

Road Service*, Falkirk Council

Response

to:

'The Consultation on the Regulation of Utility Company Roadworks'

In responding to the above consultation, the Roads Service* of Falkirk Council would wish to register its belief that it is appropriate that such a consultation be commissioned at this time and thanks the Scottish Executive for doing so and for giving the Service the opportunity to respond.

General Comment

The above does not mean, however, that the Service believes that the format of the consultation is entirely appropriate being perhaps less than targeted on the real current problems. While it is recognised that democracy is a necessary adjunct of such consultation, the list of consultees include many organisations whose understanding and experience of the legislation, codes of practice, structures, procedures and ensuing problems must be very limited particularly at a practical level. It is hoped that the responses of the real professionals in the field, the Roads Authorities and Utilities will be given considerably more weight than those of less affected bodies.

The Service believes that a consultation specifically on the Traffic Management Bill would have been a more targeted and useful exercise. It is disappointed that the implication given at the RAUC(S) Seminar on the 1st October 2003 that the consultation would be in this latter form was not corrected by Scottish Executive personnel in attendance.

The Service is further concerned that the implication of the consultation is that Scotland is prepared to 'go it alone' in this field. The Service believes that, for a largely UK wide 'industry', it is not only a retrograde step but one which could lead to future difficulties for Roads Authorities in Scotland having to deal with utility companies possibly not fully conversant with, and possibly resentful of, a different regime in Scotland.

Nevertheless, the Service does recognise the dire need for improvement on current arrangements. But the Service does not consider that there is too much wrong with the New Roads & Street Works Act 1991 were the utility

* In Falkirk Council the Roads Service does not exist as a single entity but comprises elements of Development Services (the 'lead' element in NRSWA matters) and of Corporate & Commercial Services.

companies prepared to play (or were coerced into playing) a full, active and responsible part in it. It is with considerable sadness that the Service recognises that twelve years of encouraging and cajoling Utilities to do so has resulted in no more than their paying lip service to the requirements of the Act and its subsidiary Codes of Practice. This in spite of there being a large number of committed and professional people within the ranks of the Utilities who would welcome the opportunity to do so. Unfortunately they have had no more success than the Road Authorities in getting Utilities to co-operate effectively. The reasons behind the Utilities' position is, of course, privatisation, profit generation and the inevitable and virtually continuous 'downsizing' which has been experienced as Utilities try to meet their commercial goals and obligations without any regard to their obligations under the NRSWA.

It would therefore be considered pointless if the outcome of this present consultation were the continuation of a regime or the establishing of an alternative whereby the regulations, obligations and procedures are not mandatory on all utility companies.

The Service, in endeavouring to deliver a high quality environment with traffic and transport protected as far as possible from difficulties and delays, does recognise the inequality inherent in a highly regulated utility sector and an unconstrained roads authority works sector whether the latter service is delivered internally, at one remove or totally separately. It would be wrong not to recognise the present contribution made by Roads Authorities to disruption and delay through carelessness, bad practice and failure to co-ordinate and adopt fully the 'noticing' system.

The Service therefore believes that all occupiers of the public road, Utility, Roads Authority and others should be subject to the same regime. Aspects of the Traffic Management Bill's 'Network Manager' scenario should be adopted as a compulsory element of the future regime. It is felt that it is necessary to specifically include Roads Authorities themselves in the rules and regulations as, apart from the above criticism of them, were it to be voluntary to Authorities, some would implement it by way of best practice and others would not. Those that did would be committed to expenditure greater than those who did not. Current Performance Indicators would inevitably reflect this in a way detrimental to the conscientious Services.

Lastly, as far as general comment is concerned, although it was emphasised in the second paragraph that the views of Roads Authorities and Utilities should be given a weight not afforded to most of the other consultees, one point has to be recognised which is that there is every likelihood that the views of these two sides will be completely polarised as they were in the last consultative exercise a year or so ago. In the event of this scenario arising, it must be borne in mind that it is the Roads Authorities who have the ultimate responsibility for the state of the roads and the traffic flows on them. It is only they who can, given the proper tools, effect a change for the better. Accordingly, their views must be given precedence and great care must be

taken in attempting to reach a compromise solution as any such is very likely to be weak and/or unworkable.

Response to the Specific Questions within the Consultation Document

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)*

Reply

- i) Extended stays on site often to the extent of abandoning the site during the course of work.
- ii) Poor temporary traffic signal management in relation to flows in general but, in particular, in relation to tidal flows. Often no one is on site to reset signals during rush hours particularly during the short working winter days.
- iii) Lack of attention to signs, barriers and signals once erected. The former two in particular are often not checked and, tending to be light and not properly weighted (latest CoP rules may improve this if adhered to) often get blown over usually when no one is on site to effect repairs.
- iv) Lack of proper timeous noticing and co-ordination efforts

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

Reply

- i) The failure of Utilities to play their full part in implementing the NRSWA as intended. This stems from their conflicting profit motives (and, to be fair, sometimes from their statutory duties) and the consequent downsizing, externalisation etc.
- ii) It is questionable whether top executive management of the Utilities are truly aware of their companies' obligations under NRSWA. Whether they are or not, by their policies, intentional or otherwise, they tend not to allow lower echelons to comply with the Act properly even when there is a will to do so.
- iii) Downsizing has meant that there is a lack of staff, particularly appropriately qualified staff at the various relevant levels, to deal with all the NRSWA matters and site inspection is virtually non-existent. Indeed, it is clear that the Roads Authorities personnel

are used for this latter purpose albeit it is the proper role of Roads personnel simply to 'monitor'.

- iv) Externalisation has led to most work being carried out by contractors often with agents performing the role of client instead of the Utility. This leads to another one or two sets of company agendas and profit motives getting in the way of effective and conscientious compliance with the Act. Such companies are self-regulating under their respective contracts but it has become clear from a number of such arrangements over the last decade that these do not deliver the intended outcome.

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

Reply

- i) The current electronic noticing system is always under review with a view to improvement and this is effected when possible but the system is generally satisfactory.
- ii) There may be budget issues restricting improvement since finance is contributed effectively voluntarily. The utilities in particular are unlikely to vote monies to aspects which would have, from their points of view, detrimental affects on them. It may be necessary for directives to be put in place by the Executive to regularise funding for improvement although care would be required not to translate this into taking control of the system.
- iii) The main difficulty and where most improvement is required is not in the noticing system itself but in the adherence to the requirements of the Act and CoPs in respect of its proper usage. **Effectively this aspect requires enforcing legislation.**

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

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

Reply

- i) Community Planning is perceived as the mainstay of all operations undertaken by Falkirk Council. The Council has established a framework which insures consultation with the community through Area Forums, Local Officer Network, the production of local neighbourhood plans and provision of support for the administration of the framework.

- ii) However, given the nature of the work and the main parties, Roads Authorities and Utility Companies, involved, it is unlikely that very heavy local input would be practical in what is a very technical issue.
- iii) It would be considered impractical because each community would have its own agenda, would not fully understand the relationships and intentions of the regulations and would simply react quickly to urgent issues arising. It is believed that this would be detrimental to the task.
- iv) Valuable and very scarce resources on both sides would be tied up servicing community involvement rather than improving the basic task of improving matters on the road.
- v) However, none of the above would prevent consulting with the community by briefing at the appropriate Area Forums.

27.2 Would further guidance on the Local Government in Scotland Act and how its powers can be used to address roadworks be useful? Is so, what form should this take?

Reply

- i) No further guidance is required in that the Local Government Act is considered, as indicated above, to have no part to play in this issue.

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

Reply

- i) While a detailed analysis of what would be possible in terms of strengthening the NRSWA as opposed to new legislation would be required, it is considered that, if at all possible and practical, **this would be the best way forward.**
- ii) The advantage of strengthening the NRSWA as opposed to new legislation is the familiarity the whole 'industry' has with it and its CoPs, guidance etc even if their provisions are not currently voluntarily applied as intended.

27.4 What are your views on Forward Plans for Roadworks?

Reply

- i) Formal Forward Plans may have a place but, when it is considered the number of emergency works which take place and the number of nearly similar works where Utilities have to

respond to service problems virtually instantly by virtue of their charters, they are not as attractive as they may appear.

- ii) In any case, the present co-ordination intentions, if implemented properly, would have the same effect as Forward Plans and no doubt this title could be used in connection with them if desired.
- iii) However, there are too many ways for the utilities to avoid their obligations for co-ordination. The phraseology of the CoP is too tightly drawn. It refers only to major works. Utilities have creative ways of denoting works as non-major or not in a programme and deliberately fail to advise of their intentions even when programmes are known many months in advance. Commercial confidentiality is also cited for avoiding submitting details.
- iii) A valuable way forward would be to **make mandatory the tabling of all known or potential works of all classes**. Potential would include all probable or even possible works. The submission of **accurate dates as possible and their regular updating would also be made mandatory**. The need for the Roads Authority to demonstrate that they considered all submitted programmes might well also be made mandatory.
- iv) To be really effective the above legislative changes require to be **allied to the powers of the Transport Bill's 'Network Managers'**. Of necessity, the **Roads Authorities' own programmes would require to be mandatorily submitted** (presently these are also voluntary so less than effective) for consideration alongside those of the Utilities.

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

Reply

- i) New primary legislation may be the way forward although, as indicated above, it is considered that a strengthening of the NRSWA might be preferable. However, it is also acknowledged that a new Act drafted from scratch might be preferable as an item of legislation due to the potential complexity of strengthening the present Act.
- ii) However, **a solution to present difficulties is required now**. It is therefore essential that the time required to deliver a new Act and all its subordinate Regulations, CoPs, guidance and training is carefully weighed against the time which would be required to strengthen the present Act especially if the assumption may be made that much of the present subordinate documentation etc would stand.
- iii) The time element is also relevant if it were intended that new legislation were solely Scottish and work on it would have to start from the beginning without benefit of proceedings in England which may be ahead of Scotland.

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

Reply

- i) It is considered that, in general, much of the present Act and its CoPs could be strengthened by being made mandatory through legislation. Such strengthening is considered to be essential, the 'voluntary' arrangements having totally failed as stated above.
- ii) It may be that the Roads Authorities require to be given 'more teeth'. This might simply be by increasing rates for Defect Inspections and such matters. Greater and more immediate powers/consequences of failed reinstatements and other failures or on the serving of Improvement Notices may be appropriate. The poor response by Utilities to defect notices and more immediate such communications is very poor usually leaving the Roads Authorities to 'sweat it out' trying to get something done. The 'penalty' which lies only within the inspection charging provides no incentive.

[27.7 Number not used within original consultation document]

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?

Reply

- i) Charges for overstaying would lead to over-estimation of time required as has been witnessed in England. It would be a very difficult task for the Roads Authority to monitor all openings and later prove their arguments. The resources required for the on-site task and later the administrative task of correlating reports, interfacing with utilities and resolving the inevitable and many disputes would be enormous.
- ii) It appears that the preferred way of charging would be on a daily basis. While the Roads Authority would still be required to monitor all openings, it is considered that this would be a little easier than checking overruns. The subsequent administration task would probably be a little easier also.
- iii) It is doubtful if such a charging scheme should include a free day or days. It would appear preferable for everyday to be payable if only to reduce administration.
- iv) It may be that a scale of charges, relatively small for a few days increasing as the length of occupation increased could have merits but this would require to be considered further. Charges relating to traffic sensitivity might also be appropriate but this

could be difficult to implement as it is likely that Roads Authorities' lists of such may not be up to date and Utilities have a veto on designations.

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?

Reply

- i) On the face of it, it would appear that making all the NRSWA CoPs statutory would be beneficial. However as mentioned above, some careful consideration of the Codes would be required to ensure that, for example, inappropriate sections were not included.
- ii) If some or all aspects were being considered for statutory status and with the nature of the industry being that much is done by consensus, it again may have to be the Roads side views which are given most weight. The utilities are unlikely to vote for matters which will be detrimental to themselves.
- iii) As far as sanctions are concerned, these too need a little further thought, but as has been mentioned, increased charges for defects of whatever nature need to be introduced. Realistic penalties, whether monetary or restrictions on placing new apparatus, may be appropriate in the cases of persistent failures or on receipt of an Improvement Notice.
- iv) Similar sanctions would be appropriate, especially for repeated offences, for failing to assist co-ordination, for failing to notice or provide notices accurate in all respects, for occasioning abortive visits, for failing to be represented at co-ordination and other meetings.
- v) Some of the latter may also be relevant for Roads Authorities who fail to comply with their side of the legislation.
- vi) All the above monetary 'fines' to go to the Roads unit supervising NRSWA matters to help defray costs.

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

Reply

- i) Training for all participants on both sides from top managers through line managers, inspectors, supervisors, operatives and 'noticing' operators to be introduced. Note the involvement of top managers – each organisation would require, by legislation, to have a Director directly responsible for NRSWA matters and performance. If that Director was located in England, he/she would still have to undertake a Scottish course unless

arrangements were UK wide. Training would be relevant to level of involvement, uniform across the country and coherent, focussed and mandatory. Probably provided by formal training establishments.

- ii) Could a certificate system be introduced as for supervisors and operatives? The latter's certificates to continue to be in card format and to be made foolproof to avoid duplication etc. No certificate to be awarded simply for attendance. A set number of failures at any level to involve the removal of the certificate (for a period?) and prevent involvement in NRSWA matters? Periodic retraining and formal updates to be added to certificates in the event of changes occurring such as a revised CoP.
- iii) It is recognised that these suggestions are pretty draconian but some real improvement in training and prevention of backsliding afterwards is desperately called for.

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?

Reply

- i) Virtually any and all of the above proposals will have an effect on Roads Authority staffing levels. Particularly if regulations are extended to cover Roads Authorities own work. Generally, at present NRSWA sections are understaffed, they would be more so under these proposals.
- ii) It is difficult to see Local Authorities funding the revised staffing levels at the present time and some provisions may be necessary in this respect. Minimum staffing grades and numbers may required to be specified in respect of the task in question and based on local authority area, length of public road, population etc.
- iii) Less tangible may be the loss of the mutual harmony and co-operation between Utilities and Roads Authorities at lower levels even if the co-operation element is somewhat more lip-service than actual much of the time. The future of consensus based meetings such as RAUC(S) may be in doubt.
- iv) Such adverse effects may be necessary to achieve useful improvements overall.

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

Reply

- i) Arrangements for conciliation and arbitration are provided for in the NRSWA and expanded on in the CoPs. This includes

reference to an independent arbitrator when considered necessary.

- ii) However, these arrangements may be considered somewhat *ad hoc* and it could well be preferable for a single 'professional' arbitrator to be established with a Scotland-wide remit. As an alternative, a limited corps of such 'professionals' might be preferable. Both arrangements would allow for consistency in approach but the latter would allow better sharing of information and understanding and allow for continuity issues to be addressed.
- iii) The role might well develop with time as experience of arbitration was gained by both Roads and Utilities. Initially it may be appropriate for relatively basic matters to be handled as well as major issues so that the 'industry' might establish 'precedence'. Established precedence would assist in informal conciliation/arbitration thereafter.

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

Reply

Falkirk Service believes that either new legislation or the strengthening of the NRSWA is preferable to utilising Community Planning or other aspects of the Local Government in Scotland Act. The Service believes strengthening the present Act is preferable to new legislation but recognises that there could be difficulties and time issues in the latter approach outweighing identical issues inherent in new legislation.

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?

Reply

- i) It is considered that Performance Indicators should never be established simply for the sake of having them. They must be absolutely relevant, meaningful, repeatable and able to be compiled with the minimum impact on staffing and front-line service provision.
- ii) Of those mentioned, the number of roadworks are irrelevant unless related to a common base e.g. population, public road length especially urban road length.
- iii) The type of works as suggested is not held at present. Difficulty is anticipated on determining the types of works and recording same.

- iv) Overrun statistics are only as good as the inspection and administration regime. Could reflect more on Service's staffing levels and quality than on Utilities' work. With daily payments, it might be possible to indicate number of work days per opening per utility which would be true relevant averages but whether water, for example, can be compared with telecoms is perhaps doubtful.
- v) Considering the number of Road Openings in the sense described, do we really want to have a PI which will usually be either 0% or an extremely low value? Often Utilities cannot co-ordinate for very good reason although improved legislation and/or a Network Manager would encourage more than at present.
- vi) Numbers of complaints received may not be relevant the one to the other. Openings in heavily trafficked areas or residential areas for example may incur more complaints therefore the PI would reflect where the Utility happened to be working during a particular review period. A Utility with saturation apparatus placement or the business plan not to enter a particular area could achieve 100% as there would be no complaints at all as there would be no openings. An improvement would be to relate complaints to the total number of openings although, as a percentage, no openings/no complaints would rate a percentage of infinity! It is not always possible to attach a verbal complaint to a particular opening. Statistics would require to be amended as and when on site information became available, sometimes some time later if identification is difficult. Would multiple complaints re one opening at one time be counted as one or multiple?

28.2 *Would you suggest any others?*

Reply

- i) Would suggest as PI, the national coring results although it might need to be recognised that such coring might only occur in certain years. Local coring could be done but consistency of selection, procedures and evaluation could be questioned.
- ii) The sample inspection results might be used but, because of their nature, these may tend to be uniformly fairly high indicating purely the snapshot in time that they do.
- iii) The number of defect notices as a percentage of openings may be possible but, to an extent would be measuring Roads Authority staffing and activity.
- iv) Abortive visits might be used.
- v) Failure to notice might be used.
- vi) Any of the above, including some suggested by the Executive may, with a great deal of care, be worked up into meaningful PIs.

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

Reply

Insofar as any PI reporting is actually of interest or of use to any stakeholder, relevant and meaningful PIs (of limited number) would be reported as per other Statutory PIs although perhaps those discussed here may also be published elsewhere where maximum exposure and impact would be achieved.

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

Reply

The Service's suggestions are contained in the foregoing but, in summary, relate to the need for considerable tightening up on procedures whether by new legislation or by strengthening the NRSWA by legislation; by incorporating Roads Authorities' own operations in these procedures; by instigating posts such as Traffic Manager and by introducing real penalties for defaulters.

[End of Reply]