introduction of this new calculation method for inspection units in 2011-12, updated in Code of Practice for Inspections November 2012 S2.3.2, there has been a steady and significant decline in the amount of agreed inspections per year in Stirling, due wholly to the change in the way inspection units are calculated.</p> <p>The previous calculation method was based on the amount of openings created. Although the previous method could be challenging to manage, mainly due to the lack of robust primary legislation (see item 1b), it was more reflective of a proper sample size. An example of this is based on SGN works in Stirling, who are undergoing an extensive programme of works to replace all steel pipes. The nature of the SGN works (pipe insertion or pipe bursting), requires many openings to be created. Each street can typically takes less than 15 days to complete generating one inspection unit under the system introduced in 2012. Under the previous calculation method this would have generated more inspection units per street. Agreed inspection units for SGN in Stirling in 2009-10 was 700 units, 2010-11- 700 units, 2012-13- 243 units and 2013-14 – 247 units. This is a typical example and shows a considerable drop in the sample size and resultant reduction in chargeable inspections for what is similar scale of works. The methodology of calculating the number of inspection units requires to be reviewed to better reflect a true sample size.</p> <p>The inspection 6 months after reinstatement (Cat B) is very useful in identifying immediate defects. For the most part, defects take time to develop and identify. Therefore the current level of 10% is considered to be sufficient, if based on a realistic sample size.</p>

	<p>The inspections within 3 months of the guarantee period should be treated as the end of the warranty. Introduction of a minimum of 50% inspection sample (with possible discounts) at the end of the guarantee period, would bring the procedure more in line with that applicable under the road construction consent legislation. Authorities inspect all works undertaken at the end of warranty on their own contractors or developers. This would also aid undertakers to focus on the impact that their works have on the public road. Proposed payments and discounts for good performance is expanded on in answer Q4.</p>
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Views Sought	
04	<p>Should the arrangements for inspection fees be changed, and could this include a performance element?</p> <p>Regarding inspections within 6 months of the initial (or interim), reinstatement (CAT B), taking into account the issue raised at Q3, the existing 10% paid inspections should be retained.</p> <p>Regarding the reinstatement within 3 months of the end of the guarantee period (CAT C), considering the current percentage of failure rates, varying from 1.9% to 29.2% for the major Undertakers, introducing a performance element would be appropriate. It is suggested that any Undertaker with a failure rate greater than 10% in a full inspection year should be required to pay for a 50% sample of inspections in the following inspection year. For Undertakers who continually produce a failure rate of less than 10%, their sample size could be reduced pro rata to the current levels. This would assist RA's by helping to target increasingly limited inspection resources to those who constantly underperform, with a fair proportional cost element going to the underperforming Undertakers. Thereafter, in all cases outwith the sample regime, any failed reinstatement inspections carried out by the RA should be chargeable.</p> <p>Apparatus inspections. The current code of practice requires apparatus failures to be repaired within either 2 hours (or made safe within 2 hours with a permanent repair within 7 days), 10 days or one month. The initial inspection should have no charge, as this is not an inspection of workmanship. However, after the period given in the Code of Practice for repair has elapsed, further follow-up inspections take RA Inspectors away from their normal duties to re-attend a defect site which should have been repaired. RA's should be compensated for the loss of this time as under the Code of Practice, no apparatus defect should exist for longer than one month. RA's should not be paying for Inspection staff members to visit sites in the name of safety simply because an Undertaker has failed to meet their duties under the code. All Apparatus inspection follow ups should have a charge.</p> <p>Fee levels should also be revisited. Fee levels were reduced in 2010/11 to reflect the supposed actual costs to RA's for carrying out inspections. However, the reduced charge failed to recognise the impact and cost of Inspection staff being taken away from their normal RA duties.</p>

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	<p>Yes. A large number of reinstatements fail outwith the guarantee period but within the residual life of the carriageway. This currently requires public funding to be used to carry out often significant repairs. An extended guarantee would focus utility companies on ensuring adequate durable reinstatements. In the recent consultation exercise on planned changes to the SROR Code of Practice, many RA's requested such a change. However, the current joint RA/Undertaker working arrangements, whereby the Utility Companies can virtually veto such changes, makes it unlikely that increased periods will be introduced through this process.</p>

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	<p>This would be welcomed but would require a clear definition of what is meant by "unreasonably prolonged". It could be developed around an updated NRSWA Section 125 which, in its current format, is impractical to apply, where delayed works involve exposed apparatus.</p> <p>Currently, evidence of undue delay is established by the ROADWORKS AUTHORITY who will enter details on the Notice when works have stalled or have been abandoned for no apparent logistical reason. In these circumstances, the SU will be contacted via the Notice and by phone calls informing of the obvious delay and asking for explanations and expected reasonable remedial timescales. If the delay continues without reason and no response is made to reasonable requests for action, a sliding scale of charges related to the road hierarchy and traffic sensitivity would be particularly useful. This would be more helpful to RA's as opposed to the current NRSWA S 125 (4) process which states "If the undertaker fails to comply with such a notice within 24 hours of receiving it, or such longer period as the authority may specify, the authority may take the necessary steps and recover from him the costs reasonably incurred by them in doing so". This leaves the burden on the Roadworks Authority to take action to remove the delay. Remedying the delay could be as simple as reinstating an opening and removing traffic management but in many cases, RA's are unable to do so if there is exposed SU apparatus in the opening. For that reason, many RA's are disinclined to utilise S125 in its current format.</p>

Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	Not in favour at this time. Further research and evidence is required to demonstrate

	there is a clear cost/ benefit.
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Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes. .
	Not in favour at this time. Further research and evidence is required to demonstrate there is a clear cost/ benefit.

Views Sought	
09	Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?
	<p>The current limited scope of the fixed penalty scheme leaves gaps in the enforcement regime. Fixed penalties are generally available for the lowest level of offence, whilst prosecution is a viable option for the highest level of offence. This leaves many offences in the middle that are outwith the scope of the current fixed penalty scheme but not sufficiently serious to justify the cost of a prosecution. An extension of the fixed penalty system would therefore be welcomed.</p> <p>Some examples of gaps in fixed penalty legislation</p> <p>If a third party applies for and is granted permission to place apparatus in the road but fails to give the correct Notice of start date, they can be issued with a fixed penalty notice under Section 114. However, if they do not bother to apply in the first place and just go ahead without permission, then they can not be issued with a fixed penalty as their offence comes under Section 110 which is outwith the fixed penalty scheme. There are many other examples, and a comprehensive review of possible extensions to the scheme would be worthwhile.</p> <p>Specific comments in relation to the three potential fixed penalty offences listed in the consultation are as follows:</p> <p>Section 110 – This would meet all the requirements for a new fixed penalty offence and address the current anomaly described above.</p> <p>Section 124 – There would be occasions when it would be beneficial for a fixed penalty to be issued by a roads authority for a minor signing, lighting and guarding offence by a utility company. However, the process would need to be clear that issuing a fixed penalty does not constitute corrective action and addressing the health and safety issues is the primary action.</p> <p>Section 130 – When the provisions of the New Roads and Street Works Act were first introduced, it was agreed by both roads authorities and utility companies that defect inspections should be charged at double the rate for other inspections. Subsequent reviews reduced this to the same rate as for other inspections. The introduction of a</p>

	fixed penalty for not reinstating excavations in accordance with the specification would reinstate the original intention of a disincentive for poor reinstatement performance.
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Views Sought	
10	<p>Should we create the proposed new summary offences with a view to Introducing fixed penalty notices? Please state the reasons for your View.</p> <p>Yes - Applying FPN legislation has highlighted some unintended loop holes.</p> <p>a) misclassification of works as urgent or emergency to circumvent longer planned work notice periods;</p> <p>This already is a FPN offence. However it lacks credibility and encourages misclassification. Regular incorrect classification to deliberately avoid an FPN is an issue that requires to be addressed. This should also be a FPN and where appropriate it should be possible to issue two separate FPN's one for failure to give 24hr notice and one for deliberately misclassifying works.</p> <p>b) If actual start notices are to become a statutory requirement then they must become offences subject to FPN. Without a legal endorsement certain aspects of co-ordination and reinstatement will continue to be on a 'best practice' basis rather than a statutory one.</p> <p>c) Failure to rectify a defective reinstatement within a reasonable period. Some Undertakers continually fail to apply a consistent and timeous approach when they are required to rectify their reinstatement defects. This can be a particular problem when a response is required within a certain time scale. Stronger enforcement powers would assist and encourage consistency, which will only affect Undertakers who continually fail to rectify their own defects in good time.</p> <p>d) Failure to rectify defective apparatus within a reasonable timescale. - See reply at 4, 3rd paragraph.</p> <p>e) We would also welcome an expansion of the current range of FPN's by the addition of the following offences :</p> <p>Extending a notice without discussion or agreement - Utilities are able to issue extensions on their works after the proposed end date of the works, with no consequence. This problem is increasing; resulting in difficulties when co-ordinating road works.</p> <p>Starting a major works notice without having traffic management agreed in good time. - This could be managed through responses to S115 directions.</p> <p>FPN for remaining on site after a proposed end date has passed. - Statutory Undertakers are closing their notice after their proposed end date with no consequence. They do not apply for extensions to their notice, nor do they inform the RA. Currently as long as a utility closes their notice within 24hr period regardless of whether they are passed their end date or not, they will not incur a FPN.</p>

EXAMPLE:

Expected Work End Date is 14/05.

Notice should preferably be extended before 12pm on 13/05 or closed before 4:30pm on 15/05.

M	T	W	T	F	S	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

Works are being left in progress until 23/05. As long as the notice is closed before 4:30pm, no FPN can be issued.

M	T	W	T	F	S	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

Un-ticking the Traffic Sensitive Designation with no agreement or discussion with the Roadworks Authority should also be a FPN offence.

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?

The FPN amount should rise annually in accordance with inflation. However, the amount should be reviewed every 5 years to ensure that the financial penalty is having the desired effect of improving performance and quality of work. This could be similar to the inspection fees as per the Code of Practice for Inspections.

Given the ongoing reductions in Local Authority funding, where large parts of expenditure are ring fenced to key government priorities, Education being the primary

	example, Ministers need to recognise that many Local Authorities are now reliant on this income to pay for the Inspectors and Officers who carry out this work.
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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?
	The current maximum level of fine is acceptable. However this should be reviewed periodically and increased in accordance with inflation. However there should also be a link between the size of the organisation and the maximum penalty that can be levied to ensure the level of fine has the desired effect on the organisation.

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.
	Agreed. The changes to definitions as recommended by the Commissioner are welcomed.

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.
	The Code of Practice for Safety at Street Works and Road Works is not detailed enough to cover the full range of activities carried out by Roads Authorities. Roads Authorities are required to work to a higher and more complex standard to comply with Chapter 8. The consultation fails to explore what benefit this would bring and who would be responsible for ensuring compliance.

Views Sought	
15	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.
	Yes, but only for Undertakers who, in terms of asset data, have responsibility for fairly simple and straightforward assets types. Most Undertakers already hold digital records so there is little additional cost incurred in providing them to the SRWR through the VAULT system. It is, therefore, recommended that this should be made mandatory in the short term.
	Unlike Undertakers, Roads authorities are responsible for a wide range of underground

	<p>assets RA's can reasonably be expected to have details of relatively new installations and providing this existing information should be mandatory. However most of the historic Roads Authorities' underground apparatus, in particular the drainage network, will be difficult to detect, without excavating in the road to look for it. Therefore Roads Authorities cannot reasonably be expected to provide digitalised records of the wide range of underground apparatus they are responsible for.</p> <p>Stirling therefore cannot support any mandatory requirement to hold digital records of all their apparatus in the road. Whilst it might be desirable to make this mandatory over the longer term, a long transition period would be necessary.</p>
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Views Sought	
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>Agree in principle, S109 should be adopted as the way forward.</p> <p>However the responsibility for record keeping should lie with the Statutory Undertakers in instances where they will adopt the apparatus on completion of the works. In the mainstream the Statutory Undertakers are consulted at works planning stage and are aware of what they will be adopting. RA's should be responsible for record keeping in other cases.</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>
	<p>Agreed.</p>

Views Sought	
18	<p>What are your views on the 3 month advance notice period for major works?</p>
	<p>Since introduction in 2006 the 3 month advance notice has significantly improved coordination issues. Statutory Undertakers often provide various reasons for failing to bring details of possible works to the table at Local Coordination Meetings. This requirement forces Undertakers to provide details of their planned works at an earlier stage. Major capital programmes are not approved without detailed pre-planning. Notification is a valid part of that pre-planning.</p> <p>Removal of this requirement would be a huge step backward.</p> <p>Three months is the minimum time required to meet and agree traffic management, duration of the major works and dissemination of information to affected parties including local and rural transport arrangements, bin collections, access for deliveries and emergency services.</p>

	The 3 month advanced notice coupled with the early start provision ensure that works are discussed and agreed at an early stage and are not unnecessarily held up once agreements are in place. Undertakers who co-operate with the roads authority are not disadvantaged by a three month notice period.
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Views Sought	
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?
	Roads Authorities can designate routes as traffic sensitive if they meet the traffic count data required. In reality traffic sensitivity is very narrowly defined. The current limited definition does not reflect the true nature of some roads for various changing, reasons such as annual or ad hoc events, their proximity to traffic sensitive roads, temporary use as a diversion route, if major works involve a road closure or other co-ordination reasons. Works on such non-traffic sensitive roads have the potential to cause substantial disruption and so it is appropriate that advance notice should be required. Coupled with the early start procedure, no Undertaker should be unnecessarily held up once discussions and agreements are in place. No Undertaker who plans their work efficiently and co-operate with the roads authority is disadvantaged by a three month notice period.

Views Sought	
20	Should the early start procedure be a statutory requirement?
	Yes. The existing voluntary early start procedure has worked well to date and should now be formalised in statute. If the process is not followed, this should be an FPN offence.

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	No objections, however it is essential the Undertaker informs the Roads Authority as soon as they are aware of the need to begin urgent or emergency works to allow for co-ordination. Also further investigation is required into defects that can be left untouched for long periods of time that suddenly become urgent. An effective new condition might be the introduction of a mandatory requirement to state the reason for works qualifying as urgent on the notice.

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?
	<p>No objections in principle for co-ordination reasons and noticing timescales.</p> <p>However, there should be no requirement for a Roads Authority to record details of individual reinstatements. Any requirement for Roads Authorities to record reinstatement details would lead to a huge volume of additional work, for example patching along a rural road could easily result in as much as 35 different sites. As the purpose of this information is currently for the inspection purpose, there is no benefit to Roads Authorities supplying this information to themselves as Roadworks Authority on their own asset.</p>

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?
	<p>Yes, regulations should be aligned to give roads authorities the same flexibility as Undertakers around the placing of notices for works involving no or minimal excavation on non traffic sensitive roads. Any regulation changes should include direction on the definition of "minimal excavation" as this is open to abuse.</p>

24	Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?
	<p>Actual start notices should be a statutory requirement and any offence for non compliance subject to a FPN.</p>

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 explain your answer.
	<p>The current requirements establish a reasonable achievable timescale. All organisations involved would find it difficult to provide accurate information to a shorter timescale.</p>

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?
	<p>Yes, existing is acceptable, with the exception of abuse relating to the 24hr notification of end date, as explained in the response to Q10.</p>

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.
	<p>Subject to the comments below, the current validity periods should be retained. They allow for flexibility and are particularly appropriate in advanced notices. In all cases, the end date of a works is far more important than the start. Validity periods are a key tool used in the coordination process when dealing with delays with one works ending affecting another starting. Weather related conditions; particularly snow in the winter often results in works being delayed with revisions needed.</p> <p>Minor Works – Since the change in the new Code of Practice, the validity has changed from 24hr to 12pm the following day. This is causing an overlap of Minor Works Notices. Increasing the validity would only cause further co-ordination issues. The preference would be to reduce the validity to 24hr as set previous or to keep at 12pm the following day as a maximum.</p> <p>Major Works/Resurfacing Works – Due to the co-ordination issues that come along with Major Works and Resurfacing works, flexibility is required. Resurfacing works should have their own validity period due to the type of work and co-ordination required with the RA's, it is very much weather dependant, so does not fit well to Follow-up notices. As long as full co-operation and communication is maintained between RA's and Utilities, Major Works should be able to start within the validity period provided agreements are met.</p> <p>All works that require any kind of agreement should be covered by primary legislation.</p> <p>Works extensions should always be used as a last resort, not as a means to work around the validity period of the works type. The initial proposed end date should always be the priority to work towards.</p>

28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
	<p>No. Setting maximum durations would only be appropriate if there was a specific reason e.g. works have been created in conflict with another works, or run over an event like a parade date or R(S)A occupation date. In those cases S115 and early/ late starts adequately covers these situations. However, greater penalties should be introduced for Undertakers ignoring agreed S115 directions rather than allowing roads authorities to dictate the duration of Undertakers works.</p>

29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	<p>Yes - provided it is reasonable and justified.</p>

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

31	<p>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.</p>
	<p>a) Further control is required over the works periods. Notification of expected end dates need to be tightened up and failures to meet these dates (without agreed extensions) should be an offence subject to a FPN. There should also be a specific penalty for failing to repair defective work within a reasonable time in addition to the current system where the reinstatement is repaired by the roads authority on a rechargeable basis.</p> <p>b) Some of the current reinstatement standards in the SROR do not encourage effective reinstatements. Interface cracking tolerances within SROR are not fit for purpose. Also stepped joints should be required as standard.</p> <p>c) The Wirral Arbitration (Sept 12) establishes and formalises the principle that there is no requirement for Statutory Undertakers to regularly inspect their apparatus under S.140. They can simply rely on RA safety inspections to notify them of defects. However due to the lack of inspections by Statutory Undertakers, RA's are also having to respond to third party enquiries relating to these defects. Currently the Code of Practice only allows inspections fees to be charged should the RA encounter a high risk defect. The defect inspection process for apparatus should mirror that for failed reinstatements allowing RA's to recover costs for carrying out all repeat defect inspections of Statutory Undertaker's apparatus. This would help encourage early attention to reported apparatus defects.</p> <p>d) The legislation requires amendment to clarify that the definition of apparatus within all Code of Practice's includes all underground plant such as pipes, cables and ducts (not just surface ironwork and access chambers).</p> <p>e) Statutory Undertakers continually change contractors to maintain lower costs. It often continually falls to the RA's to supervise these contractors on site with a number of Statutory Undertakers paying no attention to quality at the time of the works. All Statutory Undertakers must be required to carry out some quality monitoring of their own contractors on site and record the results of these inspections on the SRWR. They have to be given some responsibility to properly supervise the quality of works that are undertaken with particular regard to signing lighting and guarding and the competence of the contractors and their individual squads. Any inspections carried out by Statutory Undertakers must be recorded on the SRWR.</p> <p>d) There is no clear definition in current legislation as to who is responsible for water discharging from a Statutory Undertaker's inspection/access chambers on to the public road causing intermittent flooding. This inevitably causes dangerous situations where the discharging water freezes. It can also lead to damage to adjacent properties and complaints from affected property owners. Some Undertakers are aware of this gap in legislation and will not react to reported situations. Roads Authorities are left to take</p>

	appropriate action and bear the cost of resolving what should be considered to be a defect. This requires appropriate changes to legislation to make it clear that Undertakers are responsible for this type of defect and must work with Roadworks Authorities to resolve.
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32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.
	<p>Changes to primary legislation required to move towards Statutory Undertakers taking more responsibility for the consequences of their work could be the most significant and innovative contribution towards the way in which works in roads are managed and undertaken.</p> <p>No or late actual starts and extensions, closing notices after proposed end date and not properly registering information should all be FPN offences. This will help drive proper co-ordination of works. Specific penalties for failing to reinstate defective work within a reasonable timescale and ignoring directions given by RA's would also aid co-ordination.</p> <p>The current joint RA/Undertaker working arrangements, whereby the Utility Companies can virtually veto any significant changes, does not work. There is an over reliance on an abundance of Advise Notes and Codes of Practice, due primarily to a lack of clear and concise primary or secondary legislation.</p>

33	Please outline the potential impact of any additional costs.
	<p>There is currently an imbalance on ultimately who meets the cost of preserving the countries road asset. Current legislation favours those who only require access to their own underground assets and are only required to reinstate the road to a short-term based standard with no responsibility for ensuring its longevity and durability.</p> <p>For those well performing Undertakers, who have a commitment to have properly specified, well managed and co-ordinated excavation with right first time reinstatement, there should be no additional significant costs. With the correct innovative formal and legislative framework in place, the only significant financial impact would be for those who do not comply with their duties.</p>

Bus and Local Transport Policy
Transport Policy

Victoria Quay, Edinburgh EH6 6QQ
T: 0131-244 7057
Joanne.gray@transportscotland.gsi.gov.uk



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

Your ref:

Our ref:

5 April 2013

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

If you have any queries contact Raymond Elliot in the Scottish Road Works Commissioner's office on 0131 244 9938.

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:

Name: Joanne Gray

Address: 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	<p>What contribution do you consider should be introduced? What are your reasons for coming to this view?</p>
	<p>17% contribution for the Trunk Road Network.</p> <p>This is due to the higher cost of traffic management, higher standard of specification for reinstatement and the impact on the travelling public whilst work is being carried out. There is normally a media strategy required for the trunk road network and environmental impact assessments. In addition a greater number of the works are carried out overnight and at weekends incurring higher costs. Traffic orders may be required for areas of work and this would also incur additional expense.</p>

Views Sought	
02	<p>Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?</p>
	<p>Yes – It should be increased to five years.</p> <p>Consultation takes place prior to major works commencing so this should give all parties time to plan and prepare their works.</p>

Views Sought	
03	<p>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?</p>



A minimum of one inspection for every reinstatement carried out prior to the guarantee period expiring.

A percentage of the other two inspections should also be considered.



04	Should the arrangements for inspection fees be changed, and could this include a performance element?
	Not applicable to the Trunk Road Operator.

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	Not applicable to the Trunk Road Operator

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	<p>A lane rental charge would be appropriate for the Trunk road network. This is already in place for some schemes that have been promoted and issued through the European journal for roadworks.</p> <p>This would negate the introduction of the 17% charge previously mentioned.</p>



Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	The Trunk Road Operators coordinate with Public Utilities at present and already advise of timing directives and traffic management requirements for works.

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	<p>Lane rental schemes would be welcomed. At present there are minimal schemes that this would apply to on the Trunk Road Network.</p> <p>This would be the favoured option rather than permits or percentage charges to reinstatements.</p>

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 fixed penalty notices should be increased to cover other aspects of noticing failures. One example would be where notices are extended after their due completion date. Roads Authorities to coordinate works properly, the end date for other works would become critical. A contractor must advise at least one day prior to the works end date if an extension is required.



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.
	<p>Yes – There are some works being promoted under the wrong classification with Urgent and Emergency notices now becoming more apparent.</p> <p>The offence of “Actual Start” notices would need more investigation and consideration before becoming an offence.</p>

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 – The fines are minimal and do not provide an effective deterrent at this time.

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?
	<p>We believe that they should be increased as the current level of penalty appears to be low.</p> <p>As regards to the level of the penalty it would be inappropriate for the Trunk Road Operators to comment as we are the Operating Companies on behalf of Transport Scotland. This should be deferred to Transport Scotland.</p>



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.
	At present the coordination and cooperation of the utilities with the Trunk Road Operators is at a high level. For this purpose the definitions are clear at this point in time.

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.
	Agreed – All utilities and roads authorities should be working to the same standards.

Views Sought	
15	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.
	Yes – This would provide better and more accurate data for the VAULT when the initial Symology notices are raised.



Questions	
16	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.
	Yes – Clarity is required for these sections as public utilities should be responsible for the upkeep of their records even under these sections. The definition of a “small builder” or a large housing company doing a 109 would need to be clarified as to who would be responsible for record keeping.

Views Sought	
17	Do you agree that the designation of “major road managers” be created? Please provide the reasons for your view.
	No comment from the Trunk Road Operators.

Views Sought	
18	What are your views on the 3 month advance notice period for major works?
	<p>The time period is appropriate at present as once all coordination/consultation has taken place and agreement reached an early start can be granted if this falls within the three month period.</p> <p>The coordination/consultation process for work is more important than the time frame for the noticing. If this is done correctly then the works should proceed without complications.</p>



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?
	No – This would still impact on the trunk road network. How are roads authorities meant to coordinate works to a high standard on their network if they do not know works are taking place or are to take place no matter how minor. Real Time Journey Information is now considered crucial by Transport Scotland and removal of this noticing period could have an adverse affect on this.

Views Sought	
20	Should the early start procedure be a statutory requirement?
	Yes – This would ensure better coordination and cooperation for roadworks.

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	Yes – This is a reasonable period for the commencement of urgent works.



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?
	Yes – The rules should apply across the board for all.

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?
	No – The noticing should remain the same to ensure coordination and cooperation for works.

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 – It is required if other legislation for example lane rental or timing issues have been identified. It would show that the works have commenced as planned and provide a start time from which other calculations would stem.



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.
	Yes – Most offices do not have staff that work nights. The noon deadline gives time for people to investigate and contact the relevant bodies to confirm what works programmes have commenced.

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 it is reasonable

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.
	Yes this should be applied to both and the validity period reduced to 2 days.



Views Sought	
28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
	No – The roads authorities would not have enough knowledge and expertise to make this decision. However if a lane rental system was introduced it would be in everyone's interest to complete the works as soon as possible.

Views Sought	
29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	No – At present the current system works well with general cooperation between roads authorities and public utilities. No-one wants the associated negative publicity that would be associated with disrupting a high profile event.

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.
	Additional fields in the system to cover all traffic management such as convoy working. Alternatively give an option such as "other" where the applicant can define what the traffic management is. The definition of "major" works should be redefined as trunk road operators close slip roads and other sections of their network for one or two nights and this has to be noticed three months in advance or given an early start. We consider these works as minor.

Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.
	Have one system that records roadworks instead of Traffic Scotland and Symology operating different systems. The trunk road operators have to update and operate both these systems which is double work for the same result. Find a way to link both systems where only one input of roadworks is required.

Views Sought	
33	Please outline the potential impact of any additional costs.
	Unknown but this has been looked at and discussed by Transport Scotland and The Scottish Roadworks Commissioner.



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

BEAR Scotland

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

Stewart

Forename

Ian

2. Postal Address

BEAR House, Inveralmond Road, Perth

Postcode PH1 3TW Phone 01738 448600 Email istewart@bearsotland.co.uk

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

Bus and Local Transport Policy
Transport Policy

Victoria Quay, Edinburgh EH6 6QQ
T: 0131-244 7057
Joanne.gray@transportscotland.gsi.gov.uk



25

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

Your ref:

Our ref:

5 April 2013

Dear Sir/Madam

STRATEGIC CONSULTATION ON WORKS IN ROADS

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or

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Name: Joanne Gray

Address: 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	<p>What contribution do you consider should be introduced? What are your reasons for coming to this view?</p>
	<p>We understand that studies into whether completed utility works have an impact on the integrity of the road, thus reducing their life span, have been completed.</p> <p>We understand that the outcome of the report was based on a desk top exercise review and generally related to joint sealing.</p> <p>It is understood that the executive summary in the report states that there no 'empirical evidence' other than the time element that an excavation is left open.</p> <p>We understand that the output of trials undertaken in England indicate issues with workmanship (compliance with specification) and competence.</p> <p>It is our view that based on evidence to date the issue of road integrity following utility works is one of:</p> <ul style="list-style-type: none">• Robust quality assurance controls to ensure the work is completed to the current reinstatement specification.• Providing and maintaining a competent workforce.

Views Sought	
02	<p>Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?</p>
	<p>We agree that present 1 year restriction should be changed to a generally accepted period of three years. We are not sure if there is evidence to support that the integrity of the road will improve but there would be a more positive public perception.</p>

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?
	We feel that the current 30% is a representative and sustainable sample. If the performance of reinstatement deteriorates the authority already have the ability to inspect all parts of the work.

04	Should the arrangements for inspection fees be changed, and could this include a performance element?
	Although we feel the present arrangements are satisfactory the Government may wish to reduce inspection fees for good performance as an incentive and increase inspection fees for unsatisfactory performance.

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	<p>We do not agree that the Guarantee Periods should be increased.</p> <p>Research undertaken in England generally identified failure to performance within the first year of the Guarantee period.</p>

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a



	charge for occupation where work is unreasonably prolonged.
	<p>As a Contractor we are already under Commercial and Regulatory pressures to complete the work safely and as quickly as practical.</p> <p>There are a number of unknown obstructions that have to be managed owing to a well established utility network. These are already addressed as effectively as possible; further pressures may lead to unsafe situations.</p>

Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	<p>We believe that the current noticing arrangements are adequate without creating further bureaucracy within the work planning process.</p> <p>Some permits in England document construction conditions that may be initiated by an Officer who is not competent to state such a requirement. This may conflict with the requirements of the Health and Safety at Work Act.</p>

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.



	<p>We believe that as a Responsible Company only those roads that are very congested should operate a lane rental scheme.</p> <p>A lane rental scheme should be fair and flexible to permit the consideration of unknown circumstances during construction. We are not sure if rewarding early completion is the right thing to do as this may lead to unsafe practices.</p>
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Views Sought	
09	<p>Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?</p>
	<p>We believe there are already an adequate number of Fixed Penalty Notices. As a Contractor our view is to provide a safe, secure and economically viable service to a community served by our client. Adding such an additional burden makes it more difficult in these present times of austerity to maintain a sustainable business that provides local employment.</p>

Views Sought	
10	<p>Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.</p>
	<p>We do not see any evidence that requires new summary offences.</p>

Views Sought	
11	<p>Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?</p>



	As a contractor we have to work under constant pressure to drive down cost hence we would disagree with any price increase.
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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?
	As per Question 11. Behaviours in companies are already influenced by penalties imposed by courts for violation of legislation e.g. Health and Safety Legislation.

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.
	We have a concern with the point: <i>'such practice as appears to the Scottish Road Works Commissioner to be desirable.'</i> We believe this statement is too ambiguous and could lead to conflict through difference of opinion to the safe and timely completion of the works. This could create difficulties in certain permit conditions that require further collaboration.

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.



	Totally agree, we are surprised it is not mandatory for roads authorities as Health and Safety Law requires a safe system of work and this is the only Code of Practice for Street works.
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Views Sought	
15	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.
	Yes-it can only improve safe working in the highway with time.

Questions	
16	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.
	We support any move to give greater clarity as to Roles and Responsibility and removes any uncertainty.

Views Sought	
17	Do you agree that the designation of "major road managers" be created? Please provide the reasons for your view.
	We are not sure there is enough evidence to give a valued view point. If the present designation is satisfactory then best left as is for now.

Views Sought	
18	What are your views on the 3 month advance notice period for major works?
	New customers sometimes complain to us as Contractors why it is taking too long to get a connection. In the case of new supplies this may need to be reviewed especially if the House Building sector is to be kick started.

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?
	Advance notice should remain a requirement on all roads to allow the community to co-ordinate their works. Failure to notify works on a non traffic sensitive road could have a major impact on traffic flow. E.g. this



	could be a diversion route for other major works on a strategic route.
	In summary, we believe this requirement should remain.

Views Sought	
20	Should the early start procedure be a statutory requirement?
	Further information is required to allow us to comment on this statement.

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	<p>Sometimes work is urgent but cannot be started immediately e.g. an activity which would prevent the loss of supply, but where customers aren't immediately affected. A planned notice does not cover this situation as the notice period would impose too great a risk, (and an early start could not be guaranteed), a minor notice does not cover this either as the duration is too short.</p> <p>A planned urgent notice which allows a delay in the start date but does not require a specified notice period would resolve this situation. This would allow Utilities to give an estimated start date but if the situation changed, they would still be permitted to go in before.</p>

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?
	Yes, all road works affect the public. This would also aid greater co-ordination of work planning and possible greater collaboration in replacing all assets in one project as a multi functional team.

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, would reduce the level of bureaucracy.

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 process will support co-ordination of works and give greater certainty to other utilities of who else is working in the vicinity .

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.
	This may be a burden where the geographical areas across Scotland make it difficult for all the information to be transmitted in these timescales.

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?
	We agree that works closed notices should be lodged by the end of the next working day.

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.



	We do not believe that the validity period should be reduced because there are many reasons that may delay the start date such as resources, material availability, unexpected emergencies, unforeseen site conditions etc.
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Views Sought	
28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
	There are various factors which must be taken into consideration, such as the geographical location, the network, the interconnections, the surface type, any engineering difficulties, customer requirements and possibly any commercial constraints. These are decisions that impact on the duration and the Utility company is more experienced in making this decision in collaboration with the contractor.

Views Sought	
29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	We feel such embargos may conflict with Regulatory requirements that are set out to give enhanced value to the customer.

Views Sought	
30	Do you agree with the definition of a working day given above?
	Yes – we agree with the definition of a working day as described within the Co-ordination Code of Practice and within the Consultation.



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.
	We feel the drive for further co-ordination and collaboration involving all road works organisations should continue with the aim to safely and effectively reducing road occupation.

Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.
	We participate in the NJUG awards for new innovations as a communication channel for the exchange of best practice.

Views Sought	
33	Please outline the potential impact of any additional costs.
	<p>Increased operating costs that cannot be recovered in this sector of very low margins and extended payment periods.</p> <p>Impact is basically striving to do more with less people leading to stressful working environments.</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

Morrison Utility Services Ltd

Title Mr ☒ Please tick as appropriate

Surname

Zelenovic

Forename

Peter

2. Postal Address

Hampden House, Hitchin Road, Arlesey, Beds

Postcode SG156RT

Phone 07775703480

Email

peter.zelenovic@morrisonus.com

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

- (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





Bus and Local Transport Policy
Transport Policy

Victoria Quay, Edinburgh EH6 6QQ
T: 0131-244 7057
Joanne.gray@transportscotland.gsi.gov.uk



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

Your ref:

Our ref:

5 April 2013

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

If you have any queries contact Raymond Elliot in the Scottish Road Works Commissioner's office on 0131 244 9938.

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:

Name: Joanne Gray

Address: 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	<p>What contribution do you consider should be introduced? What are your reasons for coming to this view?</p>
	<p>The reduction in service life, as proportionate to the remaining life of the road may be a consideration for any proposed scale of fees.</p> <p>Different carriageway construction, eg type 1, will have higher reconstruction costs, but possibly be less prone to damage from utility tracks.</p> <p>The higher (10%) would be preferred since the area of the carriageway to be repaired is often much more than the area of the excavation of the utility apparatus.</p>

Views Sought	
02	<p>Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?</p>
	<p>Yes - To excavate in a newly resurfaced road after one year, will create problems sooner rather than later in the life of the road. The longer it is left un-disturbed the better. Problems early in the life of a road will have a larger % reduction in the service life of the road resulting in increased service life maintenance costs.</p> <p>It is also a running joke for the public, who perceive that very soon after a major re-surfacing job, some utility will very soon after, be there digging it up. Utilities should be encouraged to align their works more towards Council resurfacing programmes, which are typically developed 1-3 years ahead.</p> <p>The period of restriction should therefore be increased to 3 years as proposed.</p>

Views Sought	
03	<p>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?</p>
	<p>In a largely rural area such as Shetland, the current level of inspections would seem appropriate, however, in urban areas, it may be possible to increase the inspections, increase compliance without significantly increasing costs or having staffing implications for the authorities.</p>



The most important inspection would be at the end of the guarantee period, it might therefore encourage a higher standard of work if all utility works were inspected at this time.



04	Should the arrangements for inspection fees be changed, and could this include a performance element?
	It would seem more than reasonable that those that pay most are those who fail to comply. A targeted inspection regime on failing utilities could be a faster mechanism to achieve a higher standard of reinstatements on our roads. Yes, we think it should be changed and include a performance element.

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	Increased guarantee periods should promote a higher standard of reinstatement, which will have a positive effect on the service life of the carriageway. Increasing to 5 and 6 years is a much more realistic period for utilities to have to maintain any reinstatement failures and as such would be a very welcome change.

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	Delays to works in rural areas such as Shetland are common and largely due to adverse weather or limited flexibility of smaller workforces. If a charge is to be levied, adequate provision to make allowance for genuine delays to be excluded should be considered.



Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	Adequate provision exists in the Act via S.115 and S.125. No further permit should be required.

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	This does not really have much relevance to rural areas such as Shetland, but may be a very useful tool for major city centre, traffic critical routes. Any scheme should differentiate between urban and rural or use traffic sensitive as a trigger.

Views Sought	
09	Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?
	Fixed Penalties are not operated in Shetland due to the small number (relatively) of works and larger costs (in sparse area) to operate the system. So there would be no benefit to Shetland by extending the scheme, unless the operating criteria made the system simpler and less onerous to run.



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.
	Again, not maybe relevant to Shetland for same reasons as in 9 above, but do agree that the Actual Start Notice should be a legal requirement.

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?
	Increases in Fixed Penalties need to off-set increased costs of the Roads Authority costs in operating the system. If the consumer price index or inflation is the best mechanism for this, then it should be used. However, there may be merit in a system based directly on Roads Authority actual costs.

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?
	Commissioner's penalties require to act as a deterrent and therefore require to be at an appropriate level to the size of the company/utility/authority being penalised. They would not necessarily require to be increased in line with any index, but would have to be reviewed in relation to their effectiveness on a regular basis to ensure they remain relevant and useful.



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.
	<p>Agree that 'any duty under NRSWA and supporting regulations' (including requirements in Statutory COP's) would simplify and avoid narrow definition.</p> <p>However feel that 'such practice as appears.... to be desirable' is very loose and does not help to clarify matters.</p>

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.
	No – Roads Authorities works are of a different nature compared to the single excavation type undertaken by utilities, which is covered by the Code of Practice for Safety at Street Works. Chapter 8 of the Traffic Signs Manual which is more appropriate for common Roads Authority type works such as Surface Dressing operations.

Views Sought	
15	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.
	The apparent success of the Streetworks Apparatus Vault is testament to the use for which digital data can be put. It is very important to try to get as much accurate information on plant records as possible from all involved and the digital format is undoubtedly the solution for the future. However, consideration should be given as to the time and financial costs, the collection or preparation of this vast amount of information will involve before any timescale is set.

Questions	
16	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.
	Yes, there is little need for duplication and this will help clarify and



	standardise approaches between different authorities, creating less room for errors or problems.
--	--

Views Sought	
17	Do you agree that the designation of "major road managers" be created? Please provide the reasons for your view.
	This is unlikely to be relevant in Shetland or sparse rural areas, but it would seem a sensible approach to limit unnecessary access points to the register and tidy things up.

Views Sought	
18	What are your views on the 3 month advance notice period for major works?
	3 Months advance notice is difficult to achieve in small and rural authorities who rely on a smaller less flexible workforce and can often contribute to noticing failures. For about half the year in Shetland, Weather will play a significant part. Where traffic sensitivity is not an issue, it is often important to grab the opportunity to reschedule works programmes, resulting in high numbers of early starts.



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?
	<p>No</p> <p>All our roads are classified as non traffic sensitive, so if no notice is required, we would not necessarily know what was happening and that would be a major cause for concern.</p> <p>Again there is a difference between large urban areas and sparse rural areas which gives rise to some problems in the one size fits all approach of some legislation.</p> <p>It may be interesting to look at the legislation in its entirety and examine how fit for purpose it is in sparse rural areas compared to traffic sensitive urban centres.</p>

Views Sought	
20	Should the early start procedure be a statutory requirement?
	Yes, but it is important to retain the inherent flexibility of the system without inflicting extra delays through bureaucratic procedures.

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	<p>This would accurately reflect the need to show some degree of urgency in the works, although there are occasions where works such as coastal defence works are urgent, but the mobilisation may take longer than a day to implement.</p> <p>However, this will not in itself tackle the abuse (not prevalent in Shetland) of using urgent notices for non-urgent works.</p>



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?
	We think that the current requirements are satisfactory. The different types of work carried out by roads authorities, say for example, patching a road prior to surface dressing, would entail a ridiculous number of sites to be entered and registered. Such information would simply not be available or desired or necessary. So, No, because of the differences in the types of works being undertaken.

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 does generally make sense if roads authorities and utilities are required to operate as far as possible under the same conditions, where relevant.

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, in Shetland we already stress the importance of this practice for all types of road works.

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.
	Yes, we find it to be acceptable, but most will do better, especially non- utility works under license, by simply telephoning the roads service on the day work starts. (with mobile phones etc, it should not be difficult to notify direct or notify the SRWR operator responsible)

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?
	In the Shetland or rural context, the current requirement of noon the next day is acceptable. (unless works involve significant traffic diversions) However, in high traffic sensitive areas, it may be very useful to know exactly when the works are closed due to the adverse effect they may have had on normal traffic routes. In this instance they should be able to confirm works closed on the same working day.

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 - These 'Time blocks' are not such an issue in the rural or sparse areas but if it were to be introduced, some built in flexibility to deal with delays caused by weather and or the effect of having a limited workforce in smaller authorities would be desired.



Views Sought	
28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
	This would not be thought to be necessary in rural areas, but could significantly improve works times in city centres or on busy routes where disruption is multiplied by not utilising weekend working etc.

Views Sought	
29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	Yes, This would clarify any grey areas where roads authority officers may feel uncomfortable dealing with voluntary agreements for embargoes that relate to certain events. Particularly relevant as the road becomes increasingly the venue for choice of many 'community' events.

Views Sought	
30	Do you agree with the definition of a working day given above?
	Yes, although generally this has not caused any problems to us. The fact that many contractors work on Saturday too is probably more troublesome in terms of the definition of working day.



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.
	<p>I was interested to see the proposal for removing the noticing requirements to non-traffic sensitive roads. Although this is not something I would advocate, particularly in rural authorities with little traffic sensitive roads but where many lightly trafficked roads are critical links for the sparse community. I would however be interested to see some variations or flexibility in some of the noticing of major works.</p> <p>In rural Shetland, even relatively minor works can expand and take over two weeks. The need to consider a culvert replacement on a remote rural road as major works, and follow the same noticing procedures as central Glasgow or Edinburgh is thought by many to be frankly silly and un-necessary. A variation for such relatively small works in rural areas should be considered and could result in more respect being paid to the legislation.</p>

Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.
	No comment.

Views Sought	
33	Please outline the potential impact of any additional costs.
	No comment.





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

Shetland Islands Council

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

Robertson

Forename

Neil

2. Postal Address

Roads Service, Gremista, Lerwick, Shetland

Postcode ZE1 0PX

Phone 01595744875

Email

neil.robertson@shetland.gov.uk

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

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or

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

or

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

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Please tick as appropriate

