

## Final Business and Regulatory Impact Assessment

### Title of Proposal

Road Works Legislation – Transport (Scotland) Bill measures

### Purpose and intended effect

- **Background**

Road works are undertaken by roads authorities and statutory undertakers (or utility companies) either to improve the road surface or to install, maintain, inspect and repair plant or apparatus within the road. These works are necessary in order to maintain the road as an asset and enable the provision of utilities and services to businesses and all others who need them.

The duties and responsibilities of roads authorities and statutory undertakers who carry out road works are largely set out in the Roads (Scotland) Act 1984 or the New Roads and Street Works Act 1991. In September 2015, Derek Mackay, the then Minister for Transport and the Islands, commissioned an independent review of the office and function of the Scottish Road Works Commissioner (SRWC) by Jim Barton, former senior chartered engineer with Transport Scotland. Mr Mackay was keen to build on existing strengths and in particular to improve of the regulations and enforcement of road works. The review made a number of recommendations to improve the regulation of road works in Scotland, which form the basis for some of the measures in this area within the Transport (Scotland) Bill ('the Bill'). Specific detail on these provisions can be seen in the Policy Memorandum accompanying the Bill at:

[http://www.parliament.scot/Transport%20\(Scotland\)%20Bill/SPBill33PMS052018.pdf](http://www.parliament.scot/Transport%20(Scotland)%20Bill/SPBill33PMS052018.pdf)

- **Objective**

To enhance the regulation and enforcement of road works which will improve both the quality of road works and the information that relates to these works.

- **Rationale for Government intervention**

Enhanced regulation and enforcement of road works will assist the achievement of the National Performance Framework Outcomes on:

- **Built and natural environment** – by protecting the road as an asset, reducing congestion associated with road works
- **Public services** – by improving efficiency in the undertaking of road works to reduce disruption to road users and consumers of services provided by utility companies.

The Barton Review recommendations include: improvements in the availability of information; measures to improve the quality of road works reinstatements; improving enforcement; and strengthening the powers available to the SRWC and roads authorities.

## Consultation

- **Within Government**

The commission and creation of the of Barton Report required extensive discussion with stakeholders to fully develop and help reinforce Transport Scotland's pre-existing policy development group made up of key stakeholders from the road works community (detailed below). Such engagement continued in shaping the legislative proposals.

The Bill contains proposals which will confer new enforcement powers on the SRWC. This includes an increase to the maximum civil penalty available to the Commissioner. In addition, the Bill will include provisions which will allow the SRWC to issue compliance notices, which are a type of enforcement notice. Non-compliance will be a criminal offence. The SRWC will be able to offer a fixed penalty notice (up to a maximum of £100,000) as an alternative to submitting a report to the Procurator Fiscal for potential prosecution. The provisions have been discussed internally with Scottish Government (SG) criminal justice officials, whilst the new criminal offences have been discussed with the Crown Office and Procurator Fiscal Service.

Discussions regarding the proposals to extend the requirement for professional road work qualifications have also taken place with the Scottish Qualification Authority (SQA) who run the Street Works Qualification Register (SWQR) on behalf of the Scottish Ministers, and also on a UK basis on behalf of the other administrations.

Several discussions with the SRWC (an independent Ministerial appointment and one of the 'other public bodies' in Scotland) have also been held.

- **Public Consultation**

A 12 week public consultation took place between July and October 2017. The purpose of the consultation was to ensure adequate care is taken to protect the road, whilst affording the utility companies the ability to protect and maintain their apparatus. Whilst road works are inevitable, it is important to drive forward quality consistently through all types of works and reduce the impact as much as possible to the public. The consultation was split into six main categories, listed below:

- Improving Quality
- Improving the availability of information about road works
- Improving consistency
- Enforcement
- New function for the SRWC
- Miscellaneous – Technical amendments

With only a few exceptions, there was strong support for most of the proposed

measures contained in the consultation. Responses were more mixed in relation to proposals to improve the availability and accuracy of information in the SRWR. In particular proposals to require the notification of actual starts and completion of works, and validity periods were not so popular. Concerns raised by respondents – such as utility companies and roads authorities – were around fears over likely cost and complexity, and a loss of flexibility to plan works to take account of changing circumstances. Subsequent discussions with key stakeholders suggest that most of the concerns can be addressed through a sympathetic pace of introduction that keeps pace with emerging technology to allow the electronic submission of notices from the work site itself. While the principal obligations are being created through the Bill, the implementation of the provision of more accurate information relating to the actual start and end of road works actual starts and works closed will be through secondary legislation and subject to further consultation, building on the views raised above.

- **Business**

In terms of the business sector, those principally affected by the legislative proposals are utility companies such as energy or water providers. There is also the potential effect on roads authorities, as a corporate entity.

The membership of Transport Scotland's existing Road Works Policy Development Group comprises the roads authority and utility chairs of the Roads Authority and Utility Committee for Scotland, the SRWC, and the Chair of the Scottish Road Works Register Steering Group and representative from the Society of Chief Officers of Transportation, and the National Joint Utility Group. To develop consultation proposals, the membership of this group was expanded to take on further representatives from Roads Authorities and Utilities organisations.

The policy development group first met to discuss the Barton Report on 5 October 2016 and has subsequently met on 8 further occasions, therefore helping steer how recommendations informed specific policy proposals for consultation, which has influenced the Bill.

Meetings were held with officials from Scottish Gas Networks on 2 October 2017, to discuss the implications for them arising out of the Barton Report and related public consultation proposals.

Roads authority and utility co-chairs of the Roads Authorities and Utilities Committee were also met with on 19 December 2017 to discuss possible governance arrangements for quality plans.

Discussions took place with officials from Scottish Water on 28 March 2018 regarding the recommendation from the Barton Report and elements of Scottish Water's responses to the public consultation.

Monthly meetings have been held with the SRWC and his staff. In the development of proposals we have benefited from the technical expertise of the Commissioner and his staff.

### **Options**

The Barton report recommendations and subsequent measures contained in the Transport (Scotland) Bill are complex and multifaceted, affecting a range of groups including the SRWC, roads authorities and the commercial sector such as utility companies. Additionally, many of the elements have a knock-on effect to other measures being proposed and are seen as a package.

As such, it is not considered feasible or practical to split these into a range of various options for the purposes of this BRIA. Therefore, to best maintain coherence and clarity within the document for the purposes of assessing the effect on the business sector, two options are considered:

#### **Option 1 - Do Nothing (no new legislative measures)**

#### **Option 2 – Implement Barton Report recommendations and other regulatory improvements**

The proposals within the Bill can be broken down into two broad categories:-

(a) Measures to improve the quality of road works and information about them. This includes:-

- Reinstatement Quality Plans
- Safety at roads authority road works sites;
- Professional qualification for roads authority operative and supervisors;
- Notification of actual start of works, and completion of works
- Recording of all plant and apparatus on the Scottish Road Works Register

(b) Improvements to the Office and functions of the Scottish Road Works Commissioner. This includes:-

- Compliance notices and associated enforcement measures;
- An increase in the Commissioner's civil penalty to £100,000;
- A new inspection function with associated powers;
- Reporting non-compliance to the Scottish Ministers and to the Procurator Fiscal for Prosecution.

## **Option 1**

**Benefits** – If nothing is done, roads authorities will avoid the relatively modest costs that may be required through the new proposals. Businesses (particularly utility companies) would not be subject to the increased civil penalty rate for contraventions, yet this maximum of the scale and can be avoided by compliance with the regulatory system. Any new duties or obligations placed on those conducting road works to provide better information about their apparatus and about the timing of road works potentially have resource implications. This would be avoided with Option 1. Currently, however, the road works community generally use the Scottish Community Apparatus Data Vault – an electronic geographic information database – to store the location of their plant and apparatus. This will be suitable as the initial basis for new requirements, although the suitability will need to be reviewed with the development of detailed requirements. Only those which have to transfer paper-based records would see any significant impact.

**Costs** – Although affected parties would not see any new costs associated with adhering to new standards or increased penalties for non-compliance, it is forecast that Option 1 would lead to a net loss over time due wider savings that the statutory measures aim to facilitate.

It is estimated that in 2016-17 some 5,500 utility road works required remedial works. That is to say that the road reinstatements were not up to standard, and required further work to be undertaken. We estimate that this may have cost the companies concerned up to £16.5m. If no action is taken, similar numbers of additional unnecessary works will continue, with the companies concerned facing similar levels of unnecessary additional costs.

## **Option 2**

**Costs** – Quality plans will incorporate current best practice and the detailed requirements will be developed in partnership with the sector which should minimise unnecessary impacts. Notification of actual starts, works closed could add to the administrative burden of utilities and roads authorities, but this could be ameliorated by the use of emerging technology and targeting in traffic sensitive areas. Supplying plant information to the register may involve some costs to organisations who do not hold their information already in a suitable format. Most of the potential costs associated with the new enforcement measures for the SRWC's office can be avoided through compliance.

**Benefits** – The road works measures within the Transport (Scotland) Bill aim to engender wider societal benefits outlined above. In relation to the business sector, a 'quality first' approach has the ability to reduce utility costs over time by removing the need for remedial works. The availability of plant information in one central location has the potential to reduce cost to utilities who may currently put significant resource cost into pulling together different plans/maps of apparatus from a variety of different locations. Within the new enforcement options, the use of compliance notices, will provide businesses with an opportunity and the time to demonstrate that they can be compliant rather than immediately face enforcement action.

## **Scottish Firms Impact Test**

Transport Scotland's face-to-face discussions (outlined above) began with a high level assessment of whether roads authorities and utilities were concerned whether any of the proposals could result in job losses. This was not a concern.

The only real area of any concern was around the additional administrative burden that might be created through the provision of additional information to the SRWC. It appears, however, that affected organisations may be more sanguine about those proposals if the pace of implementation allowed technology to be used to provide the information directly from a road works site. This will be set by regulation, so cannot be definitively defined in the BRIA, and such views will be considered.

There was little from consultation responses in terms of specific, fully costed business impacts. Therefore part of the focus of face-to-face discussions with individual organisations was to explore what those might be. This gave the bodies affected the opportunity to report any concerns regarding such cost implications. However, feedback – including from some larger organisations – was that they had done little work to look at the specific cost of proposals to their own organisation beyond the general implications.

Discussions with roads authorities suggest that most of the proposals which impact on them describe existing best practice, and therefore introduce few new cost pressures.

Some utilities had done some internal work to look at the additional costs they face due to remedial works and had been promoting the concept that getting it right first time resulted could result in tangible savings. It is estimated that, across Scotland, this might remove around 5,500 additional road works each year and save up to £16.5m.

Some organisations are also beginning to see the longer term benefit of having all of Scotland's plant and apparatus information in one central location. At the moment utility companies (and roads authorities) devoted considerable resource into pulling plant information together from a variety of different resources. They have to do this in relation to each road work site. A central repository will provide the opportunity for efficiency savings.

## **Competition Assessment**

Answers to the four Competition and Markets Authority (CMA) competition assessment questions are given below:

- Will the measure directly or indirectly limit the number or range of suppliers?  
No
- Will the measure limit the ability of suppliers to compete?  
No
- Will the measure limit suppliers' incentives to compete vigorously?  
No
- Will the measure limit the choices and information available to consumers?

No

### **Test run of business forms**

There will be piloting and user testing of any new requirements to provide any new information into the Scottish Road Works Register.

### **Legal Aid Impact Test**

The proposals contained in the Bill are unlikely to impact on the requirements for legal aid, principally because the main offence provisions are aimed at corporate bodies rather than individuals. This will be further explored and updated as necessary as the legislation progresses.

### **Enforcement, sanctions and monitoring**

The enforcement of road works regulations will be carried out by a combination of roads authorities and the SRWC. Compliance will be monitored through sample and random inspection of road works sites.

The enforcement options for roads authorities are:-

- Submission of a crime report to the Procurator Fiscal (not currently used);
- Fixed Penalty Notices.

The enforcement options for the Scottish Road Works Commissioner (including those contained in the Bill):-

- Imposition of Compliance Notice;
- Submission of a crime report to the Procurator Fiscal;
- Fixed Penalty Notices (up to £100,000);
- Commissioner civil penalty (up to £100,000);
- Report to the Scottish Ministers;

### **Implementation and delivery plan**

Should the legislative measures proceed to an Act of Parliament, it is estimated this would come into effect in summer 2019. Provisions requiring detailed technical regulations will be developed during this period, with the intention of being proposed timeously afterwards .

### **Post-implementation review**

It is proposed that the introduction of quality plans be reviewed after a period of 6 years.

### **Summary and recommendation**

Which option is being recommended and why? Refer to analysis of the costs and benefits in reaching the decision. Summarise, using the table below, the information gathered for each option.

• **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	<ul style="list-style-type: none"> <li>• Overall societal disbenefit in terms of the outcome of better road works not being realised.</li> <li>• For business – primarily utility companies – there will be the benefit of no modest costs or changes to practices associated with adherence to new standards or the potential for increased penalties.</li> </ul>	<ul style="list-style-type: none"> <li>• Continuation of thousands of unnecessary remedial road works at a significant annual cost (detailed forecasts are contained in the Financial Memorandum introduced to Parliament alongside the Bill (link below))</li> <li>• For business – primarily utility companies – there will be no modest costs practices associated with adherence to new standards or the potential for increased penalties.</li> </ul>
2	<ul style="list-style-type: none"> <li>• Removal of thousands of unnecessary road works at an estimated annual cost of £16.5m;</li> <li>• Improved safety at roads authority work sites, and operative/supervisor competence;</li> <li>• Better environment to ensure that reinstatements are right first time;</li> <li>• Records of Scotland’s plant and apparatus in one central location;</li> <li>• Better opportunities within the enforcement model for business to demonstrate compliance</li> </ul>	<ul style="list-style-type: none"> <li>• Some additional costs on quality plans;</li> <li>• Some potential costs associated with additional noticing unless emerging technology removes that burden;</li> <li>• Cost of converting records of plant information if not held in a suitable format</li> <li>• The above costs are subject to a number of variables and scenarios, these are explored in detail in the Financial Memorandum introduced to Parliament alongside the Bill (link below)</li> </ul>

The Financial Memorandum can be viewed at:

[http://www.parliament.scot/Transport%20\(Scotland\)%20Bill/SPBill33FMS052018.pdf](http://www.parliament.scot/Transport%20(Scotland)%20Bill/SPBill33FMS052018.pdf)

**Declaration and publication**

The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication. Use appropriate text from choices below:

- Sign-off for Final BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**A handwritten signature in blue ink, appearing to read 'Michael Matheson', written in a cursive style.**Date: 27<sup>th</sup> August 2018****Minister's name - Michael Matheson****Minister's title - Cabinet Secretary for Transport, Infrastructure and Connectivity****Scottish Government Contact point:****Ewen Milligan (Road Works Policy, Transport Scotland)**