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Your Ref

19 December 2003

The Scottish Executive  
Transport Scotland Consultation  
Victoria Quay  
EDINBURGH  
EH6 6QQ

**For the attention of Iain Gardiner**

Dear Sirs

**REGULATION OF UTILITY COMPANY ROADWORKS**

Please find attached the formal response from Glasgow City Council to the above consultation paper. This response was approved by the Council's Policy & Resources Committee on 16 December 2003.

Please do not hesitate to contact Duncan McCallum on the telephone number detailed below should you require any additional information.

Yours faithfully

Robert Booth  
Director of Land Services

**If phoning or visiting please ask for Duncan McCallum**  
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**RESPONSE BY GLASGOW CITY COUNCIL TO: -**

**SCOTTISH EXECUTIVE  
THE REGULATION OF UTILITY COMPANY ROADWORKS  
CONSULTATION DOCUMENT**

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

- Roadworks by utilities inevitably cause disruption to road users where the carriageway is closed or reduced and footways obstructed by the works. This leads to congestion and delay for traffic, additional pollution and inconvenience to pedestrians.
- The requirements of the regulators, demands of customers and the poor state of their infrastructures has led to a very large number of utility roadworks every year with the level likely to increase. In Glasgow, the current level of utilities activities results in over 20,000 openings each year and with the increasing numbers of competitors in the market place this number is likely to rise.
- The fundamental difference between works undertaken by roads authorities and utilities is that in the case of roads authorities, the core business is maintaining, repairing and renewing the road infrastructure for the use and convenience of all road users. The core business of the utilities however is installing their apparatus and historically this has resulted in little attention being paid to reinstatement. Reinstatements at best weaken the structural integrity of the road and at worse severely damage it.
- The two main issues involving utilities roadworks and the disruption they cause are the excessive time taken to undertake works and the poor quality of the reinstatements which often require to be redone thereby further increasing disruption.
- Even when good quality reinstatements are done the ride quality of the carriageway is reduced and potential weaknesses introduced.

**26.1 What are the most common types of problem?**

- Utilities taking too long to complete works
- Excavations left opened and unattended for periods of time
- Lack of site supervision resulting in poor quality reinstatements
- Repeat visits by utilities to undertake repairs on failed reinstatements
- No incentive for utilities to complete work timeously
- Unacceptable response to dangerous defects (ie. water leaks, missing ironwork) and inadequacies in signing and coning
- A high proportion of works undertaken by utilities is emergency or urgent which do not require advance notification. However, these works can be of long duration and cause similar levels (if not higher) of disruption than planned pre-notified work.

- Public complaint and the level of public liability claims associated with missing/defective utility apparatus.

## **26.2 What do you think is causing the problem?**

- Utility companies are commercial enterprises whose prime objectives are the provision of their services and financial viability. Of secondary consideration is the quality of their reinstatements and reducing the time taken to undertake works
- Contractors undertaking the works on behalf of utilities appear to be appointed on a lowest price basis and utilities do not adequately supervise their works
- The existing legislative powers of the Local Authorities are insufficient with the Authorities having little control over the duration of works and an ineffective sampling regime. Offences under the New Roads and Street Works Act do allow financial penalties for offenders but in practice due to the number of criminal cases being dealt with by the Procurator Fiscal and the relatively low priority of NRSWA offences they are not proceeded.
- Regular co-ordination meetings do take place between utilities and local authorities, however, the programmes submitted by utilities tend to be indicative and works more often than not are cancelled or start times changed. A number of the utilities, in particular Scottish Water and Transco, have a large scale mains renewal programme which is constantly changing making any form of co-ordination impossible.
- Most works undertaken by utilities are emergencies, urgent works and new customer service connections – these types of work cannot be programmed and cause the majority of disruption to the travelling public and resultant damage to the roads network.
- Insufficient powers for the roads authorities to dictate when works can be carried out – at present the roads authority can recommend that works (on busy streets only) be undertaken only at certain times. In practice however utilities are commercial enterprises and work hours to suit their interests. As an example, one utility recently refused to work in the evening to repair an emergency on a busy city centre road stating that they had no funds to do overtime. This resulted in delays to motorists the following day which would have been avoided had evening work been undertaken.
- Lack of public information provided on site by utilities.

## **26.3 Are there ways in which the current electronic notification system could be improved? If so, what are they?**

- Currently all of Scotland is covered by the moleseye electronic notification system.
- The system is constantly being developed but needs to be more 'user friendly'.
- The biggest single problem with the system is the quality of the information inputted by utilities. Until this is addressed the full potential of the system will not be realised.
- Many smaller and new utilities are not signed up to the moleseye system and legislation should be changed to make this compulsory.
- Performance reporting using the moleseye system requires further development but as stated will only be as good as the information inputted.

- Co-ordination would be simplified if the system could display graphically locations of ongoing and intended works. Potential areas of conflict are easier to identify if works locations are on plans.
- Currently details of the location of utilities existing apparatus is via web sites, CD's or written requests – this information should be added to the moleseye database for easy access by the whole user community.

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

- The inadequacies and ineffectiveness of the present controls over the activities of utilities are clear and public opinion and political concern with regard to disruption are indicative of the need to employ additional measures to improve the situation.
- Legal opinion is that the Local Government in Scotland Act cannot supersede the NRSWA and there are concerns that the LGA would not be forceful enough to control the utilities.
- Doing nothing is not an option and the proposals are a positive step in addressing the situation.
- Other concerns and considerations are not included in either proposal and these are listed and commented upon in question 29.

### **27.1 Do you see Community Planning as an effective route for addressing the roadworks issue?**

- No – the primary legislation for control of the activities of utilities is the New Road and Streetworks Act and amending this legislation is the way forward in addressing the issue. Having two different legislative Acts to control roadworks will lead to confusion, legal challenge and is impractical. As stated the LGA would not take precedent over the primary legislation.
- The Local Government in Scotland Act 2003 and the 'power to advance wellbeing' could be used to introduce a raft of measures to assist in the completion and co-ordination of utility roadworks but may not allow any charging for the costs of implementing, administering and monitoring. Additional costs to undertake this function would have to be met in their entirety by the local authorities. In effect local authorities may be subject to a substantial increase in operating costs to 'police' the utilities without recourse to any additional funding. The fact is that it is the utilities that are creating the problem and accordingly they should have to foot the bill any additional costs involved in correction.

### **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**

- Any further guidance would be of interest however, as the Act is intentionally non-prescriptive then individual Authorities may have different interpretations on how to apply the powers. This would lead to major inconsistencies in dealing with utilities and would be unfair on them.

### **27.3 Would strengthening existing NRSWA Codes of Practice be sufficient to improve matters?**

- There is no doubt that strengthening the Codes of Practice will assist in improving the situation but as a measure on its own it is unlikely to make much impact. The Codes of Practice are recommendations and not a statutory obligation. If the Codes of Practice are currently being ignored it is not considered that strengthening them would be totally effective.

#### **27.4 What are your views on Forward Plans for Roadworks?**

- Forward Plans are a positive step in improving co-ordination but there are severe reservations as to whether utilities can plan 1 year in advance never mind 5-10 years.
- Most of the problems encountered are due to unplanned works

#### **27.5 Do you think new primary legislation is required, and why?**

- Yes – Existing legislation has shown to be ineffective as demonstrated by political and public opinion.
- Three successive national coring exercises show that despite a 'Roads Authorities and Utilities Committee Reinstatement' document with an eight – point action plan for improvement, the utilities have comprehensively failed to improve on their performance. The failure rates in the 3 national coring exercises have been 57%, 62% and 55% respectively for the years 1998, 2000 and 2002.
- Regular liaison meetings are held at all levels between utilities and roads authorities to progress co-ordination and co-operation between parties but still the situation has not improved.
- **Voluntary measures by utilities have failed** and the only recourse left for addressing the problem is for the introduction of new primary legislation giving greater powers to roads authorities to control the activities of utilities.

#### **27.6 Are there existing powers under NRSWA which are underused, or could be strengthened?**

- Undoubtedly there are powers under NRSWA which could be strengthened but unless some financial incentive is levied against the utilities then they are likely to be as ineffective as the existing powers.

#### **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 timescale for completing roadwork?**

- Any system for applying charges must be simple to understand, easy to administer and monitor whilst still providing an incentive for utilities to minimise the timescale of the works.
- The House of Commons Transport Committee recently published a report examining the effectiveness of current legislation in England and Wales in reducing disruption. The report highlights the extreme difficulties that have been encountered in establishing a workable system. What has happened is that utilities are greatly overestimating the time for completion and charges are being applied to overrun.
- The report also shows large discrepancies in the potential overrun charges, actual overrun charges and actual payments.

- Clearly the system in England is over-complicated, difficult and expensive to administer and lessons must be learnt before embarking on any such system in Scotland.
- A 'lane rental' system is presently being trialled in Camden and Middlesborough but as yet no reports have been issued regarding its success or otherwise. However, it has been suggested that a more acceptable solution as far as utilities are concerned would be to limit the scheme to the busiest roads and have an exemption for the first three days.
- A lane rental charging mechanism is favoured. However the following must be taken into consideration to ensure that the scheme is not over complicated, bureaucratic or difficult to monitor:-

Simple table of rates for traffic sensitive and other roads linked to the standard definition of work types i.e. standard works, minor works, urgent works and emergency works.

Rates should not be punitive but sufficient to cover the increase administration charges.

Higher premium of rates when reinstatement fails and utilities have to redo reinstatement

Consideration should also be given to implement a permit system whereby utilities must obtain a separate permit for each of its works at a reasonable charge and be charged a daily rate for overrun. Again however the additional administration costs would need to be considered.

Any revenues generated from the imposition of any charging scheme should go directly to the roads authority to cover for network improvements and the additional administration, supervision and inspection charges required to ensure the system is effective.

**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?**

- Yes – non-compliance could be a fixed penalty notice issued to offenders rather than a criminal prosecution.

**27.10 How do you think training for all those involved in roadworks could be improved?**

- Training should not be an issue – all those involved on both the Roads Authority and Utility side have received HAUC training accreditation.
- The problem is lack of supervision, ensuring trained personnel are on site and utilities currently wanting the cheapest price for the job.

**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.**

- Any charging mechanism must be supervised monitored and controlled, which would lead to a greater administrative burden on the roads authorities. However, bearing in mind the present performance of utilities, this would be worth the potential improvement in reduction of disruption and quality of work
- As previously stated, any costs recovered should go directly to the roads authority to offset the additional running costs.

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

- Any new procedures under primary legislation are likely to result in disagreements and disputes between parties, an independent arbitrator would be of assistance in settling these.
- Role should solely be to arbitrate not to manage and co-ordinate.

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

- The Moieseye system could be adapted to give quarterly reports on each utility detailing some of the following:

Total number of notices

Breakdown of notice types ie. 28 days, 7 day, emergency, etc.

No. of sample inspections and results

No. of defect notices from roads authorities

No. of roadworks defined in overrun

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

- The statutory performance indicators listed are no longer in use and have been superseded for the year 2003/2004.

**28.2 Would you suggest others?**

- As a starting point, the performance indicators listed in paragraph 24 are acceptable and as stated, should be able to be generated automatically by the moleseye system. Again however, I would caution that any output is only as good as the input.

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

- This should be done for each utility on a quarterly basis and reported to the Area RAUCs and Scottish RAUC to check regional and national trends.

- Consideration should be given to applying fixed penalty charges for utilities failing to meet performance indicators.

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

- Utilities should have a statutory obligation for regular inspection of their apparatus and be able to demonstrate an effective system for recording and dealing with faults. Results of inspections should be available to roads authorities and penalties applied for non-compliance.
- Extended powers for roads authorities to determine when works carried out on busiest roads
- Review 2 year guarantee period
- 12 months advance notice for Major Works
- Powers for authorities to require larger surface reinstatement to be carried out, eg. full width, half width, etc when road/footway less than 3 years surfaced.
- Increase period (currently 12 months) when utilities can come in following new road surface to 3 years.
- Introduce fixed penalty fines for non-compliance with notification procedures
- Mandatory that utilities core a percentage of their reinstatements using an independent NAMAS accredited coring contractor and make the results available to road authorities
- Consider the use of a permit system which would provide a positive mechanism to improve control of all activities on the road, not just utility works. A permit system could be adapted to apply conditions such as the need for planning permission for works in conservation areas.
- Operate a considerate contractor scheme for better co-operation with utilities
- Increase the existing levels for offences under the NRSWA and make them fixed penalty notices rather than via criminal prosecution – court time and cost saved
- Allow road authorities to require undertakers to install ducts as part of works which they carry out. This could be extended to making use of existing spare duct space rather than carry out new installations. Also to make surplus duct space owned by them available to other utilities.
- Amending the existing provisions of the NRSWA to allow charges to be applied to the placing of skips, scaffolding and materials on the road when they overrun the agreed permit dates.
- Ensure all utility plant records are held centrally (eg. moleseye or web) in the same format and readily and easily available to the user community. Such records must be updated at least annually.
- Include legislation for prescribing response times for replacing missing ironwork and repairing water leaks which should be classed as emergencies because of the safety implications.
- Develop a map based notification system to simplify co-ordination.

- Implement greater controls and restrictions on work undertaken in Conservation Areas and High Amenity Areas etc. to ensure greater standards of reinstatement are achieved.