

Mobility and Access Committee for Scotland (MACS)

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Road Works Policy

roadworksconsultation2017@transport.gov.scot

Our ref:
2017/04

Date:
23 Aug 2017

MACS Response to Road Works Consultation

Respondent Information Form

Please Note this form must be returned with your response.

Are you responding as an individual or an organisation?

X _Organisation

Full name or organisation's name

Mobility and Access Committee Scotland (MACS)

Phone number

Address:

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:-

X _Publish response with name

www.macs-mobility.org

- _Publish response only (anonymous)
- _Do not publish response

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?

X _Yes

Question 1 - Should utility companies be required to produce quality plans for proposed road works?

Answer: Yes

MACS agree with the regulatory introduction of quality plans for road maintenance to ensure that more onus is put on utility companies to reinstate roads to an acceptable standard with less reliance on inspections.

However, we feel there must still be a robust inspection element from the relevant road authority but any such inspections must be charged at a cost neutral level and not rely on being paid for by the public purse. Since the introduction of NRWSA and RSA in 1991 and 1984 respectively, expectations concerning access for disabled people have developed considerably. MACS feels it is essential and critical that access for disabled people to be able to negotiate around or through road works is clearly identified and guidance is included in any future primary or secondary legislation.

Question 2 - Should there be a single guarantee period offered on utility reinstatements of 6 years regardless of the depth of excavation?

Answer: Yes

We agree that there should be a single guarantee period of six years regardless of the depth of excavation because although only the black top that is visible it may be that the substructure is faulty.

Question 3 - If introduced, should the impact of quality plans be reviewed after a suitable period (perhaps 6 years), and the necessity of the latent defect process be assessed?

Answer: Yes

Any new regulatory powers and/or methodology that is introduced must be reviewed after a given period to ascertain its effectiveness otherwise there is the danger that the process introduced is not as effective as first imagined and therefore needs to be refreshed or perhaps even re-written.

Although the latent defect process is seldom used at present it should nevertheless not be abandoned altogether but should be suspended until the effectiveness of quality plans have been robustly assessed after the six-year period.

If the quality plans are not as effective as first hoped it might be necessary to refresh the latent defect process so that it is more effective and works hand-in-hand with the quality plans.

Question 4 - Should we clarify that the scope for a code of practice on reinstatement (currently the SROR) includes all activity relating to the execution of road works e.g. signing lighting guarding, excavation, reinstatement, and guarantee period?

Answer: Yes

Absolutely. The SROR desperately and critically needs to be clarified, especially to utility companies. From a disability perspective we often find that pavements have been blocked with signage, rubble, excavation debris, plant and equipment and other barriers to the extent that a route is impassible for people with a disability.

Although the SROR is the code of practice for reinstatement of roads we feel that it should also include a section highlighting the necessity for access and awareness training for staff at all levels to enable the understanding of the impact that barriers can have on a disabled persons life, especially when the barriers have been put in place unnecessarily.

As already eluded to in question one it is imperative that the SROR now details the requirements for a good standard of access to enable disabled people to navigate the road/pavement during any and all road work's that are being undertaken.

It is essential that the SROR reinforces the Code of Practice "Safety at Street Works and Road Works", which state the requirements for pedestrian access, including for disabled people.

Question 5 (a) - Should actual starts, works completed, works cleared, and works closed notices be notified within 2 hours, or within 2 hours of the start of the next business day if outwith office hours?

Answer: Yes

MACS has been in discussion with the Road works Commissioner on this very subject.

In this age of technology it should be quite a simple process to have something like an app developed so that any road maintenance work being undertaken can be automatically updated on the SRWR within two hours of the start or finish of the works, this would include emergency road works.

When emergency road works are closed or cleared we do not see why notification has to be delayed until the following day given the technology now available.

We believe that there is an opportunity to keep members of the public up-to-date on road works in their own area, especially for disabled people so any potential barriers that may result can be identified at an earlier stage than when workmen are on-site.

We would envisage this to only be the public face of the SRWR i.e. the website page showing where the road works are, when they are due to start, when they are due to finish and the name of the main contractor with contact details.

We believe that along with real-time information this would have positive benefit to the public with little or no extra work for the Office of the Road Works Commissioner. This could prove a useful tool for disabled people in particular when planning their day-to-day journeys and their daily routine.

This progress would, however, require an education process to make members of the public

aware that Scotland actually has a Road Works Commissioner and the existence of the Scottish Road Works Register, or at least the web page where they can gain the information.

Question 5 (b) – Should the validity period for notices placed onto the SRWR in relation to planned works be reduced, the proposal being that they be set at 4 days or 2 days depending on the traffic sensitivity of the road?

Answer: Yes

Given the need for more real time information we would agree that the validity period for notices be reduced from 7 or 3 days to 4 or 2 days depending on road traffic sensitivity on any particular road.

Question 6 - Should the provision of plant information to the Scottish Road Works Register be made mandatory?

Answer: Yes

MACS opinion is that plant information to the SRWR Vault should be made mandatory for all utility companies, including all telecommunication companies. However, given that plant and machinery are expensive commodities and can be subject to theft and criminal activity it is imperative that the vault has to be kept relatively secure and not made available to the public in general, subject to the public interest test.

It may be that freedom of information and environmental information request should be scrutinised to ensure that they are coming from valid sources and not from general members of the public where there is a potential for that information could be misused.

This extra level of security could convince utility companies that information on their expensive plant and machinery equipment is safe.

Question 7(a) – Should the obligation on the Scottish Road Works Commissioner to make the Scottish Road Works Register available for inspection be repealed?

Answer: Yes

MACS believe that the removal of the extra layer of bureaucracy requiring the Road works Commissioner to make the SRWR available for inspection is sensible as long as the Commissioner has a duty to actively publish information relating to the location of planned and actual road works.

Question 7(b) – Should the duty to make the Scottish Road Works Register available for inspection be replaced with a duty on the Scottish Road Works Commissioner to actively publish information relating to the location of planned and actual road works?

Answer: Yes

We would refer to answer 7(a) above.

Question 8 – should 'Safety at Street Works and Road Works A Code of Practice' apply equally to roads authority and utility roadwork sites?

Answer: Yes

In demonstrating equity and transparency, the code of practice 'The Red Book' should be applicable to all. It is, therefore, imperative that rules and standards are applicable to everyone undertaking road works, utility companies and road authorities alike. We suggest that this Code should be put on a similar legal footing to elsewhere in the UK, making failure to comply with it a criminal offence

However, we would suggest that 'The Red Book' needs a refresh and that refresh should include information on how disabled people can safely navigate a route to and from their destination free from barriers and any obstacles of clutter that could create such barriers.

Question 9 – Should Utility and Road Authority workers be required to qualify in the 'Signing Lighting and Guarding of a site, and also in the Location and Avoidance of Underground Apparatus'?

Answer: Yes

Qualified staff is essential if we are to maintain good health and safety standards.

Any and all future information relating to health and safety must also include measures taken to mitigate any possible injury and obstacles to disabled people attempting to navigate their way around road works.

Question 10 - Should the minimum legal requirement for at least 'one' operative to be qualified be increased to ensure that more operatives at each road work site hold formal qualifications for the particular work they are undertaking?

Answer: Yes

MACS believe that the current situation of one operative and the supervisor being qualified is untenable and that to better ensure good standards of health and safety every operative (worker) should be qualified in signing lighting and guarding of the site and in the location and avoidance of underground apparatus.

Depending on the size of road works being undertaken it may be worth considering one member of staff that is on site being an access champion to ensure that safe access for disabled people is maintained at all times during the works.

Question 11 – Do you agree with our policy proposals to revise and improve the enforcement of road works in Scotland by the Scottish Road Works Commissioner?

Answer: Yes

While we agree with the proposed policy revise and improve the enforcement of road works by the SRWC we believe that a £100,000 limit is not high enough and that the maximum should be increased to £250,000 for non-compliance with the NRWSA and the RSA.

Further more, we agree that for more serious non-compliance and persistent offenders the decision to refer to the Procurator Fiscal should be the decision of the Commissioner.

Given that any summary procedure taken by the Procurator Fiscal would fall below the maximum fines already available to the Commissioner it would surely make sense for the most serious offenders referred to the Procurator Fiscal be prosecuted under solemn procedure.

However, we also believe that safety around road works, such as safety barriers, and access for disabled people through or around road works should also be enforced by the SRWC. This, however, depends in the first place on the ability of roads authorities (usually councils) to inspect road works while they are on site ('Category A' inspections). We do not believe that this is happening adequately at present, as there are many non-compliant road works at any one time.

We feel that inspections must be charged at a cost neutral level and not rely on being paid for by the public purse. There should, therefore, be a review to establish what these full costs are. Unless roads authorities can fully cover their inspection costs there will remain a disincentive for them to carry out the inspections that are needed to ensure that the access requirements at road works are properly applied on site.

Question 12 – Do you agree with our policy proposals to reform the use of Fixed Penalty Notices for the enforcement of road works in Scotland?

Answer: No

Although we feel that it is more fair and transparent for a written warning to be given before an FPN is charged we, nevertheless, feel that to limit the maximum fixed penalty notice (FPN) to 20% of the maximum fine set for the associated criminal offence under statute, although substantial, may not be sufficient to deter persistent offenders and that the maximum fine should be set at a higher level with the SRWC having the powers to impose a graded level of fine depending on the severity of the offence committed taking into consideration any mitigating circumstances that may be considered.

Question 13 – Do you agree with our policy proposals to enhance the role of the Scottish Road Works Commissioner?

Answer: Yes

For the proposed changes to be effective in improving the quality of road works in Scotland it is essential that the role of the Scottish Road Works Commissioner is enhanced.

For the SRWC to be effective in this proposed enhanced role it is imperative that he/she has the power to appoint inspectors as it is totally impractical and impossible for the Commissioner to carry out inspections themselves.

Scotland is unique in having a Road Works Commissioner and as such it is imperative that the person holding this ministerial appointed post has legal protection in the form of indemnity from civil proceedings and criminal prosecution as long as they have followed the prescribed tests as laid down in statute.

MACS feel that enforcement to ensure that disabled people can navigate around or through any road works in a safe manner should also be part of the enhanced role of the Scottish Road Works Commissioner.

Question 14 - Should there be flexibility to prescribe the restricted period following substantial works through secondary legislation?

Answer: Yes

It is more transparent and fairer to take a more flexible approach to prescribing the length of restrictions. It, therefore, make sense to introduce the ability to prescribe the restricted

period following substantial works via secondary legislation.

Question 15 - Should we clarify that a roads authority is included within those to be notified under Section 114 of NRSWA?

Answer: Yes

Section 114 of the NRSWA as it stands does not make sense when the Roads Authority is not regarded as a notifiable body. It would seem to be much better practice for the Roads Authority to be included as a notifiable body as it is likely to be the body that is the first line of enforcement of the standards for reinstatement, safety and inspection of the road works in question.

Question 16 - Should roads authorities be one of the parties that must be notified under statute to help formalise the use of early and late start consents?

Answer: Yes

We believe that it is essential that a Roads Authority as one of the principal parties must be notified under statute in the use of early and late start consents.

Question 17 - Should Section 132 of NRSWA be repealed?

Answer: Yes

As long as the principles of section 132 are included with mandatory quality plans we would support section 132 be repealed.

Question 18 - Should noticing requirements for roads authorities and utility companies be exactly the same in order to facilitate coordination and cooperation?

Answer: Yes

MACS believe that improvement in the quality of road works for the 21st century must show and demonstrate transparency and fairness and as such it is essential that road authorities and utility companies are treated equally. Therefore, it is imperative that noticing requirements for both should be exactly the same.

Question 19 - Should Section 61 of the Roads (Scotland) Act 1984 be revoked with savings provisions for existing agreements?

Answer: Yes:

As it is essential for parity between utility companies and road authorities it was equally important that there is parity for householders and developers to register with the SRWR that works are being undertaken. Given that it was 1984 when the Road (Scotland) Act RSA was introduced we believe more up-to-date and workable provisions being introduced over the last 33 years have overtaken much of it, section 61 is certainly one of these anomalies and as such should be revoked.

Impacts Equality

In creating a consistent approach to managing road works in Scotland the public sector equality duty requires the Scottish Government to pay due regard to the need to:

- eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010;
- advance equality opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a relevant protected characteristic.

These three requirements apply across the 'protected characteristics' of:

- _age;
- _disability;
- _gender reassignment;
- _marriage and civil partnership;
- _pregnancy and maternity;
- _race;
- _religion and belief; and
- _sex and sexual orientation

Once completed the Scottish Government intends to determine, using the consultation process, any actions needed to meet its statutory obligations. Your comments received will be used to complete a full Equality Impact Assessment to determine if any further work in this area is needed.

Business and Regulation

In our work to the regulation of Road Works a Business and Regulatory Impact Assessment will analyse whether the policy is likely to increase or reduce the costs and burdens placed on businesses, the public sector and voluntary and community organisations.

Question 20 - Are there any likely impacts the proposals contained within this consultation may have on particular groups of people, with reference to the 'protected characteristics' listed above? Please be as specific as possible

Answer: Yes

MACS believe that the impact of the proposals have on the lives of disabled people are likely to be considerable as is the impact on older people and indeed the younger population such as mothers with small children in buggies and prams because road works can create considerable barriers in disrupting the door-to-door journeys for people.

However, in the 33 years since the introduction of the RSA and the 26 years since introduction of the NRSWA issues affecting disabled people and others within the protected characteristics of the Equality Act have very much moved forward.

No longer are road works only considered in technical terms but professional organisations are now beginning to recognise the socio/economic impact of good road maintenance as such it is imperative that access for disabled people is considered equally alongside technical requirements that can and will deliver better maintenance across all utility companies, road authorities, individuals and developers.

Further, if we are to continually improve road works in Scotland it is essential that the positive effects of good road maintenance can be measured to secure that continuous

improvement and that we consider those within the protected characteristics that are affected by any and all road maintenance.

Question 21 - Do you think the proposals contained within this consultation may have any additional implications on the safety of children and young people?

If yes, what would these implications be? Please be as specific as possible.

Answer: Yes

It is essential that good health and safety measures are not only complied with but are continually improved so that children and young people are not put at risk by any road works being undertaken, such as inappropriate guard barriers being used or excavation materials being left on footpaths that can cause barriers and obstructions.

Question 22 - Do you think the proposals contained in this consultation are likely to increase or reduce the costs and burdens placed on any sector?

It is not within the remit of MACS to ascertain whether any costs or burdens are placed on any sector. Therefore, we are unable to pass any comment on question 22.

Privacy

We need to ascertain whether our proposals on road works regulation may have an impact on the privacy of individuals.

Question 23 - Are there any likely impacts the proposals contained in this consultation may have upon the privacy of individuals?

Answer: Yes

By the very nature of road works it is unavoidable that some individuals may have their privacy impacted upon especially if the road works in question are happening outside their home, close to their drive or perhaps outside their place of work.

Environmental

The Environmental Assessment (Scotland) Act 2005 ensures those public plans that are likely to have a significant impact on the environment are assessed and measures to prevent or reduce adverse effects are sought, where possible, prior to implementation.

Question 24 - Are there any likely impacts the proposals contained in this consultation may have upon the environment?

Answer: Yes

As road works usually necessitates excavation it is inevitable that the outcomes of this consultation may have an impact on the environment, hence the need for environmental assessments on larger projects.