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Raising Standards and Improving the Quality of Road Works in Scotland

Analysis of Responses from the Consultation

March 2018

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Executive Summary

Background

This report summarises the responses received to the Consultation on Raising Standards and Improving the Quality of Road Works in Scotland. The consultation followed an earlier independent review of the office and functions of the Scottish Road Works Commissioner (SRWC), which resulted in a number of accepted recommendations to improve the regulation of road works in Scotland. Those recommendations formed the basis of the consultation document.

Responses and Analysis

The consultation sought views in response to 21 questions spread across six themes, these being: (i) improving quality, (ii) improving the availability of road works information, (iii) improving consistency, (iv) enforcement, (v) the Scottish Road Works Commissioner - new functions, and (vi) miscellaneous provisions.

A total of 88 responses were received. Most came from roads authority representatives, utilities representatives and contractors (i.e. those most likely to be involved in works to place, repair, renew or improve utility service pipes and cables, or to repair, renew or improve roads). Responses to all questions were analysed both qualitatively and quantitatively, with graphs and accompanying narrative used to highlight the number of respondents who agreed and disagreed with each of the individual proposals.

Main Findings

Overall, there was support for the majority of the proposals presented. For each theme, the main findings were:

Improving Quality: there was overall support for the introduction of quality plans, and the review of their effectiveness over time, potentially removing the need for the latent defect process. Although most considered that there should also be a single guarantee period offered on utility reinstatements of six years, (regardless of the depth of excavation), there were some concerns that this may be overly bureaucratic and might be unfairly influenced by existing 'failing surfaces' in some cases. Additional clarity on the scope for a code of practice on reinstatement, including all activity relating to the execution of road works was also welcomed by most.

Improving the availability of road works information: while some felt that making information more accessible and available in a shorter time would assist with the planning and co-ordination of works and traffic movement, others felt that the proposals were too demanding and would be administratively challenging to implement. While this theme attracted the most difference in opinion overall, the majority of respondents still agreed with the different proposals to improve the availability of road works information.

Improving consistency: there was clear support for introducing consistency into Codes of Conduct for those working at sites, as well as for making the requirements

for safety related qualifications more stringent across the board (providing that there was flexibility to accommodate minor works, and staff on apprenticeships).

Enforcement: there was reasonable support for both strengthening the role of the SRWC in respect of enforcement powers and changes to the fixed penalty notices scheme, with a widespread recognition that both would potentially lead to better compliance with existing road works rules and regulations. The costs of implementing these proposals, as well as concerns that more consultation was needed before changes were introduced were the main reasons given in opposition.

The Scottish Road Works Commissioner - new functions: proposals to enhance the role of the SRWC attracted the most support, overall. Almost all who responded agreed that the creation of new inspection functions and clarifying the juristic status of the Commissioner would build on progress already achieved in Scotland to date.

Miscellaneous provisions: there was strong support to allow greater flexibility on the 'restriction period' following substantial works and also for noticing requirements to be made the same for all those undertaking works. Absolute agreement was noted, however, with both the need to clarify that a roads authority is included within those to be notified under Section 114 of NRSWA, and roads authorities being one of the parties that must be notified under statute to help formalise the use of early and late start consents. Almost all who gave a response also agreed that Section 61 of the Roads (Scotland) Act 1984 should be revoked. There was less support for Section 132 of NRSWA to be repealed, mostly on the basis that it lacked clear rationale.

Cross-Cutting Themes

Most agreed that, although there is already a great deal of good work being undertaken in the road works community, there is still room for improvement. Respondents seem committed to work together to try and find solutions that are proportionate, transparent and fair to all. If implemented, the proposals were considered to have few potential negative impacts (to road users, the environment, business or regulation). The main concerns raised in respect of the proposals (across the board) were around the potential for increased costs to both utility companies and road authorities, and perceived increases in administration and bureaucracy.

Next Steps

An encouraging response was received which can be used to inform the Programme for Government commitment to bring forward legislation to improve the regulation of road works in Scotland, and to enhance and improve the role of the SRWC. The findings will also inform a wider package of regulatory reforms, ensuring that any changes reflect the voices of those who took part across the road works and wider community.

1 Introduction

Background

- 1.1 This report summarises the responses received to the Consultation on Raising Standards and Improving the Quality of Road Works in Scotland.
- 1.2 The consultation sought views on proposals for improvement to the regulation of road works in Scotland and followed the earlier 2016 Barton Report - an independent review of the office and functions of the Scottish Road Works Commissioner (SRWC). The review was broad in its scope and resulted in a number of accepted recommendations to improve the regulation of road works in Scotland. Those recommendations formed the basis of the consultation document.
- 1.3 The consultation sought views in response to 21 questions spread across six themes, these being:
 - Improving Quality
 - Improving the availability of road works information
 - Improving consistency
 - Enforcement
 - The Scottish Road Works Commissioner - new functions
 - Miscellaneous provisions

Legislative Context

- 1.4 The legislation under which works on roads are undertaken in Scotland is the New Roads and Street Works Act 1991 (NRSWA) or the Roads (Scotland) Act 1984 (RSA). NRSWA was revised and updated by the Transport (Scotland) Act 2005 and is supported by a series of regulations.
- 1.5 The vast majority of road works in Scotland are either utility company works to place, repair, renew or improve utility service pipes and cables, or road authority works to repair, renew or improve roads.
- 1.6 Under NRSWA, roads authorities are deemed to be 'road works authorities' and, as such, have an obligation to co-ordinate their own works and those of utility companies, which in turn are obliged to co-operate with the roads authorities. Utility companies have statutory rights which allow them to place, repair, renew or improve their pipes or cables in roads, subject to meeting certain conditions. Under NRSWA, such utility companies are known as 'undertakers'.
- 1.7 Scotland is already ahead of the rest of the UK in its planning and co-ordination of road works, having the only SRWC for the sector, and having an all-Scotland single register of road works (the Scottish Road Works Register (SRWR)). However, it is recognised that there is still scope for improvement in the

planning and co-ordination of works between road works authorities and undertakers. Ensuring the provision of timely and accurate information for road users and others also remains a key aspiration.

- 1.8 The Programme for Government announced by the First Minister on 6 September 2016 included a commitment to bring forward legislation to improve the regulation of road works in Scotland and to enhance and improve the role of the SRWC. Some of the proposals set out in the consultation are, therefore intended to form part of a Bill. However, these are part of a wider package of regulatory reforms, many of which do not require new primary legislation to implement. Some can be introduced through secondary legislation, and/or codes of practice. Together, these will form an overall regulatory framework for road works in Scotland.
- 1.9 The consultation was used as a vehicle to establish the views of all interested stakeholders, including those with a professional interest, road users and others. The consultation findings, alongside other information and evidence, will feed directly into any Bill which is subsequently introduced as well as informing non-legislative developments to improve the standards and quality of road works in Scotland.

Overview of Respondent Numbers and Profiles

- 1.10 The consultation was published on 20 July 2017 and was open for 12 weeks, with no restrictions on who could respond. A total of 88 responses were received. The majority were submitted via Citizen Space - the Scottish Government's online consultation Hub - with only a small number received by email/post.
- 1.11 Table 1 below shows the number and proportion of responses received from individual contributors and those who responded on behalf of different organisation 'types'. The majority of responses were received from either roads authority representatives or utilities representatives. Special interest groups included those representing mobility impaired, pedestrians, motorists, cyclists, etc. 'Others' included public transport providers, transport partnerships and those representing specific community interests.

Table 1 Respondent Profiles

Respondent Type	Number of Responses	% of Responses
Roads Authority Representatives	26	30%
Utilities Representatives	15	17%
Special Interest Groups	8	9%
Contractors	10	11%
Individuals	16	18%
Others	13	15%

1.12 All respondents were invited to submit a Respondent Information Form (RIF) with their substantive response. This identified whether they were responding as an individual, or on behalf of an organisation, as well as providing an opportunity to indicate if they were willing for their response to be published, or not. Nine requested that their responses not be published and a further 41 indicated that they wished only their responses to be published, but not their name. The remaining 38 indicated that they were willing for both their response and their name to be published.

Approach to the Analysis

1.13 All responses were downloaded for both quantitative and qualitative analysis. For closed response questions, positive and negative response categories were created so that responses could be clustered to show the number and proportion of respondents who agreed or disagreed with each proposal. Where a 'neutral' response was provided, this was categorised as such. For all of the questions, respondents were also asked to state the reasons for their views, or to explain their answers in more detail using a free text field. Thematic analysis of this narrative data was carried out to identify the main reasons presented both in support and against the various consultation proposals. Again, where views were neutral or could not be easily classified into existing themes, these were analysed separately and are reported as such.

1.14 While most of the analysis presented below relates to the sample of respondents 'as a whole', in any cases where there was a clear difference in opinion by different respondent 'types' (e.g. roads authorities or utility providers, etc.) this is explained in the analytical commentary.

1.15 All responses that were received were included in the analysis - none were removed. Any information which was not of direct relevance to the consultation, but was still of wider interest to Transport Policy colleagues was retained for separate analysis - it is not presented here. This ensured that important wider messages from contributors were not lost.

Reporting Conventions

1.16 This report summarises the views given in response to each of the individual questions contained within the consultation in the order that they appeared in the consultation document itself. Separate chapters are provided which relate to each of the six sections of the consultation (listed above). A separate chapter explores the perceived impacts that the proposals may have on communities, individuals, business interests and the environment.

1.17 For each question, a chart is provided which shows the number of responses received in support of or against each proposal. For consistency, all responses are shown in all charts (i.e. all charts total 88) and, in cases where respondents provided 'no response' to specific questions, these are shown as 'NR'. A

breakdown is also provided which shows the numbers of respondents who agreed and disagreed with each proposal by respondent 'type'.

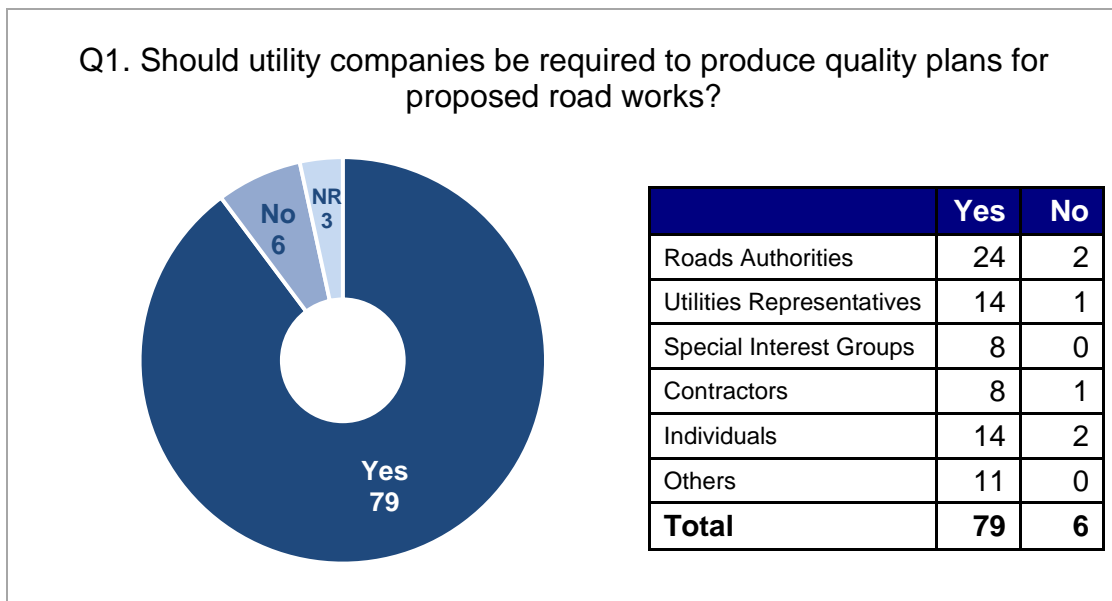
- 1.18 Wherever possible, verbatim quotes have been used to highlight some of the main sentiments expressed as part of the consultation. Where quotes have been used, the contributor has been identified, only in those cases where they indicated that they were satisfied for their response and identity to be published (via the RIF).
- 1.19 Although the report provides a comprehensive overview of the responses received, it is important to stress that the overall number of responses that was received was relatively small. Many were from roads authorities, utility providers or specialist organisations who are already familiar with the themes addressed and may have their own interests to protect. When interpreting the findings presented below readers should, therefore, be mindful of the extent to which the views can/cannot be generalised to the wider public and broad range of professional stakeholder groups who may have an interest in road works in Scotland.

2 Improving Quality

2.1 Part one of the consultation focussed on Improving Quality. It sought views around the mandatory requirement for quality plans and integrating quality assurance into the road works process. It also asked questions around extending reinstatement guarantee periods, reviewing quality plans and achieving greater clarity on the scope of the Specification for the Reinstatement of Openings in Roads (SROR). Together, these proposals seek to improve the quality of road works ‘from the start’ and minimise the need for ongoing monitoring and inspection.

Introduction of ‘Quality Plans’

2.2 Building quality assurance into the routine practice for utility road works is a key aspiration in Scotland. As part of the consultation, views were sought on whether there should be an onus on those undertaking road works to show that they have reinstated the road properly through the mandatory use of ‘quality plans’. This would mean a shift from current practice which places emphasis on the inspection of reinstatements as a means of identifying defects, to a process where quality assurance is built-in.



2.3 The majority of respondents **agreed** with proposals to introduce quality plans. There was consensus that anything that would improve the standard and longevity of works would be welcomed. Placing more emphasis on quality assurance procedures before the reinstatement process begins and ensuring that the quality assurance process includes preventative methods to minimise the likelihood of future defects arising from the works were seen as key:
“By introducing quality plans, this will hopefully put an emphasis back into good quality workmanship and will hopefully give contractors pride in their work again, to ensure that all standards are met from the beginning instead of

corners being cut and thus remedial works being required, which then provides further disruption to the public.” [Contractor]

- 2.4 Respondents expressed that quality plans must cover the ‘whole process’ and be thorough in what is required, including consideration of how works would impact on pedestrians and other road users and regular monitoring of impacts:

“A quality plan should include a commitment to monitor the impact on the road network during the works, with a requirement to address excessive delays. It should also detail how reinstatement work will be monitored. The quality of the road surface following works should be inspected at intervals following the work’s completion as part of an ongoing process to ensure the integrity of the reinstatement and to address any issues before they cause further delays to road users.” [Other]

- 2.5 While there was support for the introduction of quality plans to create less reliance on inspections, views were expressed that robust roads authority inspections should still be retained (and not be replaced by quality plans), as they provide an important additional layer of quality control during works:

“[We] 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.” [Other]

- 2.6 In contrast, some (mostly utilities providers) offered their support only if quality plans replaced existing inspections and audit regimes:

“This support is based on the understanding that it replaces the current inspection process. This would see costs move away from roads authorities to utilities and roads authorities simply having to audit and inspect our plans and results... Any quality plan must be robust, transparent, and provide sufficient detail to be worthwhile but it is important that it does not become overly complex or burdensome on utilities and roads authorities...A proportionate approach has significant benefits for all parties.” [Utilities Representative]

- 2.7 In some cases where respondents **did not agree** with the proposal, their disagreement was only partial. They indicated that quality plans may be appropriate when the works were planned, but not when they were reactive and urgent. Making quality plans mandatory for only very small works was also seen as unnecessary and potentially quite costly. Others agreed with the proposal in principle, but felt that more detail was needed on exactly what would be required as part of the plans and how these would be audited/enforced. Indeed, a lack of clarity around the exact requirements of quality plans was the biggest concern raised.

- 2.8 The other responses received against the proposal indicated that satisfactory quality control policies were already in place but were not currently being enforced or expedited by local authorities. The view was that quality plans may be seen as a ‘tick box’ exercise for some utility providers but that there would be no real improvement in the actual delivery of quality:

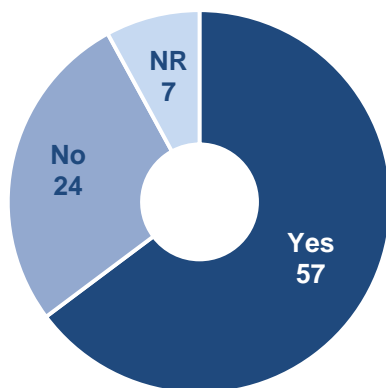
“Currently the performance is well below that required by legislation and another document will not guarantee improvement. There is sufficient legislation in place that Undertakers do not comply with currently. If quality plans replace any of the current requirements it is generally believed it will be a backward step... Undertakers may welcome this as a tick box exercise.”
[Roads Authority Representative]

- 2.9 Others perceived that the introduction of quality plans would add an unnecessary layer of bureaucracy and more audit requirements, and felt that the focus should, instead, be on the quality of workmanship rather than formal procedures.
- 2.10 Overall, however, most agreed that the introduction of quality plans would lead to a notable improvement in the execution of works and the proposal was supported by roads authorities’ representatives and utilities representatives alike.

Reinstatement Guarantee Periods

- 2.11 The quality of utility reinstatements is currently backed up by a guarantee period of two to three years, depending on the depth of the excavation. While roads authorities have previously expressed a preference to see this guarantee period extended up to ten years, utility companies have argued against the extension based on a lack of empirical evidence to support its value. As a compromise, and based on available anecdotal and other evidence, proposals for a six-year guarantee period were included in the consultation.

Q2. Should there be a single guarantee period offered on utility reinstatements of six years regardless of the depth of excavation?



	Yes	No
Roads Authorities	25	0
Utilities Representatives	1	14
Special Interest Groups	6	1
Contractors	3	6
Individuals	13	2
Others	9	1
Total	57	24

2.12 A large number of respondents considered that there should be a single guarantee period offered on utility reinstatements of six years, regardless of the depth of excavation. Importantly, however, only one of those who agreed was responding on behalf of utilities providers.

2.13 The **main reasons given in support** were that it would make rules simpler to understand and that it would assist in achieving better quality overall:

“The current system of two or three years dependent on depth of excavation is unnecessarily complicated.” [Special Interest Group]

2.14 The proposal would overcome current problems with contractors not meeting the basic requirements set out in the SROR, it was felt:

“There are still too many utility contractors who are not reinstating to the Specification for the Reinstatement of Openings in Roads (SROR). If reinstatements are done to the specification they should last at least 6 years and the undertakers should have no problem accepting responsibility for their work.” [Roads Authority Representative]

2.15 While some respondents seemed to indicate that the guarantee period should be even longer (up to ten years), most seemed content that six years was a sound compromise (or would be an acceptable “interim step”). Flexibility to allow some variations, depending on the nature of the reinstatements, would be welcomed.

2.16 Supportive views were also expressed that such guarantees would counter against substructure defects that are not immediately visible (i.e. current performance measurement of utility reinstatements looks only at the compressed ‘blacktop’ surfacing and not at the compaction and composition of the backfill materials in the under-bound layer). One suggestion was that

an acceptable limit of later compaction and, hence, surface depression could also be included, otherwise there may be an increase in cosmetic remedial works.

- 2.17 Respondents who **did not agree** with this proposal (mostly utilities representatives and contractors) expressed views that they perceived the current guarantee periods to be sufficient, and many indicated that the six-year period seemed “arbitrary” and lacking an evidence base:

“The current guarantee periods are sufficient and as stated that any failure becomes apparent within the current time-frames. Should an extended period be desired then consideration should be given to ensuring that any liability after the agreed extended date is passed back to the Highway Authority. If quality plans were implemented then I don’t see the need to extend guarantee periods as well.” [Utilities Representative]

- 2.18 Others indicated that increased regulations would be unfair to utility companies, in particular, and would only be fair if applied across the board:

“This would only be fair if Roads Authority works are subject to the same guarantee period. If the Roads Authority carry out patching works, why should their guarantee period potentially be less than that of the utilities?” [Utilities Representative]

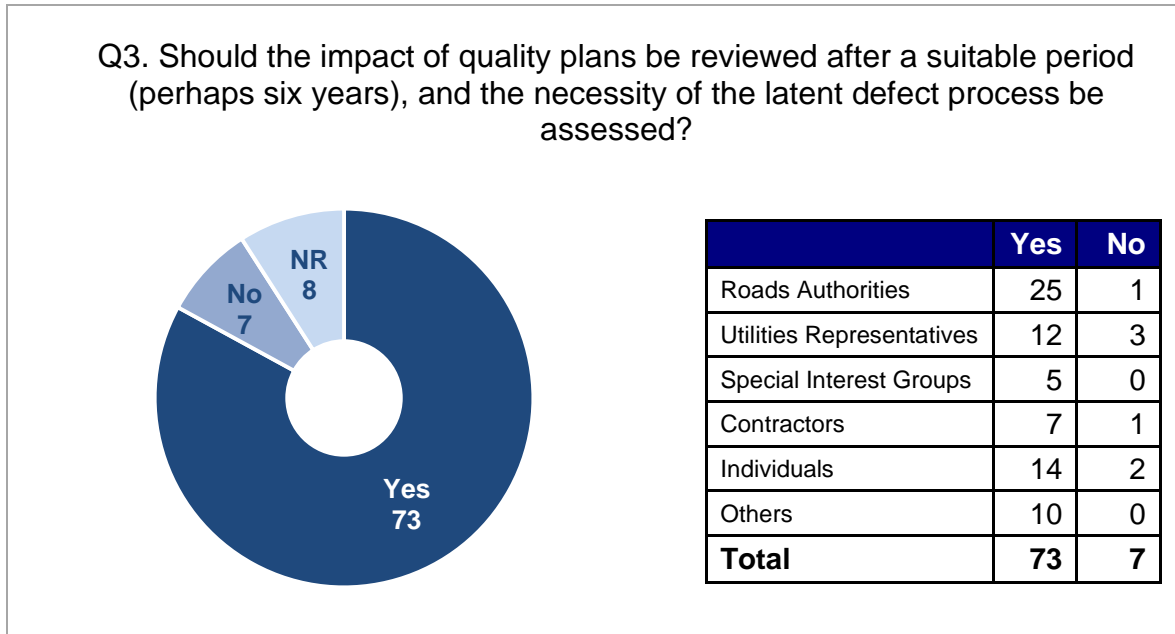
- 2.19 Indeed, comments were made that the quality of carriageways and footways was generally ‘poor’ and that they were not well maintained by local authorities. The age and integrity of the existing surfaces would unfairly impact on what was being asked, it was felt. This may make any patching and resurfacing difficult to implement (e.g. it is difficult to tie utility patches into the existing surfaces and there may be disparity between the depth of the utility reinstatement construction being greater than the existing surfaces being tied into.) The suggestion was that local authority maintenance and bringing all surfaces to an acceptable standard should be the focus, prior to any new changes being introduced around guarantee periods.

- 2.20 Overall, among both those who agreed and disagreed, it was felt that any enforced guarantee period needed to be applied equally to all those undertaking works (roads authorities and utilities providers) as well as being both practical and proportionate to the works being undertaken.

Quality Plans and the Latent Defect Process

- 2.21 Section 2 (2.5) of the Code of Practice for the Specification for the Reinstatement of Openings in Roads (SROR) currently allows roads authorities to challenge reinstatements that appear to be failing, even where the guarantee period has lapsed (i.e. the ‘latent defect process’). Legal challenges can be brought, if necessary, but this is rarely pursued. Indeed, reinstatement failures are often arbitrated to a mutually agreed end without formal recourse, i.e. the latent defect process is essentially redundant, as currently specified.

2.22 If quality plans are introduced (as described above), there is an opportunity to build in a commitment for utility companies to review their effectiveness after a suitable period (perhaps six years). This, in turn, may remove the need for the latent defect process (but only if there is an overall improvement in the quality of reinstatements). Views were sought on this possibility.



2.23 Almost all respondents **supported** the introduction of quality plan reviews and assessment of the need for the latent defect process. This would place greater responsibility on utility companies to ‘get it right first time’ and avoid local authorities getting the blame for poor reinstatements, it was suggested.

2.24 In practical terms, respondents agreed that there was no point in retaining a process that is rarely used and is not likely to be used in the future, especially if this meant that savings could be achieved in terms of costs and resources.

2.25 Some respondents caveated their support for the proposal suggesting that it should only proceed if surface and repair quality is not compromised and only if it does not result in further disruption. Views were also expressed that any new regulatory powers and/or methodology that is introduced must be reviewed after a given period to ascertain its effectiveness, and that it should be revised or adapted, as necessary (preferably in consultation with the road works community):

“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.” [Other]

“Where the process is not working as expected then changes should be made in consultation with industry and other stakeholders. We would like to see the latent defect removed if an extended guarantee period is introduced, as moving to a performance spec makes latent defects redundant.” [Utilities Representative]

- 2.26 The main **views given against the proposal** were that quality plans or “self-monitoring” would not lead to better performance from private companies and that removal of the latent defect process could ultimately lead to poor decisions around which reinstatements require attention (and potentially ‘corner cutting’ for the sake of profit):

“The impact of quality plans should be reviewed continuously but should not be used as a justification for the removal of the latent defect process. Latent defects will always mean that work has been completed not in compliance with the specification and as such no advantage should be given to a utility that has not met the specification and simply manages to hide that defect long enough that the guarantee period has expired. Latent defect process should stand as is regardless of the introduction of quality plans.” [Individual]

- 2.27 One individual respondent who did not agree with the proposal cited local authority responsibility for road repairs as the reason why quality plans should not be needed or reviewed. Overall, however, it was seen as sensible to review the process periodically, to learn lessons and make adjustments where necessary.

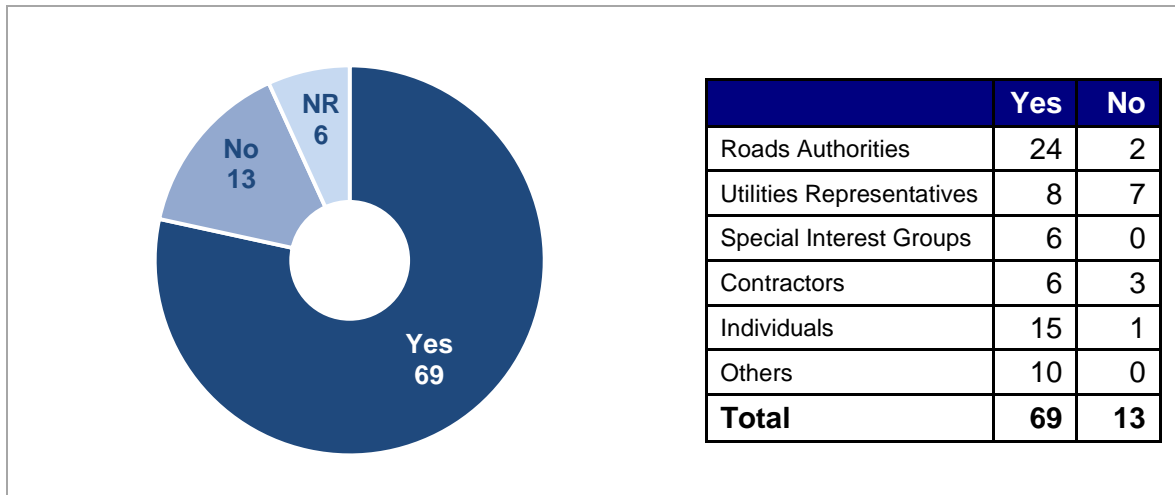
- 2.28 There was no obvious split in views by respondent ‘type’ for this proposal,

Clarity on the Specification for the Reinstatement of Openings in Roads

- 2.29 The Specification for the Reinstatement of Openings in Roads (SROR) plays a crucial role in helping to drive up and maintain quality standards in road works. It provides both a technical specification and a required standard for reinstatements undertaken by utility companies, and covers the complete process required to carry out road works.

- 2.30 The extent to which the broad scope of SROR is currently recognised within the relevant enabling provisions in Section 130 of NRSWA has previously been questioned. As part of the consultation, therefore, views were sought on whether there should be further clarity on the ability of Scottish Ministers to create a code of practice (currently the SROR) which includes all activity relating to the execution of road works e.g. signing, lighting, guarding, excavation, reinstatement, and guarantee periods.

Q4. Should we clarify that the scope for a code of practice on reinstatement includes all activity relating to the execution of road works?



2.31 Most who provided a response to this question **agreed** with the proposal. In particular, there was a desire to see greater clarity around the amount of time that obstructions and barriers remain in place during (and after) works. Similarly, respondents stressed that the SROR should 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 disabled (and other) road users.

2.32 An all-encompassing document that would bring clarity and improve workmanship was welcomed:

“This would clarify the position and is to be supported. It would be beneficial especially in regard to those small sub-contractors making up the third, fourth or lower tiers of a Utilities supply chain where understanding of reinstatement requirement is often lacking. It should lessen the burden on the roads authority through reducing incidents of inspection staff having to explain to sub-contractors the need for what are industry standards of reinstatement.” [Roads Authority Representative]

2.33 Where people **did not agree** with this proposal, this was mainly because they perceived the SROR already works well. Respondents also noted that, while they supported the proposal to clarify the code of practice, they did not support the inclusion of signing, lighting and guarding being part of this. Other views expressed against the proposal related to the perceived confusion that may occur if attempts were made to merge too much information:

“The SROR is a formidable document and specifically relates to backfill and reinstatement. It should be maintained as a separate document from the Safety at Streetworks and Roadworks - A code of practice. To incorporate all areas in to one document would bring about great difficulty especially when updating the different areas as bringing all the different amendments together would be impossible to co-ordinate ready for publication at the same time.” [Utilities Representative]

2.34 There was a clear split in views for this proposal based on respondent 'type' with almost all of those who did not agree representing utilities companies. Overall, however, most respondents shared the view that greater clarity would improve co-ordination and be beneficial for all stakeholders.

3 Improving the Availability of Road Work Information

3.1 The second part of the consultation focussed on road works information, including information that is uploaded to the Scottish Road Works Register (SRWR) as well as information that is available at sites. It covered new proposals for changing noticing obligations in respect of both actual starts and the completion, closure and 'clearance' of sites. It also considered what information should and should not be required to be made publicly available.

New Noticing Obligations

3.2 At present, the main source of information for current, planned and completed road works in Scotland is the Scottish Road Works Register (SRWR). The SRWR is used by all roads authorities and utility companies in Scotland to co-ordinate their works. It allows them to share details of where they intend to work and what they intend to do. Although a valuable tool for those working in the sector (including operators, inspectors, undertakers, authorities and road users alike), it has long been recognised that the SRWR may be underutilised as a resource, and that real-time information, delivered in a more accessible way may be desirable.

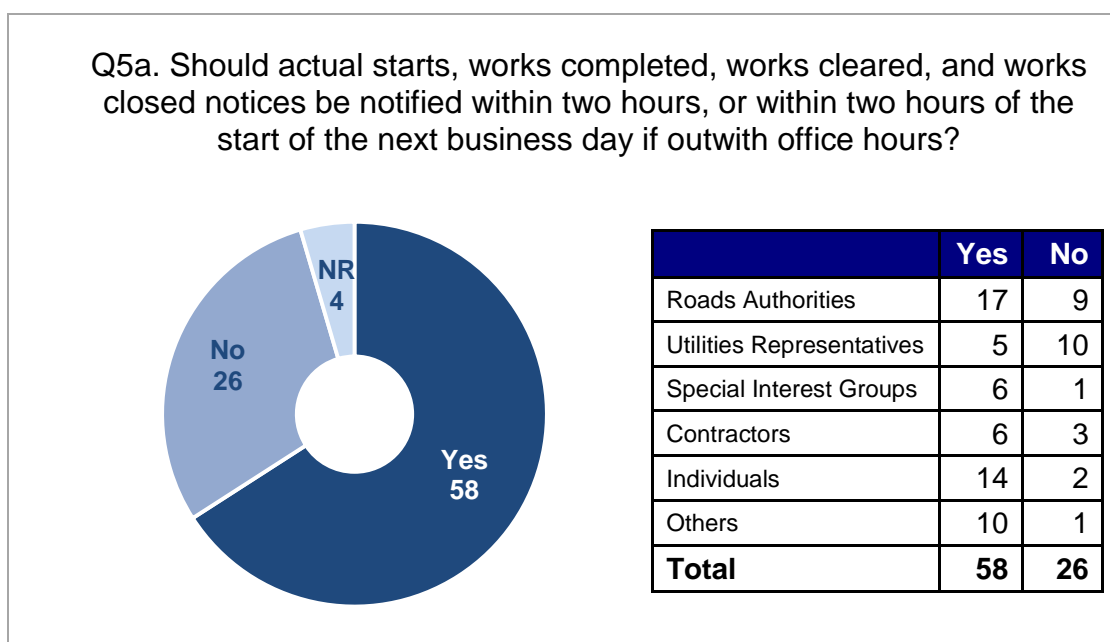
3.3 Indeed, improving the quality and timely availability of information about forthcoming and completed road works for both the public and professionals alike was a key theme of the consultation. Specifically, the consultation sought views on the improvement of noticing information in relation to:

- Notification of the actual start date: although not currently required by legislation, those undertaking road works are asked to provide an 'expected' start date for works, variable by up to three or seven days (depending on the traffic-sensitivity of the road), when registering works on the SRWR. The actual start date, when the road works commence, also requires to be noted on the SRWR but, in some cases, this can be up to 24 hours after the work has begun. Discrepancies between the expected and actual start of works, as well as delays in registering the actual start date can cause confusion for road users and can cause wasted time by inspectors, on occasion. The consultation sought views on reducing the validity period for planned works to two or four days (depending in the traffic-sensitivity of roads) and reducing the notification of actual works to within two hours of works commencing on site.
- Notification of the completion of road works: when works are completed, legislation dictates that works completion notices should be submitted to the SRWR up to 16.30 the next working day or by noon the following day, meaning that there can sometimes be a significant lag between actual completion and the availability of this information on the register. Works of short duration may, for example, take place and be completed before the start of the works is logged as an 'actual start' and can be confusing for users of the road in question. Again, views were sought on reducing the lag for

noticing to reduce uncertainty for the public, and allow better co-ordination of works and movement on the roads.

- Notification of works clear: relating to interim rather than final reinstatements, a ‘works clear’ notice follows the same timescale as the notification of the completion of road works (i.e. up to 16.30 the next day or by noon the following day), and views were sought on reducing this notice period to two hours (or within two hours of the commencement of the business on the following working day for works carried out at night/emergency works).
- Notification of works closed: relating to permanent reinstatements wherein the road/footway(path) can return to normal use. Again, the consultation sought views on reducing the submission of works closed notices within two hours of the road being returned to normal use (or within two hours of the commencement of business on the following working day for works closed at night/emergency works).

3.4 By reducing the timescales for providing information about actual starts, works completed, works clear and works closed it is hoped that inconvenience to the general public and for those organisations working in the road works industry might be minimised.



3.5 This proposal attracted differences in opinion across the board, with no clear split by respondent ‘type’.

3.6 Many respondents indicated **support** for a change in the noticing periods for actual starts, works completed, works cleared and works closed notices. Comments were made which indicated that the current timescales meant that information was often out of date or late and that information on planned, closed and current works was difficult to find. Several also indicated a

preference to see new ways of communicating/sharing information, including mobile technologies and felt that improving information provision should be a minimal burden (especially given that the SRWR can be accessed remotely outside of office hours):

“This proposal would substantially improve the accuracy of information available to the public, as well as improving the potential for Road Authority inspectors to locate sites for ‘in progress’ inspections. This is particularly true in relation to minor works, where the work may be in progress on site for only a short time, perhaps only a few hours, and current timescales for noticing may mean that the notice indicating start of works is only recorded after the works has already finished.” [Other]

3.7 One special interest group noted that timely and easily accessible information would be particularly welcomed for disabled road users to help them better plan their journeys. For all road users, however, it was felt that greater awareness of the SRWR and the SRWC was needed to ensure that any improvements in information sharing were maximised.

3.8 Views were expressed that the current situation was untenable, with too many failing to adhere to the noticing rules, and the process not being taken seriously enough:

“On the issue of start times, it remains unclear as to why it should be regarded as acceptable for road works to commence before the register has been updated. Only by making the process more onerous, will utility companies and their contractors take it more seriously and consider the huge impact they are having upon the economy.” [Other]

3.9 One of the main barriers mentioned was staff availability for issuing notices, the suggestion being that notices could only be prepared during office hours. Concerns were also noted that, although mobile technologies could be used to provide real-time information, network signals were not always sufficiently strong to allow people to access the internet (especially in remote/rural areas). One comment was also made that the timings specified might still lead to some inaccurate/late information being shared:

“However, the relaxation for works outwith office hours not requiring notification until 2 hours after the start of the next business day is still a serious flaw in providing accurate information. It means that any works started or finished after 16:30 (or perhaps after 14:30, depending on the precise wording of regulations) will be shown inaccurately throughout the following morning “rush hour”. Even worse, works started or finished after this time on a Friday may be shown inaccurately throughout the whole weekend and most of Monday morning.” [Other]

3.10 Some expressed a wish to see the notification of starts extended to 24 hours and suggested that the proposal was not sufficiently strong.

3.11 A reasonably large number of respondents **did not agree** with the proposed changes. Views against the proposal included that existing noticing requirements were already sufficiently robust and that, in some cases, this would not allow sufficient time for sites to be ‘fully cleared’:

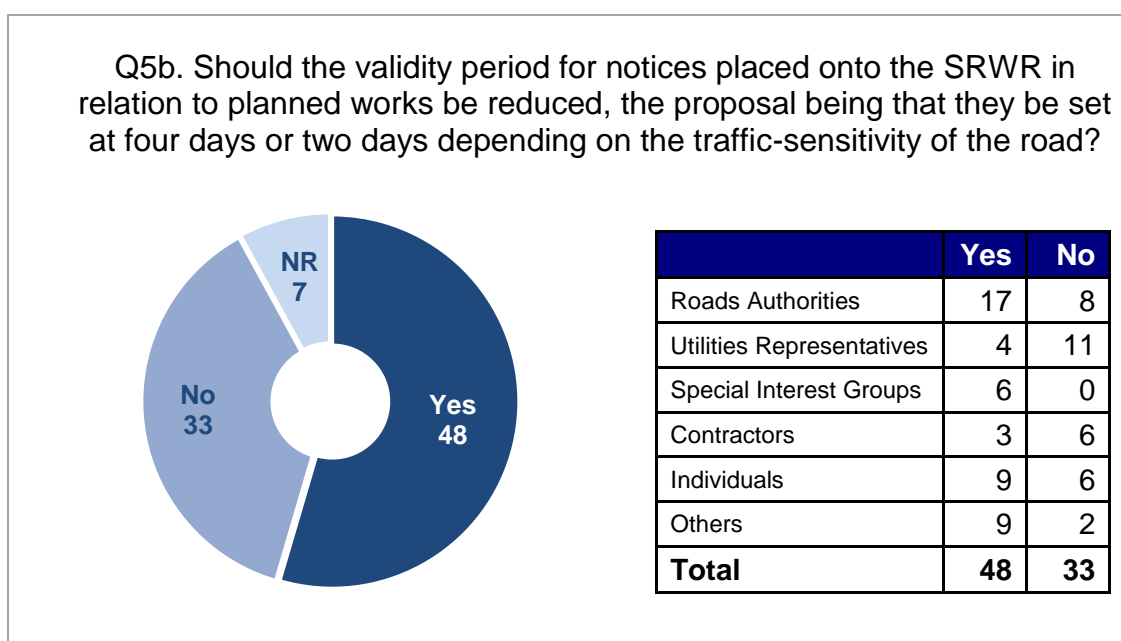
“With planned works, as the required notice has already been given such timely notifications are not necessary and bureaucratic. There would be a significant resourcing burden placed upon works promoters to be able to deliver such a requirement which may impact on the current notifications for immediate works. There is no evidence to show that these requirements would have any impact and there is no real-time mechanism whereby they could be communicated to the road users so that a benefit could be met.” [Utilities Representative]

3.12 Staff working in local authorities/roads authorities also expressed views that the two-hour requirement would be difficult to adhere to given other competing commitments and their lack of availability in the office/desk based time to meet the requisite administrative demands.

3.13 For the most part, however, feedback on reduced noticing times was positive:

“In summary, we support an efficient system that allows road users to get the most accurate, up-to-date information along with enough notice to be able to seek alternative routes.” [Special Interest Group]

3.14 There were also mixed views in relation to noticing for planned works, with no clear consensus within or between respondent ‘types’. Just over half of those who contributed to the consultation agreed with proposals to reduce the validity period for notices placed onto the Scottish Road Works Register in relation to planned works, the proposal being that they be set at four days or two days, depending on the traffic-sensitivity of the road.



- 3.15 The main reasons given in **support** included that it may improve co-ordination, would provide more accurate and useful information for inspectors, route planners and the public:

“The current validity periods are too long and impact on co-ordination. Reduced validity will improve the ability to carry out effective co-ordination and encourages improved programming of works by statutory undertakers and roads authorities.” [Roads Authority Representative]

- 3.16 While the challenges of implementation were recognised, it was felt that these should reduce over time:

“A reduction in validity period will go some way to improving co-ordination of road works. Such a change will also improve information supply for the travelling public reducing ambiguity and confusion. However, the reduction may initially present organisational issues for those who are undertaking co-ordination, but with advancements in technology, there is scope to make changes and embrace any change. Any new legislation should make provision to draft regulations to further reduce validity periods as new technology is introduced.” [Other]

- 3.17 Some strong views were also expressed **against** this proposal. Among those who did not agree, the main reasons given were the increases in administration that this would cause and a loss of necessary flexibility. A view was also expressed that traffic-sensitivity should not be the only determining factor and that the needs of road users, especially residents, should be considered in determining which rules apply to which jobs. Other comments were made that there was insufficient evidence to support a change in existing requirements (which were already workable) and that every job should be judged on its own merit:

“Utilities are committed to avoiding early/late starts but there are too many moving factors to make this proposal feasible. This would add no value to the process and simply become an administrative burden on utilities.” [Utilities Representative]

- 3.18 Views were expressed that reducing the validity period would most likely increase early and late starts and discourage companies inputting any future programmes. Others perceived that the reduction would not lead to any increased accuracy in noticing:

“We do not believe that the validity period for notices placed onto the SRWR should be reduced beyond the current 7-day period. Although we recognise that it would improve planning, we do not believe that reducing the period will lead to increased accuracy with start dates. Significant planning is necessary to undertake works, with adaptability necessary to respond to issues with resources or impacts from delays or changes to other jobs. With a condensed delivery period reducing flexibility we would expect to see more early/late starts

being notified causing added administrative effort for both the local authority and the utility.” [Utilities Representative]

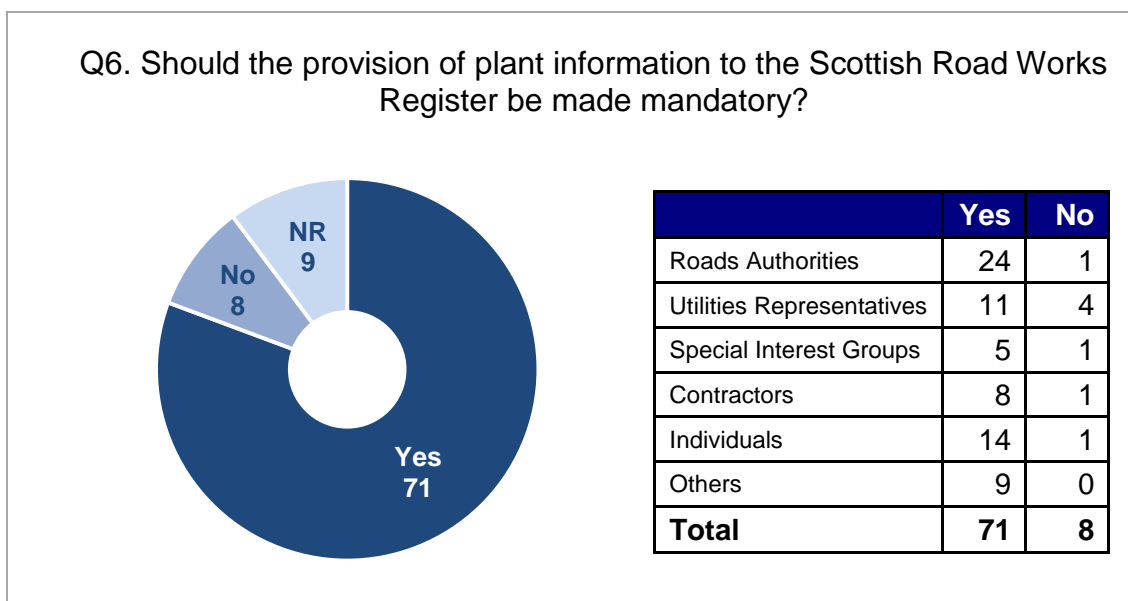
3.19 For many, the current requirements were seen as already workable and congruent with expectations in other parts of the UK. Doubts were also expressed about the rationale for this proposal, since performance in relation to current requirements was seen as already satisfactory. Retaining flexibility was strongly urged, especially by statutory undertakers and their affiliates.

Placing Plant Information on the SRWR

3.20 Plant Information Requests (PIRs) refer to situations where information is sought on the location of underground apparatus which may affect works being planned or undertaken. PIRs are typically used to allow those undertaking works to ensure that any excavation work can be carried out safely and without causing damage or disruption to services. PIRs typically result in information being shared in a variety of formats, including maps sent by email, access to websites, and provision of CDs containing data or paper plans.

3.21 The Community Apparatus Data Vault System ('Vault') was introduced a number of years ago to try and centralise this type of information on the SRWR, however, the addition of information to Vault is currently done on a voluntary basis. Although utility companies and roads authorities are not required to supply this information to the SRWR routinely, most do. The main exception is telecoms providers who have historically declined to share information voluntarily due to concerns about the security of the information and the way in which it is stored.

3.22 In order to fill the gaps that exist in the Vault at present, a proposal was put forward to make the provision of plant information on the SRWR a mandatory requirement.



3.23 The majority of consultation respondents **agreed** with this proposal, in the interests of safe operation of works and better sharing and co-ordination of intelligence:

“Making the use of the data Vault mandatory will enhance the SRWR as a national asset. It will also provide a reliable “one stop shop” for plant information both in normal service hours and out of hours emergency works. It is therefore possible that having one complete record in the form of the data Vault in an accessible location will eventually reduce the burden on plant owners to store and make available information using their own means, as they do presently.” [Other]

3.24 Although there was also some **resistance**, this related almost entirely to security concerns for telecommunications providers. Some respondents indicated that there needed to be some reassurances offered to telecommunications providers that providing information about the location of commodities would not expose them to risk of theft or criminal damage. It was also considered (by some) that any information held on Vault should be released only in cases where the reasons for its request could be validated, and that PIRs should not be for public use. One comment was made that this proposal would not be welcomed if local authorities were expected to transfer historic inventory, as this would be too time/resource intensive. Comments were also made that this need not be made a mandatory requirement, since most already upload data voluntarily (i.e. it was unnecessarily bureaucratic).

3.25 Overall, respondents of all ‘types’ seemed supportive of this proposal, including all but one roads authority representatives and most (but not all) utility representatives.

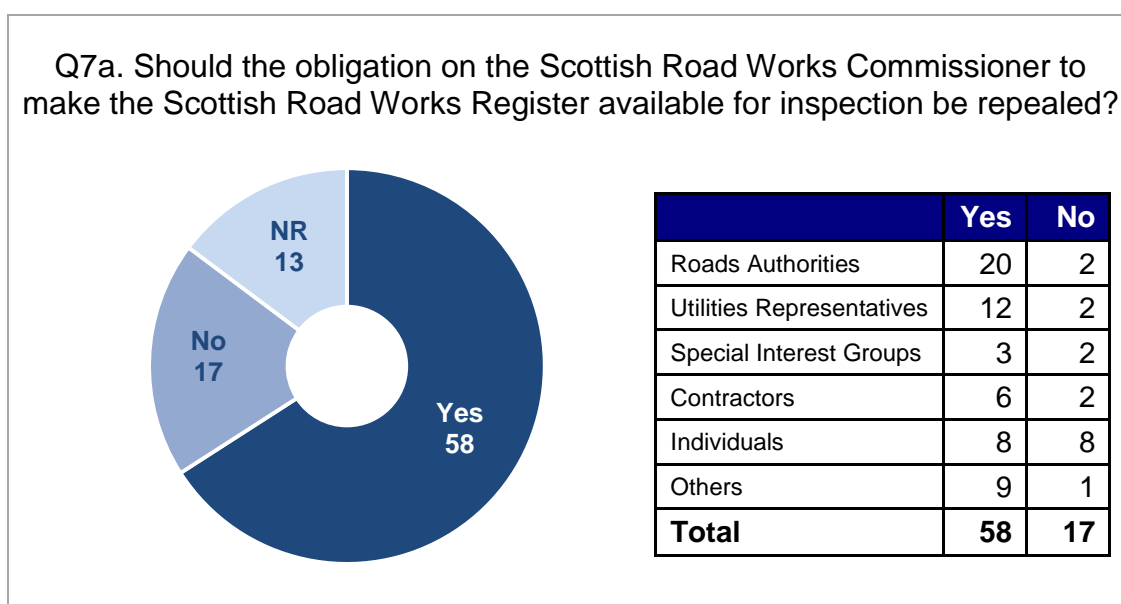
Public Inspection of the SRWR

3.26 In light of concerns about safety and security when sharing plant information via Vault, the consultation also sought views on whether a review should be undertaken of the way that information on the SRWR is shared.

3.27 At present, information from the SRWR can be requested from the Commissioner in three ways:

- Via a user of the register (e.g. a roads authority or undertaker)
- Through the requirement for the Commissioner to make the SRWR available for inspection, on request (as set out in S112A(6) and S112A(7) of NISSWA)
- Public information requests either via the Freedom of Information (Scotland) Act 2002 (FOISA) or the Environmental Information (Scotland) Regulations 2004 (EIRs)

3.28 While the latter of these offers some reassurance to those who wish their commercially confidential information be to be protected (through exemptions written in to both FOISA and EIRs), there is little to control access to information made via a requirement for the Commissioner to make the SRWR available on request. By repealing the obligations of the SRWC to make information on the SRWR available for inspection, and replacing this with a duty to actively publish information relating to the location of planned and actual works only, the security concerns and risks presented to utility companies may be reduced. Views were therefore sought on these proposals.



3.29 There were mixed views in relation to whether the obligation on the Commissioner should be repealed. Most roads authorities and utilities representatives **agreed** and this was because they felt it would reduce bureaucracy, could reduce risks to public safety (if information from the SRWR was used inappropriately by private individuals) and that, as long as the duty to actively publish information relating to the location of planned and actual works went ahead, there should be no need for public access to other information:

“The success of the SRWR is its transparency to the street works community and delivery of consistent data. The duty to actively publish works data is welcomed and would be seen as a positive step to improving further the accuracy and quality of the data. The accuracy of data could be linked to quality plans which would further drive change.” [Roads Authority Representative]

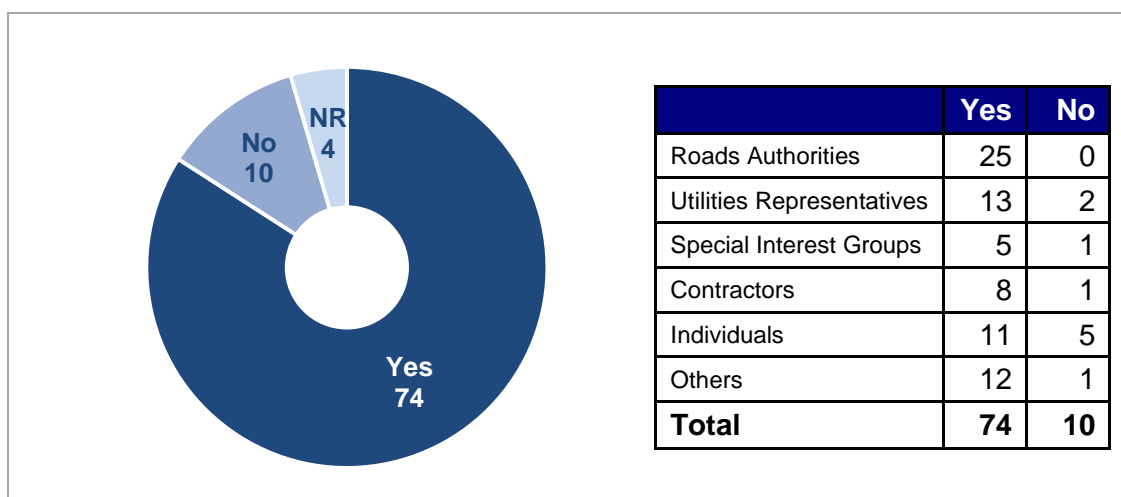
“...there has to be some safeguards provided to the data providers around who can access the data freely. It is fully understandable that in today’s society data relating to the position of crucial utility apparatus is restricted to those that require visibility of them for the purposes of avoiding the danger they pose

when undertaking works in the highway. In order to provide that security, we concur with the proposal put forward in this consultation.” [Contractor]

“From a road user perspective, the register itself is of little value. What is most useful is how this is displayed and presented to show where roadworks are taking place and who is responsible.” [Utilities Representative]

- 3.30 Where respondents **did not support this proposal**, this was typically due to concerns that it might be misconstrued that information was being ‘hidden’ (and may therefore result in more Freedom of Information Requests being submitted, which would be counter-productive). Other reasons given included that the public interests and functionality of paths/roads should take priority over commercial sensitivity of corporate firms (i.e. the current system was seen as necessary to ensure that private individuals could find out about works in the vicinity of their homes).
- 3.31 Others commented that they did not see what this proposal would achieve, given that access to the information could still be achieved under other existing regulations (namely, the New Roads and Street Works Act 1991 (NRSWA), INSPIRE (Scotland) Regulations 2009 and the Environmental Information (Scotland) Regulations 2004 (EIRs)).
- 3.32 Interestingly, most of those who did not agree were responding as individuals who did not provide an organisational affiliation. Notably, a large number of respondents either gave no answer to this question or expressed no clear preference.
- 3.33 Similarly, there were mixed views in relation to whether inspection obligations should be replaced by new duties for the Commissioner in relation to the release of information. Again, those who did not agree were mainly individuals who did not provide an organisational affiliation. All roads authorities and most utilities providers agreed with the proposal.

Q7b. Should the duty to make the SRWR available for inspection be replaced with a duty on the Commissioner to actively publish information relating to the location of planned and actual road works?



3.34 Those who **agreed** again stressed the importance of public access to up-to-date local information and the need to ensure as much transparency for the public as possible:

“A summarised version showing the pertinent information should be published. This would allow transparency and public access to current and historic information without compromising data protection.” [Roads Authority Representative]

3.35 Agreement was also contingent, in some cases, on access still being readily accessible to those with a professional interest:

“We agree with the suggested amendments to the obligations of the Scottish Road Works Register being carried out, assuming that they will in no way impact upon the ability of bus and coach operators to interrogate the Register for information on road works.” [Other]

3.36 Most of those who **disagreed** gave no substantive reason to support their view. One who did, indicated that it may be a duplication of effort since all works in a local authority’s network already require to be made publicly available (and so the resource implications for the SRWC could not be justified). Another suggested that the proposed amendment appeared unnecessary as the SRWC is already under the statutory duty to allow public access to the SRWR (under Regulation 8 of the INSPIRE Regulations and Regulation 4 of the EIRs). Again, therefore, this duty was seen as superfluous.

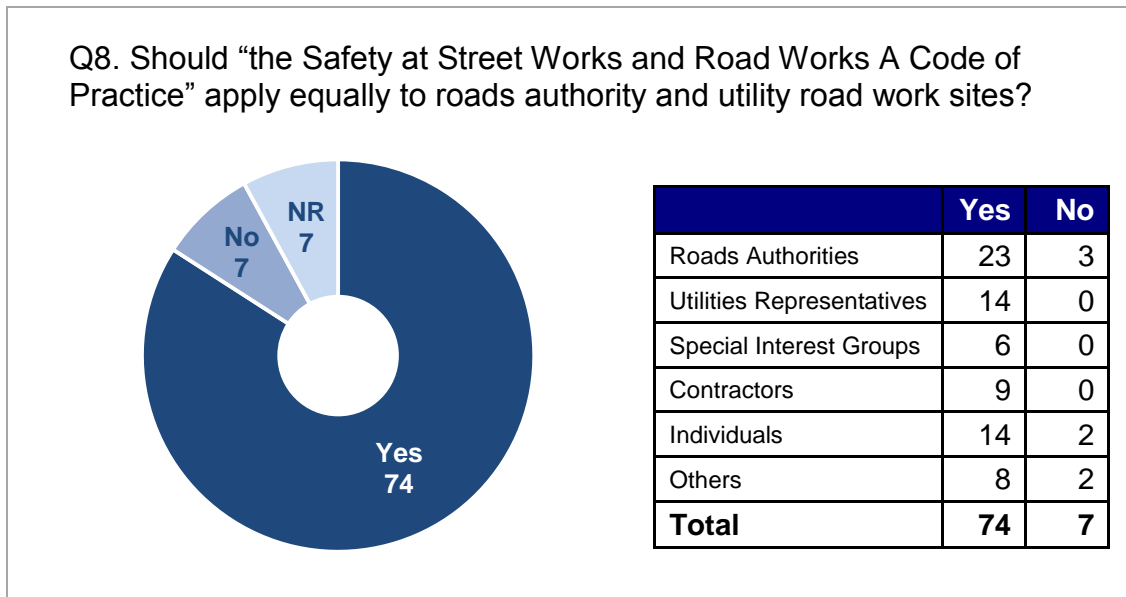
3.37 Overall, however, replacing the duty to make the SRWR available for inspection with a duty on the Commissioner to actively publish information relating to the location of planned and actual road works was the most supported of all of the ‘information’ themed proposals.

4 Improving Consistency

- 4.1 Part three of the consultation was dedicated to ‘improving consistency’. Specifically, questions were asked around safety at road works sites and the qualifications that should be required by those undertaking works, to ensure safe and consistent practice.

Safety at Road Works Sites

- 4.2 Ensuring safety at road works sites is key. At present, utility companies are required to comply with the Code of Practice - ‘Safety at Street Works and Road Works’ - a book which sets out rules and codes of practice to ensure that safety standards are never compromised. This Code does not currently apply to roads authorities undertaking works, and proposals were sought on whether such a requirement should be introduced, to ensure parity between roads authorities and undertakers in relation to safe practice.



- 4.3 Almost all who responded to this consultation question agreed and there were no clear differences in views based on respondent ‘type’. The main reasons given in **support** of this proposal included a perceived increase in equity, consistency and transparency:

“There should be a level playing field. The Code of Practice sets a minimum standard for basic safety and traffic management that everyone working on a road should be complying with. This would result in consistency for everyone affected by road works, especially pedestrians, and improve the public's perception of road works.” [Roads Authority Representative]

“This would ensure that there is consistency across the system. Wider use of the “Red Book” should be promoted. Signing, Lighting and Guarding of a roads

authority's own works should be undertaken to the same standards and requirement as those of Statutory Undertakers.” [Utilities Representative]

- 4.4 Notably, there was agreement with this proposal from both roads authorities and utilities providers, as well those representing ‘other’ types of organisations:

“The provision of a safe environment for operatives and ALL road users is an absolute and must apply to all works promoters including utilities, road authorities and others.” [Contractor]

- 4.5 Additional comments were made that the existing Code of Practice - ‘The Red Book’ - may need to be updated and refreshed and also that, despite the rules being clear, some authorities and undertakers may continue to show a disregard when working on the public highway. One respondent suggested that the Code be put on a similar legal footing to elsewhere in the UK, making failure to comply with the Code a criminal offence. The main feeling, however, was that the public should expect the same high quality of standards and safety regardless of who was undertaking the works:

“Customers are confused about what standards should be expected from any organisation working on the road. Where safety is concerned, there cannot be different levels of practice between organisations doing the same or similar types of work on the road.” [Utilities Representative]

- 4.6 Where people **did not agree** this was mainly because the existing Code of Practice was seen as being more relevant to utilities (since they carry out more “*inherently dangerous*” works) and not sufficiently detailed to cover all activities carried out by roads authorities (e.g. grass cutting and gully emptying or major resurfacing works):

“This could work as long as the code of practice is broad enough and detailed enough to cover all activities carried out. Due to this it may need to be amended or adapted in order to be useable by a roads authority. Without this it may not be detailed enough to provide adequate information.” [Other]

- 4.7 Chapter 8 of the Traffic Signs Manual was considered as being the most appropriate guidance to be used for safety at street works for roads authorities. Many also noted that roads authorities often already voluntarily comply with the Code.

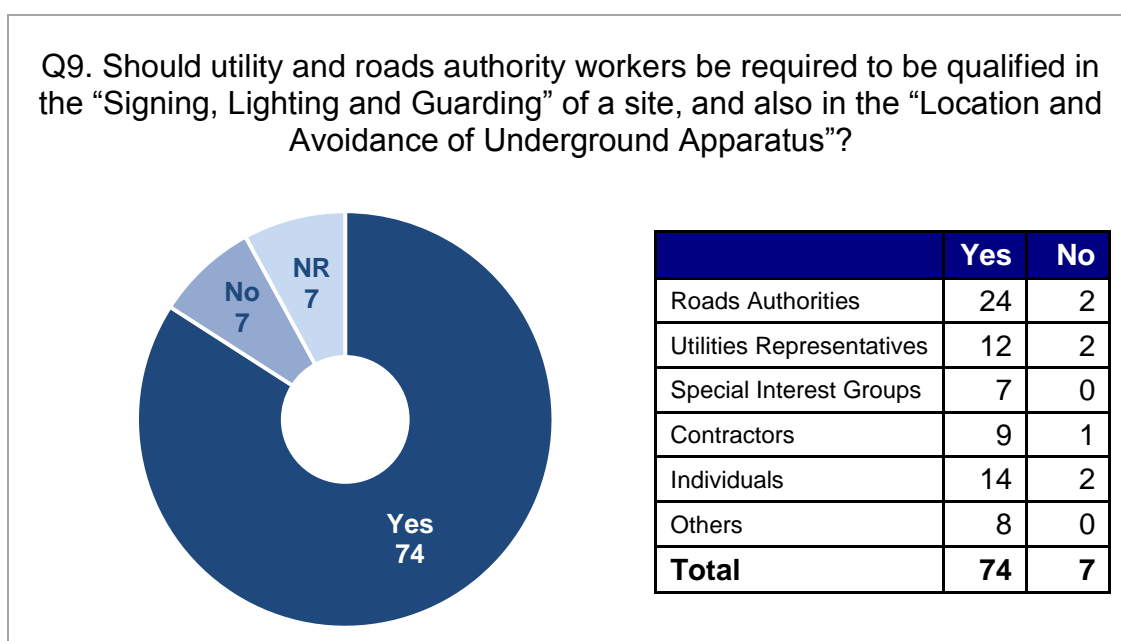
Requirements for Safety Related Qualifications

- 4.8 Current legislation requires those executing road works on behalf of utility companies to meet certain qualification standards. This includes at least one operative and the supervisor at each road work site to hold a qualification that is relevant to those works.

4.9 The Road Works (Qualifications of Supervisors and Operatives) (Scotland) Regulations 2017 also sets out mandatory requirements for each trained road worker and operative to hold two fundamental basic qualifications:

- The “Signing, Lighting and Guarding” of a site - essentially about the traffic management, setting out of cones, signs, signals and necessary pedestrian measures
- The “Location and Avoidance of Underground Apparatus”, essentially about how to detect pipes and cables when digging in the road, and how to properly deal with them when they are encountered

4.10 Views were sought on whether it was seen as desirable for all operatives to have their workers qualified to this minimum level, regardless of whether they were working on behalf of a utility company or a roads authority.



4.11 Again, almost all of those who provided a response to this question agreed with the proposal and support was found across all respondent ‘types’. **Supporting comments** indicated that qualified staff were essential to maintain good health and safety standards, and that the proposals should lead to safer sites and consistently good standards, minimising potential dangers to all road users:

“This will result in an overall improvement in standards; more people trained will increase the overall awareness of a team and assist in reducing the risks and number of injuries associated with working in the public road.” [Roads Authority Representative]

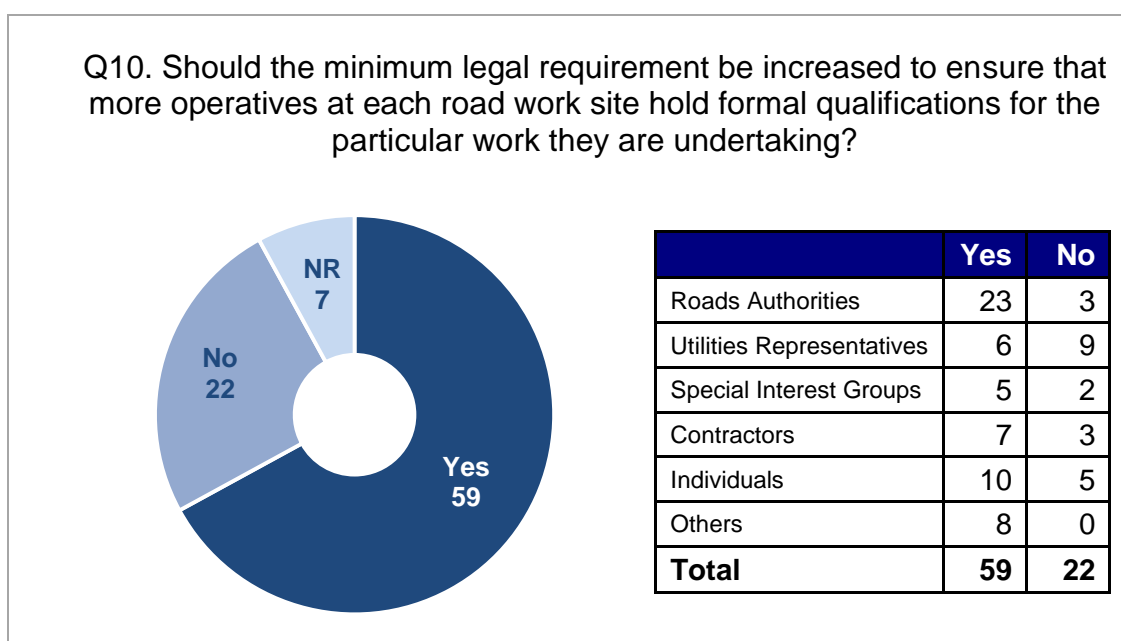
4.12 Others caveated their support and expressed concerns that the training requirements should not extend to the “Location and Avoidance of Underground Apparatus” (although they agreed with SLG training suggestions).

4.13 The small number of respondents who **did not agree** with this proposal put forward views that not everyone needed to be qualified, as long as there was a qualified supervisor responsible for the site. Other views included that it may be “excessive” in some cases and should be dependent on the complexity of works being carried out. Comments were also made that further consideration would need to be given to the qualifications required by those undertaking work experience or apprenticeship training:

“It is important that this proposal is introduced in a way that does not exacerbate the skills and resourcing issues facing the sector, or restrict apprentices, for example...To overcome this challenge, but recognising that working in the road can be a hazardous environment, [we] would like to see consideration given to a basic road safety qualification which can be undertaken by apprentices and trainees relatively quickly. The responsible team leader would be fully trained...This proposal would not compromise on safety, but would allow these individuals to gain experience and skills as they work towards being fully trained.” [Utilities Representative]

4.14 The way in which it would be monitored was also a concern, both for those who agreed with the proposal and those who did not and there was a suggestion that this may be a role that could be taken on by the Commissioner.

4.15 When asked if the minimum legal requirement that one person on a road work site must hold relevant qualifications should be increased to ensure that more operatives at each site hold a formal qualification for the particular work being undertaken, support was less unanimous. Utilities representatives were, in particular, less supportive of this proposal.



4.16 Where respondents **agreed**, this was again related to perceived increases in standards of health and safety that could be achieved, as well as views that it would reduce the burden of responsibility which currently can sit with just one person (although it is noted that many companies currently already exceed the required minimum of one, with some ensuring that all of their road operatives obtain formal qualifications). Having others who are qualified to provide holiday or sickness cover was seen as particularly beneficial:

“Ensuring there are enough people on site with formal qualifications is important. There should be more than one person with the required level of qualifications, in the case of illness or injury, for example, to that person which prevents them from being on site.” [Special Interest Group]

4.17 Where respondents **did not agree** with this proposal, this was because they felt that it may be disproportionate in some cases for all staff to be qualified. The scope and scale of works, in particular, may again mean that it was “excessive” in some cases. A ‘flexible’ approach seemed to be popular with many where the numbers of people requiring to be trained was appropriate to the works being undertaken (rather than a “blanket” rule). Comments were again made that it may not be appropriate for those serving apprenticeships and that ongoing update or ‘refresher’ training would be necessary (and that this, as well as initial outlay costs for training, would be expensive). One comment was also made that this requirement may become redundant over time, due to technological advances in the way that works are being carried out. Overall, however, there was agreement that contractors should be encouraged to engender an ethos of continuous professional development among staff, wherever possible.

5 Enforcement

5.1 Two questions were included in the consultation to explore enhanced enforcement activities. Specifically, this included strengthening the role of the SRWC in respect of enforcement powers and changes to the fixed penalty notices scheme, both designed to encourage better compliance with existing road works rules and regulations.

Enforcement and Intervention by the SRWC

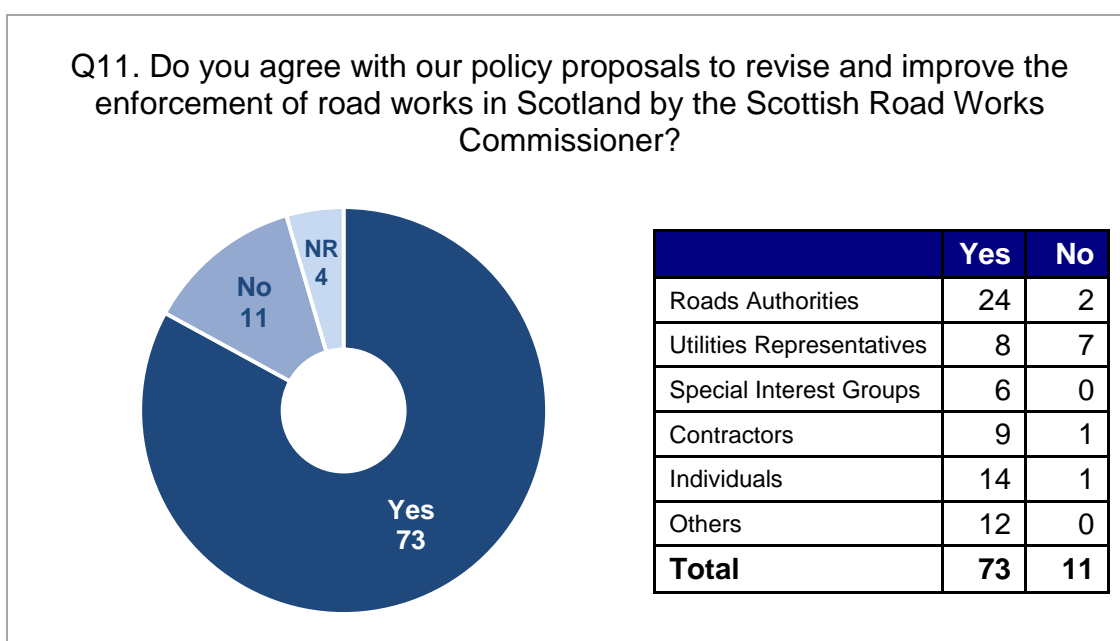
5.2 The NRSWA and RSA currently provide the main framework which guides the co-ordination of works by roads authorities and the co-operation of utility companies in undertaking works. Instances of non-compliance are typically reported to the Commissioner who intervenes to resolve any issues reported, and ensure that undertakers are fulfilling their duties. In cases that cannot be resolved, the SRWC has powers to impose financial penalties (currently up to £50,000) on those who fail to comply. Although this power rarely requires to be used, there are often cases where the SRWC is required to intervene to enforce compliance with the NRSWA and RSA. The scope of when such intervention may be appropriate and necessary is, however, currently quite narrow, and the consultation sought views on whether the remit of the SRWC could be extended in a number of ways to allow him/her to undertake inspection and enforcement activity and, if necessary, to penalise (or refer to the courts) in a wider range of circumstances.

5.3 Specifically, the consultation proposed that:

- An appropriate set of enforcement powers be clearly set out to ensure clarity, transparency and fairness in the enforcement process
- Broadening the scope for cases where the SRWC may intervene (i.e. beyond Sections 118 and 119 of NRSWA, which currently dictate the only situations in which intervention is permitted). This would also assist roads authorities to escalate any instances of non-compliance that they encounter and which they are unable to resolve at the local level (which currently require to be referred to the Crown Office and Procurator Fiscal Service)
- Allowing any Directions given by the SRWC to be made to all utility companies and/or roads authorities, where appropriate, rather than only to specific organisations (i.e. general powers of Direction relating to compliance with NRSWA or RSA). This should be accompanied by provisions making it clear to undertakers that non-compliance with such Directions is punishable and may result in enforcement action
- Allowing cases of persistent non-compliance to be referred by the SRWC to the Scottish Ministers, if required. This would act as a non-fiscal deterrent to those who do not comply (i.e. affecting reputational damage rather than affecting only commercial interests)

- Increasing the maximum penalty that can be imposed by the SRWC from £50,000 to £100,000 for serious non-compliance
- Giving the SRWC power to report serious offences to the Procurator Fiscal to be processed through the courts where all other enforcement and punishment options have been exhausted and have not been effective in improving the level of compliance. Offences reported should be capable of being prosecuted under solemn as well as summary procedure.

5.4 Each of these changes would require to be delivered by either Primary or Secondary Legislation.



5.5 Again, most of those who provided a response to this question **agreed** with the policy proposals:

“The SRWC role has become fully established and respected by the community as a fair and independent arbiter in issues that arise. This has already resulted in improved standards of compliance in many areas. Whilst standards are continuing to improve, there is still an inevitable reluctance on the part of roads authorities to resort to the ultimate deterrent of prosecution. The broadening of the scope of the SRWC’s role, together with the increased powers, provides the potential for some of the more serious failings to be investigated and resolved. As mentioned in the document, the stigma associated with a censure or penalty imposed by the SRWC has already been shown to be an effective deterrent and a means of driving up standards.” [Other]

5.6 Several respondents indicated that current enforcement options were not taken seriously enough. Some suggested that they would like to see even tougher enforcement options, including increasing the maximum fine for non-

compliance with the NRSWA and RSA to £250,000 and including failure to comply with the Human Rights Act. Unless enforcement options were strengthened, it was perceived that risks to the public may remain.

5.7 Some concerns were also raised that any inspection work carried out as part of the enforcement process should not be at a cost to the public purse. Overall, however, the main sentiment expressed was one of agreement that the role of the SRWC should be strengthened.

5.8 Where people **did not agree**, this was mainly due to concerns around the cost of implementing the proposals as well as a lack of evidence to show that strengthened powers would be adhered to. Some also expressed views that the introduction of quality plans should minimise the need for improved enforcement:

“We have seen no evidence that additional powers would be an advantage. Without a clear understanding of their benefit we are concerned that the expenditure required to implement these powers would be unnecessary. We note in particular that the introduction of Road Quality Plans should minimise the need for intervention by the Scottish Road Works Commissioner.”
[Utilities Representative]

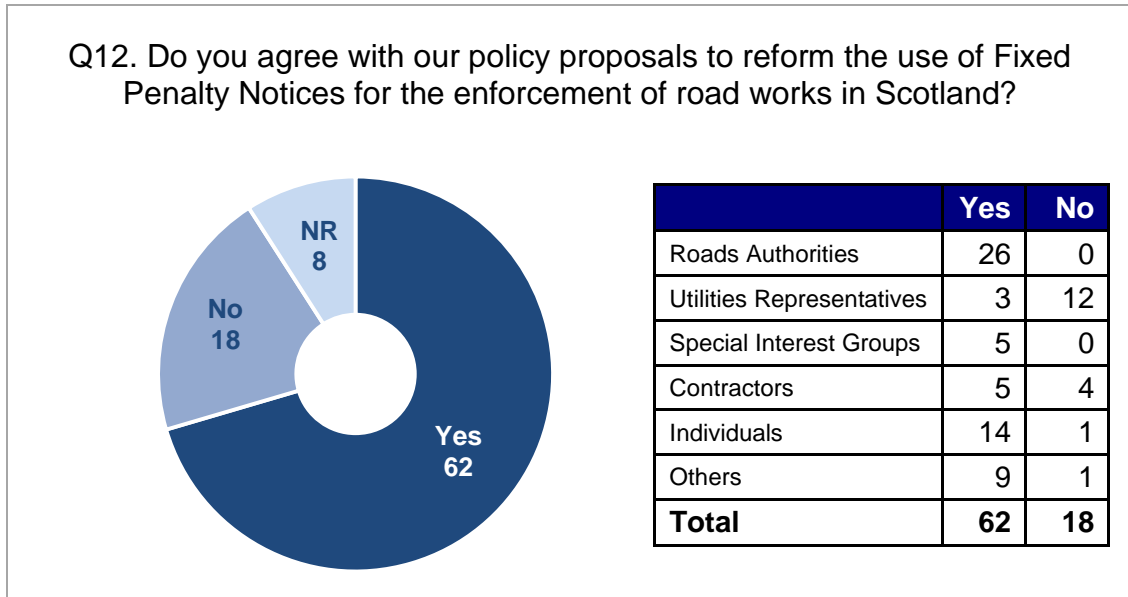
5.9 Others commented more generally that the proposals would create a ‘culture of punishment’ and that this was unhelpful to all in the road works community. The focus of the role should instead remain on early intervention, encouraging collaboration and better understanding, it was suggested. Overall, views against this proposal were mostly received from utilities representatives.

Reforms to Fixed Penalty Notices

5.10 Roads authorities primarily rely on the use of Fixed Penalty Notices (FPNs) as a non-court disposal for failure to comply with regulations. Such instances are currently confined to non-compliance with certain noticing requirements in relation to the SRWR and the consultation sought views on whether the scope for using FPNs should be extended to include any offence under NRSWA. While every effort would still be made to resolve non-compliance through non-punitive measures (including the provision of formal written warnings setting out what is required through future compliance), keeping the FPN as an option and making it available for use in a wider range of scenarios should aim to reduce instances of non-compliance occurring, i.e. use of FPNs as a deterrent. One scenario where it may be particularly appropriate is in relation to non-compliance with the signing, lighting and guarding (SLG) of road work sites.

5.11 In addition to broadening the scope of when a FPN might be used, the consultation sought views on whether the maximum level of FPN should be increased. This is because of observations set out in the Barton Report which noted that roads authorities often do not use FPNs since the level of penalty (currently £120 reduced to £80 for early payment) did not cover the administrative costs associated with issuing the FPN and processing the

associated payment. Proposals were therefore set out that the level of the FPN should instead be set at 20% of the maximum fine set for the associated criminal offence under statute. This would hopefully have more of a punitive and deterrent effect.



5.12 Again, the majority of respondents **agreed** with widening the scope of the use of fixed penalty notices and, again, some indicated that they would like to see even stronger fines being available, where appropriate:

“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.” [Other]

5.13 Comments were also made that the new system would increase the credibility of FPNs and that current fine were not a sufficient deterrent:

“Whilst the FPN process is advantageous, it seems to now be a 'given' that FPNs will be received and that is almost budgeted for by the most reoccurring offenders. The SRWC having the powers to intervene can only be of benefit to the community.” [Contractor]

5.14 In contrast, some comments reflected support of written warnings to be issued as a first measure before FPNs are issued, with FPNs being used only as a last resort where other enforcement methods have not worked.

5.15 Where people **did not agree**, this was because it was felt that the existing system of FPNs should first be reviewed before being changed. A lack of evidence to support the effectiveness of this proposal was also cited. The main view expressed against the proposal, however, was that the suggested increase to the fine amount was significantly greater than the administrative costs that it is currently designed to cover.

5.16 It was also suggested that an independent party may be better to carry out inspections, specifically in cases where a FPN was being considered for failures of Sample A inspections:

“Before extending the system there is a need to consider what other reforms are necessary to improve on the current model...Possibly the only way impartiality could be assured would be for a non-interested party/consultant to carry out a certain amount of random inspections on both roads authorities and utilities works, to give a balanced view of SLG on works carried out under a road opening notice.” [Utilities Representative]

5.17 One other individual respondent who did not agree with the proposals indicated that they perceived the system of FPNs was abused by local authorities as a means of generating revenue. Similar views were also expressed by utility providers:

“The “Barton Report” recommends that the level of FPN charges is increased and highlights that the current level does not cover the administrative costs of issuing an FPN. While we believe it is absolutely necessary for the punitive figure to cover associated administration costs we do not believe that the charge should be allowed exceed this. We are particularly concerned that if this was the case fines may become considered as a revenue stream driving the wrong behaviour.” [Utilities Representative]

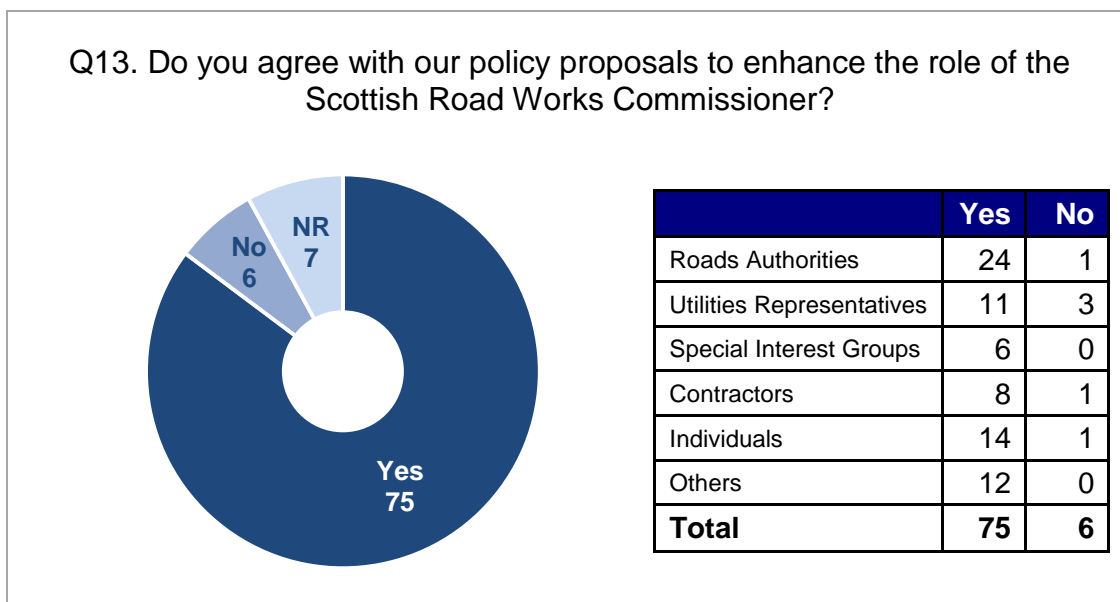
5.18 Responses to this consultation question showed clear differences between utilities providers (and their representatives) and all other respondent types. Utility providers were against this proposal, on the whole. That being said, some roads authorities also commented that the payment of fines by roads authorities may be difficult to enforce given ongoing cuts to local government funding (and a lack of money to fulfil the fine obligations).

6 The Scottish Road Works Commissioner - New Functions

- 6.1 A dedicated section of the consultation explored changes to the function performed by the SRWC, with proposals to enhance the role, particularly with regards to inspection of road works.

Enhanced Role of the SRWC

- 6.2 The role of the SRWC, as currently specified, does not extend to direct inspection functions. This means that they are reliant on others to report any non-compliance, or that they must use powers of Direction to request that certain information be provided from those undertaking works. While roads authorities currently have the remit for local oversight of works, to ensure that that they are compliant, there is no means by which roads authorities themselves can currently be inspected. In the interests of parity and fairness, it was proposed that the SRWC needs to be able to look at road works activity across the whole of the road works community. This would not replace existing roads authority powers of inspection, but would complement and enhance the overall inspection regime.
- 6.3 If the role of the SRWC was enhanced in this way, it was proposed that it may also be prudent to allow the Commissioner to appoint inspectors to work alongside him/her in carrying out inspections. This would assist the SRWC and ensure that the new function does not become overly burdensome on just one individual. Further, to facilitate both the Commissioner and any inspectors appointed by him/her, a set of inspection powers would need to be developed which set out the scope of the inspection role.
- 6.4 Finally, in order to protect and make completely clear the juristic powers of the Commissioner and any inspectors appointed by them, it was proposed that primary legislation be brought forward which clarifies the legal personality of the SRWC role as well as legislation to provide statutory protection for those fulfilling inspection roles. While this would not provide complete indemnity from civil proceedings and criminal prosecution (recognising that individuals should always be accountable for their own actions), it would provide protection for those undertaking activities which are determined by their role.



6.5 One question was included in the consultation to cover all of these proposed legislative changes and almost all who responded **agreed** with policy proposals to enhance the role of the Scottish Road Works Commissioner. It was felt that this would add an impartiality that is currently missing, and would also complement existing inspection regimes:

“By enhancing the role, an equitable function will give confidence in the system and bring about parity by equally inspecting Road Works Authority Works as well as utilities.” [Utilities Representative]

“Yes. It is considered that the introduction of a formal inspection function within the SRWC, carrying out a complementary inspection role, will provide a valuable check and balance against the existing RWA inspection function.” [Roads Authority Representative]

6.6 Comments were made that the performance of both roads authorities and undertakers had improved since the SRWC was originally appointed and that extending the role even further (as proposed) would bring about even greater improvements in the future. There was also strong agreement that the legal standing of the SRWC needed to be resolved.

6.7 Where people **did not agree**, this was because they felt that the proposals, as stated, lacked clarity and that some of the proposed changes would be dependent on other consultation proposals being implemented or dismissed (for example, the introduction of quality plans could reduce any requirement for further inspections or changes to FPNs.) Other comments were made that the new functions could potentially lead to an overlap with the inspection work already being carried out by the Health and Safety Executive (HE)/other authorities and may also impinge on the authority of the local roads authority, in some cases. That being said, others noted that the Commissioner having new powers may assist in speeding up existing local inspection practices. Several

comments were also made regarding the possible cost implications of introducing inspection powers for the Commissioner:

“The implementation of these changes is important, and it must be done proportionately and with consideration to the increased costs. [We] would like clarity on the likely scale of these costs and information on how these would be recovered. These changes should be considered in the round, with the overall impact of the changes taken in to account. The impact of these changes on the overall inspection burden need to be recognised.” [Utilities Representative]

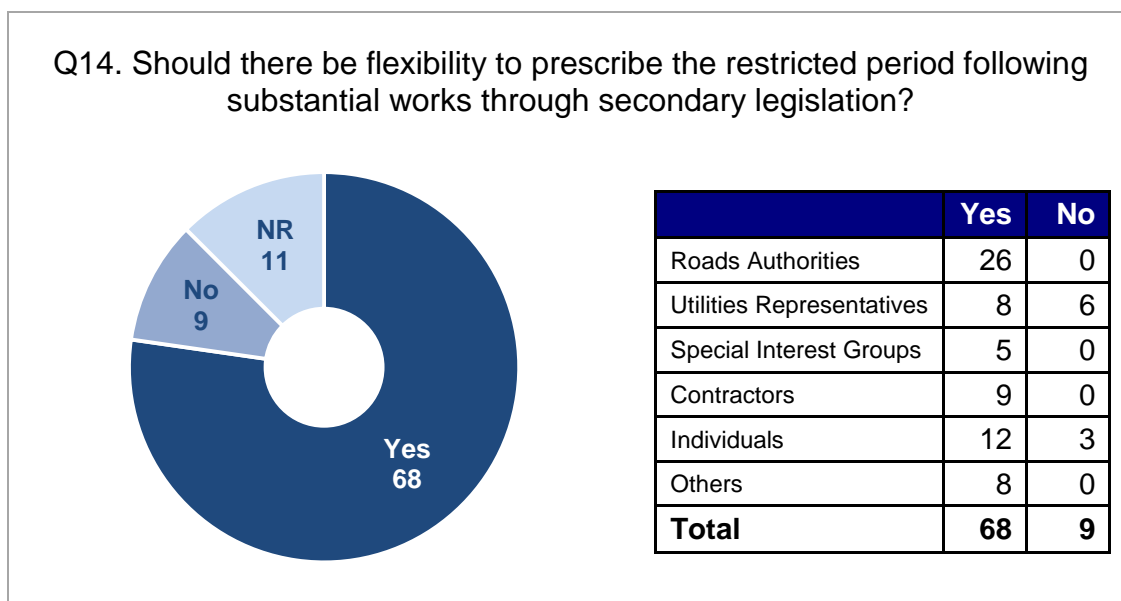
- 6.8 Overall, a lack of clarity around the extent of the changes and how they would be implemented was the main reason for resistance, and disagreement was only marginal (coming from only three utilities representatives, one individual, one contractor and one roads authority representative). Protecting the independence and securing the legal status of the SRWC (and their appointees) was seen as paramount and was supported by all.

7 Miscellaneous Provisions

7.1 The final strand of the consultation sought views on a number of ‘miscellaneous’ provisions. This section covered a variety of issues that had been raised by the road works community and those who have an interest in road works legislation in Scotland, including roads authorities, utility companies and the SRWC.

Restriction Periods

7.2 A proposal was put forward to allow greater flexibility on the ‘restriction period’ following substantial works, and to achieve this via secondary legislation. The desire is to encourage better co-ordination between utilities companies in carrying out maintenance of their plant and those undertaking road works before reinstatement occurs, as well as to avoid disruption to newly resurfaced carriageways. Although the Transport (Scotland) Act 2005 amended Section 117 of NRSWA to try and accommodate greater flexibility, this may still not meet the needs of the road works community.



7.3 The majority of those who responded to this consultation question **agreed** with proposals for greater flexibility (including all who responded on behalf of roads authorities):

“It is agreed that the restricted period following substantial works should be prescribed through secondary legislation. This proposal will encourage co-operation and co-ordination between roads authorities and utility companies, improve the service life of roads and be more in keeping with the expectations of the public, in relation to the co-ordination of road works.” [Roads Authority Representative]

- 7.4 In addition, some expressed that this change would be a more fair and transparent approach to prescribing the length of restrictions, and would result in improved protection of a roads authority's asset. It was also suggested that such changes would be in keeping with the 'pace of change':

"As with other areas of activity, the technologies, materials and processes that are used in road maintenance and in excavation/reinstatement are subject to constant change. If only because of this, it would seem appropriate to introduce the flexibility for being able to prescribe both the type of activities covered by restrictions and their lengths. Changes would be relatively straightforward to introduce into the SRWR." [Other]

- 7.5 This proposal was also welcomed on the basis that current legislation was unclear:

"The current legislation is vague and inadequate. There is a need to prescribe restriction periods through secondary legislation. This increased flexibility would improve co-ordination between roads authorities and undertakers for major schemes." [Individual]

- 7.6 Again, it was felt that many roads authorities and utility companies already worked voluntarily to extend the guarantee periods in some cases (i.e. up to three years), but that formalising this through legislation would be welcomed:

"A Roads Authorities and Utilities Committee (Scotland) agreement has been in place for several years voluntarily increasing the restriction period to 3 years for carriageways. The use of Secondary Legislation to define a clear approach to restrictions following substantial works is welcome." [Roads Authority Representative]

- 7.7 Introducing this change would protect investment in improving the public road and improve public perception in terms of co-ordination of works, it was felt.

- 7.8 While most respondents supported this proposal, some **negative comments** were made that guidance would still be needed around the length of period identified (e.g. linked to road hierarchy). There was also support for greater clarity around what constitutes 'substantial works':

"Clarification of the definition of 'substantial works' would also aid this - as it stands, something fairly 'normal' for a utility could result in what a roads authority sees as 'substantial works' - i.e. major traffic management or large reinstatement works." [Utilities Representative]

- 7.9 Others suggested that more consideration should be given to the flexibility needed in different cases, before any legislative changes are made, and that there was a need for more communication with the road works community around the rationale and implications of this change prior to implementation:

"Providing flexibility around the period of restriction, by introducing the ability to prescribe time periods within secondary legislation will allow changes to be

processed quicker and allow for the possibility of different scenarios. It has become clear that a singular approach does not fit all situations. The ability to prescribe such scenarios will result in the protection of the roads authority asset appropriately as well as provide for better co-ordination on the part of road works.” [Other]

- 7.10 In contrast, some felt that existing legislation was already sufficiently clear in this regard and that better enforcement of existing rules was instead necessary:

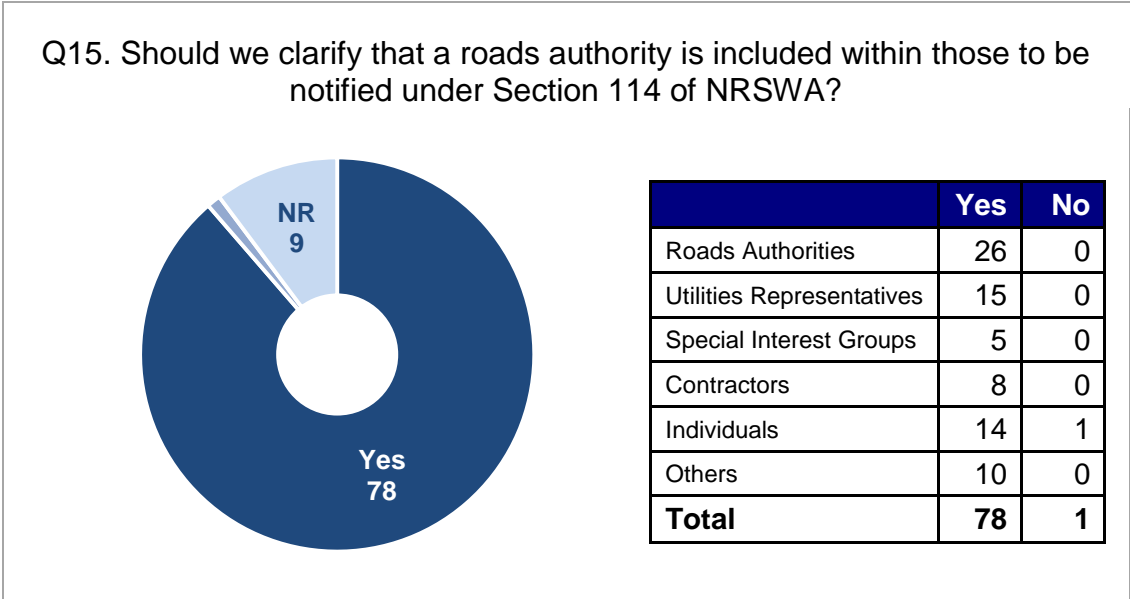
“Present legislation is sufficient but more co-ordination/co-operation is required between PUs and LAs to ensure the restricted periods are adhered to.” [Individual]

- 7.11 One respondent also questioned why validity periods were being addressed as part of the current consultation, given that they formed part of the Scottish Government’s 2013 Strategic Review. One comment was also made that the proposed change may lead to delays in the implementation of works (although no further explanation was offered).

- 7.12 Notably, this proposal caused a split in opinion among utilities representatives, with around half each offering support/lack of support. The only other ‘type’ of respondents who did not agree were individuals with no organisational affiliation. Again, several respondents did not provide an answer to this question.

Required Notice

- 7.13 At present, Section 114 of NRSWA does not include roads authorities as interested parties that a utility company must give notice to of planned works. While, in practice, there is usually good communication between utility companies and roads authorities to ensure that relevant parties are alerted to planned works, a proposal was included in the consultation to formalise this through changes to primary legislation.



7.14 All but one who responded to this question **agreed** with this proposal. Views were given that roads authorities were an essential notifiable body since they are the first line of enforcement for reinstatement, safety and inspection of roads, and that including them as notifiable bodies would allow them to fulfil their co-ordination responsibilities. Others stressed that noticing of relevant roads authorities does often occur despite the lack of legislation, but felt that this proposal would formalise the process and bring about ‘completeness’:

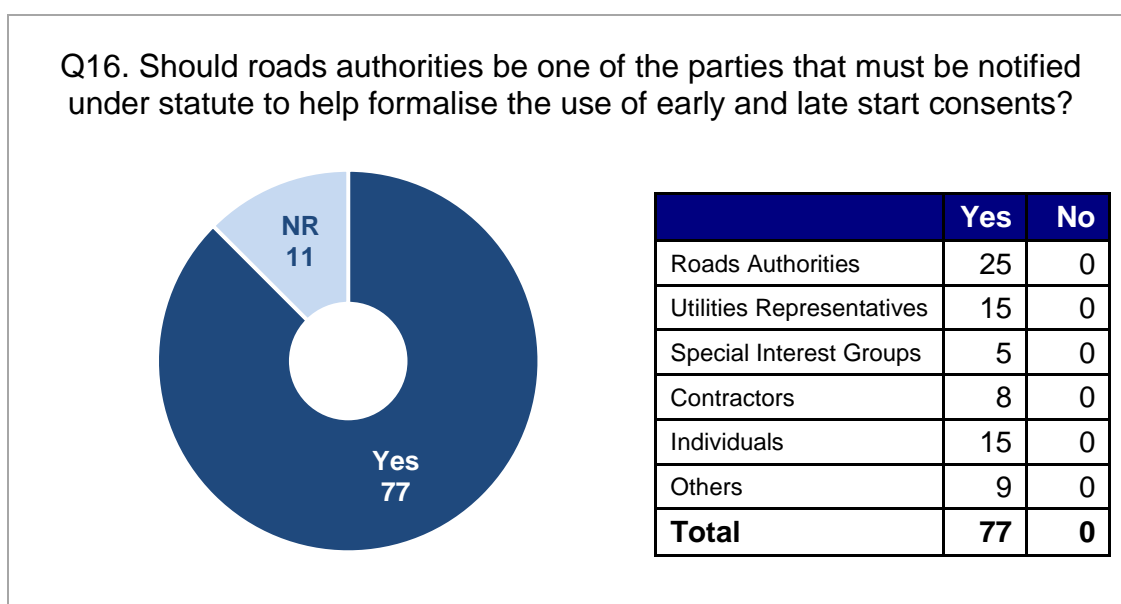
“This would close a loophole in the legislation by ensuring that the legislation reflects the actual good practice and co-ordination requirements.” [Roads Authority Representative]

7.15 A view was also expressed that, not only should roads authorities be informed, but that road authorities should also be tasked with passing on relevant information to other parties, including, for example, bus and freight operators who may be affected. The suggestion was that roads authorities should have a more direct role in noticing of ‘other’ relevant stakeholders once made aware of planned works.

7.16 The one individual who put forward a view **against** this proposal indicated that while Section 114 of the NRSWA covers Notice and Co-ordination of works, Section 113 already states that the local authority shall be given advanced notice. The change, therefore, was seen as superfluous.

Early Starts

7.17 Given that current legislation does not include roads authorities as a notifiable body, this can present barriers to a roads authority in giving their consent for early and late starts. The code of practice for the Co-ordination of Works in Roads sets out a RAUC(s) agreed process for early and late starts that assumes that roads authorities are aware of planned works and will be able, as a result, to co-ordinate and co-operate with utility providers accordingly. Only if roads authorities are included as a body to be notified under Section 114 of NRSWA can it be guaranteed that they will be able to meet their requirements in respect of early and late start consents.



7.18 All those who responded to this consultation question **agreed** with the proposal. The main reasons given in support were that it would improve consistency and co-ordination of works and would remove ambiguity:

“The aim of all the proposed changes is to improve the planning, co-ordination and execution of works. The more data provided to the authority and the community allows for informed decisions to be made which can only be a positive.” [Roads Authority Representative]

7.19 Again, several respondents noted that this practice was already operational on an informal basis, but welcomed formalisation of the process:

“The present arrangements for early and late start consents, detailed in the relevant advice note, works well. It would, however, be sensible to formalise the use of early and late start consents in legislation.” [Roads Authority Representative]

7.20 One comment was made that this change would also be of wider benefit to public transport operators who, it was perceived, can currently incur costs associated with changes to services:

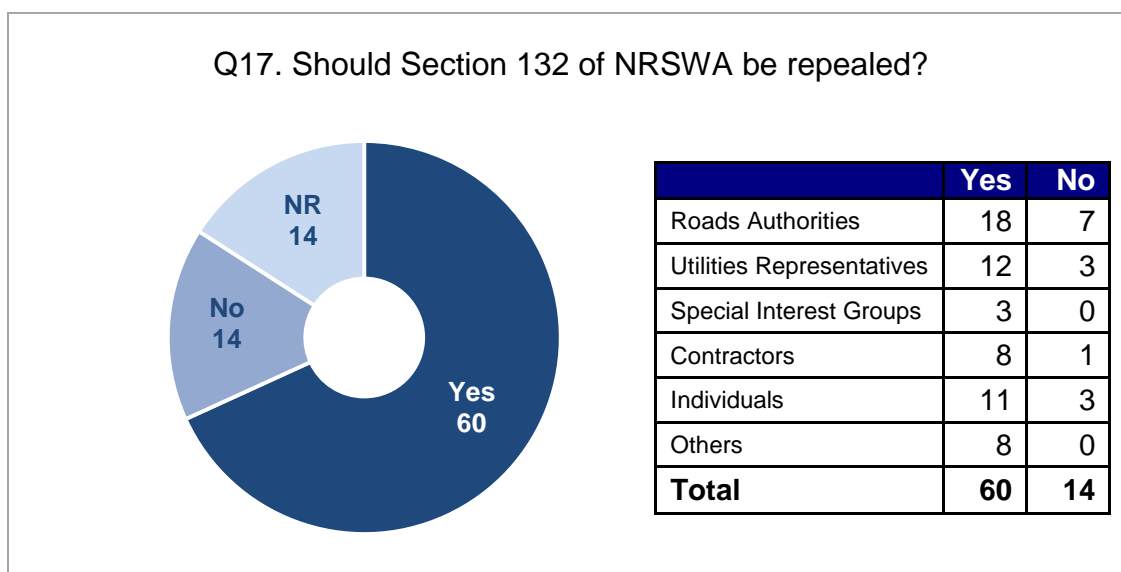
“Roads authorities should be one of the parties that must be notified under statute. To improve the process whereby road works are carried out in an efficient manner, minimising disruption to the road network, all affected parties have to have open lines of communication and work together. Currently early and late start consents allow utility companies to gain maximum flexibility and lower their costs whilst simultaneously minimising bus and coach operators’ flexibility and increasing costs. It is an inverse impact cycle and needs reversed.” [Other]

Section 132 of NRSWA

7.21 Section 132 of NRSWA makes provision for utility reinstatements which are affected by subsequent works, including where the roads authority has had to make remedial repairs in the absence of the utility company concerned repairing a defective reinstatement.

7.22 Ahead of the consultation, a working group of RAUC(S) concluded that the provisions of Section 132 are unworkable and this led for calls for the provision to be repealed.

7.23 In light of the proposed introduction of mandatory quality plans (discussed in Chapter 2 above), Section 132 would become redundant and so it was proposed that it should be repealed.



7.24 While the majority of respondents agreed with this proposal, some did not. Negative responses came mainly from roads authority representatives, but there were also some from utilities providers, individuals and one contractor.

7.25 Those who **supported** repealing Section 132 suggested that this was because current regulations were unworkable and that the mandatory quality plans would supersede its requirement. Indeed, most support was contingent only upon there being alternative controls in place, or the provisions of Section 132 of NRSWA being incorporated within proposed quality plans:

“The provisions of Section 132 could be considered for inclusion in mandatory quality plans. Where latent defects exist though, no period of time should elapse that allows the guarantee to expire. This could be written into secondary legislation.” [Roads Authority Representative]

7.26 A view was also expressed that allowances would need to remain for roads authorities to be able to carry out repairs directly on grounds of public safety.

7.27 Those who **did not support** the proposal expressed that Section 132 should instead be reviewed to make it fairer to undertakers (making it clear where liability for reinstatement defects occur), and that there was insufficient detail given in the consultation on the proposed quality plans to give confidence in Section 132 being repealed. It was suggested that the current provisions provided a valuable framework in relation to subsequent works and that, although the provisions were wide ranging, they were necessary to cover the complexity of different scenarios that may arise in relation to reinstatements:

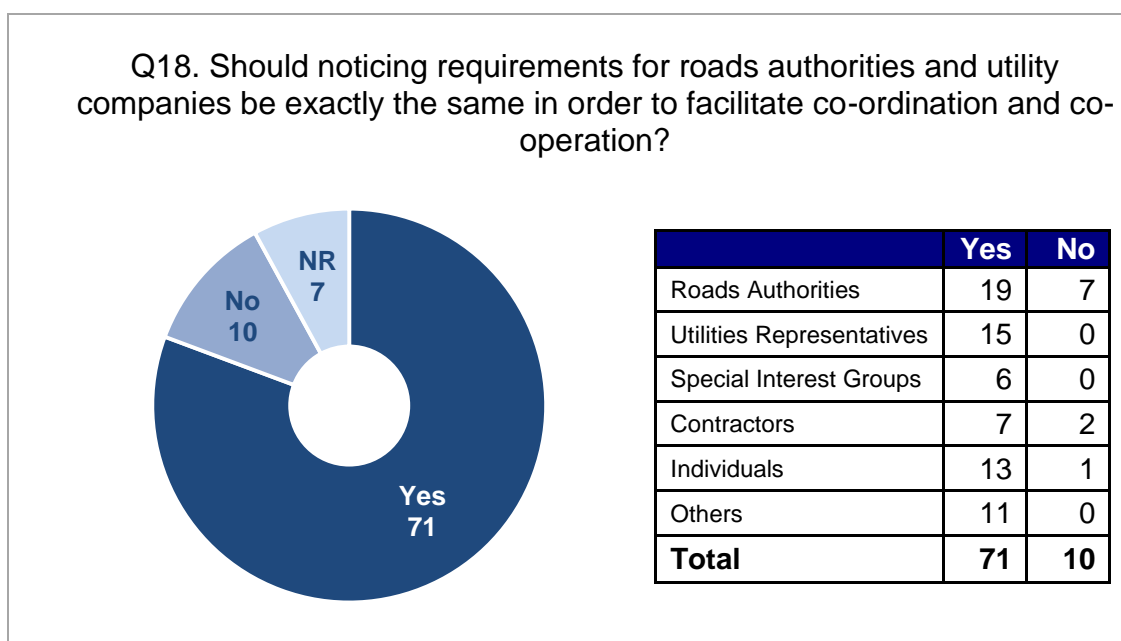
“The important provisions within Section 132 require to remain. Where latent defects are discovered, no time period should elapse that allows the guarantee to expire and where a reinstatement is made larger, the guarantee needs to be reset to the newest date.” [Roads Authority Representative]

7.28 Overall, for those who did not agree with this proposal, the main issue appears to be a lack of clarity around what would be used instead to ensure that quality is maintained but that undertakers and other third parties are protected.

Noticing Requirements

7.29 Notices require to be placed on the SRWR by both roads authorities and utility companies in respect of works being planned, undertaken or completed. However, to date, there has been some disparity in the obligations placed on the two types of bodies, both in terms of the timing of when notices require to be placed and the number of compulsory entries required (with utility companies being required to make significantly more compulsory entries in notices placed on the SRWR compared to roads authorities).

7.30 To achieve greater parity and fairness, and in the interests of facilitating improved co-ordination and co-operation, a proposal was put forward to make noticing requirements the same for both parties.



7.31 A large number of respondents **agreed** with this proposal, suggesting that fairness and equality between roads authorities and utility providers was intuitive and necessary to ensure transparency and better co-ordination and co-operation between the two. It was also felt that this change would simplify the process for those overseeing the SRWR as well as making the register more complete:

“Parity across the sector has been requested for a number of years and this would certainly bring uniformity in terms of noticing, however, it would also bring the added benefit of a move towards completeness of the SRWR, in terms of works being undertaken, this in turn would facilitate better works planning and minimise oversights of road occupation.” [Other]

- 7.32 However, comments were made that while equity was desirable, this should not come at the cost of rules being relaxed for either party, but should instead focus on both types of body being required to follow strict requirements:

“Noticing requirements for roads authorities and utility companies should be the same in order to facilitate co-ordination and co-operation but this should be achieved by applying the stricter notification requirements to all parties and not by relaxing any requirements for utility companies.” [Other]

- 7.33 Some respondents questioned the accuracy of suggestions that undertakers currently have to make *“significantly more compulsory entries”*, but indicated support for the proposal nonetheless. Another referenced permit schemes in England which have shown that benefits can be delivered to the public from enhanced planning, better co-ordination and reduction in works durations that result from better data sharing about network occupations. Similar benefits may be achieved if noticing requirements were changed in Scotland, it was suggested.

- 7.34 Importantly, some caveated their support for this proposal, mainly because they wanted to see some flexibility retained and did not want the process to become administratively burdensome:

“It is agreed that the standards of notification should be applied equally to roads authorities and utility companies, provided roads authorities are not required to issue registration details, in relation to road surfacing works etc.” [Roads Authority Representative]

“Yes, we agree that the notice periods for roads/utility should be the same. However, it is felt additional flexibility around the use of early starts is also required. There are some very good reasons to ask for and accept an early start, it isn’t always down to bad planning of works as often portrayed. It is important that all parties should follow the same noticing requirements as this will help in maintaining a high standard of co-ordination and co-operation, no one element of this process should be done differently by any other party.” [Roads Authority Representative]

- 7.35 Where respondents **did not agree**, this was mainly because it was felt there would be no obvious benefit to the community for what would be a significant increase in administrative burdens for roads authorities (and duplication of efforts), as well as views that there may be organisational barriers (in terms of a need for management sign-off of works) for those working in local government:

“Roads authorities should not be required to input details of reinstatements. Roads authorities already have asset management systems and this is duplication of effort for no real purpose.” [Individual]

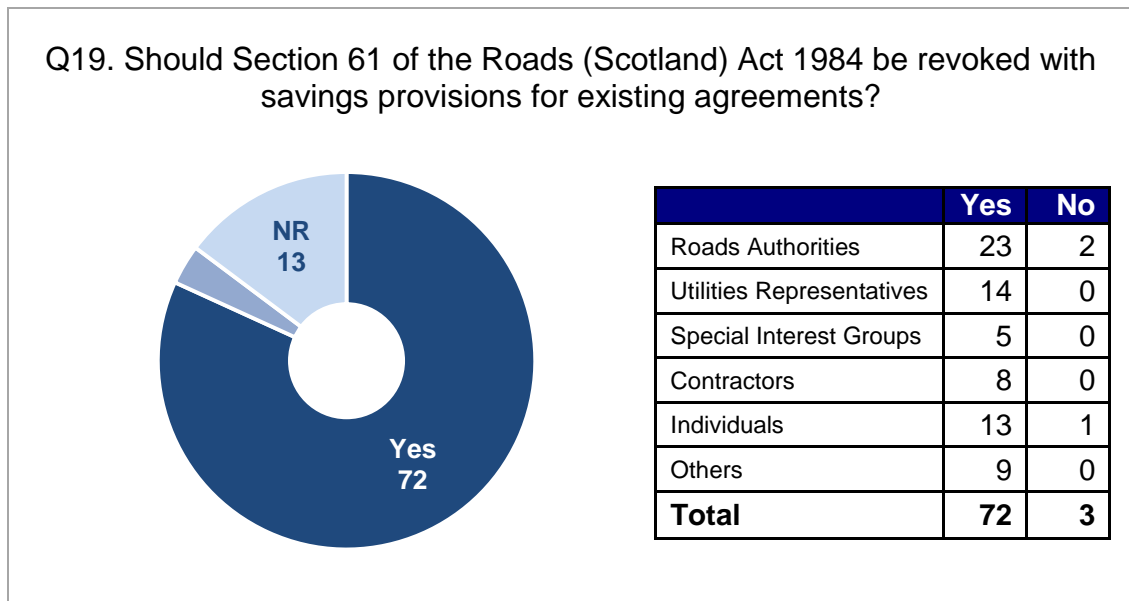
“Due to the nature of roads authorities works, this may be a harder task for them due to the decisions for their works usually being agreed by higher powers, whom are unaware of the noticing timescales and RAs themselves

have no control over this. This is a change that would have to happen at a government level. I do agree that it would only be fair to have consistency throughout all organisations but I am not sure that this, in reality, is viable.”
[Contractor]

- 7.36 Some concerns were evident that roads authorities may struggle to adhere to these new noticing requirements and that this may result in FPNs. It was not clear where the liability for such penalties would sit, nor how any revenue created by such FPNs would be distributed. Overall, roads authorities appear to be concerned that this additional demand may result in poor quality information being placed on the SRWR and would be extremely resource intensive while offering little value (since roads authorities are already responsible for the integrity of the network and addressing any issues that emerge).
- 7.37 The majority of those who did not agree with this proposal were roads authority representatives. All utilities providers (and their representatives) gave a positive response.

Section 61 of the Roads (Scotland) Act 1984

- 7.38 The final substantive question in the consultation sought views on whether Section 61 of the Roads (Scotland) Act 1984 should be revoked with savings provisions for existing agreements.
- 7.39 At present, anyone wishing to undertake road works other than utility companies, roads authorities or those undertaking work on their behalf, must seek agreement under either Section 109 of NRSWA, or an agreement made under Section 61 of the RSA to do so. This would apply, for example, to private householders or developers who may wish to undertake works.
- 7.40 The use of these different means by which agreement may be sought has varied over time and between different authority areas, and can be confusing for those seeking agreement. Although Section 61 has been seen as less onerous, historically, and on advice from RAUC(S) Advice Note 22, the Section 109 permission has been the standard approach taken by Scottish roads authorities. It is on this basis that the proposal to revoke Section 61 of the RSA was put forward.



7.41 All but three who gave a substantive response **supported** this proposal. There was consensus that Section 109 procedures were more robust and that consistency (everyone using one approach) should be pursued. There were also views that it would improve the information available on the SRWR:

“The proposal to revoke R(S)A Section 61 and mandate the use of NRSWA Section 109 would achieve greater consistency across Scotland and ensure all these works are available on the SRWR to assist in the planning and co-ordination functions.” [Other]

7.42 Several comments were also made that Section 61 of the RSA may be ‘dated’:

“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.” [Other]

7.43 Another reason given in support was limited knowledge or familiarity of the RSA provisions among the road works community:

“Where possible all NRSWA works should relate to the one act NRSWA 1991. It simplifies for all parties and few other parties than LAs have knowledge of RSA 1984.” [Individual]

7.44 Again, it was perceived that, if actioned, this proposal would provide clarity and formalise current practice across Scotland.

- 7.45 One individual who **did not support** this proposal indicated that they viewed existing legislation to be 'useful' (but offered no further explanation). One roads authority indicated that they would prefer to be able to retain the right to use Section 61 at their discretion. One note of caution was also expressed that the proposal would not cover Sections 56 under RSA where used for dropped kerb applications.
- 7.46 Again, it should be noted that several respondents opted not to answer this question.

8 Possible Impacts of the Proposals

8.1 As is standard practice for all Scottish Government consultations, questions were asked of respondents to explore the perceived impacts that the various proposals may have with regards to equality, privacy, business and regulation and the environment. Each of these areas of impact is central to any future action planning in respect of the main consultation proposals, ensuring that the Scottish Government meets its statutory obligations.

Equalities Impacts

8.2 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.

8.3 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.

8.4 Several responses were received in respect of whether the proposals contained in the consultation may impact on people with reference to these 'protected characteristics'. Most comments related to how disruption to the road network caused by road works may impact negatively on freedom of movement, especially for vulnerable road users (e.g. the elderly, the young and disabled). Indeed, several comments were made that the elderly and disabled were disproportionately affected by road works and that any proposals for changes needed to be particularly cognisant of the needs of these groups:

"...there are clearly many temporary roadworks sites that do not cater adequately or safely for pedestrians, and since disabled people's and older people's dependency on walking for their mobility is above the average for the population as a whole, then any failure in the proposals to properly address these issues will amount to indirect discrimination against these groups. In addition, the Equality Act 2010 places a duty on all service providers, including

statutory undertakers and roads authorities, to make reasonable adjustments to their services so that they can be used equally by those people with protected characteristics and those without. Guidance from the SRWC should be updated to reflect this legal duty.” [Other]

- 8.5 Several respondents noted that concessionary travel for older adults on public bus services means that they, in particular, may be disproportionately more likely to be impacted by disruption to services:

“Given that the National Concessionary Scheme for Older and Disabled People provides free travel on buses, a failure to address the issues raised in this response will have an impact on the bus network and therefore the ability of these groups to make vital journeys. It is an issue of accessibility and social inclusion. Bus operators need to be able to mitigate for the impacts of road works as best as possible and this requires timely information on the location and start and end dates of works as well as steps to be taken to free the bus from road works congestion where possible. This must include priority through road works and, in the area of road works, to minimise delays and disruption to passengers.” [Other]

- 8.6 Although not a ‘protected characteristic’, some suggestions were made that the proposals did not go far enough to ensure that those living in areas of deprivation were not disproportionately affected (since there may be greater reliance on public transport and lack of alternative means of travel in cases where public services are disrupted due to road works activity). Similarly, areas where there is no rail provision, and hence a dependence on roads or private and other public transport modes may be discriminated against unless treated as priority areas when it comes to road works, it was suggested.

- 8.7 In contrast to these concerns, several comments were also made that the proposals should, in principle, have positive impacts and be beneficial (especially in terms of safety and accessibility) to both vulnerable road users and the Scottish population as a whole:

“In theory, the proposals outlined should have benefits for more vulnerable groups, including the elderly and those with disabilities, as more efficient roadworks should reduce occupation of the road.” [Utilities Representative]

- 8.8 There was, however, a desire to see ongoing monitoring and strengthening of the way in which works are carried out and, in particular, how noticing is implemented, to ensure that the needs of vulnerable road users and pedestrians remain central to all road works decisions:

“Breaches of the Safety of Street Works and Road Works: Code of Practice can have a significant negative impact on people with protected characteristics. This includes failure to provide clear walkways of sufficient width for wheelchairs, buggies or accompanying guide dogs. Failure to provide ramps is also a common occurrence. For these reasons, quality plans must consider

equality issues, and enforcement must be more consistent and stringent.”
[Special Interest Group]

- 8.9 While most equality impact views were generic in terms of the proposals put forward, some comments were also made on specific proposals. This included views that changes to the requirement for qualifications may impact on non-UK site operatives who have limited English but are required to sit written exams to obtain the necessary qualifications. Other specific concerns included the need to strengthen even further the requirement to ensure sufficient and appropriate diversion signage and guidance is provided for all works affecting pedestrians and the mobility impaired. One respondent commented that they would like to see the FPN system extended to cover other aspects within works, such as pedestrian or disabled access through works, to achieve even greater impact.
- 8.10 One comment was made in support of changes to the ‘Red Book’ but it was noted that the impacts of this change may be ‘marginal’:

“It could be argued that making the "Red Book" a statutory code for roads authorities might improve provision at road works for people with a disability. However, as many authorities use this code already and the alternative guidance in Chapter 8 of the Traffic Signs Manual incorporates the same requirements for provision for those with a disability, it is likely that any impact would be marginal.” [Roads Authority Representative]

- 8.11 Specifically, in relation to children and young people, it was felt that some of the proposals may have impacts on safety, mainly due to their reliance on public transport (i.e. for young non-drivers and those using buses to travel to school) as well as the safety of those using prams and relying on safe pedestrian routes:

“Young children and their parents can experience serious inconvenience and safety issues where works are poorly managed. Therefore, the legislation and supporting guidance needs to ensure all works sites are passable by buggies, and also parents walking two abreast with their children. This includes placement of signs on footways, as children should never be forced to walk on the road.” [Special Interest Group]

- 8.12 Some comments were also made in support of special provisions being made for works carried out near schools and where there was a high-footfall of pedestrians using buggies:

“...the Code of Practice should include specific requirements to the safety of all affected by works perhaps extending to special requirements about works near schools and with specific consideration to active travel.” [Other]

- 8.13 Again, however, most felt that the proposals should not impact negatively on children and young people and, indeed, that strengthening the legislation in relation to safety at road works sites and the training and qualifications of operatives may ultimately enhance children’s awareness and personal safety.

Similarly, one respondent suggested that additional inspection by the SRWC may improve safety at and around road works sites which was especially important for children and young people. Other comments were made in support of ongoing monitoring and improvement of safety measures for the benefit of children and young people:

“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.” [Other]

- 8.14 Overall, the dominant view was that the proposals would be beneficial to children and young people if implemented, as well as older and vulnerable road users:

“The implementation of everyone working on the highway working to the same high standard can only benefit the public at large. Young, elderly and infirm.” [Contractor]

- 8.15 Finally, it is important to note that several respondents indicated that they would be unable to comment on equality impacts until or unless the proposals had been implemented and their effectiveness assessed.

Business and Regulation Impacts

- 8.16 In taking forward the regulation of Road Works, a Business and Regulatory Impact Assessment will be prepared to analyse whether the policy proposals may in any way increase or reduce the costs and burdens placed on businesses, the public sector and voluntary and community organisations. To inform this assessment, views were sought from consultation respondents on likely business and regulation impacts.

- 8.17 The two main views put forward in response to this question were that the proposals would either (1) lead to savings for local authorities in terms of reducing the costs to repair roads damaged by poor reinstatements, or (2) lead to increased costs to local authorities (administrative and otherwise) in terms of fulfilling new duties or obligations. Specifically, the increased costs were most likely to result from the need for more inspections (staff time), the completion of more paperwork, staff training and the need to gather, create and cleanse data for imputing to the Vault information system and the SRWR. Implications in relation to IT facilities, upgrading of technology and database management were also anticipated, especially in relation to the proposed two-hour notification requirement.

- 8.18 While most perceived that cost increases would occur across the board (i.e. for both undertakers and roads authorities), comments were also made that the proposals would impact more on utility companies than roads authorities, in terms of increased costs and burdens. This was especially true in relation to

quality plans, extended guarantee periods and changes to the two-hour notification period (which may require some out-of-hours working in order to be implemented).

8.19 Others, however, commented that any additional costs for undertakers should be offset by savings made in reducing the requirement for remedial work. A 'cultural shift' was posited by one respondent who suggested that quality plans should be seen as a replacement rather than an addition to the current regulatory regime. If seen this way, utility providers were more likely to accept that quality plans may reduce costs over time (even if the short-term impact was costly).

8.20 Indeed, while most perceived that there would be cost increases arising from the proposal in the short term, most also agreed that these would ultimately lead to longer term savings:

"Yes - initially there will be increased costs and burdens on both the utility community and the roads authorities. However, these increased costs will lead to increased standards throughout the industry and when taken in context with the cost of delays, remedial works, damages and incidents, I believe there will be significant overall savings." [Utilities Representative]

8.21 In relation to specific proposals, for those undertaking works, it was considered that there may be cost impacts in terms of funding for additional training/qualifications, although comments were made that this was justifiable:

"For the road works community, there could be slight increases in cost in some areas, such as additional training, but that should be fully justifiable. Some of the principal objectives of improving quality should lead to reduced costs, as "right first time" avoids the costs of subsequent remedial actions." [Other]

8.22 Cost increases were also expected in relation to the need to produce quality plans and extended guarantee periods (i.e. investing more to ensure 'getting it right first time'). There were mixed views on whether this would be a cost increase to utility companies (in particular) or whether it would be cost neutral:

"If, as intended, the proposals were to result in an overall improvement in the standard of road works, then the overall cost to all sectors should reduce as it is more efficient to get things right the first time rather than wasting resources having to repeat things." [Roads Authority Representative]

"Utility companies may argue that their costs will increase. However, the cost should fall with the disruptor, not the disrupted within a fair and more equitable system. Ultimately this process should lead to a reorganisation of utility companies' approach to road works through improved co-ordination and efficiency. This will benefit the whole economy." [Other]

8.23 Fines for those who do not comply might also impact on some utility companies, it was felt. Increases were also seen as inevitable for the SRWC

related to the proposed expansion of the Commissioners functions (although the exact nature of these perceived increases was not clear).

- 8.24 In respect of 'road user' costs, several comments were made that the proposals should ultimately benefit the general public, through reduced disruption and safer streets (e.g. less onward cost to public bodies such as the local authority and NHS which result from accidents/injury arising from uneven surfaces, potholes, trip hazards and obstructions). The benefits and savings were seen as potentially favouring bus users (and providers) most of all, due to reduced disruption to services and improved general public perception of bus as a mode of travel (if road works management was better co-ordinated):

"The better management of road works will deliver significant reliability benefits, and hence cost savings, for public transport operations. We are confident that the monetised journey time savings accrued by public transport passengers will outweigh any financial costs borne by private companies carrying out road works." [Special Interest Group]

- 8.25 Finally, one comment was made that the cost implications of the proposals were far reaching and that it was not possible to comment accurately on business impacts within the timescale for the consultation. Others also commented that it was difficult to comment on business and regulatory costs until after the proposals had been implemented and the full extent of the changes and their operation was known.

Privacy Impacts

- 8.26 An impact question was also included to gather views on whether any of the proposals on road works regulation may have an impact on the privacy of individuals.

- 8.27 While this question attracted very few substantive responses overall, several comments were made in relation to the provision of plant information to the SRWR being made mandatory. It was felt that the public release of information on the SRWR may impact negatively on the privacy of individuals, as well as posing some security concerns, and would need to be carefully managed. If implemented appropriately, however, it was suggested that the proposals may lead to an improvement in data protection, specifically if personal information was removed/redacted in any version of the SRWR made available to the public:

"The proposal for the duty of the commissioner to make the SRWR available for public inspection with a duty to actively publish relevant information on road works would have a beneficial impact on the privacy of individuals as personal details could be redacted from the published information." [Roads Authority Representative]

"Removing the duty to make the Scottish Road Works Register available for inspection will mitigate any current privacy concerns regarding information

already contained within the SRWR and will ensure no privacy concerns for information added moving forward.” [Other]

- 8.28 One comment was made that the proposals should perhaps be extended to make information more publicly available regarding poor contractor performance:

“The legislation should allow naming and shaming of the worst contractors and sharing information on compliance between road authorities and the Commissioner. All quality plans should be in the public domain and subject to FOI regulations. Streets are public spaces, so information on how they are managed (even by private companies) should be publicly available.” [Special Interest Group]

- 8.29 Comments were also made that private householders may be impacted by road works in the areas around their homes, but that this may be unavoidable:

“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.” [Other]

- 8.30 One of the other main concerns regarding private householders was that the proposals may impact negatively on the possibility to have a dropped kerb installed (although there was no explanation given for why this was perceived to be the case).

- 8.31 Overall, most respondents viewed that it was unlikely that the proposals would have any impact of the privacy of individuals.

Environmental Impacts

- 8.32 The final impact question sought views on whether any of the proposals on road works regulation may have an impact on the environment.

- 8.33 The majority of respondents perceived that no negative environmental impacts would arise as a result of any the proposals. Indeed, several commented that they perceived there could be positive impacts, including reduced emissions resulting from improved traffic flow and less traffic congestion, reduced emissions from repeated visits to sites, reduced noise pollution (if works were completed efficiently) and reduced use of raw and recycled materials (where works were carried out ‘right first time’):

“Better working practices (including standardised reinstatements) and extended warranty periods is likely to improve the quality of workmanship and therefore reduce the number of failures. This should reduce the number of repeat visits, thus, lessen the impact on the environment/surrounding roads networks from repeated road works.” [Roads Authority Representative]

- 8.34 Air quality in particular was seen as being positively impacted by the proposals, especially in respect of better flow of traffic, and encouraging modal shift to buses if disruptions were minimised through the better co-ordination of road works:

“Congestion leads to worsening air quality. If buses are not freed from the impacts of road works where possible then reliability and punctuality are reduced, leading to modal shift away from public transport. This, in turn, leads to more transport based emissions... If the proposals contained are incorporated, it will see emissions fall in totality and it will see local air quality improve as a result. Local air quality should be a part of the quality plan for medium to large works.” [Other]

“If road works management is improved, then it is possible that the bus will be seen as a more attractive mode of travel and in turn, this will have beneficial effects on the environment.” [Other]

- 8.35 One comment was made that consideration should be given to the introduction of road charging to incentivise all within the road works community to reduce the time spent on works, thus reducing delays for the travelling public. Two comments were also made that the proposals were not sufficiently ‘proactive’ in minimising environmental impacts insofar as they did not encourage innovation or working towards a ‘material substitution’ method, for example.

- 8.36 Another comment was also made that there may currently be missed opportunities to trial reallocation of road space at the sites of longer term and larger, programmed works:

“For example, if a lane is taken out by utility works, the route could be designated for cycling and walking only, with a diversion made for vehicular traffic. This could allow for testing of potential reallocation of road space and traffic management for the short term - similar to a ‘pilot’ - and would assist in assessing any impacts on general traffic flows and accessibility across the wider area, which would have a positive impact on the environment by helping to reduce congestion and improve air quality.” [Special Interest Group]

- 8.37 Overall, however, the proposals were seen as creating opportunities to reduce environmental damage, rather than adding to it.

9 Discussion

Overview of Findings

9.1 The consultation sought views in response to 21 questions spread across six different themes and attracted a wide range of views in respect of each. The main findings from the analysis indicate that:

- Improving Quality: there was solid support for the introduction of quality plans, and most also supported a review of their effectiveness after a suitable period, removing the need for the latent defect process (but only if there is an overall improvement in the quality of reinstatements). Although the majority of respondents also considered that there should be a single guarantee period offered on utility reinstatements of six years, (regardless of the depth of excavation), there were some concerns that this may be overly bureaucratic and might be unfairly influenced by the existing 'poor' condition of some roads. Additional clarity on the scope for a code of practice on reinstatement, including all activity relating to the execution of road works was also welcomed by most, although there was some concern about the complexity of this task and that it may 'muddy' existing guidelines.
- Improving the availability of road works information: proposals to change noticing requirements and to change the placing and accessing of information on the SRWR received mixed views (and received the least support across all consultation themes). While some felt that making information more accessible and available in a shorter time would assist with the planning and co-ordination of works and traffic movement, others felt that the proposals were too demanding and would be administratively challenging to implement. Several also questioned the rationale/evidence on which the noticing proposals were based. The mandatory uploading of plant information on the Vault received good support, but the release of information on the SRWR was questioned by some, mainly on the basis of security concerns.
- Improving consistency: there was clear support for introducing consistency into Codes of Conduct for those working at sites, as well as for making the requirements for safety related qualifications more stringent and applicable across the board. Although there were mixed views around increasing the minimum legal requirement to ensure that more operatives at each road work site hold formal qualifications for the particular work they were undertaking, these related mostly to the need for flexibility to accommodate minor works, and those on apprenticeships.
- Enforcement: there was reasonable support for both strengthening the role of the SRWC in respect of enforcement powers and changes to the fixed penalty notices scheme, with a widespread recognition that both would potentially lead to better compliance with existing road works rules and regulations. The costs of implementing these proposals, as well as concerns that more consultation was needed were the main reasons given in opposition.

Concerns around creating a punitive culture were also raised. This area of the consultation was also where the greatest discrepancy in views between roads authorities and statutory undertakers was noted.

- The Scottish Road Works Commissioner - new functions: proposals to enhance the role of the SRWC attracted the most support, overall. Almost all who responded agreed that the creation of new functions in respect of inspections and clarifying the juristic status of the Commissioner would build on the progress that had been achieved in Scotland to date. The main dissenting views related to a perceived lack of clarity around how the proposals would be implemented, potential for duplication of inspection efforts and associated costs.
- Miscellaneous provisions: there was strong support to allow greater flexibility on the 'restriction period' following substantial works and also for noticing requirements to be made the same for all those undertaking works. Absolute agreement was noted, however, with both the need to clarify that a roads authority is included within those to be notified under Section 114 of NRSWA, and roads authorities being one of the parties that must be notified under statute to help formalise the use of early and late start consents. Almost all who gave a response also agreed that Section 61 of the Roads (Scotland) Act 1984 should be revoked. There was less support for Section 132 of NRSWA to be repealed, mostly on the basis that the rationale for this move had been poorly conveyed.

9.2 Comments made in relation to possible 'impacts' of the proposals focussed mainly on the importance of ensuring that carriageways and footways are passable and free flowing for all road users, but especially vulnerable road users and those who rely on public transport. Business and regulation impacts were viewed largely as difficult to quantify. Overall, however, it was felt that the proposals (if successful in their aspirations) should result in improvements for all members of society, as well as reducing environmental harm, over time.

9.3 A strong cross-cutting theme across the consultation was agreement that, although there is already a great deal of good work being undertaken in the road works community, and that there have been significant improvements over time, especially since the SRWC has been in post, there is still room for improvement. There was also evidence of a commitment by all those in the community to work together to try and find solutions that are proportionate and fair to all. Equity, transparency and clarity were all mentioned as anticipated outcomes which would arise from the proposals.

9.4 The main concerns or objections raised in respect of the proposals (across the board) were around the potential for increased costs to both utility companies and road authorities, and perceived increases in administration and bureaucracy. Some greater clarity was also required for several of the proposals, which some perceived to lack a clear rationale. That being said, most still welcomed the majority of proposals 'in principle' on the basis that they

would improve transparency and lead to greater parity in the way that roads authorities and utility providers are treated.

- 9.5 Overall, the analysis of responses showed a bias in support for the majority of the proposals, although it is noted that the interests of those who responded (and the proportionate representation of roads authorities, statutory undertakers and others) may have influenced this.

Possible Gaps in the Evidence

- 9.6 The consultation attracted a strong response, both from those who work directly in the planning, co-ordination and execution of road works, as well as those with a wider interest in protecting the footways and carriageways for the benefit of all road users. Responses were received from public transport providers, as well as regional transport partnerships and special interest groups. Responses were also received from those working exclusively in Scotland and those with wider jurisdictional interests. To this extent, the consultation attracted a good mix of views and interests and a wide range of end users' voices were included.
- 9.7 That being said, the majority of those who responded did so on behalf of either a roads authority or utility companies/undertakers, and almost all could arguably be considered professional members of the road works community. There were few responses received from individuals. This means that many of the responses were technical in nature, and were based on a wealth of experience and historical knowledge of road works legislation and operating procedures/guidance, rather than representing the views of more 'naïve' road users. This is arguably a gap in the research and, indeed, several comments were made across various themes that engaging with 'local communities' or the general public may be an appropriate next step before some of the proposals are implemented.

Next Steps

- 9.8 The consultation was designed to collect stakeholder feedback which could be used (alongside other evidence) to inform future improvements to the standards and quality of road works in Scotland. The quality, breadth and volume of responses that the consultation attracted was encouraging and will allow this outcome to be realised.
- 9.9 The Programme for Government included a commitment to bring forward legislation to improve the regulation of road works in Scotland, and to enhance and improve the role of the SRWC. The findings presented here will influence proposals within any Bill which is subsequently introduced in the Scottish Parliament. However, legislative change is only one part of a wider package of regulatory reforms, and many of the proposals, which do not require primary legislation can be acted upon more swiftly. This may include use of secondary legislation, and/or codes of practice.

9.10 Through this consultation, the road works community and others have made their voices heard. The important contributions that have been made are much appreciated and will ensure that any future changes that occur to raise the standards and quality of road works in Scotland best represent the interests of all.

Appendix A Glossary of Terms

Scottish Road Works Commissioner (SRWC)	An independent public official established under section 16 of the Transport (Scotland) Act 2005 - accountable to Scottish Ministers.
Scottish Road Works Register (SRWR)	Central tool for Scottish roads authorities and utilities to assist with planning/co-ordination of road works; source of data for indicators to determine performance of the undertaking of road works; accurate source of information for the public and interested organisations of future, ongoing and past road works.
Vault - Community Apparatus Data Vault System	Supplementary to the SRWR - provision of information to Vault is currently voluntary.
Primary Legislation	An Act of the UK or Scottish Parliament.
Secondary Legislation (such as a Scottish Statutory Instrument (SSI))	A Statutory Instrument, normally an Order or regulations.
Code of Practice	Working documents that contain a set of rules and guidance often underpinned through primary and secondary legislation.
Direction (SRWC Powers of...)	Instruction issued by the SRWC to road works industry where certain action is to be taken.
Plant Information Request (PIR) ¹	Prior to application for a road permit, make a Plant Information Request (to local authority) for the site to check if there is any utility company or other private apparatus under the road, to prevent damage to other plant.
Roads Authorities and Utilities Committee (RAUC(S))	Comprises representatives of the Roads Authorities and the Scottish Joint Utilities Group together with representatives of the Scottish Government and the SRWC.
Fixed Penalty Notice (FPN) (for road	Issued by roads authorities to utility

¹ For developers and private individuals who wish to undertake works in roads

works offences)

companies for certain road works offences set under the Road Works (Fixed Penalty) (Scotland) Regulations 2008 and the Roads (Scotland) Act 1984 (Fixed Penalty) Regulations 2008.

Inspection (Category A)

Inspection of road works in progress.

Roads Authorities

The 32 Scottish Local Authorities plus Transport Scotland for trunk roads.



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ISBN: 978-1-911582-35-9

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This document is available on the Transport Scotland website: www.transport.gov.scot
Published by Transport Scotland, March 2018

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