

THE REGULATION OF UTILITY  
COMPANY ROADWORKS:  
A CONSULTATION

**October 2003**

# **SCOTLAND'S TRANSPORT – THE REGULATION OF UTILITY COMPANY ROADWORKS**

**A Consultation**

**October 2003**

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# THE REGULATION OF UTILITY COMPANY ROADWORKS

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## **Foreword**

The Scottish Executive Partnership Agreement sets out a powerful range of transport commitments to improve life for everyone in Scotland. We are committed to improving our transport infrastructure, putting in place an integrated transport system that connects communities, gets goods to market quickly and efficiently and gets people to work safely and on time.

Our aim is an accessible Scotland, with a safe, reliable and sustainable transport system.

To achieve this we have set a budget which will grow to over £1 billion a year by the end of the current spending period in 2005-06. We are investing to improve our transport system after decades of neglect. This is both a significant opportunity but also a major challenge. It is many decades since transport in Scotland saw this level of investment. We need to ensure we get the right skills and the right structure to deliver these projects effectively.

Here we set out our thoughts on how the regulation of utility company roadworks can be improved. This consultation focuses on the way in which utility company roadworks are currently carried out and how they could be improved. The simple challenge is to create a system which can deliver better.

During this Parliament I am determined that we will achieve real improvements in Scotland's transport infrastructure. We have identified our priority transport projects and have committed to major investment. The approach outlined in this document should help us together to deliver these improvements. Your views will help us to get it right.

A handwritten signature in black ink that reads "Nicol Stephen". The signature is written in a cursive, flowing style.

**Nicol Stephen MSP**

Minister for Transport

September 2003



# THE REGULATION OF UTILITY COMPANY ROADWORKS CONSULTATION

## Summary

### *Why are we consulting?*

- Poorly managed utility company roadworks cause a range of problems, most visibly traffic congestion, for all of us.
- Safe and reliable transport is one of the Executive's top priorities. Our economy is hampered by congestion, and we are therefore committed to tackling any adverse impact caused by utility company roadworks on Scotland's transport network.

### *What are we consulting on?*

- The purpose of this consultation is to seek your views on:
  - The **extent and type of problems** which utilities roadworks cause in Scotland;
  - Two **proposals for change**, one involving strengthening and providing further guidance on *existing* legislation, and the other involving *new* primary legislation;
  - How the **co-ordination and quality** of roadworks should be measured;
  - **Wider views** on how to improve the co-ordination and quality of utilities roadworks.

### *Who will be affected by any new proposals?*

- Road users include businesses, public transport, private motorists, pedestrians, cyclists and people who may have particular access needs such as disabled people. The aim of consulting on this issue is to find out if we can reduce inconvenience and other problems for road users by taking a new approach to regulating utilities roadworks.
- Roads authorities (which co-ordinate roadworks), and the utility companies, (which undertake roadworks), will be directly affected, as they will be responsible for implementing any new proposals.

### *What do we need to know?*

- **Paragraphs 1- 19** set out the **background and context** to this issue;
- **Paragraphs 20 and 21** set out **two specific proposals** for change;
- **Paragraphs 22-24** set out proposals for **measuring the performance** of roadworks;

We are also interested in **any wider views** you want to put forward, or proposals for improving the regulation of utilities' roadworks.

## A. THE PURPOSE OF THIS CONSULTATION

1. Poorly managed utility company roadworks cause a range of problems, most visibly traffic congestion, for all of us. They can hold up the public transport system, delay business, cause inconvenience for road users, and affect the quality of the environment.

2. Utilities' road works are currently regulated under the New Roads and Street Works Act (NRSWA), which became law in 1991. NRSWA is a devolved piece of legislation, which means it is the responsibility of the Scottish Parliament rather than Westminster. A new Traffic Management Bill is under development for England and Wales, which takes a different approach in line with different issues – for example traffic congestion levels in London.

3. Attached to NRSWA are Regulations and Codes of Practice, which set out the detail of how utilities roadworks should be co-ordinated and completed. These are:

- The Specification for the Reinstatement of Openings in Roads Code of Practice
- Code of Practice for Inspections
- Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters
- Measures Necessary Where Apparatus is Affected by Major Works (Diversionary Works) Code of Practice

Currently, only the Specification for the Reinstatement of Openings in Roads Code of Practice is statutory. It may be helpful to make all Codes of Practice statutory, through new primary legislation.

4. The purpose of this document is to seek a wide range of views on whether existing legislative measures, under NRSWA, are still sufficient to co-ordinate utilities roadworks effectively and keep Scotland's roads running smoothly. The Scottish Executive last consulted on this issue in 2001/02. This document now widens and develops the debate from the original consultation. **It sets out 2 proposals** for changing the way in which utilities roadworks are regulated in Scotland. **These are listed in paragraphs 20 and 21.**

## B. HOW CAN I GIVE MY VIEWS?

5. In summary, we would welcome your views on:

- To what extent disruption caused by utility company roadworks is causing problems for Scotland's transport network, and what the most common problems are;
- The 2 proposals set out in this document;
- Whether existing NRSWA Codes of Practice should become statutory;
- Meaningful performance indicators for measuring improvements to disruption from utility roadworks;
- Any wider suggestions for change and improvement.

The specific questions on which we would like your views are set out in **paragraphs 26-29**.

6. You can let us have your views in the following ways:

- By post to:

Iain Gardiner  
Travel Information and Traffic Management Branch  
Transport Division 3  
The Scottish Executive  
Victoria Quay  
Edinburgh EH6 6QQ.

You can also request extra copies of this document from this address.

- By email to: [transport@scotland.gsi.gov.uk](mailto:transport@scotland.gsi.gov.uk)
- Unless you want your response to be treated as confidential (see below), your response will be treated as public information. This means that a copy of all responses together with a copy of this consultation paper will be placed in the Scottish Executive Library within 20 days of the closing date of this consultation. A list of respondees will be included with this information.
- If you want your response to be treated as confidential, please mark this clearly on your response. **All requests for confidentiality will be strictly respected.**

The closing date for the consultation period is **20 January 2004**.

You can also view this document on the Scottish Executive website [www.scotland.gov.uk](http://www.scotland.gov.uk).

If you have any queries, or require copies of this document in alternative formats, please contact Iain Gardiner on 0131 244 0838.

## C. THE BACKGROUND TO THIS CONSULTATION

*Who's responsible for carrying out roadworks?*

7. Roadworks are either undertaken by **utility companies**, or by the **roads authorities** which are responsible for co-ordinating works on Scotland's roads. The roads authorities are **local authorities**, or in the case of trunk roads, the **Scottish Executive**. The Executive employs term operating companies to fulfil its roads authority function for trunk roads. Any organisation which carries out roadworks under NRSWA is called an **undertaker**.

*How do we keep track of where roadworks are happening?*

8. All roadworks carried out on Scotland's roads are recorded. **The Scottish Roadworks Register** is the central record of all NRSWA roadworks in Scotland used by undertakers and is maintained on a web-based system called *Moleseye*. The Scottish Roadworks Register is fundamental to the successful co-ordination of roadworks. If it is not accurate or up-to-date, then it is not possible to get a clear picture of when, where and why utility roadworks are being carried out.

9. Any undertaker who is planning to carry out roadworks must give advance notice to the roads authority. The aim is to minimise disruption, ensure safety and protect any other apparatus which is already in the road. The roads authority may direct the undertaker to carry out works at particular times if this will help to avoid disruption. Failure to notify the roads authority in advance, or to comply with directions about timing of works, are both offences.

10. Different periods of notice apply, depending on the type of works and the traffic sensitivity of the particular road. The only exception is **emergency roadworks**, caused for example by a gas leak or burst water mains. In this case, undertakers must give notice to the roads authority *as soon as reasonably practical*, and at least within 2 hours.

## D. WHAT'S THE PROBLEM?

### 11. *How many utility roadworks are carried out in Scotland?*

- Whilst it is important to note that not all notices to the Scottish Roadworks Register result in roadworks subsequently being carried out (some may be amended or withdrawn), the Register gives a good indication of the scale of roadworks carried out in Scotland.
- For the period April 2002-March 2003, the Scottish Roadworks Register shows 181,771 notices of roadworks. The majority of these (93.5%) were submitted by utility companies.
- In turn, most of these notices (64%) were submitted by water and gas companies.<sup>1</sup>
- In 2002 the Executive commissioned research into the extent and impact of utility company roadworks in Scotland<sup>2</sup>. The report showed that, in 2001, 92% of all roadworks in Scotland were completed by utility companies. Of these, 50% of roadworks inspected were passed as of sufficient quality.
- In 2001, nearly 40% of all roadworks were registered as emergency or urgent works. These works are difficult to manage because they cannot be planned for in advance.
- Since 1998, there appears to be a continual decrease in the proportion of roadworks which present a danger to the public.

12. Earlier this year, the Roads Authorities and Utility Committee (Scotland), on which both utility companies and local authorities are represented, published the results of its 3<sup>rd</sup> national coring exercise. This involves a random sample of utilities roadworks reinstatements, completed between Sept. 2001 and March 2002.

- For the period 2001/2002, the results showed that 45% of samples passed inspection, whilst 40% failed (requiring replacement) and 15% failed (requiring further monitoring)<sup>3</sup>. These figures show some overall improvement on previous years, although in some Council areas there was a reduction in the pass rate.

### 13. *Why do problems arise?*

Two major changes have occurred since NRSWA became law in 1991. Firstly, most utility companies (with the exception of Scottish Water) are now in the private rather than the public sector. Secondly, rapid developments in new technology mean there are more utilities available to consumers. An increase in the number of utility roadworks also means that more people are involved in carrying them out. Utility companies can employ sub-contractors to carry out roadworks, and to **reinstate** (put back) the road afterwards.

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<sup>1</sup> Source for these figures: Scottish Roadworks Register. Notices of roadworks may subsequently be amended or the roadworks not undertaken.

<sup>2</sup> Source: *Assessing the Effectiveness of Utility Companies' Roadworks*, The Scottish Executive Central Research Unit, 2002

<sup>3</sup> Source: Roads Authorities and Utility Committee (Scotland), 2001/02 National Coring Exercise.

14. Other problems which can arise include:

- Poor quality **reinstatement** of the road, so that the road surface deteriorates quickly and has to be repaired again
- **Overstaying** - roadworks which take longer to complete than the agreed period
- **The same area of road being dug up more than once** within short time periods, to carry out different types of roadworks which could have been completed together
- Roadworks which **continue outside agreed periods**, for example continue during rush hour
- **Unattended roadwork sites**, causing health and safety concerns.

## E. OVERVIEW OF PROPOSALS

15. Safe and reliable transport is one of the Executive's top priorities. Our economy is hampered by congestion, which has a major impact across and between urban areas of Scotland. We are therefore committed to tackling the adverse impact caused by utilities roadworks on Scotland's transport network.

16. The Executive wants to achieve this by introducing new measures which provide **practical solutions** to the problems faced by roads authorities, utility companies and the wider public alike. In particular, we want to encourage roads authorities and utility companies to **work together better** and find **effective joint solutions** to improving the way in which utility roadworks are carried out.

### *Proposal One: The Community Planning Approach*

17. Under the Local Government in Scotland Act 2003, local authorities have both a new **duty** – to co-ordinate **Community Planning** – and a new **power** - the '**power to advance well being**'. The aim of both of these is to improve delivery of public services to local communities. The Executive considers that the effective co-ordination of roadworks, to ensure good quality roads are provided for Scotland's people, is an example of the type of public service which could be improved through the Community Planning process.

18. Specifically, the Act requires local authorities to work in partnership with other public bodies **and any other appropriate bodies** (which could, for example, include utility companies), to ensure a strategic, joined-up approach to delivering public services. The partners should outline their joint vision for the area and agreed objectives, normally in the form of a **Community Plan**. The **power to advance well being** is a very broad new power. It allows local authorities to take action as they see appropriate (and in partnership with other bodies if they need to) to improve the quality of public services to communities.

19. Community Planning, by its very nature, requires a high level of accountability to local communities. Communities have a say in the planning and delivery of public services, and receive regular reports on how public services are performing and improving.

**20. PROPOSAL ONE: THE COMMUNITY PLANNING APPROACH**

- **Provision of Scottish Executive guidance to local authorities suggesting how the 'power to advance well being' and the Community Planning process can be used to improve the co-ordination and completion of utility roadworks.** The Local Government in Scotland Act is intentionally non-prescriptive and it is for local authorities to decide how to use their powers under the Act. For example, a local authority could require utility companies to share underground ducts wherever possible, to reduce the number of road openings. The Executive would not wish to prescribe how local authorities use these powers. However, we feel that guidance might be useful for local authorities in respect of roadworks.
- **Local authorities and utility companies to produce joint Forward Plans setting out plans for future roadworks, where known, and their impact on wider service delivery.** The Executive acknowledges that not all roadworks can be planned for in advance. However there appears to be significant scope for local authorities and utilities to work together more closely on this issue – for example, where major utility infrastructure repairs are planned over a 5-10 year period, or where public events such as festivals may impact on the planning period for roadworks. To avoid duplication of work and ensure links are drawn to other public services, the Roadworks Forward Plan should fit into the overarching framework of the Community Plan.
- **Reporting to communities,** through Community Planning mechanisms, on improvements to the co-ordination of roadworks. Proposals for possible performance indicators are set out in **paragraph 22**. Local authorities might also, in reporting to local communities, choose to name utility companies which had consistently failed to meet required standards for roadworks.
- **Strengthening current NRSWA Codes of Practice,** as part of an improved 'quality framework' of best practice which all undertakers should follow.

## 21. PROPOSAL TWO: NEW PRIMARY LEGISLATION

As we have said, the Executive wants to see less disruption to the transport system caused by utilities roadworks. One of the purposes of this consultation is to gain a better understanding of the scale and nature of this disruption. If consultation findings indicate that current legislation (under NRSWA and the Local Government in Scotland Act) is not sufficient to tackle the problem, then consideration will be given to new primary legislation. This could include:

- **Charging for the full period of roadworks, and/or:**
  - **Increasing sanctions for follow-up works where major works have already taken place, as well as for overstaying agreed periods**
  - **Introducing a premium charge for roadworks undertaken in peak periods**
  - **Measures to ensure costs incurred by utility companies (where it can clearly be demonstrated that roadworks were carried out inefficiently) are not passed onto consumers.**
- **Provision of an independent arbitration role.** The arbitrator could determine the timing of roadworks where this is disputed before the roadworks actually begin. S/he would also resolve disputes at a later stage (for example, on the quality of a reinstatement where this is contested). Additionally, the arbitrator would have the power to refuse permission for poorly performing utility companies to undertake roadworks in a specific area, or for a defined period of time.
- **Increased emphasis on training for all those involved in the planning, completion and inspection of utility roadworks.** The Executive would not seek to prescribe training as we feel this should be determined by the different needs of organisations and their employees. However, we would want to see a nationally agreed quality standard for training, which both roads authorities and utilities would be required to meet – and demonstrate that they are doing so.
- **Making all current NRSWA Codes of Practice statutory**
- **A review of existing powers for roads authorities on reinstatements.**
- **A requirement to use the web-based, electronic notification system** for notification of works. By removing any 'paper-based' notifications, this could reduce the number of errors and inaccuracies in notifications.
- **A review of current penalties for safety offences** - currently a fine not exceeding level 3 (£1000) on the standard scale.
- **Powers for roads authorities to invest revenue generated from charges** in co-ordinating roadworks.
- **As set out in Proposal One, local authorities and utility companies to produce joint Forward Plans setting out plans for future roadworks, where known, and their impact on wider service delivery.** Provision of a Forward Plan would be a requirement under new legislation, rather than a recommendation through Executive guidance.
- **As set out in Proposal One, regular reporting to communities,** through Community Planning mechanisms, on improvements to the co-ordination of roadworks. Proposals for appropriate performance indicators are set out in **paragraph 22**. Again, this measure would be a requirement under new legislation, rather than a recommendation through Executive guidance.

## F. HOW SHOULD WE MEASURE IMPROVEMENT?

22. Measuring the quality and co-ordination of roadworks is not straightforward. Local authorities currently report on a number of related statutory performance indicators for roads and lighting. These include:

- Expenditure on structural maintenance per carriageway metre
- Percentage of total maintenance spent on structural maintenance
- Expenditure on maintenance surveys and inspections per carriageway metre
- Percentage of road network resurfaced.

23. Performance information on utility roadworks themselves is gained through roads authorities inspections. These are either **sample** (random) inspections of roadworks, or **defect** inspections which are usually carried out where a sample inspection has found a problem, or where a complaint has been made about roadworks. Inspections indicate the number of roadworks which pass or fail.

24. The Executive would like to see consistent performance indicators in place which measure how effectiveness roadworks are co-ordinated and carried out. We do not wish to place undue burdens on local authorities, which already collate substantial amounts of information on the performance of their services. However a small number of meaningful performance indicators, reported on an annual basis to local communities, would increase the accountability of both local authorities and utility companies on this issue. These might include:

- **Total number of roadworks.** This would indicate the scale of utility roadworks carried out in a particular local authority area.
- **Type of works** – indicating the type of roadworks, allowing recurrent problems (such as repeated reinstatements due to poor quality road surfaces) to be identified.
- **Number of roadworks defined as overrun** – indicating the level of disruption caused by utility roadworks which are not completed to schedule
- **Number of inspection failures** – indicating the general level of quality of roadworks
- **Number of road openings** where more than one set of works took place – indicating how often utility companies are successfully co-ordinating their works.
- **Number of complaints** received by local authorities regarding utility company roadworks.

## **G. CONCLUSION: PLEASE GIVE US YOUR VIEWS**

25. So far in this document, we have set out:

- The background to disruption caused by utility roadworks, and some of the issues which seem to be causing problems;
- Some key facts and figures about roadworks;
- Two different proposals for tackling the issue;
- Some discussion about performance measurement.

Now we'd like to ask your views on the following:

### **26. To what extent do you think disruption from utility roadworks is causing problems for Scotland's transport network?**

- 26.1 What are the most common types of problem? (If you can give us examples, that would be helpful)
- 26.2 What do you think is causing the problem?
- 26.3 Are there ways in which the current electronic notification system could be improved? If so, what are they?

### **27. What is your view on the 2 proposals set out in paragraphs 20 and 21?**

#### **On Proposal ONE:**

- 27.1 Do you see Community Planning as an effective route for addressing the roadworks issue?
- 27.2 Would further guidance on the Local Government in Scotland Act and how its powers can be used to address roadworks be useful? If so, what form should this take?
- 27.3 Would strengthening existing NRSWA Codes of Practice be sufficient to improve matters?
- 27.4 What are your views on Forward Plans for Roadworks?

#### **On Proposal TWO:**

- 27.5 Do you think new primary legislation is required, and why?
- 27.6 Are there existing powers under NRSWA which are underused, or could be strengthened?
- 27.8 What would be the most effective way of applying charges for roadworks? For example, would charges for overstaying simply lead to over-estimated timescales for completing roadworks?
- 27.9 Do you think making all NRSWA Codes of Practice statutory would be helpful? If so, what type of sanctions do you think should apply for non-compliance with the Codes?
- 27.10 How do you think training for all those involved in roadworks could be improved?

27.11 Do you see any adverse indirect impacts in what is proposed? For example, would increased charges simply lead to increased administrative workloads for roads authorities?

27.12 In what ways do you think an independent arbitrator would be helpful? Do you have any suggestions for the extent of his/her role?

**If you favour one of these proposals over the other, please tell us why.**

**28. How do you think successful co-ordination and quality control in roadworks should be measured?**

28.1 Are the suggested performance indicators set out in paragraph 22 the right ones?

28.2 Would you suggest any others?

28.3 How should roads authorities be asked to report on performance indicators?

**29. Do you have any other suggestions for reducing problems caused by roadworks?**

*In responding to these questions, it would help us if you indicate the number of the question you're referring to.*

## **H LIST OF CONSULTEES**

31. In addition to making this consultation document publicly available via the Executive website, we are circulating it to the following:

- Business sector
- Clerk of the Local Government and Transport Committee at the Scottish Parliament and the relevant Departmental Committee Liaison Officer (DCLO)
- Community Planning Partnerships
- COSLA
- The Disability Rights Commission
- Equal Opportunities Commission
- The Commission for Racial Equality
- Local authority Chief Executives and roads professionals
- Other Government departments
- Relevant professional bodies
- Scottish Water
- Trade Unions
- Transport academics in colleges/ universities
- Transport lobby groups
- Transport sector
- Trade unions (on training & safety issues)
- Utility companies
- Utility Company Regulators
- Voluntary sector /community groups or umbrella groups

However, if you think anyone else or any other organisation should receive a copy, please let us know.

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