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Iain Gardiner

Scottish Executive  
Transport Scotland Consultation  
Victoria Quay  
Edinburgh  
EH6 6QQ

Scottish Joint Utility Group  
Findlay Taylor  
BT  
PP HW PO45  
PO box 234 (HOM-EH)  
Edinburgh  
Midlothian EH12 (UR  
  
findlay.taylor@bt.com

Dear Mr Gardiner,

Regulations of Utility Company Road Works Consultation

Thank you for allowing us to respond to your consultation paper on the above subject.  
I enclose a copy of our response to your paper.

If you have any query on any of the content please contact me as above.

Yours sincerely

Findlay Taylor  
Chair of Scottish Joint Utility Group

**THE REGULATION of UTILITY COMPANY ROADWORKS**  
**A Consultation October 2003 - Scottish Executive**

**A response to the Scottish Executive consultation paper by SCOTJUG**

**General comment:**

The omission of the definition of congestion in relation to current data is extremely worrying as it implies that the author is not aware of the scale of the perceived problem. No serious consultation can ignore the whole picture and merely concentrate on only one of the constituents.

Recent data published in England (Transport Research Laboratory 1999 report quoted in the Highways Agency Business Plan 2002-3) advised that road congestion is caused by 65% traffic volumes, 25% incidents and 10% road works. It is generally accepted that of this 10% of road works, 5% relates to utility works and 5% authority works. The utilities are working to further reduce this percentage by maximising minimum dig techniques and technology wherever possible.

The roads works referred to include roads construction or renewal, roads maintenance, roads diversionary works, utilities diverting existing apparatus due to roads diversionary works within a roads works site or utilities undertaking diversionary works off site in order to maintain their network as well as providing service to private development sites. Transport schemes can also cause disruption.

It is important to acknowledge that at present there are no measures in place to determine the exact level of disruption caused by utilities. The lack of evidence has important implications for the credibility of this consultation.

Excavation more than once in the same area of road can occur for several reasons. One reason this can happen is when a developer or customer has not yet completed all of their applications for each of the services required from the respective utility companies. Perhaps this is an area that could be investigated by local authorities when a building warrant is issued.

The consultation paper is based upon data supplied by the Scottish Road Works Register concerning the quantity of notices issued. The register is incomplete as many roads authority equivalent works are not noticed or recorded on the Register. To seriously tackle the problem of traffic congestion both utility and roads authority works must be considered as only 5% of the overall problem has been considered by the consultation paper.

Scottish roads provide a thoroughfare for vehicles and pedestrians but they also act as essential conduits for many services that are often taken for granted – electricity, gas, water, sewers and telecommunications. We believe the importance of these services and the work undertaken by utilities is not adequately recognised in the consultation document.

The correct way forward is as stated in your consultation document, page 13, section E, paragraph 16, which states that, “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 road works are carried out”.

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

- **The ‘power to advance well being’** is not fully explained in the consultation paper but could arguably be said to compliment the powers of the roads authority currently existing under NRSWA 1991 (NRSWA) as in section 115 the ‘power to give directions as to timing of works’. To devolve this power to a community level will not necessarily contribute to improvements and could lead to serious conflict between regulations as well as confusion amongst utilities and roads authorities.  
The power to require utility companies to share underground ducts would require extremely complex regulations due to the safety issues of electricity, gas, water and telecommunication services being in close proximity. A requirement forcing electricity to share a duct with water or gas (or telecommunications) is potentially life threatening and too dangerous to contemplate. Ducts not only carry services but are also a conduit for water and gas if not duct sealed correctly. More than one utility in a duct in addition to the primary safety issue of electric shock or explosion would require opening and closing duct seals by different operatives probably supplied with equipment from different manufacturers realistically questioning the integrity of any re-opened duct. This initiative is completely condemned.
- **Joint Forward Plans** enhance the requirement of the roads authorities to co-ordinate works under NRSWA section 118. Any practical enhancement to assist in co-ordination is to be encouraged.
- **Reporting to communities** must realistically reflect improvements to the co-ordination of road works and by definition must also apply equally to road works authorities as only 10% of congestion is caused by road works of which 5% is undertaken by the utilities. The Susiephone data regarding numbers of openings and activities in the Scottish Road Works Register does not include the majority of roads works authority minor works only those notices submitted by the utilities. Any percentage comparison between “council” works and utility works is biased due to the volumes of works undertaken by the road works authorities that are not noticed.

Relevant and meaningful performance indicators will be difficult to establish and are discussed in paragraph 28 below.

- **The strengthening of the powers already existing within NRSWA** and a review of the current associated Codes of Practice along with the regulations is to be encouraged as the majority of powers available to the road works authorities already exist.

**REVIEW of PROPOSAL ONE** – Duct sharing aside, the enhanced use of NRSWA along with the Local Government in Scotland Act will not stop utility activities as utilities only carry out essential works anyway, but if applied to road works authorities and utilities will result in improved co-ordination of all road activities to the benefit of the public.

## **21. PROPOSAL TWO: NEW PRIMARY LEGISLATION**

- **Charging for the full period of road works** - will not stop a single utility carrying out a single essential works and will increase the consumer costs of services as costs will be passed on to customers, i.e. the public. Unless deemed to be a utility tax for the government, charging for road works offers no benefit to utilities, authorities or the public as proven by the lane rental trials in England that have failed (not unsurprisingly) to record any decrease or increase in utility volumes of work which are governed by supply and demand.
- NRSWA section 117 already restricts works following substantial works carried out for road purposes. It does rely heavily upon road works authorities giving notice of works initially and the utilities having the demand and budgets to plan substantially ahead. Both of which are not always happening or possible. Strict enforcement of section 117 by both parties and the associated enhanced co-ordination is to be encouraged.
- Premium charging (or simply charging) for road works undertaken in peak periods will reduce peak period working unless essential (emergency repairs), depending upon the traffic sensitivity as per NRSWA section 123. However, it may increase the duration of works by restricting the working hours to those outside of traffic sensitivity if late/night working is not environmentally acceptable to the public.
- Costs incurred by utility companies due to inefficient working will be difficult to audit as work duration times depend upon site conditions. NRSWA section 125 already deals with the avoidance of unnecessary delay or obstruction.
  
- **Provision of an independent arbitration role** – if applied to both road works authorities and utilities to ensure a common requirement to undertake works efficiently, is to be encouraged. The arbitrator would have to consider the contractors working for authorities and utilities. The public need to be aware that both sides are subject to the same penalties, otherwise 5% of works undertaken in the road will be subject to no control and public perception of the control of works in any one road authority area will be flawed.
  
- **Increased emphasis on training for all those involved in the planning, completion and inspection of utility road works** – if applied to roads authority Inspectors as well as utilities and their contractors must benefit all parties.
  
- **A review of existing powers for roads authorities on reinstatements** – recommended to be undertaken by RAUC(S) and the Scottish Executive.
  
- **Making all current NRSWA Codes of Practice statutory** – the codes of practice as written will all require extensive re-drafting as the lawyers would make a fortune out of the mistakes and anomalies in the current documents. Also the regulations will require exact scrutiny. The ensuing codes of practice will require best practice guideline documents to make them practically workable. A massive undertaking but it would reduce prosecutions due to miss-interpretations of the existing codes and regulations.
  
- **Removing paper based notifications** – the Susiephone system currently achieves this but will need some improvements directed by the Scottish Executive to ensure

compliance by both utilities and authorities. It can only assist in improving co-ordination if used properly and managed appropriately.

- **A review of current penalties for safety offences** – agreed, as genuine safety offences are not acceptable. However, road works authority sites are often far worse than utility sites. The Safety code of practice should be equally applied to roads authority works with a review of all traffic management as currently being undertaken by the DfT in England.
- **Powers for road authorities to invest revenue generated from charges in co-ordinating road works** – as explained in proposal one, charges will have no effect upon utility activity, unless the English section 74 (133) ‘charge for occupation of the highway where works unreasonably prolonged’ were implemented noting that section 125 already deals with the matter albeit as a prosecution as opposed to a charge. Section 74 did work to a large extent in England in stabilising site occupation, whereas any charges incurred by the utilities for site overruns pay not for investing in co-ordination but in paying for administering the charging regime.
- **Joint Forward Plans** that enhance the requirement of the roads authorities to co-ordinate works under NRSWA section 118 that requires roads authorities to co-ordinate their works alongside utility works is to be encouraged. Long-term proposals except in cases such as the current Transco mains replacement programme or water mains replacement programmes are difficult to foresee with many utilities as commercial sensitivity and the lack of forward planning due to the restrictions of demand and supply. Artificial forward plans generated by legislation may well not be desirable or even possible.
- **Regular reporting to the communities** – no problems in principle although the primary informant must be the authorities who are looked upon as the road and activity owners as perceived by the public. Relevant and meaningful performance indicators will be difficult to establish and are discussed in paragraph 28 below.

## **F: HOW SHOULD WE MEASURE IMPROVEMENT?**

- **Total number of road works** – absolutely meaningless unless it includes roads authority works. Local communities will need to know the combined total of road works (roads authority and utility) and the quantity of each in order to scale any problems.
- **Type of works** – agreed.
- **Number of road works identified as overrun** – difficult to monitor unless based purely upon average estimated completions per industry. To be publicly acceptable it would have to equally apply to roads authority works.
- **Number of inspection failures** – agreed. To be publicly acceptable it would have to equally apply to roads authority works.
- **Number of road openings** – agreed. To be publicly acceptable it would have to equally apply to roads authority works.
- **Number of complaints** – each complaint would have to be verified as to validity and ownership and must impartially include road authority sites in order to obtain a balanced overview.

**G. Conclusion: Please give us your views**

**26.** The consultation must scale the problem to the proportions of responsibility and not restrict it's investigations to a minor contributor to the perceived problem of congestion. It must be noted that future planning and road design could impact in a positive manner towards future congestion. For instance, if the roads are designed for potential road works in the future, then traffic disruption in conjunction with effective planning and co-ordination of the works between the roads authority and utility could minimise congestion.

**26.1** The most common problem is likely to be peak hour working during high volume traffic flow and work on traffic sensitive roads. There is also a problem when roads authorities schedule works on major trunk roads and local trunk roads at the same time in the same area.

There is little doubt that inconvenience is caused when major road refurbishment works and large scale works are undertaken (i.e. those activities that impact on an area of road continuously over a 24 hour period) – whether by utilities or local authorities. Similarly, urgent repair works to utility apparatus will cause some inconvenience or congestion.

Within the city/town centres in Scotland the number of building projects and property re-developments that impinge on footways and carriageways for extended periods of time also cause congestion and delay. It must be noted that the introduction of bus/taxi only lanes, whilst aimed at promoting public transport, has had the effect of increasing congestion for other road users.

**26.2** The problem is mainly caused by high volumes of traffic, followed by poor co-ordination and communication. Other causes are: -

- The dual function of roads as a conduit for transport above service, and a conduit for the delivery of essential utility services below surface,
- the economic necessity for both uses to be facilitated with the minimum of disruption and to maximum efficiency

these all combine to cause the problems associated with road works, congestion, and disruption.

**26.3** Road authority and utility works must be equally co-ordinated. The electronic notification system should be able to group together proposed works and automatically flag any conflict of timings linked to estimated durations. Priority parameters could then kick in directing unsuccessful applications for both utility and roads authority works and should include housing and industrial development works as well as skips and scaffolding all of which affect traffic flow.

All local authority and non-statutory undertaker work should also be recorded on the Scottish Road Works Register (currently only statutory undertakers' work is required to be recorded). This would facilitate a more complete picture of what is actually happening. The gazetteer should be brought up to level 3; this would allow technology to

be introduced which would show on a map where the problem areas are at any given time. In addition, all local authorities and statutory undertakers should be members of Susiephone Ltd.

## **27. PROPOSAL ONE:**

We fully appreciate the thinking behind the community planning approach and the use of the Local Government Scotland Act 2003 (under which local authorities have a duty to co-ordinate community planning and the power to advance well being). However, we have a number of concerns over how the community planning approach would work in practice.

### **27.1**

SCOTJUG welcomes any opportunities for local communities to be kept better informed. However, to give local communities an accurate picture, the data must include work carried out by local authorities - the majority of which are not recorded on the Scottish Road Works Register.

Community Planning is likely to conflict with NRSWA section 118 which already requires the road works authorities to co-ordinate the execution of works of all kinds (including works for road purposes) in the roads for which they are responsible. Community Planning may benefit the co-ordination of major works but all parties should be consulted at the planning stage anyway. Any additional body trying to co-ordinate road works is likely to lead to conflict and inefficient co-ordination. The roads authority already has powers to give direction as to the timing of works, and it is not certain that value would be added to Proposal One as an effective route for addressing the congestion issue.

**27.2** Any legislative guidance that assists co-ordination is to be encouraged. However, section 20 of the Local Government in Scotland Act 2003 – “Power to advance well being” will need extensive extension by Statutory Instruments to be road works specific, something already covered by NRSWA. It is also likely to cause serious conflict with NRSWA and the associated regulations introducing an unmanageable plethora of rules and regulations.

**27.3** The strengthening of the powers already existing within NRSWA and a review of the current associated Codes of Practice along with the regulations is to be encouraged as the majority of powers available to the road works authorities already exist. The Codes of Practice will require extensive revision to be legally compliant with NRSWA and its associated regulations, but once achieved, areas of doubt and conflict should be minimal.

**27.4** Joint Forward Plans that enhance the requirement of roads authorities to co-ordinate their works alongside utility works is to be encouraged. Long-term proposals except in cases such as the current Transco mains replacement programme are difficult to foresee with many utilities as commercial sensitivity and the lack of forward planning due to the restrictions of demand and supply. The majority of utility works do not fall into the category of “forward plans” and any artificial forward plans generated by legislation may

well not be desirable or even possible. As mentioned previously, all works should in any case be co-ordinated by the roads authorities as required by section 118 of NRSWA. If information on all planned work was recorded on the SRWR and made available to all parties, this would assist in the co-ordination of major works, and in some instances might assist with other proposed works. This could be achieved by the use of Geographical Information Systems (GIS) for roads authorities and all statutory undertakers and then subsequently inserted onto the local authorities web site for viewing by all interested parties.

**PROPOSAL TWO:**

**27.5** There should be no need for new primary legislation unless required to enable dormant sections of the current act, NRSWA that has comprehensive powers already. New primary legislation would almost certainly be required to create the position of an independent arbitrator.

**27.6** Existing powers are not being used effectively. This was recognized by the House of Commons Transport Committee in its report on Local Roads and Pathways, produced on 25 June 2003. In this report the Committee states:  
‘There is insufficient co-ordination and co-operation between utilities and local authorities...The Government is developing new legislation to give local authorities more powers to co-ordinate these works and minimise delays...We recommend that the Government makes the existing system work before bringing in any new systems.’

The following Sections of NRSWA could be reviewed and if necessary strengthened or used more frequently:

- Sections 117 “Restrictions on works following substantial works carried out for road purposes”
- Section 118 “General duties of roadworks authority to co-ordinate works”
- Section 119 “General duties on undertakers to co-operate”.

NRSWA section 117 already restricts works following substantial works carried out for road purposes. It does rely heavily upon road works authorities giving notice of works initially and the utilities having the demand and budgets to plan substantially ahead. Both of which are not always happening or possible. Strict enforcement of section 117 by both parties and the associated enhanced co-ordination is to be encouraged.

Section 125 requires undertakers to avoid unnecessary delay or obstruction. This is rarely enforced and if enforced in England (as section 66) would have negated the need to introduce section 74 i.e. section 133 – charges for the occupation of the road where works are unreasonably prolonged. Seeming totally forgotten.

**27.7** (Missing).

**27.8** This relates to lane charges/overstay charges as possible options. Charges for road works will not stop a single utility carrying out a single essential works and will increase the consumer costs of services as costs will be passed on to customers, i.e. the public. Unless deemed to be a utility tax for the government, charging

for road works offers no benefit to utilities, authorities or the public as proven by the lane rental trials in England that have failed to record any decrease or increase in utility volumes of work which are governed by supply and demand. The trials failed to include roads authority works thus depriving the public of the true effect on all works undertaken in the public roads.

Charges for the occupation of the road where the works are unreasonably prolonged under section 133 of NRSWA have proved to be very cumbersome to administer as section 74 in England, mainly through badly drafted associated regulations. The administrative burden has increased overheads for both authorities and utilities, the question arises as to how the charges are to be funded by the utilities. As explained previously in proposal one, charges will have no effect upon utility activity but section 74 did work to a large extent in England in stabilising site occupation, whereas any charges incurred by the utilities for site overruns pay not for investing in co-ordination but in paying for administering the charging regime. Section 125 already deals with the matter albeit as a prosecution as opposed to a charge.

Given that utilities have statutory rights to occupy and access roads, and legal obligations to maintain the infrastructure, lane charging seems unnecessarily harsh, not to say unfair. There could even be an argument that lane charging provides almost a disincentive to maintain underground networks, because of costs involved.

These costs can only be passed on to the consumer of that service. This would then lead to the situation where utility charges would have to be increased to pay charges to the roads authority for delays to road traffic.

Charges may require 24 hour working to expedite the works whereas Environmental and Health and Safety issues must also be considered if late/night working is required. Alternatively, charges may also increase the overall duration of works by restricting the working hours to those outside of hours of traffic sensitivity.

**27.9** Making all the current NRSWA codes of practice statutory will require the re-drafting of all the codes in order to remove the mistakes and anomalies in the current documents so as to avoid future litigation. Also the regulations will require exact scrutiny. The ensuing codes of practice will require best practice guideline documents to make them practically workable. A massive undertaking but it would reduce prosecutions due to miss-interpretations of the existing codes and regulations.

Non compliance could be a fine following a prosecution as at present as it will be a criminal offence not to comply. The alternative is decriminalising the codes and allowing the roads authorities to charge miscreants. However, this will require a robust appeals procedure administered by an independent ombudsman, as challenges will be forthcoming.

If codes of practice are made statutory there are two options open to the Executive. The first option is that they are enforceable by a fine following a prosecution as is presently the case. The second option is that the office of the independent arbitrator is responsible for administering a penalty system with a sliding scale of penalties dependant on the

seriousness of the offence. It would not be appropriate for local authorities to administer the scheme as they should, as indicated previously, also fall under its auspices.

**27.10** Training and training reviews equally for roads authorities and utilities would ensure up to date knowledge and compliance with the legal requirements of undertaking and supervising road works. Section 126 of NRSWA already requires utility supervisors and operatives to be suitably trained and qualified in order to execute road works whereas there is no such requirement for the roads authorities.

Compulsory accreditation for roads works inspectors to mirror the utilities and compulsory review/refresher training every five years would help ensure that everyone involved in executing road works is as fully trained as possible. Furthermore, compulsory training for SRWR administrators and road works inspectors on the NRSWA codes of practice would improve system efficiency.

**27.11** The proposals will initially “smarten up” utility standard work durations, but due to the nature of statutory and commercial business demands, road activities will neither increase nor decrease as proven in England. Without including roads authority activities within the proposals, the public will only be marginally affected by any improvements. The question is not clear as it refers to increased charges. Charges, if introduced will definitely increase the administrative workloads of utilities and roads authorities, resulting in increased utility costs and charges artificially high to pay for their own administration.

A further indirect impact of charges could be that increased costs are passed on to both the domestic and business consumer.

**27.12** The provision of an independent arbitration role if applied to both road works authorities and utilities to ensure a common requirement to undertake works efficiently, is to be encouraged. The arbitrator would have to consider the contractors working for both authorities and utilities. The independent arbitrator’s powers only applied to utility working will not enhance the co-ordination process as the process takes all road works into account.

The public need to be aware that both sides are subject to the same penalties, otherwise 50% of works undertaken in the road will be subject to no control and public perception of the control of works in any one road authority area will be flawed.

The main purpose of the paper is to reduce congestion. By independently co-ordinating conflicting works between all parties i.e. roads authorities, utilities, skips applications, scaffolding and development sites as necessitated by customer requirements, budget restrictions (year end excess etc.), regulatory conditions of service etc., the arbitrator would be seen as truly neutral with only the interests of the travelling public to the fore.

The office of the independent arbitrator could also deal with complaints from the public concerning both utility and local authority road works.

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

In order to achieve better co-ordination of works, the SRWR needs to hold all information of intended works including those where permits are issued for skips and scaffolding. It should also include all road authority works. All utility companies are already required to register all their works. This could be facilitated for non-statutory undertakers by either a direct link into the electronic system, or payment to have the works recorded by a third party. By making this information more widely available, in a format, which can be readily used, this would improve the co-ordination of works.

Each organisation working on the public road should carry out their own quality procedures. This can be done in a number of ways. SJUG have agreed to undertake self-scoring as well as checks on the accreditation of those involved in these works. In addition the local authority and trunk road operators should continue to carry out their inspections of all works. It is important that this information is collated within the register and that all results are published.

**28.1** The suggested performance indicators set out in paragraph 22 as stated previously must include both utility and roads authority works, trunk road operators, as well as skips and scaffolding and is extremely difficult to scale as the first decision is “what is being measured?”

None of the suggested performance indicators specifically concern co-ordination and they only marginally concern quality as the whole life wear and tear of a road starts with its history, its construction below blacktop (if any), upgrades, authority and utility activity and traffic intensity and loading.

The performance indicators suggested would cover the main areas although there is a need to include all road works in each local authority area including those carried out by the local road authority, trunk road operators, non-statutory undertakers and permits for skips & scaffolding.

In summary the performance indicators will only be useful if all works are included.

**28.2** Consideration must be given to the basics such as the number of excavations (roads authority and utility) in any given period, associated defects (roads authority and utility), road failings due to other causes. Also the degree of congestion (if any), frequency of lane/road closures and associated reasons and the number of traffic incidents occurring with and without road works (roads authority and utility) could all be considered.

A report on the inspections carried out by the local authority and trunk road operators should be included, as this will indicate general performance. The current compliance rate is 90% pass and this is the minimum target that all utility work should be measured against. There needs to be some agreement across the country as to what constitutes a pass and fail as some areas of the country currently differ. An example of this would be two adjacent local authority councils where one passes and one fails to meet the 90% compliance targets and the work has been carried out by the same contractor, squad and with the same material, for a utility company.

**28.3** The roads authorities should report to the Area RAUCs who report to RAUC(S) who report to the Scottish Executive.

The report should be available from the Scottish Road Works Register provided that all local authorities and trunk road operators enter the information for all inspections undertaken for all road works including local authority, trunk road operators, statutory and non-statutory undertakers and not just for those inspections that fail. This report should then be presented at all levels of RAUCs and made available to the public.

There are two performance reporting mechanisms that could be applied. The first as outlined above, the second option is that local authorities report directly to the office of an independent arbitrator who could publish the performance reports alongside its annual report.

**29.** Road works undertaken by road authorities and utilities are only ever undertaken as works deemed to be essential for the good of the public as essential services or by competitive selection. Not all the public benefit at the same time so there is often a conflict of concern whenever those not directly benefiting at the time may see road works as a nuisance, whilst the recipients of service demand the works in order to obtain the service.

Utility companies only dig as a last resort. The excavation process is extremely complex and costly and due to the associated maintenance responsibilities is only undertaken when required either by statute, for maintenance or by customer demand.

The Scottish Joint Utilities Group is determined to reduce time spent re-visiting sites to effect remedial works by improving the quality of their reinstatements. Each utility has submitted long term improvements as part of a joint plan to improve quality and subsequently reduce the possibility of causing congestion.

Finally, congestion is caused by traffic, traffic is caused by people, people living densely create traffic, traffic causes congestion. Every single housing application that is approved by the government or the authorities attracts a minimum of four utility companies to the site of application to provide water, electricity, gas and telecommunications services demanded by the developers and their customers. This equally applies to industry. Compulsory unique utility service strips alongside new trunk, town and rural roads and within development sites along with service road crossing points would all not only assist with reducing congestion, but will help keep the utilities off the roads in the future.

**SCOTTISH JOINT UTILITY GROUP RESPONSE**  
**16.01.2004**